

possible failure to comply with standards or requirements subject to this Part. The investigation should include a determination of the authority under which the standards or requirements were imposed and, where appropriate, a review of the records kept pursuant to 24 CFR Part 40.6; the circumstances under which the building of facility was designed, constructed or altered; and other factors relevant to a determination as to whether there has been noncompliance with this Part.

(e) *Resolution of Matters.* (1) If any examination, inspection, periodic compliance review, complaint, or investigation pursuant to this section indicates a failure to comply with the applicable standards or requirements, the Secretary shall attempt to gain voluntary compliance whenever possible. (2) If it has been determined that voluntary compliance cannot be achieved, the Secretary shall refer the matter to the appropriate Assistant Secretary for action pursuant to his or her program authority regarding the residential structure or other building or facility under investigation, to achieve compliance with the requirements subject to this Part. The Assistant Secretary shall report to the Secretary within 30 days of the date of such referral regarding the action taken and the schedule and means of achieving compliance, except that the Secretary may specify a shorter or longer reporting period, as deemed appropriate.

(f) *Disposition of Unresolved Complaints.* Unresolved complaints shall be referred to the Architectural and Transportation Barriers Compliance Board to be processed in accordance with 36 CFR Part 1150. A complaint shall be deemed unresolved if it is not resolved within 90 days of the date of the filing of the complaint with the Department.

(g) *Compliance Action by Other Individuals.* Individuals other than the Secretary may receive complaints and undertake other appropriate actions to achieve compliance with requirements subject to this Part, so long as initial notification of such complaints or proposed actions is given both to the Secretary and the appropriate Assistant Secretary.

§ 41.6 Matters involving the architectural and transportation barriers compliance board.

(a) *Complaints.* With respect to any complaint referred to the responsible Department Official by the Architectural and Transportation Barriers Compliance Board (A&TBCB), the procedures set forth in this Part shall apply. In such a case, the Secretary shall coordinate all

investigations and/or other compliance actions to assure that the Department resolves any architectural barriers deficiencies so as to respond to the A&TBCB within its required 60-day period set forth at 36 CFR 1150.41 for the informal resolution of complaints.

(b) *Citations.* The Office of General Counsel shall, with the assistance of the appropriate Assistant Secretary, respond to any citation issued by the A&TBCB to the Department alleging noncompliance with the standards issued pursuant to the Architectural Barriers Act of 1968, as amended. The applicable procedures regarding such a citation are set forth at 36 CFR Part 1150.

Authority: Sec. 7(d) Department of HUD Act, 42 U.S.C. 3535(d), and Pub. L. 90-480, 42 U.S.C. 4153.

Issued at Washington, D.C., October 23, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Test Report

Wednesday
October 31, 1979

Part V

Environmental Protection Agency

Timber Products Processing Point Source
Category Effluent Limitations Guidelines,
Pretreatment Standards, and New Source
Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 429

[FRL 1311-4]

Timber Products Processing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Regulation.

SUMMARY: EPA proposes regulations to limit effluent discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from facilities engaged in the processing of timber products.

The regulations proposed in this notice include Best Practicable Control Technology Currently Available, Best Conventional Pollutant Control Technology, and New Source Performance Standards regulations for the wet process hardboard and insulation board subcategories and revised Pretreatment Standards for New Sources and Pretreatment Standards for Existing Sources for the wood preserving subcategories. This notice withdraws Best Available Technology Economically Achievable regulations for the Wood Preserving-steam subcategory and for the hydraulic barking portion of the Barking subcategory.

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic data bases, and other aspects of the proposed regulations. That section also summarizes the public comments on the draft technical report and the draft economic analysis report circulated in October and December 1978, respectively. The Abbreviations, acronyms and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

These proposed regulations are supported by four major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April, 1977, EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Timber Products Processing Point Source*

Category. The Agency's economic analysis is presented in *Economic Impact Analysis of Alternative Pollution Control Technologies, Wood Preserving Subcategories of The Timber Products Industry, and Economic Impact Analysis of Alternative Pollution Control Technologies, Wet Process Hardboard and Insulation Board Subcategories of the Timber Industry*.

DATES: Comments on this proposal must be submitted on or before December 31, 1979.

ADDRESS: Send comments to: Mr. Richard E. Williams, Effluent Guidelines Division, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

ATTENTION: EGD Docket Clerk, TIMBER, (WH-552). The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. Richard E. Williams, at the address listed above after November 14, 1979, or call (202) 426-2554. The economic analysis may be obtained from Mr. Dale Ruhter, Office of Analysis and Evaluation (WH-586), Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, (202) 426-2617.

SUPPLEMENTARY INFORMATION:

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I. Legal Authority

The regulations described in this notice are proposed under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"). These regulations are also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979.

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT") (Section 301(b)(1)(A)); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of

the best available technology economically achievable (BAT) which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" (Section 301(b)(2)(A)). New industrial direct discharges were required to comply with Section 306, new source performance standards ("NSPS"), based on best available demonstrated technology (BADT); and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were to be enforceable directly against dischargers to POTW (indirect dischargers).

Although Section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these guidelines and standards by the dates contained in the Act. In 1976, EPA was sued by several environmental groups and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgation for 21 major industries of BAT effluent limitations guidelines, pretreatment standards and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc.*

v. Train, 8 ERC 2120 (D.D.C. 1976), modified March 9, 1979; 12 ERC 1833.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most significant feature is its incorporation of many of the basic elements of the Settlement Agreement program for toxic pollutant control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for toxic pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMPs") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants. Instead of BAT for "conventional" pollutants identified under Section 304(a)(4), (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984 of "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT"). The factors considered in assessing BCT for an industry include the costs and benefits of attaining a reduction in effluents, compared to the costs and effluent reduction benefits from the discharge of a publicly owned treatment works (Section 304(b)(4)(B)). For non-toxic, non-conventional pollutants, Sections 301(b)(2)(A) and 301(b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment, or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations and guidelines for BPT, BAT and BCT and to establish NSPS and pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA promulgated BPT, BAT, NSPS, and PSNS for the Timber Products Processing Point Source Category in two phases: on April 18, 1974 (39 FR 13942; 40 CFR Part 429, Subparts A-H), and on January 16, 1975 (40 FR 2804; Subparts I-M). BPT, BAT, and NSPS regulations for Subpart E—Wet Process-Hardboard were withdrawn by the Agency on September 28, 1977. EPA promulgated pretreatment standards for existing sources (PSES) within the Timber Products Processing Point Source Category on December 9, 1976 (41 FR 53930; Subparts A-M).

C. Overview of the Industry

The Timber Products Processing Industry (timber industry) consists of a diverse group of manufacturing plants whose primary raw material is wood. Included in this industry group are thousands of industrial operations, with products ranging from finished lumber and other wood building products to hardboard and preserved lumber. The size of these operations ranges from small family-owned concerns to facilities with over a thousand employees.

The timber industry includes nearly 11,000 sawmills, 3,000 millwork and finishing operations, 500 veneer and plywood plants, 415 wood preserving plants, 75 particleboard plants, 16 dry-process hardboard plants, 11 wet-process hardboard plants, 11 insulation board plants, and 5 plants producing both wet process hardboard and insulation board. The geographical distribution of this industry follows the natural range of timberland in the Pacific Northwest, Southeast, North Central, and Northeastern United States.

The industry is defined in Major Group 24 of the Bureau of the Census, Standard Industrial Classification (SIC) Manual; insulation board plants are listed in SIC Major Group 26 (Building Paper and Building Board Mills).

Previously published effluent limitations guidelines divided the industry into 15 subcategories: Barking; Veneer; Plywood; Dry Process-Hardboard; Wet Process-Hardboard; Wood Preserving (now titled Wood Preserving—Water Borne or Non-Pressure); Wood Preserving-Steam; Wood Preserving-Boulton; Wet Storage; Log Washing; Sawmills; Finishing; Particleboard; Insulation Board-Mechanical Refining; and Insulation Board-Thermo-mechanical Refining.

The Agency is not prescribing changes to existing regulations for eight of the above subcategories: (See Section of this

Preamble entitled "Pollutants and Subcategories Not Regulated").

The Agency is prescribing changes to existing regulations for the remaining subcategories: Wood Preserving-Water Borne or Non-Pressure; Wood Preserving-Steam; Wood Preserving-Boulton; Wet-Process Hardboard, dividing it into two subcategories; Insulation Board, combining the two subcategories into one; and Barking.

This preamble summarizes the profile and subcategorization, technical base, and methodology used by the Agency to develop effluent guidelines limitations and standards for these six subcategories.

III. Scope of This Rulemaking and Summary of Methodology

These proposed regulations open a new chapter in water pollution control requirements for the timber industry. EPA's 1973-1976 round of rulemakings emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well known technologies for control of familiar (i.e., "classical") pollutants.

In contrast, this round of rulemaking is directed to the achievement by July 1, 1984 of a level of control of pollutant discharge which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. This technology level represents, at a minimum, the very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In the 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. The "priority" pollutants have been relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience dealing with these pollutants. Additionally, these pollutants often appear and have toxic effects at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" detection and control, it directed EPA to act quickly and decisively to detect, measure, and regulate these substances. Thus, with the passage of the 1977 legislation, the

Nation's water pollution control program was thrust toward the frontiers of science.

EPA's implementation of the Act required a complex development program, described in this section and succeeding sections of this notice. Initially, because in many cases no public or private agency had done so, EPA and its laboratories and consultants had to develop analytical methods for toxic pollutant detection and measurement. These are discussed under Sampling and Analytical Program. EPA then gathered technical and financial data about the industry, summarized under Data Gathering Efforts. The resulting information was the basis for these proposed regulations.

First, EPA studied the timber industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments of the industry. This study included the identification of raw waste and treated effluent characteristics, including: (1) the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant, and (2) the constituents of wastewaters, including toxic pollutants. (See Industry Subcategorization for further discussion). EPA then identified the wastewater constituents to be considered for effluent limitations guidelines and standards of performance and statistically analyzed raw waste constituents as discussed in detail in Section V of the Development Document.

Next, EPA identified several distinct control and treatment technologies including both in-plant and end-of-process technologies which are either in use or capable of being used in the timber industry. The Agency compiled and analyzed both historical and newly generated data on the effluent quality resulting from the application of these technologies. The long term performance, operational limitations, and reliability of each of the treatment and control technologies were also identified. In addition, EPA considered the non-water quality environmental impacts of these technologies, including impacts on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency used two separate methodologies to estimate the costs of compliance to the industry for each control and treatment technology. NSPS and PSNS costs were derived from unit

cost curves applied to model plant characteristics (production, flow and pollutant loads) developed for each subcategory. BPT, BCT, and PSES costs were derived from unit cost curves applied on a plant-by-plant basis. This estimate, prepared for every plant in the technical data base, takes into consideration plant specific wastewater characteristics and flows, as well as technology currently in place. For both methodologies, the costs themselves were derived from unit cost curves developed by standard engineering analysis for each unit process within a control and treatment technology (pump station, settling basin, etc.). These unit process costs were added to yield total costs at each treatment level. After confirming the reasonableness of both methodologies by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs. (Costs and economic impacts are discussed in detail under the various technology options, and in the section of this notice entitled Costs, Effluent Reduction Benefits, and Economic Impacts).

Upon consideration of these factors, as more fully described below, EPA identified various control and treatment technologies as BPT, BCT, BAT, PSES, PSNS, and NSPS. The proposed regulations, however, do not require the installation of any particular technology. Rather, they require achievement of effluent limitations representative of the proper operation of these technologies or equivalent technologies.

Effluent limitations for BPT and BCT for the insulation board and hardboard segments of the timber industry are expressed as mass limitations (lbs/1,000 lbs production) and were calculated by multiplying the long term average treated effluent quality documented for the BPT and BCT technologies by their respective long term variability factors (both maximum day and maximum 30 days). The variability factors were calculated non-parametrically, as described in Section XIV of the Development Document. BCT limitations were also subjected to the BCT cost reasonableness test described in Best Conventional Pollutant Control Technology.

Effluent limitations for PSES for the wood preserving segment are expressed as allowable concentrations in milligrams per liter (mg/l). For POTW which may wish to impose mass limitations, the proposed regulations provide equivalent mass limitations.

IV. Data Gathering Efforts

The data gathering program is described in detail in Section III of the Development Document.

The Agency reviewed all available data from previous studies of the industry, information obtained from regional EPA and state regulatory offices, and data submitted by individual plants and industry trade associations. A complete bibliography of all the technical literature reviewed during the course of this project is presented in Section XVI of the Development Document.

Analysis of the above sources indicated the need for additional information, particularly concerning the use and discharge of toxic pollutants. Current information also was needed on process raw waste loads, in-process waste control techniques, and the identification and determination of the effectiveness of wastewater treatment and disposal systems.

Under the authority of Section 308 of the Act, EPA prepared and sent a technical data collection portfolio (DCP) to 288 wood preserving plants, and 27 wet process hardboard and/or insulation board producing plants. The Agency received 216 responses (75 percent) from the wood preserving segment, and 27 responses (100 percent) from the hardboard/insulation board segment. The DCP was the major source of information used to develop the profile of each industry segment. Historical data provided with the DCP responses (particularly the insulation board/hardboard responses) served as the source of long-term, historical information for the traditional parameters such as BOD₅, COD, solids, pH, phenols (as measured by the 4AAP method described in Standard Methods), and metals.

Data for EPA's economic analysis also were obtained under the authority of Section 308. The Agency sent information requests to 601 addressees identified as potentially being included in SIC 2491, Wood Preserving; of these, 337 respondents were identified as wood preserving operations. In the hardboard/insulation board segment, operators of all twenty seven plants producing wet process hardboard and/or insulation board received and responded to the 308 economic survey.

Review of the responses indicated that the technical and economic information available was adequate to profile the industry, identify practices, wastewater treatment and disposal methods, and evaluate the financial status of the segments.

A major source of information was direct interviews and sampling visits to production facilities. Survey teams composed of project engineers and scientists visited the plants. Information on the identity and performance of wastewater treatment systems was obtained through interviews with plant water pollution control or engineering personnel, examination of treatment plant design and historical operating data, and the sampling and analysis of treatment plant influents and effluents. The teams visited nine wood preserving plants, six insulation board plants, and eight hardboard plants from November 1976 through May 1978, with several plants receiving more than one visit.

Additional current information and data came from State and Regional regulatory offices and academic institutions.

V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to detect and monitor toxic pollutants was limited. Most of the toxic pollutants were relatively unknown until only a few years ago, and only on rare occasions has EPA regulated or has industry monitored or even developed methods to monitor for these pollutants. As a result, analytical methods for many toxic pollutants, under Section 304(h) of the Act, have not yet been promulgated. Moreover, state-of-the-art techniques involve the use of highly expensive, sophisticated equipment, with costs ranging as high as \$200,000 per unit of equipment.

When faced with these problems, EPA scientists, including staff of the Environmental Research Laboratory in Athens, Georgia and staff of the Environmental Monitoring and Support Laboratory in Cincinnati, Ohio, conducted a literature search and initiated a laboratory program to develop analytical protocols. The analytical techniques used in this rulemaking were developed concurrently with the development of general sampling and analytical protocols and were incorporated into the protocols ultimately adopted for the study of other industrial categories. See *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April 1977.

Because Section 304(h) methods were available for most toxic metals, pesticides, cyanide and total phenol, the analytical effort focused on developing methods for sampling and analyses of organic toxic pollutants. The three basic analytical approaches considered by EPA were infra-red spectroscopy, gas chromatography (GC) with multiple

detectors, and gas chromatography/mass spectrometry (GC/MS). In selecting among these alternatives, EPA considered their sensitivity, laboratory availability, costs applicability to diverse waste streams from numerous industries, and capability for implementation within the statutory and court-ordered time constraints of EPA's program. The Agency concluded that infra-red spectroscopy was not sufficiently sensitive or specific for application in water. GC with multiple detectors was rejected because it would require multiple runs, incompatible with program time constraints. Moreover, because this method would use several detectors each applicable to a narrow range of substances, GC with multiple detectors possibly would fail to detect certain toxic pollutants. EPA chose GC/MS because it was the only available technique that could identify a wide variety of pollutants in many different waste streams, in the presence of interfering compounds, and within the time constraints of the program. In EPA's judgment, GC/MS and the other analytical methods for toxics used in this rulemaking represent the best state-of-the-art methods for toxic pollutant analyses available when this study was begun.

As the state-of-the-art began to mature, EPA began to refine the sampling and analytical protocols, and intends to continue this refinement to keep pace with technology advancements. Resource constraints, however, prevent EPA from reworking completed sampling and analyses to keep up with the evolution of analytical methods. As a result, the analytical techniques used in some rulemakings may differ slightly from those used in other rulemaking efforts. In each case, however, the analytical methods used represent the best state-of-the-art available for a given industry study. One of the goals of EPA's analytical program is the promulgation of additional Section 304(h) analytical methods for toxic pollutants, scheduled to be done within calendar year 1979.

Before proceeding to analyze timber industry wastewaters, EPA concluded that it had to define specific toxic pollutants for analyses. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; and the expenditure of resources in government and private laboratories would be overwhelming if analyses were attempted for all of these pollutants. Therefore, in order to make the task more manageable, EPA selected 124 specific toxic pollutants for study in this rulemaking.

The list of pollutants was later expanded by the Agency to 129 pollutants. The expanded list included five additional polychlorinated biphenyls (PCB's) and di-n-octyl phthalate; and deleted endrin ketone, because no analytical standard was available. The expanded list was not released until after the timber screen sampling was completed. The Agency, therefore, continued to work with the original list of 124 priority pollutants throughout the remainder of the timber verification sampling program.

EPA determined the presence and magnitude of the 124 pollutants in the timber industry in a two phase sampling and analytical program.

In the first phase (Screening), seventeen plants, at least one in each subcategory, were visited and sampled. The plants were selected primarily to be representative of the timber industry operations and the wastewater control and treatment technologies currently practiced. One 24 hour composite of raw process wastewater and one 24 hour composite of treated wastewater; they also took grab samples for certain analyses requiring special handling and preservation procedures. The second phase of the study (Verification) included nineteen plants; seven wood preserving plants, seven hardboard plants, and five insulation board plants. Nine of the nineteen plants were sampled twice.

The primary objective of the field sampling program was to produce composite samples of wastewater which could establish the concentrations of toxic pollutants. Samples were collected during three consecutive days of plant operation. Raw wastewater was sampled either before treatment or after minimal preliminary treatment (e.g., primary oil separation, screening). Treated effluent samples were taken either following the final treatment prior to discharge to a POTW (indirect dischargers), prior to discharge to receiving waters (direct final effluent dischargers), or prior to final effluent disposal such as spray irrigation or evaporation. EPA also sampled intake water to determine the presence of toxic pollutants prior to contamination by the production process.

At both raw waste and treated effluent sample points, automatic samplers took sample aliquots at time intervals of 30 minutes or less. Aliquot size was adjusted so that a complete time composited sample (at least 3.5 gal) was obtained during a 24 hour period. Flow recorders were used to obtain the wastewater flow rates for each 24 hour collection period, if available. If they were not in place flows were measured

manually several times during the sampling period. Samples for conventional and toxic pollutants were obtained from each 24 hour composite. Grab samples were taken in specially prepared vials for volatile (purgeable) organics and cyanide. Prior to the plant visits, sample containers were carefully washed and prepared by specific methods, depending upon the type of sample to be taken. EPA took a number of other precautions to minimize potential contamination from sampler components. Samples were kept on ice prior to express shipment in insulated containers.

The analyses for toxic pollutants were performed according to groups of chemicals and associated analytical schemes. Organic toxic pollutants included volatile (purgeable), base-neutral and acid (extractable) pollutants, and pesticides. Inorganic toxic pollutants included heavy metals and cyanide.

The primary method used in screening and verification of the volatiles, base-neutral, and acid organics was gas chromatography with confirmation and quantification on all samples by mass spectrometry (GC/MS). Total phenols were analyzed by the 4-AAP method (*Standard Methods*). GC was employed for analysis of pesticides with limited MS confirmation. The Agency analyzed the toxic heavy metals by atomic adsorption spectrometry (AAS), with flame or graphite furnace atomization following appropriate digestion of the sample. Samples were analyzed for cyanides by a colorimetric method, with sulfide previously removed by distillation. Analyses for conventional pollutants (BOD₅, TSS, oil and grease, and pH), and proposed conventional pollutant (COD) were accomplished using "Methods for Chemical Analysis of Water and Wastes" (EPA 625/66 74-003) and amendments.

The high costs, slow pace and limited laboratory capability for toxic pollutant analyses posed difficulties unique to EPA's experience. The cost of each wastewater analysis for organic toxic pollutants ranges between \$650 and \$1,700, excluding sample collection costs (based upon quotations recently obtained from a number of analytical laboratories). Even with unlimited resources, however, time and laboratory capability would have posed additional constraints. Although efficiency has been improving, when this study was initiated a well-trained technician using the most sophisticated equipment could perform only one complete organic analysis in an eight hour work day. Moreover, when this rulemaking study

was begun there were only about 15 commercial laboratories in the United States with capability to perform these analyses. Today there are about 50 commercial laboratories known to EPA which have the capability to perform these analyses, and the number is increasing as the demand for such capability also increases.

In planning data generation for this rulemaking, EPA considered requiring dischargers to perform regular (weekly or monthly) monitoring and analyses for toxic pollutants under Section 308 of the Act. The Agency refrained from using this authority because it was reluctant to place additional financial burdens on this industry. Additionally, EPA believed that the slow pace and limited laboratory capability for toxic pollutant analyses would have hampered a mandatory sampling and analytical effort. Although EPA believes that the available data support these regulations, the Agency would have preferred a larger data base for some of the toxic pollutants and will continue to seek additional data. EPA will periodically review these regulations, as required by the Act, and make any revisions supported by new data. In developing these regulations, moreover, EPA has taken a number of steps to deal with the limits of science and available data. (See Regulated Pollutants and Monitoring Requirements.)

Wood Preserving Segment

VI. Industry Profile and Subcategorization

There are approximately 415 wood preserving plants operated by about 300 companies in the United States. The plants are concentrated in two areas, the Southeast from east Texas to Maryland and along the Northern Pacific coast. These areas correspond to the natural ranges of the southern pine and Douglas fir—western red cedar, respectively.

All wood products, regardless of their original strength, durability or natural resistance, will deteriorate in conditions which are conducive to attack by fungi, insects, bacteria, or marine borers. The application of selected chemicals as wood preservatives can protect timber from this deterioration, thus maintaining the original strength of wood over a long period of time.

Approximately 250 million cubic feet of preserved wood products are used each year. The most commonly treated woods are southern pine, Douglas fir, and oak, although railroads use large quantities of other hardwoods where they are available. Railroad ties constitute the largest use of treated

wood, accounting for 95 million cubic feet in 1976. Lumber and timbers accounted for 67 million cubic feet, and treated poles ranked third, with 53 million cubic feet. These three classes accounted for 84 percent of the volume of wood products which were treated in 1976.

The most commonly used preservatives are creosote, pentachlorophenol (PCP), and various formulations of water-soluble inorganic chemicals, the most common of which are the salts of copper, chromium, and arsenic. Fire retardants are formulations of inorganic salts; the principal ones are borates, phosphates, and ammonium compounds. Eighty percent of the plants use at least two of the three types of preservatives. Many plants treat with one or two preservatives and a fire retardant.

The wood preserving process consists of two basic steps: (1) conditioning the wood to reduce its natural moisture content and to increase its permeability; and (2) impregnation of the wood with the preservatives.

The conditioning, or drying, of wood raw material ensures that the preserving chemicals are absorbed in sufficient amounts. Conditioning occurs through a variety of methods. Air drying works by long term storage in the open air; dry kiln conditioning applies dry heat to the wood in an enclosed structure. Steam conditioning subjects the wood to a steam pressure in a pressurized treating cylinder, followed by a vacuum cycle which removes moisture from the wood. Boulton conditioning process involves heating the wood in the treating cylinder immersed in oily preservative under a partial vacuum.

EPA concluded that the conditioning process used by a wood preserving plant was the most significant determinant in generating the wastewater flows. Air and kiln drying plants generate the least amount of wastewater, followed by Boulton and steam plants. Some plants use a closed steaming process which recycles the moisture removed from the wood. This conditioning process greatly reduces wastewater flow. Plants which apply inorganic salts rely on air—or kiln—drying conditioning methods. Steam and Boulton conditioning are the predominant methods of conditioning wood prior to the application of oily preservatives, although many smaller plants use mostly air—or kiln—dried wood.

Wastewaters from plants which treat solely with inorganic salts contain high concentrations of copper, chromium, arsenic, and other heavy metals. These wastewaters are low in volume and are

recycled for use as make-up water in new preservative batches. This is the basis for the existing BPT, BAT, NSPS, and PSES no discharge limitations for inorganic salt plants (Water Borne or Non-Pressure subcategory).

Wastewaters from Boulton and steam conditioning plants which use creosote and/or pentachlorophenol have high phenolic, COD, and oil and grease concentrations along with a turbid appearance that results from emulsified oils. They are always acidic, with pH values ranging from 4 to 6. The high COD contents of such wastes are caused by entrained oils and wood extractives, principally simple sugars, that are removed from wood during the conditioning phase of the process. These wastewaters also may contain traces of heavy metals at plants which use the same retort for both water-borne salts and oil-type preservatives, or which apply dual treatments to the same stock; i.e., treat with two preservatives, one organic and one inorganic.

The principal toxic pollutants in wastewaters from plants that treat with organic preservatives are volatile organic solvents such as benzene and toluene, and the polynuclear aromatic components (PNAs) of creosote, including anthracene, pyrene, phenanthrene, etc., that are contained in the entrained oils. Because PNAs are highly soluble in oil and quite insoluble in water, the conventional pollutant parameter, Oil and Grease serves as an excellent indicator compound for PNAs. Both phenol and phenol derivatives were identified in these wastewaters; pentachlorophenol (PCP) is predominant when it is used as a preservative. The conventional pollutants found in the wastewaters include TSS, oil and grease, and pH. COD is the only nonconventional pollutant that has been found.

About 125 plants use both organic and inorganic preservatives to treat wood, although the organic preservative wood treating system usually is separate from the inorganic system. Analytical data generated during this study and earlier analyses of wood preserving wastewaters concluded that, even when the organic and inorganic process water/wastewater systems are kept separate, there is often still some inorganic material ("fugitive metals") in the organic treatment system. This cross contamination occurs from such activities as the use of the same carts to move wood in and out of both organic and inorganic treating cylinders, and drippage from the inorganic operation into the organic side. Analytical data show that concentrations of fugitive

metals are always less than 5 milligrams per liter, and generally well below 1 mg/l.

Of the 224 plants comprising the technical data base, 85 treat solely with inorganic preservatives, 35 use Boulton conditioning as the predominant conditioning method, and 104 are steam conditioning plants. All plants treating wood with inorganic preservatives and all plants treating wood with nonpressure processes are subject to existing BPT, BAT, NSPS, and PSES limitations which require no discharge of process wastewater pollutants. Boulton plants also are subject to existing BPT, BAT, and NSPS no-discharge limitations; however, 11 Boulton plants introduce wastewater to POTW, in compliance with existing PSES. EPA identified only one direct discharging steam conditioning plant, although existing BPT, BAT, and NSPS allow discharge of treated effluent. This plant discharges only during periods of high rainfall. Thirty-one steam conditioning plants introduce wastewater to POTW, as allowed by existing PSES.

In developing the proposed regulations for the wood preserving segment, it was necessary to determine whether different effluent limitations and standards continue to be appropriate for different groups of plants (subcategories) within the industry segment. The major factors considered in reviewing the subcategories were: plant characteristics such as age, size, and geographical location, raw materials, wastewater characteristics, manufacturing processes, and methods of wastewater treatment and disposal.

The Agency proposes to retain the existing subcategories, making minor changes in their definition and applicability sections in order to clarify the regulation.

EPA is retaining the previously promulgated Boulton and steam subcategories because the wastewater disposal options available to Boulton conditioning plants differ from those available to steam conditioning plants. The Boulton process, during the conditioning phase of the treating cycle, involves a long vacuum cycle, up to 48 hours, resulting in a source of heat from condensed vapors. This waste heat can be applied to the evaporation of process wastewater. The steaming process vacuum cycle is much shorter, about 2-6 hours. Because waste heat is not continuously available to steam subcategory plants, alternative methods of wastewater disposal are utilized. Evaporative technologies are most common, using spray or solar

evaporation instead of the cooling tower techniques usually employed by Boulton plants.

The Agency is retaining the Wood Preserving—Water Borne or Non-Pressure subcategory because of the unique wastewater characteristics generated by this subcategory and the ability of plants in this subcategory to achieve no discharge of process wastewater through recycle of process water. This proposal merely changes the Wood Preserving—Water Borne or Non-Pressure subcategory, title and applicability section. The changes simplify the regulation and minimize the possibility of misinterpretation; they do not change the applicability of the regulation previously promulgated. Additionally, PSNS standards for this subcategory, which currently allow introduction of process wastewater into POTW subject to the general pretreatment regulation (40 CFR 403), are being changed by this proposed rulemaking to prohibit introduction of wastewater into a POTW. This change will insure that pollutants contained in these wastewaters will not be introduced to POTW.

EPA is changing the Wood Preserving—steam subcategory applicability section. The previously promulgated definition included plants that use fluorochromium-arsenic-phenol (FCAP), a water borne salt-type preservative, as a wood treating solution. Upon completion of the technical study, the Agency determined that FCAP should be included in the Wood Preserving—Water Borne or Non-Pressure subcategory, which includes all other water-borne salt preservatives. Furthermore, the technical data base did not identify any direct or indirect discharging plants treating with FCAP. A more complete discussion of the rationale for this proposed modification of applicability with respect to FCAP appears in Section IV of the Development Document.

The new definitions for the proposed wood preserving subcategories are:

Wood Preserving—Water Borne or Non-Pressure—Includes all non pressure wood preserving operations, and all pressure wood preserving operations employing water borne salts.

Wood Preserving—Steam—Includes those wood preserving operations that use direct steam contact on wood as the predominant conditioning method; processes that use vapor drying as the predominant conditioning method; processes that use the same retort to treat with both salt- and oil-type preservatives; and processes which use both steam conditioning and salt- and oil-type preservatives on the same stock.

Wood Preserving—Boulton—Includes those wood preserving operations that use the Boulton process as the predominant method of conditioning stock.

VII. Available Wastewater Control and Treatment Technology

A. Status of in-Place Technology

The control and treatment technology applicable to the Wood Preserving—Water Borne or Non-Pressure subcategory is collection and reuse of cylinder drippings and other sources of wastewater. This technology, demonstrated by ninety percent of the industry, is the basis for all existing no discharge regulations and will not be addressed further in this preamble. The remainder of the discussion applies to the Wood Preserving—Boulton and Wood Preserving—Steam subcategories, both of which use organic preservatives.

Current control and treatment practices in the organic preservative wood preserving industry range from gravity oil-water separation, which is the minimum treatment used by nearly all plants, to biological treatment used by many indirect and nondischarging plants, to soil irrigation or evaporative systems used by many plants which are nondischargers of process wastewater.

B. Control Technologies Considered

The in-plant and end-of-pipe process water control and wastewater treatment practices and procedures that are applicable to the wood preserving industry are presented below.

In-Plant

- (1) Segregation of noncontact wastewaters.
- (2) The use of surface-type condensers in place of barometric condensers.
- (3) Recycle of barometric cooling water.
- (4) Drying of raw material outside the treating cylinder.
- (5) Use of closed steaming and modified closed steaming conditioning instead of open steaming.

The technical study supporting these proposed regulations did not quantify the reduction in process wastewater volumes resulting from the application of these in-plant controls. The Development Document and Record does include industry-provided information that each of these practices can reduce process wastewater volume. The closed or modified steaming versus open steaming conditioning alternative is not appropriate for all steaming plants because the cleanliness of wood conditioned by the closed steaming method may limit the uses of that wood.

Regulations proposed herein are not contingent upon the application of the above in-plant controls. Controls (1) through (4) are common industry practice.

End of pipe	Approximate percent of plants practicing	
	Nondischarging plants	Indirect discharging plants
(1) Gravity oil-water separation	85	100
(2) Chemical flocculation	10	35
(3) Slow and filtration or sedimentation	10	35
(4) Biological treatment: Oxidation ponds, aerated lagoons, activated sludge ..	20	15
(5) Evaporation: Solar evaporation, spray assisted solar evaporation, cooling tower evaporation, pan evaporation	90	< 10
(6) Spray/soil irrigation	10	0
(7) Activated carbon adsorption		
(8) Precipitation of heavy metals		

The percentages given are estimates; a specific plant usually practices more than one of the listed treatment and control technologies.

The treatment application and performance capabilities of the end-of-pipe technologies 1 through 6 have been demonstrated in the wood preserving segment of the timber industry. The Development Document presents information and details on the performance capabilities of these technologies. Technologies 7 and 8 have not been demonstrated in the wood preserving industry but have been demonstrated for application in related industrial wastes. Activated carbon adsorption technology has been demonstrated recently in the petroleum refining and the organic chemicals industries. Hydroxide precipitation of heavy metals is currently practiced in the electroplating industry. EPA investigated activated carbon adsorption and metals precipitation as candidate technologies (See Section VII of the Development Document); however, because of the lack of demonstration, the cost of installation and operation, and the availability of other more efficient and less expensive technologies, the Agency rejected these technologies from consideration in the development of these regulations.

The Agency developed the costs of applying these end-of-pipe technologies

through compilation of cost data supplied by individual plants in the industry, and through engineering cost estimation for these technologies applied both to a range of plants in each of the two subcategories, and to each impacted plant on an individual basis. The Agency used these cost estimates to analyze the economic impact of these regulations. Detailed capital and operating cost information is presented in Section VIII of the Development Document.

VIII. Best Available Technology (BAT) Effluent Limitations Best Conventional Technology (BCT) Effluent Limitations

The Clean Water Act of 1977 established BAT as the principal national means of controlling the discharge of toxic pollutants directly to navigable waters. The Agency considered the applicability of developing BAT and BCT limitations for the wood preserving industry.

Existing BAT limitations for the Wood Preserving-Water Borne or Nonpressure and the Wood Preserving-Boulton subcategories require no discharge of process wastewater pollutants. Existing BAT limitations for the Wood preserving—steam subcategory allow the discharge of process wastewater pollutants, establishing limits on Chemical Oxygen Demand (COD), total suspended solids (TSS), Oil and Grease (O&G), phenols, as measured by *Standard Methods*, and pH.

This study identified only one wood preserving plant in the steam subcategory that could be described as a direct discharger. This plant is an intermittent discharger, discharging only when precipitation occurs with such frequency and magnitude that the plant's wastewater treatment system (a combination of aeration, holding and evaporation) cannot contain the precipitation and the plant's runoff. These discharges occur infrequently, the last one occurring in May 1979. As of July 1, 1979, the plant has discharged a total of ten days in 1979; four days in January, four days in March, and two days in May. Discharge is controlled by the plant personnel, occurs only during the day shift, and is usually between 10,000 and 14,000 gallons per day.

The Agency considered the appropriateness of proposing BAT and BCT effluent limitations for a single discharging plant.

After reviewing the available information, EPA concluded that BAT and BCT regulations are not needed to control the discharge of pollutants from this plant and that the existing BAT limitations should be withdrawn.

National effluent limitations are unnecessary for a single plant. The appropriate technology levels and limitations for this plant will be determined by the permit issuer using best engineering judgement and, on consideration of the statutory factors. The Development Document can be used as guidance by the permit writer to develop NPDES permit requirements.

IX. New Source Performance Standards (NSPS) Pretreatment Standards for New Sources (PSNS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation.

EPA reviewed the technical and economic information and data collected during the BAT review study. About ninety percent of the known wood preserving plants already are achieving no discharge of process wastewater pollutants. Only one plant in the Wood Preserving—steam subcategory was identified as a direct discharger; forty-two plants were identified as indirect dischargers.

New sources have opportunities, not readily available to existing ones, to install equipment and treatment technology which prevents discharge of contaminated wastewater. New sources also have the opportunity, if spray evaporation or spray irrigation is selected as the wastewater disposal technique, to include land requirements in the decision making process for site selection. The Agency's economic impact analysis of the wood preserving industry concluded that the cost of designing and installing the proper systems needed to achieve the no discharge status would not hinder the addition of new capacity.

Based on these facts, the Agency concluded that no discharge of process

wastewater pollutants is the appropriate new source performance standard (NSPS) and the appropriate new source pretreatment standard (PSNS).

X. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTW. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for toxic pollutants that interfere with, pass through or limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which served as the framework for these proposed pretreatment regulations for the timber industry, can be found at 43 FR 27736 (June 26, 1978).

There are 42 wood preserving plants discharging to POTW, 31 in the steam subcategory and 11 in the Boulton subcategory. These plants discharge a total of about 350,000 gallons per day.

Pollutants present in effluents from indirect discharging plants in both the steam and Boulton subcategories primarily contain incompatible organic pollutants. (See the section of this preamble on Profile and Industry Subcategorization for a discussion of the pollutants found in wood preserving wastewaters.) The economic impact analysis determined that the indirect discharging segment of the wood preserving industry is sensitive to the costs of pollution control. The Agency considered options that would control pollutant discharge and minimize the economic impact. Presented below are the pretreatment options considered and a discussion of their advantages and disadvantages. The technology options discussed are applicable to both subcategories. Options 2, 3, 4, 5 and 6, which considered a size cut-off in order to reduce the number of expected closures, used different production cutoffs for each option.

Indirect discharging existing sources in the steam and in the Boulton subcategories are subject to pretreatment standards (41 FR 53930, December 9, 1976) that establish concentration based limits of 100

milligrams per liter (mg/l) of Oil and Grease; 5 mg/l copper; 4 mg/l chromium; and 4 mg/l arsenic. The regulations are based on the application of primary (gravity) and secondary (flocculation and filtration) oil water separation before discharge to the receiving POTW. Toxic pollutants found in the segment of the industry treating only with creosote are primarily PNAs. Verification data from plants which practice current pretreatment technology and which remove oil and grease concentrations to 100 mg/l or less also reduce total PNA concentrations to less than 1 mg/l. Since PNAs are highly soluble in the oil phase and quite insoluble in water, oil and grease in an excellent indicator parameter for PNAs. For toxic pollutants (PNAs) for which historical data are limited and inexpensive analytical methods are not available, EPA is proposing numerical limitations on an "indicator" pollutant, oil and grease. The data available to EPA generally show that when this "indicator" pollutant is controlled, the concentrations of PNAs are significantly lower than when oil and grease is present in high concentrations. While the relationships between oil and grease and PNAs are not quantifiable, control of an "indicator" will reasonably assure control of toxics. For this reason, all of the PSES discharging options evaluated by the Agency for organic wood preserving plants retain the current 100 mg/l oil and grease standard. For those plants which treat wood with pentachlorophenol (PCP), PCP is reduced to about 12 to 15 mg/l with this technology. Metals levels decrease only incidentally by application of this technology.

Note.—The 1976 pretreatment standards did not establish limits on polynuclear aromatics (PNAs) or PCP.

Discussion of Options

(A) Option 1—Continuation of the existing pretreatment requirements, based on primary and secondary oil water separation. Estimates of pollutant discharge were based on flow information from all indirect discharging plants, and on the pollutant concentration levels already achieved through current pretreatment technology. EPA estimated the pollutant discharge under this option to be: 16.6 pounds per day of PCP; 2.9 pounds per day of polynuclear aromatics (PNAs); and 3.4 pounds per day of total copper, chromium, and arsenic.

(B) Option 2—Continuation of existing pretreatment standards with the additional requirement of biological treatment for plants that treat with PCP.

This additional requirement would apply to 6 of the 11 Boulton plants and 21 of the 31 steam plants. Biological treatment before discharge to a POTW is considered a reasonable option because long term biological treatment, as practiced by existing wood preserving plants, reduces PCP in the water phase to about 1 mg/l. This option would reduce PCP discharge by 92 percent (to 1.3 pounds per day). Although the levels of PNAs and metals are reduced incidentally with the application of biological treatment, the amount of reduction is not significant. The estimated capital investment and annualized costs total \$2,699,400 and \$923,400, respectively. Up to five plants, employing up to 171 workers, might close if this option were selected.

By excluding from the regulation plants in the Boulton subcategory that produce less than 700,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 900,000 cubic feet per year, capital investment and annualized operating costs decrease to \$2,004,900 and \$664,400, respectively. This production cutoff leaves 18 plants subject to the limitation. No closures are expected, and the 18 plants would discharge about 4.7 pounds per day of PCP, a 72 percent reduction.

(C) Option 3—Continuation of existing pretreatment with the additional requirement of precipitation and removal of metals. This limitation would apply to the six Boulton plants and eight steam plants which treat some wood products with both inorganic and organic preservatives. Although all plants separate inorganic preservative operations from organic operations, cross contamination does occur. This option would reduce metals concentration to about 1 mg/l, reducing the metals discharged to POTW by 76 percent (total discharge of 0.82 pounds per day). PCP and PNA discharge levels would be reduced incidentally, but not significantly. The estimated capital investment and annualized costs total \$1,862,100 and \$565,100, respectively. From three to seven plants, employing from 92 to 187 people, might close if this option were selected.

By excluding from the regulation plants in the Boulton subcategory that produce less than 700,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and annualized operating costs decrease to \$1,015,500 and \$320,900, respectively. This production cutoff leaves seven plants subject to the limitation. No closures are

expected, and total industry discharge of metals would be about 1.5 pounds per day, a 56 percent reduction.

(D) Option 4—Continuation of existing pretreatment, with an additional prohibition against discharge of PCP or metals. Seven Boulton plants and twenty-five steam plants would be required to eliminate discharge of contaminated process wastewater by pan or cooling tower evaporation, spray evaporation, spray irrigation, or reuse and recycle. The estimated capital investment and annualized costs for the no discharge option are \$4,980,300 and \$1,267,300, respectively. Seven to fourteen plants employing 214 to 535 workers might close. PNA discharge would be 0.57 pounds per day.

By excluding from the regulation plants in the Boulton subcategory that produce less than 1,100,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and annualized operating costs decrease to \$2,455,400 and \$614,100, respectively. This production cutoff leaves 16 plants subject to the limitation. Up to two plants with approximately 200 employees might close under this option. Total industry discharge would be about 3.4 pounds per day of PCP (a 79 percent reduction), 1.5 pounds per day of toxic metals (a 56 percent reduction), and 1.3 pounds per day of PNAs (a 55 percent reduction).

(E) Option 5—Continuation of existing pretreatment, with the additional requirement of no discharge of PCP. Six Boulton plants and twenty-one steam plants would be required to eliminate the PCP discharge by pan or cooling tower evaporation, spray evaporation, spray irrigation, or reuse and recycle. The estimated capital investment and annualized costs for the zero discharge option are \$4,087,000 and \$1,037,000. Three to 10 plants employing 83 to 404 workers might close. Assuming that the 27 plants currently treating with PCP elect to eliminate the discharge of all process wastewaters, the total discharge of metals and PNAs would be 1.41 and 1.61 pounds per day, respectively (a 56 and 44 percent reduction).

By excluding from the regulation plants in the Boulton subcategory that produce less than 1,100,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and annualized operating costs decrease to \$2,762,000 and \$798,000, respectively. This production cutoff leaves 15 plants subject to the regulation. Up to 2 plants with 200 employees might close under this option. Total industry discharge of

metals and PNAs would be about 2.11 and 1.99 pounds per day, respectively (38 and 28 percent reductions). PCP discharged will be 3.4 pounds per day under this option (a 79 percent reduction).

(F) Option 6—Prohibiting discharge of all process wastewater pollutants to POTW for all indirect dischargers. The estimated capital investment and annualized costs are \$7,376,000 and \$1,866,900, respectively. Nine to seventeen plants employing 268 to 604 workers might close.

By excluding from the regulation plants in the Boulton subcategory that produce less than 1,100,000 cubic feet per year of treated wood, and plants in the steam subcategory that produce less than 1,200,000 cubic feet per year, capital investment and operating costs are reduced to \$4,185,000 and \$1,055,400, respectively. This production cutoff leaves 19 plants subject to the limitation. One to three closures are expected, with 27 to 226 jobs being affected. Total industry discharge would be: PCP, 4.2 pounds per day (a 75 percent reduction); PNAs, 0.7 pound per day (a 76 percent reduction); metals, 1.5 pounds per day (a 56 percent reduction).

(G) Pretreatment Standards for Existing Sources Selection and Decision Criteria

The Agency has selected Option 5, with not size cutoff—prohibiting discharge of pentachlorophenol to POTW. This option is proposed for plants in both the steam subcategory and the Boulton subcategory.

Option 1 was rejected because pentachlorophenol is a large, heavy molecule not easily degraded by the short term biological activity usually found in municipal treatment works (POTW). PCP tends to adsorb on solids in biological treatment systems, i.e., it concentrates in the sludge phase. Plants treating wood with inorganic preservatives already are subject to pretreatment standards that require no discharge of process wastewater pollutants. As discussed in the *Industry Profile and Subcategorization* section, metals appear in the wastewaters from wood preserving plants that treat with organic preservatives as a result of cross contamination. These "fugitive" metals are generally well below 1 mg/l in concentration and methods available to reduce their concentrations further will be addressed in future BMP proposals.

EPA rejected Option 2 because it is land intensive and most plants do not have sufficient land available to install a biological treatment system.

EPA rejected Option 3 because the discharge of metals from waterborne salt treating operations is prohibited by

existing regulations and the application of best management practices (BMP) will prevent cross contamination.

EPA rejected Option 4 because the metals present are resulting from cross contamination at plants that treat wood with both organic and inorganic preservatives. Plants treating with inorganic preservatives are already subject to a non discharge standard. Cross contamination will be addressed in currently underway best management practices (BMP) study.

EPA rejected Option 6 because the economic impact was too severe, leaving 21 to 40 percent of the indirect discharging plants as candidates for closure.

Options 5 eliminates the discharge of pentachlorophenol. As stated above, ninety percent of all wood preserving plants already achieve no discharge of all process wastewater pollutants. The process controls and the end-of-pipe wastewater treatment and disposal technologies are demonstrated and widely practiced. Although the Agency considered a size cutoff in each of the options except Option 1, the excluded plants discharged enough pollutants to possibly contaminate POTW sludge, even after wastewater treatment. Therefore, none of the size cut-off options considered were selected. The *Solicitation of Comments* section request comments on this decision. Although the other except options 4 and 6 reduce the economic impact of the regulation, they also result in the discharge of significant amounts of PCP which may pass through or interfere with the operation of a POTW, or preclude beneficial use of POTW sludge.

The Agency realizes that plants affected by this proposed regulation may elect to eliminate the treating of wood with PCP, and produce more creosote or inorganic salt treated wood. EPA requests, in the *Solicitation of Comments* section of this preamble, additional information regarding whether or not this would occur, and if not, why.

The Agency intends to amend 40 CFR Part 403, General Pretreatment Regulations. The Part 403 amendment will require that parameters limited by the pretreatment standards must be monitored at indirect discharging plants.

XI. Insulation Board and Wet-Process Hardboard Industry Profile and Subcategorization

Wet-process hardboard and insulation board are sheet materials made from wood reduced to lignocellulosic fibers by mechanical or thermomechanical means, i.e., by grinding wood chips under atmospheric pressure or under

steam induced pressure. Hardboard is compressed fiberboard, with a density greater than 31 pounds per cubic foot; insulation board is a non-compressed fiberboard, with a density between 9.5 and 31 pounds per cubic foot.

Insulation board products such as ceiling tile, sheathing, and insulating board are used primarily in the construction industry. Some hardboard products such as paneling and exterior siding also are used in construction; hardboard products also occur in the automotive, furniture, and small appliance industries.

There are 27 plants in the wet process hardboard-insulation board segment. Eleven plants produce only insulation board. Of these, only two are direct dischargers, one producing mechanically refined insulation board, and one producing thermomechanically refined insulation board. Five plants are indirect dischargers, all producing mechanically refined insulation board. Four plants producing only mechanically refined insulation board are nondischargers of process wastewaters. These nondischarging plants achieve no discharge by recycle of treated wastewater, or a combination of recycle and spray irrigation. Eleven plants produce only wet process hardboard; of these, seven produce only S1S (smooth-one-sided) hardboard, three produce both S1S and S2S, and one produces only S2S (smooth-two-sided). Nine of these eleven plants are direct dischargers, including the S2S only plant; one is an indirect discharger and one is a non-discharger, using recycle of treated wastewater and spray irrigation. Five plants produce both thermomechanically refined insulation board and S2S hardboard. Three of these plants are direct dischargers, one plant is an indirect discharger, and one plant is a non-discharger, using spray irrigation of process wastewater. Ten plants are located in the south, seven in the Midwest, six in the Pacific Northwest, three in the Mid-Atlantic region, and one in the Northeast.

Eighteen companies own the 27 plants. Most are large, diversified corporations with major interests in other forest products, including pulp and paper and other building products. Several of the plants are owned by privately held corporations for whom insulation board and/or hardboard products represent the major portion of their business.

Water is essential to wet process hardboard and insulation board manufacturing, serving as the fiber transporting medium during the production process. After the wood chips are refined to fiber and fiber

bundles, water carries the wood to a forming machine, drains through the wire mesh, and either returns to the process water system or is discharged as wastewater. Pollutants present in process wastewater are mainly water soluble wood constituents high in BOD₅ and TSS, the result of the leaching of wood constituents into the process water.

Additives also contribute to the waste load. These may include wax emulsion, paraffin, starch, polyelectrolytes, aluminum sulfate, vegetable oils, ferric sulfate, and thermoplastic and thermosetting resins. Wastewater flows from discharging plants range from 0.05 to 4 MGD. Data obtained from the sampling and analysis program conducted during the BAT review study show that the only toxic pollutants present in raw or treated wastewaters from this segment are very low concentrations of heavy metals including copper and zinc, and organics—benzene, toluene, and phenol. There is no treatment technology (with the exception of a no discharge technology) currently available to further reduce the low concentrations of these pollutants, and none of these pollutants are present at levels high enough to interfere with the operation of a POTW.

Rationale for the previously published subcategorization rested primarily on the method of conditioning wood chips prior to refining, and the conditions and amount of refining. Both of these operations influence the process water requirements and waste loads generated.

In developing these proposed regulations, the Agency reviewed the appropriateness of the previous subcategorization. The major factors considered in developing the subcategories were: product produced, processes employed, process water volume and quality requirements, wastewater characteristics and treatability, treatment costs, plant size, and plant age.

The Agency determined that raw wastewater characteristics (and hence treatability and treatment costs) were closely related to the product produced and processes employed.

Mechanical refining insulation board plants exhibited generally lower raw waste loads than thermomechanical refining plants. The Agency, therefore, considered retaining the two existing insulation board subcategories. Only one mechanical refining insulation board plant, however, is a direct discharger, and this plant has a raw waste load equivalent to the average thermomechanical refining plant. Since

the remaining four direct discharging insulation board plants are all thermomechanical refining plants, and since the single mechanical refining direct discharger has a raw waste load equivalent to these thermomechanical plants, the Agency decided for practical reasons to designate a single subcategory for all insulation board plants, regardless of refining method. Effluent guidelines limitations for BPT and BCT, New Source Performance Standards and Pretreatment Standards proposed herein for the Insulation Board Subcategory apply to all insulation board plants.

The Agency found that plants which produce S2S hardboard exhibit significantly greater raw wasteloads than do S1S hardboard plants. For this reason, the proposed regulations divide the wet-process hardboard segment into two subcategories, S1S Hardboard and S2S Hardboard.

The new definitions for the insulation board and wet process hardboard subcategories are:

Insulation Board—This subcategory includes facilities that produce insulation board using wood as the raw material.

Wet Process Hardboard—This category applies to plants which produce hardboard products, using the wet matting process for forming the board mat.

XII. Available Wastewater Control and Treatment Technology

A. Status of in-Place Technology

Current wastewater treatment practices in the insulation board and hardboard segment of the timber products industry range from the minimum preliminary treatment of screening and pH adjustment, practiced by many indirect dischargers, to the biological treatment systems used by all direct dischargers.

Of the seven indirect dischargers, four plants provide no treatment beyond pH adjustment and screening, one plant provides primary sedimentation only, and two plants provide both primary sedimentation and biological treatment in an aerated lagoon.

All 14 direct dischargers provide some form of biological treatment including activated sludge systems and aerated lagoons; one plant spray irrigates primary treated effluent and collects the underflow of the spray field for discharge; another plant spray irrigates a portion of its biologically treated effluent and discharges the remainder.

Six plants have achieved no discharge through complete recycle of process

wastewater or disposal of excess water by soil irrigation.

B. Control Technologies Considered

The control and treatment technologies considered for the insulation board and hardboard segment of the timber industry include:

(1) In-plant controls: reuse of process water.

(2) Primary treatment: coarse screening, primary sedimentation, chemically assisted coagulation, and sedimentation.

(3) Biological treatment: aerated lagoons, activated sludge.

(4) Recycle of biologically treated wastewater.

(5) Disposal of wastewater by spray irrigation.

The applicability and performance of all these technologies have been demonstrated in the insulation board and hardboard segment of the timber industry. Sections VII and XIV of the Development Document summarize analysis of up to two years of performance data provided by the industry on existing treatment plants.

The Agency considered the feasibility of establishing a no discharge limitation for either or both the insulation board segment and the hardboard segment. Both the internal controls and operating considerations, and the external or end-of-pipe wastewater treatment and no discharge methods were considered.

The ability of an insulation board or hardboard plant to close its process water system depends largely on the type of products produced and the raw materials used. Hardboard products such as interior paneling and insulation board products such as ceiling tile must receive uniform surface treatments. Products for external use must be dimensionally stable and absorb limited amounts of water. Recycle of process water increases the dissolved solids retained in the board, which may result in lower quality board, unsuitable for certain uses. For these reasons, full internal recycle of process water is not considered achievable by all plants in the insulation board/hardboard segment.

Final wastewater disposal by spray irrigation is the only demonstrated no discharge technology for these segments. Because of the volumes of wastewater involved, land requirements are high. Land requirements can be included more easily in the site selection and design of a new facility than they can be added to existing facilities. The economic impact analysis did not consider the impact of a no discharge limitation on existing plants because this disposal technology, although

practiced at least in part by six or more plants, could not be a candidate technology for all plants in the segment.

EPA has developed the costs of applying these technologies through compilation of cost data supplied by individual plants in the insulation board and hardboard segments, as well as through engineering cost estimation for these technologies applied both to a range of new and existing plants in each of the subcategories, and to each affected plant on an individual basis. These cost estimates were used by the Agency in the economic impact analysis. Detailed capital and operating costs are presented in Section VIII of the Development Document.

XIII. Best Practicable Control Technology

Best practicable control technology (BPT) is generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory. This average is not based on a broad range of plants in an industry subcategory but on performance levels achieved by the best plant or plants.

BPT considers the total cost of the application of technology in relation to the effluent reduction benefits to be achieved from the technologies. The cost/benefit inquiry for BPT is a limited balancing, which does not require the Agency to quantify benefits in monetary terms. See, e.g., *American Iron and Steel Institute v. EPA*, 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants and the costs and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. See, *Weyerhaeuser Company v. Costle*, 11 ERC 2149 (D.C. Cir. 1978).

BPT regulations for the wet process hardboard segment were promulgated April 18, 1974 (39 FR 13942). The Agency withdrew these regulations on September 28, 1977. Additional information provided by the industry had convinced the Agency that the promulgated regulations were not correct and that the segment should be reevaluated.

BPT regulations for the insulation board segment were proposed in August 1974 but were never promulgated. Because most insulation board

producing plants would be included in the review of hardboard producing plants, the Agency decided to conduct a reevaluation of the entire insulation board segment concurrently with the hardboard review. The Clean Water Act requires BCT limitations for industry subcategories that discharge conventional pollutants. Process wastewaters from both the wet process hardboard and the insulation board segments did not contain significant amounts of toxic pollutants.

The Agency concluded that the application of the BCT limitations to both the hardboard and insulation board segment was appropriate.

In order to develop BCT limitations for these segments, a base level BPT determination is desirable because the "cost reasonableness test", required as part of the BCT determinations, rests on the incremental cost of removal of BOD₅ and TSS from BPT to BCT.

As stated above, the Act establishes the requirements for development of BPT limitations, which are basically the average of the best existing performance. As part of the current study, the Agency evaluated the performance of all direct discharging plants in each segment subcategory to determine which plants were representative of BPT technology.

Within the Insulation Board Subcategory there are five direct dischargers. Three of these plants produce S2S hardboard as well as insulation board, and wastewaters from both products are comingled at each of these plants. Not only are the comingled waste streams an unreasonable basis for insulation board BPT limitations, the wastewater treatment systems themselves at these plants are not representative of BPT technology. Two of the plants discharge low pollutant loads using land intensive technologies—one plant spray irrigates a 200 acre field, the other has over 100 acres of aerated lagoons and holding ponds. The third plant currently practices primary sedimentation only. Although a pure oxygen activated sludge treatment system is due to become operational in 1980 at this plant, no performance data are available for this system.

The remaining two direct dischargers produce insulation board only, one by mechanical refining and the other by thermomechanical refining. Although both of these plants perform very well with a combination of biological treatment and recycle of treated effluent as process water, the performance of the thermomechanical plant was chosen as the basis for insulation board BPT limitations because all potentially

impacted plants use thermomechanical refining. Based on its demonstrated performance, the single direct discharging mechanical refining plant will be able to comply with a BPT limitation determined in this manner.

There are seven direct discharging S1S hardboard plants. Three of these plants provide a relatively high degree of treatment; however, their systems were not appropriate for DPT technology because they are either land intensive (one plant uses a combination of biological treatment and spray irrigation), or require a higher degree of internal process control than is considered applicable to the subcategory as a whole. Among the remaining four S1S direct dischargers, one plant maintains a high level of treatment using a biological system. This plant was achieving a higher (BCT) level of treatment and therefore was not chosen as a basis for the BPT regulations. Two other plants, although equipped with biological treatment systems, do not achieve the level of BOD removal expected for a BPT candidate biological system. These plants were therefore not chosen as a basis for the BPT regulation. The fourth plant, whose performance is the basis for the proposed BPT regulations, demonstrates consistently good removal of the conventional pollutants using a technology which is applicable to all other S1S hardboard plants.

There are five direct discharging S2S Hardboard subcategory plants. Two plants, which produce both S2S hardboard and insulation board, achieve extremely high treatment levels using land intensive technology which cannot be applied to existing S2S plants as a BPT technology. One of these plants uses spray irrigation and the other has over 100 acres of aerated lagoons and holding ponds. A third plant, which also produces both S2S hardboard and insulation board, currently provides primary sedimentation only. Although a pure oxygen activated sludge system is scheduled to become operational at this plant in 1980, no performance data are available for this system. Another plant uses a biological treatment system which clearly does not perform to BPT standards. The remaining plant in the subcategory, with an excellent biological treatment system, exceeds BPT standards and is representative of BCT technology. In terms of removal of the conventional pollutants, this plant performs similarly to the S1S subcategory BCT candidate.

In the absence of a BPT candidate plant in the S2S Hardboard subcategory, the Agency has decided to establish a

BPT limitation using biological treatment technology parallel to the S1S Hardboard BPT candidate plant, applying the percent removal of BOD5 and TSS achieved by the S1S Hardboard BPT plant to the higher raw waste load of the S2S producing plant. EPA considers this approach to be a reasonable approximation of the performance which could be expected from a S2S hardboard plant applying BPT level biological treatment.

XIV. Best Available Technology Economically Achievable

Review and evaluation of the information available to the Agency, including recent analytical data relating to toxic pollutants, led the Agency to conclude that the few detected priority pollutants occurred in such low concentrations that technology was not currently available to further reduce these levels. The Development Document summarizes the specific pollutants found and their concentrations and mass amounts. The only technique available to existing plants to reduce these discharge levels would be no discharge of process wastewater pollutants. The practicality of this option is extremely limited, both technically and economically. Most existing plants do not have sufficient land available for land disposal of treated wastewaters. Recycling of treated wastewater by existing plants would probably require redesign of process waste flow systems; such redesign would also require the replacement of some existing equipment, and the installation of considerable amounts of new equipment. The wastewater pollutants generated by the direct discharging plants in this segment, primarily BOD5 and TSS, are treatable by biological means. Based on the fact that toxic pollutants are not present at levels treatable by available technology, the Agency has concluded that a BAT regulation for the hardboard and insulation board segment is unnecessary and is not proposing one.

XV. Best Conventional Technology (BCT)

The 1977 amendments added Section 301(b)(2)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4)—BOD, TSS, fecal coliform, and pH—and any additional pollutants defined by the Administrator as "conventional."

BCT is not an additional limitation, but replaces BAT for the control of

conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a new "cost-reasonableness" test. The BCT test compares the additional cost incurred by an industrial point source in removing a pound of conventional pollutants beyond BPT limitations, to the cost incurred by an average size POTW in removing a pound of BOD5 and TSS. If the industrial cost is lower, it passes the cost reasonableness test. Details concerning the methodology of the cost test used to determine BCT are contained in Section X of the Development Document.

The Agency reviewed the technical data base in detail prior to performing the BCT analysis of the insulation board/hardboard segment of the industry. Where possible, EPA identified for each subcategory one treatment and control option beyond BPT limitations, documenting technology performance with up to two years of historical effluent data provided by the industry. The estimated costs for each affected plant to upgrade its facilities to BCT performance levels were calculated on a plant by plant basis. The proposed BCT is based on the most stringent level of biological treatment technology applicable to a subcategory which passes the cost reasonableness test.

As discussed in the *Profile and Subcategorization* Section, the insulation board subcategory has only two direct discharging plants which produce only insulation board. Each of these systems combines biological treatment and treated effluent reuse. Both of these systems are exemplary and neither system needs to further upgrade its facilities for increased pollutant removal. For this reason, the Agency is proposing BCT limitations which equal proposed BPT limitations for the Insulation Board subcategory.

For the S1S and S2S hardboard subcategories, EPA identified one treatment and control option capable of providing pollutant removal beyond that required by BPT limitations. This option is to upgrade the existing BPT biological treatment and control technology by providing additional detention time and aeration capacity. The characteristics of the upgraded biological system are based on documented performance of existing systems treating S1S hardboard wastewater and S2S wastewaters.

BCT limitations for the S1S and S2S portions of the wet process hardboard subcategory are based on the best performing biological treatment/discharging plant in each of the portions. The Agency did not select a no discharge of process wastewater option for BCT because this level of control

would fail the "cost reasonableness" test.

The costs of upgrading treatments to BCT levels for S1S and S2S hardboard plants were determined separately plant by plant, based on existing raw and treated waste load data provided by each plant.

The BCT candidate technologies chosen by the Agency for both S1S and S2S subcategories passed the cost reasonableness test.

The Agency calculated the cost reasonableness in two separate ways. First, the cost reasonableness of the proposed BCT technology was tested for the two S2S plants that will be required to upgrade, using proposed BPT for S2S as a cost base.

Secondly, the cost reasonableness of the proposed BCT technology was tested for the two S2S hardboard plants using current treatment system performance (in the case of one plant, design performance of its treatment system under construction was used) as a cost base. The proposed BCT technology passed the test of reasonableness for both plants, regardless of cost base.

XVI. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient hardboard and insulation board manufacturing processes and wastewater treatment systems, and, therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

As discussed in the *Available Wastewater Control and Treatment Technology* section of this preamble, 6 of the 27 existing hardboard and/or insulation board producing plants (22 percent) currently do not discharge process wastewater to navigable waters directly or indirectly. Three of the six plants achieve this no discharge by spray irrigation. Two plants achieve no discharge through complete recycle of treated wastewater, combining low-moisture raw materials with the production of finished products that tolerate higher levels of dissolved solids in the process water system. The remaining plant achieves no discharge by treating wastewater in an activated sludge system, reusing the treated water, aerobic digestion of the waste sludge, and disposal of the remaining sludge by spray irrigation.

As current wastewater treatment and disposal practices illustrate, no discharge usually requires land application of waste sludge or water. Land requirements can be included in the planning and design stages for new sources. The no discharge technology is demonstrated by existing plants producing hardboard only, insulation board only, and one plant producing both hardboard and insulation board.

Capacity expansion for hardboard most likely will occur through incremental expansion of existing hardboard mills and from conversion of insulation board capacity. This results primarily from the high cost of new capacity compared with current market prices. While pollution control costs would exacerbate this relationship, they remain of secondary importance.

Therefore, no discharge of process wastewater pollutants is proposed for NSPS.

XVII. Pretreatment Standards Existing Sources (PSES) Pretreatment Standards New Sources (PSNS)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES) which must be achieved within three years of promulgation. Section 307(c) of the Act requires the Agency to publish regulations establishing pretreatment standards for new sources (PSNS) for introduction of pollutants into publicly owned treatment works at the same time that NSPS are published.

As presented in the *Best Available Technology* section, the concentration of the few toxic pollutants found in wastewaters from the hardboard and insulation board plants sampled and analyzed during this study was so low that any further reduction by available treatment and control technologies was not technically feasible. The conventional pollutants present in effluents from hardboard and insulation board producing facilities are treatable by biological treatment as practiced by publicly owned treatment works. Seven plants in the hardboard and insulation board segment currently discharge to POTW. The Agency is not aware of any incidents where discharge from one of these plants has caused an upset, or has been otherwise incompatible with the operation of a POTW.

The Agency is proposing pretreatment standards for new and existing sources in the hardboard and the insulation board subcategories that do not establish numerical limitations on the discharge of specific pollutants. Indirect discharging plants are subject to the general pretreatment regulation (40 CFR Part 403).

XVIII. Barking, Veneer, and Log Washing Effluent Limitations

Regulations promulgated in 1974 and 1975 for hydraulic barking, veneer manufacture, and log washing operations established BPT limitations with an allowable discharge. The BPT regulations controlled BOD₅, TSS, and pH. BAT limitations for these operations, promulgated at the same time, prohibited discharge of process wastewater pollutants.

The Act states that promulgated effluent guidelines and standards " * * * shall be reviewed at least every five years and, if appropriate, revised * * * "

As part of the BAT Review study, the Agency reviewed the information supporting the previously promulgated regulations and reviewed current industry practices regarding process water management in these operations.

A. Hydraulic Barking

(A) *Discussion:* The BAT limitation of no discharge of process wastewater pollutants for all barking operations (including hydraulic barking) was based primarily on information from a hydraulic barking plant located in northern California. This plant installed a hydraulic barker in 1969. The barking system was designed to operate with no discharge of process wastewater, treating and recycling 80+ percent of the process water, and disposing of the excess water by spray field irrigation. The Agency concluded that after a few years experience operating the wastewater treatment and recycle system, a completely closed (no discharge) status could be achieved by all plants. This expected performance was the basis for the previously promulgated no discharge limitation.

As part of the current study, the Agency contacted all known operators of hydraulic barking operations, state pollution control agencies, Regional EPA offices and equipment manufacturers. The purpose of this survey was to identify hydraulic barking installations, determine their process wastewater treatment and discharge status, and determine the progress made by the industry in meeting the BAT implementation date.

Fourteen plants having hydraulic barking installations were identified. Most plants practice some degree of recycle of barking water, usually after clarification. The plant identified in 1974 as recycling about 80+ percent is still at that level, apparently unable to increase the amount of recycle. The plant estimated that it discharges about

200,000 gallons per day of excess water to the spray irrigation system.

The timber industry was surveyed to determine the most recent installation of a hydraulic barking facility and also the possibilities of new installations.

EPA identified one company which currently supplies hydraulic barking equipment. The company does not include price information for hydraulic barkers in its price lists, although it will supply such information on request. The most recent installation of a hydraulic barking system in the United States occurred in 1969. Energy and environmental considerations in this country appear to make hydraulic barking less attractive to potential customers than mechanical barking. The capital cost of installing a hydraulic barking system is estimated to be about one and one-half times the cost of installing a mechanical barking system with the same throughput capacity. Previous mechanical barkers were inefficient in removing redwood bark; the bark, which is very stringy, would jam mechanical barkers. However, technological improvements have eliminated this problem. Mechanical barkers now can handle logs up to 72 inches in diameter and can effectively remove redwood bark.

Screen sampling and analysis of a hydraulic barking installation in 1976 determined the presence of toxic pollutants in effluents. The organic pollutants found were chlorinated phenols, nitrophenol, dinitro-o-cresol, benzene, chloroform, and dichloroethane. In 1979, another hydraulic barking system wastewater was analyzed. Only phenol occurred above the 10 g/l analytical limits of detection (it was found at a concentration of 20 g/l). Over the last three years the BAT Review analytical protocol has been refined and modified significantly. Based on these refinements, analytical personnel and the Agency have concluded that the 1979 data more accurately characterize the wastewaters generated by hydraulic barking operations than the 1976 data.

The Agency's review of the hydraulic barking timber industry and its pollutant data and growth potential clearly indicated that new hydraulic barking operations are not likely. In addition, because toxic pollutants are not present at treatable levels in hydraulic barking wastewaters, a BAT based regulation is not appropriate. The Agency did not study the hydraulic barking segment in detail during the current study, other than screening and profiling the existing plants in regard to their number and current wastewater treatment practices. Because of this fact, EPA does not have

technical or potential economic impact information to be used in developing revised effluent guidelines at this time.

(B) *Decision Criteria:* After review and evaluation of the above information, the Agency considered the propriety of the existing BAT and NSPS regulations and the applicability of a BCT regulation for this segment.

The Agency has decided to withdraw the existing BAT limitation of no discharge for hydraulic barking. The Agency has further decided not to establish BCT limitations for this subcategory. The rationale for withdrawal of BAT limitations is that the performance upon which BAT is based, 100 percent recycle following coagulation and settling of wastewater, has not been achieved in spite of extensive effort by several plants in the industry. BCT limitations are inappropriate at this time, because sufficient information is not available to establish limitations based on the required "cost-reasonableness" test, and because most plants already are achieving greater than 80 percent recycle of wastewater following coagulation and settling or biological treatment. Further treatment is not considered technically or economically feasible.

B. Veneer Manufacture

(A) *Discussion:* BPT regulations for this subcategory promulgated in 1974 required no discharge of process wastewater pollutants for all veneer manufacturing plants, except those using direct steam conditioning of veneer logs. The Agency allowed this exception in order to give plants using direct steam conditioning time to modify their operations before the no discharge BAT limitation came in force.

Review of current veneer manufacturing practices has established that no known veneer manufacturing plants are discharging directly.

During the screening phase of the current BAT Review study, sampling and analysis determined that toxic pollutants, particularly heavy metals, are present in wastewaters generated by veneer manufacturing facilities.

(B) *Decision Criteria:* Based on the current status of process water control, and the presence of toxic pollutants in veneer wastewaters, the Agency has determined that the existing BAT limitation of no discharge of process wastewater pollutants should remain in force.

C. Log Washing

(A) *Discussion:* BPT for this subcategory allows the discharge of process wastewater pollutants. Existing

BAT for this subcategory prohibits discharge of process wastewater pollutants.

Review of current practices in the timber industry revealed that log washing now is practiced by fewer facilities than previously reported. Plants washing logs for further processing are recycling log wash water after settling and coarse screening. The screening phase of the BAT Review study determined that toxic pollutants are present in log wash water, particularly heavy metals and phenol.

(B) *Decision Criteria:* Based on the current status of process water control, and the presence of toxic pollutants in log wash waters, the Agency has determined that the existing BAT limitation of no discharge of process wastewater pollutants should remain in force.

XIX. Regulated Pollutants

The basis for the selection of controlled pollutants, as well as the general nature and environmental effects of these pollutants, is set out in Section VI of the Development Document. Some of these pollutants are designated toxic under Section 307(a) of the Act, and no evidence has been found to warrant removal of any pollutant from the toxics list.

Appendix C lists toxic pollutants which were found in treated effluents at more than two plants and in significant concentrations.

Following is a summary of the pollutants controlled by each of the subparts of the regulations proposed here.

Wood Preserving—Steam Subcategory

Wood Preserving—Boulton Subcategory

A. BAT—The Agency is withdrawing the existing Wood Preserving—steam regulation. The one plant currently discharging has an NPDES permit. COD, Total Phenols, Oil and Grease, and pH are the parameters limited by the permit.

B. NSPS—By proposing zero discharge of process wastewater pollutants, the discharge of all pollutants is eliminated.

C. PSNS—Prohibiting the discharge of process wastewater pollutants to a POTW eliminates the discharge of all pollutants.

D. PSES—Prohibiting the discharge of pentachlorophenol (PCP) eliminates the possible pass through and sludge contamination by this toxic pollutant. Evidence indicates that PCP is biodegradable, but the compound requires long term holding in the presence of acclimated biota to achieve a significant reduction. Neither long

term holding, nor acclimated biota are usually characteristic of POTW. In addition, PCP, being a heavy molecule, tends to settle to the bottom of a biological treatment system, concentrating the PCP in the sludge phase.

Existing indirect discharging wood preserving plants treating wood with creosote are required to meet a maximum Oil and Grease concentration of 100 milligrams per liter, the same limitation promulgated in 1976. Data available to the Agency show that control of oil and grease to this prescribed limit also maintains polynuclear aromatic compounds at a level less than one milligram per liter. Since PNAs are highly soluble in the oil phase and quite insoluble in water, the oil and grease concentration is an excellent indicator of PNA control.

Hardboard/Insulation Board

As discussed elsewhere in this preamble, toxic pollutants occur at extremely low levels (not easily treatable) in wastewaters from these facilities. Conventional pollutants, such as BOD₅, total suspended solids (TSS), and pH are present and treatable. This regulation proposes BCT mass limitations, that is, pounds discharged per 1000 pounds of production, on BOD₅ and TSS, and establishes a pH range of 6 to 9. PSNS and PSES for wet process hardboard plants and for insulation board plants are the same as those promulgated earlier, i.e., no limitation is placed on BOD₅, TSS, or pH.

XX. Pollutants and Subcategories Not Regulated

The Settlement Agreement authorized the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been re-written in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and therefore excluded from regulation appear in Appendix B to this notice.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent from a small number of sources and uniquely related to those sources. Appendix D lists the toxic pollutants which were detected in the

effluents of only one or two plants, which are uniquely related to these sources, and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) of the Modified Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants which are detected only in trace amounts and which are not likely to cause toxic effects. Appendix E lists the toxic pollutants found in trace amounts (at or below the limit of analytical detection and qualification) which are not likely to cause toxic effects, and which therefore are excluded from regulation.

The Settlement Agreement required the Agency to regulate the Timber Products Processing industry, listed under the Office of Management and Budget's Standard Industrial Classification, Major Group 24. In addition, SIE 2661—Building Paper and Building Board Mills (Insulation Board only) was included in the timber industry list of point sources for which regulations were to be developed.

Initially, the Agency developed a profile of the total timber industry. After this initial profile information was assembled and reviewed and screen samples from all subcategories were collected and analyzed, the Agency concluded that certain portions of the industry did not justify detailed technical and economic analysis studies to support revised effluent limitations and standards.

The primary bases for excluding these portions of the industry from revised regulations are as follows:

1. The processing operations involved were basically dry (no process water involved and no process wastewater generated).
2. The operations are currently subject to a BAT regulation prohibiting discharge of process wastewater.
3. Plants in a given subcategory do not discharge to a publicly owned treatment works.
4. The present waste management practices reflect the highest level of control economically achievable.

Raw wastewater and treated wastewater from at least one plant or facility in each subcategory was collected and analyzed for 124 toxic pollutants during the screening phase of the program. After confirming the presence or absence of toxic substances, EPA reviewed the available technology and considered the reliability of candidate technologies. This review and evaluation was necessary because all the subcategories, with the exception of Wood Preserving-Water Borne and Non-Pressure subcategory were allowed by the existing regulations to discharge to

publicly owned treatment works without pretreatment.

Review of available information established that the following subcategories should be excluded from the development of revised effluent limitations guidelines and standards under the terms of Paragraph 8:

Barking; Sawmills and Planing Mills; Dry Process Hardboard; Veneer; Plywood; Log Washing; and Wood Preserving-Water Borne or Non-Pressure. These subcategories already are subject to no discharge limitations for existing and new sources, and contain less than 40 indirect dischargers.

Wet Storage—Wet storage facilities can be divided into two major segments: log ponds and wet log storage decks. Existing limitations require screening to prevent discharge of debris and pH control. Current practice in the industry is to contain and/or recycle most of the effluent from these facilities during dry weather periods, resulting in no discharge. During periods of wet weather, the volume of discharge depends on the amount and intensity of precipitation. Since discharges from these facilities occur primarily during rainfall, concentrations of BOD₅ and TSS—the major conventional pollutants present—are usually dilute. Further treatment requires large containment basins designed to contain the heavy rainfalls which occur in many parts of the country. Considering the variabilities of precipitation, drainage areas, and dilution factors involved, the Agency concluded that it is not technically or economically feasible to require a level of control beyond that provided for by existing regulations.

Finishing and Particleboard—These subcategories are subject to a no discharge regulation for existing and new sources. Fewer than twenty plants, with a total flow of less than 2,000 gallons per day in the particleboard subcategory, and about 1,000 operations with a total flow of less than 2,500 gallons per day in the finishing subcategory, discharge indirectly.

Appendix B of the Modified Settlement Agreement lists in the Timber Products Processing point source category, SIC 2411—Logging Camps and Logging Contractors (Camps only). This timber products operation was not previously studied or regulated. Because this operation was listed in the Revised Settlement Agreement as requiring regulations, the Agency surveyed the major timber producing areas of the U.S. and determined that: (1) permit issuing offices, State and EPA Regional, are not aware of the generation of process wastewater in these operations; (2) logging camps have been issued permits

to control the discharge of sanitary wastes; and (3) probably not more than ten or twelve remote logging camps exist. Therefore, this portion of the timber products industry does not justify the development of effluent limitations guidelines and standards on the discharge of process wastewater pollutants.

XXI. Economic Impact: Costs, Effluent Reduction Benefits, and Economic Impact

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's proposed regulations for implementing Executive Order 12044 require a Regulatory Analysis for major significant regulations involving annualized compliance costs of \$100 million or meeting other specified criteria. 43 FR 29891 (July 11, 1978). Where these criteria are met, the proposed regulations require EPA to prepare a formal Regulatory Analysis, including an economic impact analysis and an evaluation of regulatory alternatives. The proposed regulations for the Timber Products industry do not meet the proposed criteria for a formal Regulatory Analysis. Nonetheless, this proposed rulemaking satisfies the formal Regulatory Analysis requirements.

EPA's economic impact assessments are contained in *Economic Impact Analysis of Alternative Pollution Control Technologies, Wood Preserving Subcategories of the Timber Products Industry*, August 1979, EPA 440/2-79-018 and *Economic Impact Analysis of Alternative Pollution Control Technologies, Wet Process Hardboard and Insulation Board Subcategories of the Timber Products Industry*, August 1979, EPA 440/2-79-017.

These reports detail the investment and operating costs for the alternative control options, including the option proposed in this notice. Data underlying the analyses came from the Development Document and the economic survey program described under DATA GATHERING EFFORTS. The reports assess compliance costs in terms of plant closures, production changes, price changes, employment changes, local community impacts and balance of trade effects.

The analytical methodology employs basic economic and financial modeling techniques to determine whether facilities can continue operation following the imposition of pollution control requirements and to evaluate reductions in profitability. The Agency evaluated the impacts on the various plants based upon compliance costs

generated for each plant and their responses to an economic survey. This approach was possible because of the relatively small number of plants which would incur additional costs under the various control options.

The decision criteria for estimating plant closures were based upon the plant's cash flows, and profitability in the absence of price increases. If a plant could finance the pollution control investment from cash flow and remain profitable in the absence of price increases then the plant was judged likely to remain open. In other words, the analysis assumes that bank financing will not be available because of the generally low profits in the industry. A plant was designated as having a high probability of closure if the required investment was over 200 percent of annual cash flow and/or it would incur losses after complying with the regulation. Plants judged to have a moderate probability of closure were those for which investment would be 100 percent to 200 percent of annual cash flow but which would still show an after-tax profit.

The analyses did not estimate baseline closures (closures which may occur among the impacted plants even if EPA promulgated no additional requirements); therefore, the closure estimates are probably overstated to some extent. This is confirmed by the fact that among the wood preserving plants listing themselves as dischargers in the economic survey which was sent in the Fall of 1977 two closed before the proposal of this regulation.

Wood Preserving—PSES

Of the approximately 415 wood preserving plants in the industry, only 27 (less than 7 percent) will be affected by the proposed pretreatment regulations. These plants will require a capital investment of approximately \$4.1 million, with annualized costs of compliance including depreciation, interest, operating, and maintenance costs of about \$1.0 million. For over half of the plants the investment will be less than one year's cash flow.

Price increases appear to be either unobtainable or limited by the percentage cost increase incurred by the larger plants (approximately 1 to 3 percent). Larger price increases should not occur because the vast majority of the industry will not incur additional costs as a result of the proposed standard; competition between impacted and non-impacted plants also will limit price increases.

Approximately three to nine plants may choose to close rather than invest in pollution control equipment. These

plants employ approximately 118 to 439 production workers, representing approximately 1.5 to 5.7 percent of the 7700 production employees in the industry in 1976. However, the Agency does not expect industry production to be significantly affected since sufficient excess capacity exists to prevent shortages of preserved wood products.

Plant closures as a result of the proposed regulation are not expected to have a large community impact. The closures will be scattered around the country and generally will occur in urban or suburban areas where alternative employment opportunities should exist. Since domestic price and production impacts will be small, balance of trade effects should be insignificant.

Achievement of these standards will prevent the introduction to publicly owned treatment works of approximately 16.6 pounds per day of PCP, 1.3 pounds per day of PNAs, and 2.0 pounds per day of heavy metals. EPA believes the effluent reduction benefits outweigh the associated costs.

Wood Preserving—NSPS and PSNS

The proposed new source standards may require capital investments of \$161,000 to \$428,000 per plant, which represent from 3 percent to 8 percent of the estimated capital investment for new plants. The annualized cost of the regulation may range from \$85,000 to \$156,000 per plant. The revenue required to recover compliance costs is approximately 1 percent to 2 percent of estimated sales for a new plant.

Based upon maximum operating capacity, there is considerable excess capacity among existing plants. However, because of transportation costs and growth in some regions (e.g. the South) it is likely that new capacity will be built before existing capacity is fully utilized. Because many plants are already at zero discharge and because the capital costs and revenue increases necessary to recover the control costs are relatively small, new source compliance costs are not expected to hinder the construction of new plants.

Achievement of the proposed NSPA and PSNS standards by new source wood preserving plants will prevent further discharges of toxic pollutants such as PCP, PNAs, and heavy metals to receiving waters and POTW. EPA believes that this benefit outweighs the associated cost.

Hardboard and Insulation Board—BPT

Of the 27 plants which produce hardboard or insulation board, only three hardboard plants are expected to be affected by the proposed BPT

regulations. The affected plants represent less than 20 percent of industry capacity. Capital investment could total \$8,871,000 with annualized costs of approximately \$3,486,000. The capital investment ranges up to 300 percent of estimated plant annual cash flows. However, the Agency anticipates that financing for this investment will be available from banks or the parent corporations because of the favorable outlook for hardboard. There is a possibility that one plant with approximately 300 employees may close rather than make this investment. Additional information on this potential impact is requested in the Solicitation of Comments section of this preamble.

Demand for hardboard is expected to grow at approximately a 3 percent average annual rate between now and 1983 with the demand for hardboard being about 25 percent higher in 1983 than at present. Existing industry capacity cannot support this increase in demand, and price increases are expected. While some additional demand may be satisfied by imports, the industry is expected to add capacity by either incremental expansion of existing facilities or by conversion of excess insulation board capacity to hardboard production.

Studies indicate that even the least expensive method of increasing capacity would require prices of approximately \$106 per thousand square feet (in 1977 dollar terms) or a 16 percent price increase to become economical. This price increase resulting from rising demand exceeds the amount necessary for existing producers to recover their BPT pollution control cost. Therefore, while the regulations may reduce profits for the three affected plants, the regulations should not have a serious price impact since price increases will be set by the demand for new capacity. If, however, price increases were not achieved, one plant would no longer be profitable.

Achievement of the proposed BPT limitations by the insulation board/hardboard segment will reduce conventional pollutant discharges (BOD5 plus TSS) by approximately 20 million pounds per year. EPA believes that the effluent reduction benefits outweigh the associated costs.

Hardboard and Insulation Board—BCT

For the proposed BCT regulation up to seven hardboard plants could have capital investments above BPT totalling \$11,474,000 with associated annualized costs above BPT of \$2,690,000. The capital requirements range from less than 10 percent to approximately 330 percent of annual cash flow, and again

plants are expected to obtain external financing from either banks or their parent corporation.

As with BPT, the price impacts of BCT are expected to be insignificant compared with the price increases necessary to make capacity additions economically feasible.

Assuming price increases of \$5 per thousand square feet to recover pollution control, these proposed regulations would involve a less than 5 percent price increase over the long run expansion price of \$106 per thousand square feet. Given the inelastic demand for hardboard and the expected growth in demand, this regulation is not expected to affect significantly industry production. If, however, one plant whose pollution control investment is over 300 percent of 1976 cash flow chooses to close then approximately 300 jobs could be lost with resultant community impacts. Profitability of existing plants will decrease somewhat, but even if prices did not increase, pre-tax profitability on sales for the affected plants would generally average close to the median for the industry (14 percent).

The price increase occasioned by pollution control costs may make imported hardboard relatively more price competitive. However, it is anticipated that U.S. producers will continue to import the board as a method of meeting peak demands and not for baseline industry demand.

Achievement of the proposed BCT limitations by the insulation board/hardboard segment will reduce conventional pollutant discharges (BOD 5 plus TSS) by approximately 10 million pounds per year. EPA believes that the effluent reduction benefits outweigh the associated costs.

Hardboard and Insulation Board—NSPS

The Agency expects the demand for insulation board to decline; no new plants are anticipated. Additions to existing hardboard plants or conversion of insulation board plants to hardboard production appears to be less expensive than construction of greenfield hardboard mills (new site, new construction). Therefore, no new greenfield hardboard mills are expected before 1985. EPA does not expect that new source requirements will preclude the construction of new plants.

An average size insulation board or hardboard plant with a BCT type biological treatment system will discharge between 0.5 and 2 million pounds of combined BOD 5 and TSS per year. Achievement of the proposed NSPS no discharge standard will prevent these pollutants from being discharged to navigable waterways.

EPA believes that the pollutant reduction benefits outweigh the associated costs.

XXII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts and energy requirements of certain regulation. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This proposal was circulated to and reviewed by EPA personnel responsible for nonwater quality environmental programs. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts (including energy requirements) associated with the proposed regulations:

Air Pollution—Wood Preserving Segment. The majority of the wood preserving industry currently achieves no discharge by technologies that include evaporation of a portion of the process wastewater. Although the Office of Research and Development of EPA has recently (August 1979) collected preliminary information indicating a transfer of pentachlorophenol to the air when evaporative technology is practiced. The Agency has not confirmed air pollution problems related to the use of these evaporative technologies. However, the *Solicitation of comments* section of this preamble requests information on possible intermedia transfer, particularly pentachlorophenol and polynuclear aromatics.

Air Pollution—Hardboard/Insulation Board Segment. Wastewater treatment technologies currently in use in this segment by direct dischargers are biological, usually extended aeration or activated sludge. Air pollution problems are not expected from the application of these technologies. Proposed NSPS prohibit discharge of process wastewater pollutants, based on spray irrigation of excess process wastewater. Eleven plants currently practice this technology, which will probably be used in rural locations where land costs are lower. EPA does not expect the construction of new sources in the insulation board segment of the industry. Expansion in the wet process

hardboard segment most likely will occur by enlarging of existing facilities rather than greenfield construction. Existing and new sources discharging to POTW are not required by these regulations to install and operate additional treatment and control technology. Imposition of these regulations on hardboard and insulation board plants are not expected to create any additional air pollution problems.

Solid Waste—Wood Preserving. Information collected from the data collection portfolios received from 216 wood preserving plants indicate that plants practicing BPT technology (biological treatment) prior to disposal of wastewater are generating an average of 0.38 cubic feet of sludge per 1000 cubic feet of wood treated. Plants meeting the previously promulgated pretreatment limitations are generating 0.49 cubic feet of sludge per 1000 cubic feet of wood treated. Plants already meeting the proposed NSPS and PSNS limitations of no discharge with evaporative technologies are generating 0.43 cubic feet of sludge per 1000 cubic feet of wood treated. Thus, no significant increase in sludge generation is expected from promulgation of these regulations.

Regulations proposed by EPA under Section 3001 of the Resource Conservation and Recovery Act (RCRA) list wood preserving industry solid wastes as "hazardous" [43 FR 49402 (August 22, 1979)]. These wastes, primarily the sludges from wastewater treatment, will be subject to rigorous handling, transportation, storage, and disposal requirements, under sections 3002-3004 of RCRA. EPA's proposed generator standards would require generators of wood preserving industry solid wastes to meet stringent containerization, labeling, and reporting requirements, and, if they dispose of wastes off-site, to prepare a manifest that will track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. [See 43 FR 58946, 58979 (December 18, 1978)]. The proposed transporter regulations would require transporters of wood preserving industry wastes to comply with the manifest and assure that the wastes are delivered to a permitted facility. [See 43 FR 18506 (April 28, 1978)]. Finally, the proposed treater, storer, and disposer standards would establish technical design and performance standards for wood preserving waste storage facilities, and for landfills, basins, surface impoundments, incinerators, and other facilities where such wastes would be treated or disposed, as well as

security, contingency plan, employee training, record keeping, reporting, inspection, monitoring, and financial liability requirements for all such facilities. [See 43 FR 58946, 58982 (December 18, 1978)].

The technical study supporting these regulations did not include analyses of sludge generated by the wood preserving industry. Wood preserving process waters do contain toxic pollutants, and high molecular weight organic compounds tend to settle to the bottom of holding basins. Prohibiting the discharge of pentachlorophenol to a POTW eliminates the possibility of contamination of sludges generated by publicly owned treatment works.

Solid Waste—Hardboard/Insulation Board. Sludge generation resulting from current biological treatment ranges between 0.5 and 1.0 cubic feet per ton of production. The BPT and BCT regulations proposed herein will increase the total amount of sludge generated industry wide by less than five and ten percent, respectively. Composition of the sludge generated under BPT and BCT limitations will remain the same. The general pretreatment regulations (40 CFR Part 403) to which these facilities are subject will not result in the production of any sludge. Proposed NSPS include a combination of wastewater reuse and recycle, biological treatment of wastewater, and spray irrigation. Reuse and recycle of process water results in the uptake of solids in the product (removing them from the wastewater). No appreciable change in the quantity and characteristics of sludge is expected. Biological treatment before spray irrigation results in sludge generation equal to or less than the current levels, depending on the amount of biological treatment applied. Spray irrigation as a wastewater disposal option does not result in sludge generation.

Energy Requirements—Wood Preserving Segment. Forty-two wood preserving plants are indirect dischargers. The proposed regulations will require 27 plants, 21 in the Steam subcategory, and 6 in the Boulton subcategory, to discontinue the discharge of pentachlorophenol to POTW. If these plants continue to use this preservative, the most practical method of disposing of the process wastewater is through evaporation.

The total energy requirements for the twenty-one steam subcategory plants which must achieve no discharge are 184 megawatt hours per year. At \$0.05 per kilowatt hour the energy cost is \$9,200 per year. Six plants in the Boulton subcategory will require a total of 974

megawatts per year (\$48,700 per year at \$0.05 per kilowatt hour). The energy requirements for Boulton plants is considerably higher because the evaporation technology (pan or cooling tower) upon which the proposed limitation is based is more energy intensive than the spray evaporation technique proposed for steam plants. Both subcategories must evaporate 9 to 55 inches of precipitation falling in the immediate area of the treating cylinder. The steam plants spray water into the air and achieve evaporation using natural forces, sunlight and air movement. Boulton plants use a combination of applied heat and air movement to dispose of wastewater.

Energy Requirements—Hardboard/Insulation Board Segment. BPT—In the S1S hardboard subcategory two of the seven plants will have an additional energy requirement of 1,200 megawatts per year to achieve the BPT level of control. One of the five plants producing S2S hardboard and thermomechanical insulation board will have an additional energy requirement of 6,700 megawatts per year to achieve to BPT level of control.

One of the three plants producing S1S and S2S hardboard will have an additional energy requirement of 27,360 megawatts to achieve the BPT level of control. The direct discharging segment of the insulation board industry will not have any additional energy requirements to achieve the BPT level of control.

BCT—In the S1S subcategory four plants will have an additional energy requirement of 3,140 megawatts per year to achieve the BCT level of control. One plant producing S2S hardboard and thermomechanical insulation board will have an additional energy requirement of 800 megawatts per year to achieve the BCT level of control. One plant producing S1S and S2S hardboard will have an additional energy requirement of 40 megawatts to achieve the BCT level of control.

XXIII. Best Management Practices

Section 304(e) of the Clean Water Act gives the Administrator authority to prescribe "best management practices" (BMP's), as described under Authority and Background. EPA intends to develop BMP's which are: (1) applicable to all industrial sites; (2) applicable to a designated industrial category; and (3) offer guidance to permit authorities in establishing BMP's required by unique circumstances for a given plant.

This rulemaking does not address BMP's applicable to the wood preserving, hardboard or insulation board segments, or other segments of

the timber products industry. The technical study supporting the regulations presented here was completed before the passage of the Water Quality Act Amendments of 1977, the law that gives the Agency responsibility for developing BMPs. Rather than delay the publication of the regulations included in this rulemaking, the BMP publication will be postponed. The Agency plans to develop BMP support information in the near future. Areas of interest include: minimizing contamination of precipitation, controlling runoff from raw material storage areas, control of spillage or leaks, and sludge disposal.

XXIV. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur because of limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have divided on the question whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle, supra* and *Corn Refiners Association, et al. v. Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute v. EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F. 2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has recently promulgated NPDES regulations which include upset and bypass permit provisions (See 44 FR 32854 (June 7, 1979)). The upset provision establishes

an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury or severe property damage. Consequently, although permittees in the timber industry will be entitled to upset and bypass provisions in NPDES permits, these proposed regulations do not address these issues.

XXV. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to timber industry direct dischargers. In addition, on promulgation, the pretreatment limitations are directly applicable to indirect dischargers.

For the BPT and BCT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle*, *supra*. This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 industry regulations, it now will be included in the NPDES regulations and will not be included in the timber or other industry regulations. See the final NPDES regulations at 40 CFR 125.30, 44 FR 32854 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. (See 40 CFR §§ 403.7, 403.13; 43 FR 27736 (June 26, 1978)). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR § 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *du Pont v. Train*, *supra*.

XXVI. Relationship to NPDES Permits

The BCT and NSPS limitations in these regulations will be applied to individual timber products processing plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of these regulations on NPDES permits, except to the extent that variances and modifications are

expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

First, one matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations guidelines and standards. Under currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of these regulations must include a "reopener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. (See 43 FR 22159 (May 23, 1978)). To avoid cumbersome modification procedures, EPA has adopted a policy of issuing short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. The Agency has published rules designed to encourage states to do the same. (See 43 FR 58066 (Dec. 11, 1978)). However, in the event that EPA finds it necessary to issue long term permits prior to promulgation of BAT regulations, EPA and states will follow essentially the same procedures utilized in many cases of initial permit issuance. The appropriate technology levels and limitations will be assessed by the permit issuer on a case-by-case basis, on consideration of the statutory factors. (See *U.S. Steel Corp. v. Train*, 556 F.2d 822, 844, 854 (7th Cir. 1977)). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings. (See 44 FR 32854 (June 7, 1979)).

Another noteworthy topic is the effect of these regulations on the powers of NPDES permit issuing authorities. The promulgation of these regulations does not restrict the power of any permit-issuing authority to act in any manner not inconsistent with law or these or any other EPA regulations, guidelines or policy. For example, the fact that these regulations do not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or Federal law require limitation of pollutants not covered by these regulations (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's

NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XXVII. Small Business Administration Financial Assistance

Two SBA programs may be important sources of funding for the Timber Products Processing Industry Point Source Category. They are the SBA's Economic Injury Loan Program and the Pollution Control Financing Guarantees.

Section 8 of the FWPCA authorizes the SBA through its Economic Injury Loan Program to make loans to assist small business concerns in effecting additions to or alterations in equipment, facilities, or methods of operation in order to meet water pollution control requirements under the Federal Water Pollution Control Act if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration. Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the federal government and is currently set at 7% percent. Loan repayment periods may extend up to thirty years depending on the ability of the firm to repay the loan and the useful life of the equipment. SBA loans made through banks are at somewhat higher interest rates.

Firms in the Timber Products Processing Industry Point Source Category may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA Headquarters or in the ten EPA Regional offices:

Coordinator—Mr. Sheldon Sacks, Environmental Protection Agency, Financial Assistance Coordinator, Office of Analysis and Evaluation (WH-586), 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 755-3624.

Region I—Mr. Ted Landry or Gerald DeGaetano, Environmental Protection Agency, J. F. Kennedy Federal Office Building, Room 2203, Boston, Massachusetts 02203, Telephone: (617) 223-5061.

Region II—Mr. Kenneth Eng, Chief, Air and Environmental Applications Section,

Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007, Telephone: (212) 264-4711.

Region III—Mr. Chuck Sapp, Environmental Protection Agency, Curtis Building, 3EN40, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-9433.

Region IV—Mr. John Hurlbaas, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Telephone: (404) 881-4793.

Region V—Mr. Chester Marcyn, Contingency Plan Coordinator, Surveillance and Analysis Branch, Enforcement Division, Environmental Protection Agency, 536 South Clark Street, Chicago, Illinois 60605, AC (213) 353-2316.

Region VI—Ms. Jan Horn, Attorney, Water Enforcement Division, Water Program Branch, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, Texas 75270, Telephone: (214) 767-2760.

Region VII—Mr. Donald Sandifer, Sanitary Engineer, Water Division, Engineering Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, Telephone: (816) 374-2725.

Region VIII—Mr. Gerald Burke, Sanitary Engineer, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203, Telephone: (303) 837-3961.

Region IX—Mr. Stan Leibowitz or Ray Seid, Permits Branch, Enforcement Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94111, Telephone: (415) 556-3450.

Region X—Mr. Dan Bodien, Special Technical Advisor, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, Telephone: (206) 442-1270.

Headquarters—Mr. Donnel Nantkes, Legal Counsel, Grants Contracts and General Administration Division, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 426-8830.

Interested persons may also contact the Assistant Regional Administrators for Finance and Investment in the Small Business Administration Regional offices for more details on federal loan assistance programs. For further information, write or telephone any of the following individuals:

Region I—Mr. Russell Berry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 60 Battery March, 10th Floor, Boston, Massachusetts 02203, Telephone: (617) 223-3891.

Region II—Mr. John Axiotakis, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 26 Federal Plaza, New York, New York 10007, Telephone: (212) 264-1452.

Region III—Mr. David Malone, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 231 St. Asapas Road, West Lobby, Suite 646, Bala Cynwyd, Pennsylvania 19004, Telephone: (215) 596-5908.

Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1401 Peachtree Street, N.E., Atlanta, Georgia 30309, Telephone: (404) 881-2009.

Region V—Mr. Larry Cherry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone: (312) 353-4533.

Region VI—Mr. Donald Beaver, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, Texas 75202, Telephone: (214) 749-1265.

Region VII—Mr. Richard Whitley, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, Missouri 64106, Telephone: (816) 374-3927.

Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1405 Curtis Street, Executive Tower Building—22nd Floor, Denver, Colorado 80202, Telephone: (303) 327-3988.

Region IX—Mr. Charles Hertzberg, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone: (415) 556-7782.

Region X—Mr. Jack Welles, Regional Administrator for Finance and Investment, Small Business Administration, 710 2d Avenue, Dexter Horton Bldg.—5th floor, Seattle, Washington 98104, Telephone: (206) 399-5679.

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by Public Law 94-305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small businesses to acquire needed pollution facilities when the financing is provided through taxable and tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses. Bond financing with SBA's guarantee of the payments makes available long term (20-25 years), low interest (usually 5 to 7 percent) financing to small businesses on the same basis as that available to larger national or international companies. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn St., Magazine Bldg., Rosslyn, VA 22209 (703) 235-2900.

XXVIII. Summary of Public Participation

On October 21, 1978, the Agency circulated for public comment a draft technical report to a number of interested parties. The report was available to members of the American Wood Preservers Institute-Environmental Advisory Group, the American Hardboard Association-Environmental Advisory Group, all

insulation board producing companies, the Natural Resources Defense Council, the U.S. Department of Commerce, EPA Regional Offices, EPA Regional libraries and all States that have authority to issue National Pollution Discharge Elimination System (NPDES) permits. This document included the technical information that served as the basis for the regulations proposed at this time, but did not make recommendations or present conclusions. Reviewers of the technical report were asked to forward to the Agency their written comments by November 23, 1978; they also were invited to a meeting December 7, 1978 where they could discuss their comments with the technical, economic impact, legal, water quality, and toxic criteria staffs of the Agency. In addition, on December 1, 1978, the Agency circulated for public comment draft economic reports to the same parties who received the technical draft. The reports assessed the potential economic impact of the various control options under consideration by the Agency at that time. Participants were asked to submit their comments by January 3, 1979. A brief summary of the comments received is presented here.

1. *Comment:* One participant stated that although 216 wood preserving plants responded to the technical Data Collection Portfolio (DCP), the effort was severely flawed because the definition of the term "process wastewater" contained in the DCP differed from the definition in the existing regulation. The same participant also suggested that the Agency develop a definition of process wastewater which accurately reflects the waters which contribute to the overall volume of water requiring treatment. This would include precipitation falling in the immediate area of the retort (treating cylinder), boiler blowdown, etc.

Response: EPA purposely expanded the definition of "process wastewater" from the definition in the existing regulation. Respondents were requested to identify, characterize, and provide historical data on each of these sources of water. The Agency then used this data base to reevaluate the suitability of the existing definition of "process wastewater" for these proposed regulations. Rather than impairing the accuracy of the data, the expanded definition contained in the DCP, and the numerous telephone follow-ups confirming the interpretation of the responses, actually enhances understanding of each contributing source of wastewater in the wood preserving industry.

The plant-by-plant cost estimates for compliance with alternative treatment technologies were based on actual water flows reported by each plant. This included sources such as boiler blowdown, steam condensate, and rainwater falling in the immediate vicinity of the retorts which might be mixed with the process generated wastewater; the reported flows specifically excluded run-off from raw material or finished product storage areas and general yard runoff. The proposed regulations here are based on the same process wastewater definition previously promulgated.

The new regulations will not apply to boiler blowdown, noncontact cooling water, and run-off from raw material or finished product storage areas; precipitation on the immediate area of the retort is included in the definition of process wastewater. Runoff from raw material and finished product storage areas might be addressed later in a review of Best Management Practices (BMP) of the industry.

2. Comment: One participant expressed concern that wood preserving industry members who cooperated with the Agency's contractor during the sampling program were not advised of the data results in order that they could compare these with other available data.

Response: Analytical results from the screening sampling program conducted in November 1976 through January 1977 were mailed to participating plants for their review on June 23, 1977. Analytical results from the 1977 verification sampling program were published in the draft contractor's technical report in July 1977, copies of which were provided to each member of the American Wood Preservers Institute (AWPI) Environmental Advisory Group. Although the Agency coded the pollutant data in the draft report to insure confidentiality, plants and companies that requested their codes received them. Analytical results from the 1978 verification sampling program were mailed to participating plants for their review on June 30, 1978.

3. Comment: One participant stated that the limited sampling of wood preserving plants was not sufficient to produce statistically representative results.

Response: The data base used to formulate these proposed regulations included 16 plants that were sampled for conventional pollutants, heavy metals, and PCP during the 1975 Pretreatment study; six plants that were sampled for conventional pollutants, pentachlorophenol (PCP), heavy metals, and base neutral extractives (specific

phenolics other than PCP and volatile organic data) during the 1977 verification program; and five plants that were sampled for conventional pollutants, PCP, heavy metals, specific phenolics, base neutral extractives and volatile organic compounds during the 1978 verification program. The 1975 study collected a minimum of two grab samples per sampling point, and the remaining studies collected three 24-hour composites per sampling point. The resulting data indicated that toxic pollutants are present in sufficient quantities in the process wastewater of the wood preserving segment to warrant consideration of effluent limitations.

4. Comment: Two comments suggested that evaporation techniques work well in areas of low relative humidity and low rainfall but are not necessarily well suited to all geographical areas of the country.

Response: Although the Agency recognizes that evaporation techniques are easier to apply in areas of low relative humidity and low rainfall, these techniques are employed successfully by plants in areas of high humidity and high rainfall along the coasts of the Gulf of Mexico and the Pacific Northwest. The Development Document contains information on the feasibility of evaporative techniques in differing climatic extremes. EPA prepared cost estimates of evaporation systems using "worst case," i.e., high humidity, high rainfall, climatic conditions for the geographical area in which the plants are located.

5. Comment: In reference to forced evaporation technology for Boulton plants, one participant stated that external heat is frequently required to evaporate excess rainwater and process wastewater, and that this technology carries significant operating costs in addition to the energy cost, including costs for coil cleaning and disposal of solids.

Response: The Agency recognizes that an external heat source will be required to ensure that all wastewaters, intermittent included, are evaporated in a cooling tower/forced evaporation system using heat recovered from condensed vapors during the vacuum cycle of the Boulton conditioning process. Proper management and segregation of wastewater sources within the plant can minimize the amount of process wastewater requiring evaporation. Cost estimates reported in the Development Document for the model plants and for adoption of the system by existing plants, include operating expenses for external energy, maintenance, and disposal of residues.

6. Comment: One comment addressed the validity of data presented in the contractors draft report that associated a greater volume of process wastewater with plants that treat a significant amount of dry stock than with plants that use closed steaming preconditioning.

Response: The data presented in the document were provided by the plants in their response to the DCP; additionally each of the plants was contacted during a follow-up telephone survey to ensure proper interpretation of the data. Many of the plants listed as treating predominantly dry stock also treat a considerable amount of green stock by open or modified (semi-closed) steam conditioning.

7. Comment: The Agency received two comments which stated that activated carbon technology is inappropriate for the wood preserving industry because it is not sufficiently proven and is too costly.

Response: The Agency recognizes the lack of full-scale operating data on activated carbon technology applications in the wood preserving industry. The installation and operation of activated carbon technology is expensive. Activated carbon was evaluated as a candidate treatment technology based on successful applications in related industries, and the relative affinity of phenols, including PCP, for adsorption on activated carbon.

8. Comment: Two comments requested EPA to address the applicability of spray irrigation techniques in particular situations.

Response: The Agency recognizes spray irrigation technology as a viable alternative to evaporation for achieving no discharge of process wastewater under favorable hydrological conditions. One Boulton plant and ten steaming plants currently eliminate discharge of process wastewater through application of spray irrigation technology, usually following oil-water separation and biological treatment. Section VII of the Development Document has been expanded to include a more detailed discussion of this technology. Spray irrigation is generally more expensive and more land intensive than evaporation technology, and requires suitable soil conditions.

9. Comment: One participant noted that flocculation/filtration, the technological basis for existing pretreatment standards for the wood preserving segment, results in phenols levels (as measured by Standard Methods) nearly as low as the phenols levels resulting from biological treatment, and the removal of polynuclear aromatics (PNAs) equals,

and in some cases exceeds, the removals of PNAs achieved by biological treatment. The participant concluded that further regulation of the indirect discharging segment was not necessary.

Response: The Development Document shows that pentachlorophenol (PCP), a compound not measured by the *Standard Methods* procedures, is reduced 97 percent by industry biological treatment systems (long-term). Flocculation/filtration technology reduces PCP about 83 percent. PCP levels after industrial (long-term) biological treatment are as low as 1 mg/l, while levels after flocculation/filtration average 12 to 15 mg/l. Because biological treatment reduces PCP levels more effectively, it was considered as a pretreatment technology.

10. Comment: One participant stated that air pollution considerations might preclude the use of evaporation technology within a local air management district.

Response: In August 1979, the Office of Research and Development obtained preliminary analytical data from a laboratory scale evaporation system using wood preserving wastewater that indicated that pentachlorophenol was being transferred to the air. The Agency is planning sampling and analysis at a number of wood preserving plants currently practicing evaporation technology to dispose of wastewater. The information resulting from this study will be considered in the promulgation phase of this rulemaking. Information is solicited on this question later in this preamble.

11. Comment: One participant stated that the cost estimates for primary oil/water separation reported in the draft technical document are understated, while another felt that dollar values of materials recovered through oil separation facilities should not be deducted from annual costs of pollution control.

Response: As described in the Development Document, the value of the oil recovered in the total primary oil recovery system (which includes rough separation tanks and API-type separators) is sufficient to reduce the overall capital costs and annual operating cost allocated to pollution control to one-half of the cost of the primary oil recovery system. Because the cost of BPT and the existing pretreatment standards (promulgated in 1976) include primary oil removal costs, the plant-by-plant cost estimates did not include any costs for primary oil separation equipment.

12. Comment: One participant stated that the contractor's draft report failed

to acknowledge the additional time required for the closed steaming process (as compared to other steam conditioning methods) and made no mention of the quality control problems presented by this process.

Response: The Agency has recognized these comments on time and quality control problems associated with the closed steaming process, has considered them in the development of these proposed regulations, and has incorporated them into the Development Document. The practice of closed or semi-closed steaming is not required by the proposed regulations, but is presented as an optional procedure, to be considered where appropriate.

13. Comment: Several participants indicated that their costs of sludge disposal were greater than those estimated in the contractor's draft report. These higher costs are attributed to shipping this sludge long distances to approved landfills.

Response: The sludge disposal costs presented in the contractor's draft report were based on information received in the DCP. The Agency recognizes that some plants may experience sludge disposal costs greater than normal.

14. Comment: One participant noted that the provisions of the Coastal Zone Management Act might prevent the construction of aerated or facultative lagoons at a particular plant site. The participant noted that the cost of land needed to construct additional treatment facilities adjacent to two existing wood preserving plants located in urban areas in the Pacific Northwest is over \$200,000 per acre, much greater than the value of the land used in estimating costs contained in the technical document.

Response: The Agency recognizes that all the treatment and control options may not be appropriate for all wood preserving facilities. In the event that a specific facility is not able to meet a promulgated effluent limitation or standard because of a unique situation, such as being subject to the Coastal Zone Management Act, or prohibitive land costs, the variance provisions discussed above are available. Land costs were assumed at \$10,000 per acre for the installation of wastewater treatment systems. Although \$10,000 per acre land may not be available to all plants, the Agency believes that this is a reasonable estimate.

15. Comment: One comment stated that the control technologies as redefined in the 1977 Amendments to the Federal Water Pollution Control Act, Section 304(b)(2)(B)(4) have not been properly described. The participant pointed out that BAT applies to toxic pollutants, otherwise BCT is applicable.

Further, in the BCT there is the test of reasonableness to be applied and BAT is that which is economically achievable.

Response: The contractor's draft report contained technical information only for Agency use in developing effluent guidelines and standards. The contractor's draft report did not address statutory requirements of the Act. Earlier sections of this preamble address the statutory requirements of the Act.

16. Comment: A comment was made that in Section I of the contractor's draft report, "Conclusion," the obvious conclusion should be that BCT is the control technology to be applied to the wet process hardboard segment.

Response: The Agency directed the contractor not to include conclusions or recommendations in the draft report. EPA's review of the report has determined that BCT is the appropriate effluent limitation basis for the wet process hardboard and the insulation board segments of the industry.

17. Comment: One participant felt that the variation in raw materials from plant to plant in the hardboard/insulation board segment was sufficient to justify classification on the basis of raw material.

Response: The Agency acknowledges that variation in raw materials from plant to plant affects the raw waste load generated. Subcategorization, as presented in the Development Document, considers the variation in raw material among plants and its effect on effluent BOD5 and TSS variability. The Agency has found that the differences in raw waste loads support two subcategories in the hardboard segment, but do not support a plant by plant subcategorization.

18. Comment: One participant stated that previously excluded sources of wastewater in the insulation board/hardboard industry have now been included.

Response: As discussed in the response to Comment 1, the DCP purposely expanded the definition of process wastewater for information collection purposes. The definition of process wastewater in the proposed regulation is the same as that in the previously existing regulations for this industry.

19. Comment: One participant felt that Figure V-1 in the technical document, Variation of BOD with Pre-heating Pressure, should not be considered applicable for the United States, and should be deleted because it was based on a 7 day BOD, rather than a 5 day BOD.

Response: The figure in question is based on data collected in a scientific

study relating BOD loading to pre-heating temperature. The figure is used for illustrative purposes in the Development Document and is not used to quantify raw wastewater BOD loadings.

20. Comment: One comment questioned the accuracy of a footnote to Table V-22 of the contractor's draft report which indicated that 41.4 lbs/ton of BOD of the reported 41.6 lbs/ton of BOD in the raw waste load from plant 97 entered the process through the recycle of treated effluent. This would mean that only 0.2 lbs/ton of BOD is instantaneously generated.

Response: The footnote was in error and has been corrected for the Development Document. Of the 41.6 lbs/ton of BOD reported in the raw waste load for this plant, 0.2 lbs/ton entered the process through recycle of treated effluent and 41.4 lbs/ton is the instantaneously generated raw waste load.

21. Comment: The Agency received one comment on the toxic pollutant content of wastewaters from the hardboard/insulation board segment. The commenter requested that a statement be included in the Development Document to the effect that "these numbers as reported will not be properly used in establishing a level of discharge conditions of a permit." Apparently, this request was based upon the participant's question of protocol, procedures of analysis, and sample base.

Response: The proposed regulations do not establish numerical limitations on toxic pollutants for this segment. The limitations are based on performance of wastewater treatment and control technologies currently practiced in the industry. The "Relationship to NPDES Permits" section of this preamble addresses the question of application and enforcement of these regulations on timber industry plants.

22. Comment: One participant questioned the use of biological treatment prior to disposal of hardboard or insulation board wastewater by spray irrigation.

Response: The Agency agrees that biological treatment prior to spray irrigation of hardboard and insulation board effluents may not always be required, because allowable BOD₅ loadings for spray irrigation depend on site-specific soil conditions. For the purposes of presenting NSPS cost information, however, the Agency assumed that biological treatment would be required in order that NSPS costs not be underestimated. The proposed regulations do not require the

application of any specific technology or technology train.

23. Comment: One comment claimed that the term "new source" was not clearly defined and that the cost estimates in the contractor's draft report applied only to greenfield plants and not to expansions of existing plants.

Response: The costs presented for new sources do apply to "greenfield" plants. Neither the contractor's draft report nor the Development Document include costs of water pollution control associated with the expansion of existing plants. Regulations for NPDES (40 CFR 122.47) 43 FR 32915 (June 7, 1979) state that: "The modification of an existing source by . . . the addition of such (process) equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section." Such plant expansions are covered by permit modification provisions of 40 CFR 122.31.

24. Comment: One participant questioned the differences in biological treatment and related costs between Candidate Treatment Technology B and Candidate Treatment Technology C as presented in the contractor's draft report.

Response: The biological treatment systems in Candidate Treatment Technology B for the insulation board/hardboard subcategories were designed for a BOD₅ removal of approximately 99 percent. The biological treatment systems in Technology C for the insulation board subcategories were designed for a BOD₅ removal of approximately 89 percent. For the hardboard subcategories, the biological treatment systems in Technology C were designed for a BOD₅ removal of approximately 93 percent. The differences in costs for the biological treatment systems of Candidate Treatment Technologies B and C are a function of the differences in BOD₅ removals. Systems designed for higher BOD₅ removals will cost more because of increased aeration costs and longer detention times.

25. Comment: One participant questioned estimation of sludge production in cubic yards per ton, and felt that the presentation of estimated metals content of the sludge resulting from wastewater treatment was inappropriate.

Response: The sludge generation information in the contractor's draft report came from the information provided in the DCP. The Development Document presents *estimated* metals quantities, assuming that the metals content of the sludge equals the raw

wastewater metals, minus the treated effluent metals, with the mass of sludge being generated as a known factor. The Agency acknowledges that sludge generation data provided in the DCP varied; plants practice varying degrees of sludge recycling, and different methods of sludge handling and disposal. The Agency is conducting further studies to quantify the metals content (and organic toxics) of sludges resulting from wastewater treatment.

26. Comment: A comment was made that the use of chemical coagulants is not uniformly applicable to the insulation board/hardboard subcategories; several instances have been noted where the required additive rates are at levels which are cost prohibitive.

Response: At least two plants in the hardboard/insulation board segment are using chemically assisted coagulation. Although these plants find this practice beneficial to operation and pollution control, other plants have attempted to use coagulants without apparent success. The Agency agrees that chemically assisted coagulation has not been adequately demonstrated to be considered applicable to all plants.

27. Comment: One participant asserted that the application of proposed NSPS to a greenfield plant would make it economically impossible for the hardboard industry to construct such facilities.

Response: The process water control and treatment technologies considered applicable to new sources in the hardboard/insulation board industry are currently practiced by plants in the segment. The technologies are presented not as requirements, but as options. For a potential new source, one of these options might be more appropriate than another. The information presented addresses the technical feasibility, applicability of these options, and the installation and operating costs.

The economic impact analysis does not anticipate the construction of greenfield wet process hardboard plants between now and 1985. This is because it is less expensive for the industry to increase capacity through incremental expansion of existing plants, or through conversion of insulation board capacity (where excess capacity is expected) to hardboard production. In addition, pollution control costs are not substantially different for greenfield plants than for other methods of industry expansion. Therefore, EPA does not expect the proposed NSPS to affect significantly the construction of greenfield plants.

28. Comment: One participant stated that the average annual gross

production reported for one plant in the technical document was in error. The production reported in the document was actually the shipped panel production and not gross production as stated.

Response: The Agency had made previous attempts to clarify the production data reported by this plant. The corrected gross production figure is included in both the Development Document and in the analysis of raw and treated waste loads generated and discharged.

29. *Comment:* A participant questioned whether the plants' raw waste load data presented throughout the contractor's draft report reflected only the 1977 data.

Response: All raw waste load data in the Development Document reflect historical plant data from the latest period for which data was available, usually calendar year 1977 and in some cases 1976. If the waste loads are developed from a different data base, it is noted in the Development Document.

30. *Comment:* A participant questioned if the same analytical technique for total phenols was used for the 1977 and 1978 verification sampling programs, and what technique was used.

Response: The 4-aminoantipyrine (4-AAP) *Standard Method* was used during both the 1977 and 1978 verification sampling programs.

31. *Comment:* One comment concerned the presence of 10 µg/l of toluene in a plant's intake water, the source being a natural stream which flows through forest land receiving no industrial wastewater discharges.

Response: Toluene was found, at 10 mg/l in the plant intake water. This may have been a false positive indication, due to the fact that the concentration observed was at the limit of analytical confidence.

32. *Comment:* One comment questioned the mercury concentration of 0.018 mg/l in the plant's raw wastewater when the plant was sampled by the Agency's contractor in March 1978. The raw wastewater was sampled by the plant in November 1978; analytical results showed 0.0013 mg/l mercury on that date.

Response: The verification sampling and analysis was conducted in March 1978, five months prior to the plant's analysis. Although the Agency was not able to determine the source of the mercury, it is possible that the watershed from which the stream receives runoff or the soil from which the trees were harvested during the period of verification sampling contained high levels of mercury.

33. *Comment:* A comment was made that the annual operating and energy costs of compliance presented in Table VIII-87 (hardboard segment costs of compliance for individual plants—direct dischargers) seemed low when compared with the current treatment costs for these plants.

Response: The costs of compliance presented in the draft report and in the Development Document reflect incremental costs above and beyond the plant's current level of treatment and do not reflect total costs presently incurred by the plant.

34. *Comment:* Several participants expressed concern that the allowable treated effluent wasteloads for the candidate treatment technologies, which are based on actual annual average data for several plants, will not be attainable on a monthly basis because of seasonal variation in biological treatment system efficiency. Another participant felt that the application of a variability factor, based on 99 percent confidence with 50 percent probability, would not result in an attainable limitation on a daily basis.

Response: A variability factor applied to average treated effluent levels measures seasonal effects on biological treatment efficiency. The application of a variability factor, derived from an analysis of two years of treated effluent data from each plant's in-place biological treatment systems, and combined with bypass and upset provisions, will result in a fair and equitable effluent guidelines limitation. The variability factor itself is influenced by treatment system performance during periods of cold weather.

35. *Comment:* One participant felt that the presentation of total phenols as measured by *Standard Methods* could be confused with the data for phenol itself. Furthermore, the comment was made that analysis of total phenols is inappropriately applied to raw wastewaters from the insulation board/hardboard industry because they indicate the presence of a great many wood derived compounds with a phenolic core structure which are not toxic pollutants and have not been identified as harmful to aquatic life or other water uses.

Response: Phenols, as measured by the *Standard Methods* procedure has been identified by the Administrator as a toxic pollutant. The *Standard Methods* phenol data presented in the Development Document is identified as such to eliminate confusion between *Standard Methods* phenols and the specific compound phenol (C₆H₅OH). The *Standard Methods* procedure measures a class of compounds including phenol, ortho- and meta-

substituted phenols and, under the proper conditions of pH, certain para-substituted phenolics. It is acknowledged that wood derived compounds with a phenolic core structure are measured by this method.

36. *Comment:* A comment was made that in presenting toxic pollutant concentration data which are at or near the detection limit for the analytical techniques employed, the data should be accompanied by an indication of the precision that can be associated with a given result. Another comment recommended that sample handling, sample preservation techniques, and the presence of substances in the wastewater other than those of interest be evaluated for their effects on the precision, accuracy, and limits of detection of the Gas Chromatography/Mass Spectrophotometry analysis of organic compounds.

Response: The Agency agrees that analytical data should be accompanied by a discussion of analytical precision. Precision and accuracy studies were not conducted during this current review of the timber industry. The Agency has precision and accuracy studies under way and is soliciting information regarding this issue later in this preamble. Nonetheless, the regulations proposed here are based on wastewater control and treatment technologies as they are currently demonstrated in the industry.

37. *Comment:* A comment noted that all rainwater falling in the immediate vicinity of the treating area should be included in the estimates of rainfall runoff which becomes mixed with process wastewater.

Response: The Agency recognizes that rainwater falling in the immediate vicinity of the retorts may become mixed with other process generated wastewater and includes it in the definition of "process wastewater" set forth in this proposed regulation. Sampling data on plants presented in the Development Document include the contribution of this wastewater-source, as did all cost estimates for both model plants and the plant-by-plant cost estimates for compliance. In estimating the runoff quantities in question, it was assumed that all rainwater falling in the immediate vicinity of the treating area, as defined in the Development Document, would become mixed with process wastewater.

38. *Comment:* Two comments stated that realistic consideration was not given to the influence of rainwater runoff and geological conditions in different areas of the country on wastewater quantity and quality.

Response: The proposed regulation excludes rainwater runoff from all areas other than runoff from the immediate vicinity of the treating cylinders which actually becomes mixed with process wastewater. The plant-by-plant cost estimates presented in the Development Document used location specific rainfall data obtained from NOAA publications. Unchanneled or uncollected runoff from raw material or finished product storage areas and other areas of the plant is a nonpoint pollution source which may be addressed at a later date in a review of Best Management Practices (BMP) of the industry.

39. *Comment:* One comment stated that toxic pollutant base neutral extractives data obtained during verification sampling at one wood preserving plant are either in error, or reflect unusual or upset conditions because they do not agree with data obtained at two other plants and do not compare with data obtained at the same plant one year earlier. The participant requests that the data in question be deleted.

Response: The base neutral extractives data for PNAs reported for the plant in question are an average of three data points each representing a single 24-hour composite. Further review of these data indicates that the PNA concentrations for one of these three data points is indeed a statistical outlier which can be deleted from the data base as unrepresentative. The values reported for parameters such as oil and grease, COD, phenols, and other toxic pollutants in the same sample show no significant evidence of upset or unusual conditions, nor were unusual conditions or upset reported by the plant or sample team during sampling. The outlier will be deleted from the data base, and the concentrations of PNAs reported for this plant will be based on the average of the remaining two 24-hour composites obtained at the plant.

40. *Comment:* One participant requested that the requirements of the regulations recently proposed pursuant to the Resource Conservation and Recovery Act (RCRA) be addressed in this rulemaking.

Response: It is difficult to determine the effects of RCRA on the wood preserving industry at this time. RCRA rules were proposed in December 1978 (43 FR 58946) and on August 22, 1979 (44 FR 49402). The proposed rule identifies a set of characteristics of hazardous waste. The wood preserving industry provided information to the Agency which indicated that wastewater sludge generated per 1000 cubic feet of production decreases by about 10 percent if a plant practicing current

pretreatment technology elects to achieve no discharge status by evaporation. Sludge generated by a plant producing 5000 cubic feet per day of treated wood and achieving no discharge by evaporation is about 2.2 cubic feet per day.

41. *Comment:* One comment indicated that the contractor's draft report ignores the air pollution and related costs of the wood preserving treatment train of flocculation/filtration, followed by cooling tower evaporation. He noted that the application of flocculation followed by rapid sand filtration as a treatment option for new Boulton plants results in substantial heat loss from the effluent, and that the cost of heat replacement necessary to eliminate discharge through the cooling tower evaporation method makes the treatment system uneconomical.

Response: Cooling tower evaporation of Boulton process wastewater is and can be practiced following primary (gravity) oil separation. The treatment train presented in the contractor's draft report includes secondary oil separation before cooling tower evaporation. The contractor's draft report includes flocculation/filtration to further reduce the oil and grease concentration in the feed to the evaporation system. Evaporation efficiency is improved, and scaling, solids buildup, and overall equipment maintenance is reduced by decreasing the pollutant level in the feed water. The operating costs for this treatment train presented in Section VIII of the report assumed that the wastewater would be at ambient temperature when fed to the evaporation system. The energy costs presented in Section VIII are based on the requirements of raising the wastewater to evaporation temperature from ambient temperature.

42. *Comment:* One comment suggested that the economic impact analysis for wet process hardboard overlooked the competition from foreign producers, many of whom are in developing countries and so are not subject to tariffs. The comment further noted that future growth in demand may be satisfied by foreign production rather than domestic capacity expansion.

Response: Brazil, Argentina, Romania, and Korea face no U.S. tariffs. Most other importers pay ad valorem duties ranging from 7.5% to 30%. Imports are, however, very sensitive to economic conditions in the United States, and when the market for hardboard declined, imports also fell as a percentage of U.S. consumption. Imports generally satisfy the lower quality range in the hardboard market and it is believed that during periods of rapidly

growing demand, domestic producers purchase foreign hardboard and concentrate on producing better quality products which improve profit margins. The United States is expected to remain a net importer of hardboard, but imports are not expected to preclude additional growth in U.S. capacity.

43. *Comment:* One participant noted that the wood preserving industry is characterized by many plants which may be unable to finance pollution control costs. The participant recommended that consideration be given to extending federal and state guaranteed long term low interest loans to impacted plants.

Response: The Agency recognizes that the wood preserving industry is composed of many small plants which may have difficulty financing pollution control expenditures. Under Section 8 of the Clean Water Act, the Small Business Administration (SBA) is empowered to make loans to assist small business concerns to meet water pollution abatement requirements.

44. *Comment:* One comment suggested that the economic impact report's estimates of capital costs for new wood preserving plants were underestimated.

Response: The estimated cost in the draft report were based upon information provided by industry. However, the contractor re-examined these costs, and obtained further information from wood preserving companies and contacted equipment suppliers. Based upon these communications, the individual capital cost components were re-evaluated and were changed, as needed, in light of the additional information obtained.

45. *Comment:* One comment disputed the economic report's assertion that multi-plant companies may be able to raise prices and recover a portion of pollution control costs.

Response: While EPA recognizes that multi-plant companies do not always have this degree of market power at a specific location to raise prices, the Agency believes that multi-plant companies will frequently be able to raise prices to recover a portion of the control costs. Even so, the analysis of plant closures employed the conservative assumption that each plant is a stand alone operation that is unable to recover the cost of compliance through price increases.

46. *Comment:* One comment questioned the treating cycle times used in the characterization of operating costs for new wood preserving plants.

Response: Cycle times for wood preserving will depend upon wood species, moisture content, type of process employed and the degree of

preservation required. The data used in arriving at these assumptions were rechecked, and the Agency believes that the assumptions are reasonable.

XXIX. Solicitation of Comments

EPA invites and encourages the public to participate in this rulemaking by submitting written comments in response to this proposal. The Agency asks that if comments are submitted stating that this proposal record is incomplete, the participant specifically state the area of inadequacy and any suggestions for revision or modification by detailed information. The comment period allowed on this proposed rulemaking is sixty (60) days. This will allow adequate time for participants to conduct a thorough review of the proposed rulemaking and the supporting documents, and to prepare complete responses.

The Agency is particularly interested in receiving additional comments, data, and information in the following specific areas:

(1) The sampling and analytical methods used to determine the presence and magnitude of toxic pollutants are being reviewed by the Agency. Comments are solicited on the data produce by these methods, and the methods themselves.

(2) During the last three years, individual plants and companies have been collecting samples of untreated and treated wastewaters and analyzing them for the presence of toxic pollutants. Since the Agency has made the analytical data collected by the Agency and its contractors available to the public, we now ask that information and data assembled by individual plants, companies, as well as technical trade associations, public interest groups, state and regional pollution control offices, and others, be shared with the Agency. Further, any individuals or groups interested in generating additional data on toxic and potentially toxic pollutants in the timber products industry should contact Richard E. Williams for assistance and information.

(3) Although this rulemaking does not address Best Management Practices (BMP's) for the timber products industry, BMP's will be developed for future promulgation. The Agency is actively soliciting information, suggestions, and comments on BMP candidate practices.

(4) Characterization of the amounts and pollutant characteristics of sludges and other solid wastes generated by wood preserving, hardboard and insulation board process wastewater treatment systems, the handling and disposal techniques used, and the costs

associated with sludge handling and disposal were considered in the development of these proposed rules. Any additional information related to these areas should be submitted to the Agency. The information will be considered in the final rulemaking and provided to the EPA Office of Solid Waste, the office with primary Agency responsibility for implementation of the Resource Conservation and Recovery Act (RCRA).

(5) Evaporation technology is one of the bases for new source performance standards and new source pretreatment standards for the wood preserving segment of the industry. No information is available to confirm or deny that workers in close proximity to wood preserving wastewater evaporation systems may be exposed to significant levels of toxic pollutants in the ambient air. Information is requested regarding worker contamination, illness, ailment, etc. related to exposure to wood preserving wastewater evaporation systems.

(6) In the event that reviewers of these proposed regulations and their supporting documents disagree with the cost information presented, the Agency asks participants to document that disagreement. In order to evaluate fully the comment, the Agency needs specific information on design and operating characteristics, and actual installed costs (not estimates) for each unit operation or piece of equipment. The information should include whether or not the equipment was purchased or built in-house, date of installation, whether or not it was installed by contractors or plant personnel, the costs associated with operation and maintenance, energy requirements (in kilowatt hours or equivalents), chemical usage, if any, the labor requirements of this waste treatment system (person-years or equivalent), and any other significant information.

(7) Section 304(b)(4) requires the Agency to establish Best Conventional Pollutant Control Technology (BCT) for existing industrial point sources that discharge conventional pollutants (biochemical oxygen demand, total suspended solids, fecal coliform, pH, and oil and grease). Comments on the methodology used in the BCT analysis (discussed above), for the timber products industry are solicited and encouraged.

(8) The technical study serving as the support for the proposed regulations attempted to address the full range of treatment and control technologies, and practices and procedures, either in use, or capable of being applied to process wastewaters from the timber products

industry. Reviewers of this proposal who are aware of any appropriate technologies not considered in this rulemaking are asked to provide information concerning these technologies to the Agency.

(9) In order to establish effluent limitations for the wet process hardboard and insulation board segments of the industry, the Agency conducted an analysis of variability to determine the daily and 30 day variabilities in the discharge from treatment systems in relation to the long term average discharge. EPA is soliciting comments on the use of the nonparametric analysis (as explained in detail in Section XIV of the Development Document) for determining variability factors.

(10) The Agency requests that reviewers of this proposal point out errors in data, tabulation, possible misinterpretation of industry submitted data, or any possible errors in the logic of these proposed rules. Comments of this nature should be documented with copies of the originally submitted information, together with either a discussion explaining the participant's interpretation of the data, or a discussion of the participant's logical approach to the rulemaking.

(11) The Agency requests that POTW, which receive wastewater from timber products industry plants, submit any pertinent data which would document the occurrence of interference with collection system and treatment plant operations, permit violations, sludge disposal difficulties, or other incidents attributable to the pollutants contained in these wastewaters.

(12) Information is requested regarding the transfer of toxic pollutants (in particular pentachlorophenol and polynuclear aromatics) from the water medium to the air medium resulting from the application of evaporation technology (pan evaporation, cooling tower evaporation, and spray evaporation) to wood preserving wastewaters. The Agency has not confirmed that intermedia transfer does occur; however, for some pollutants, the possibility exists. Information provided will be evaluated between proposal and promulgation of these regulations.

(13) The Agency's economic analysis suggests the possibility of closure within the timber industry. For hardboard plants which feel that the proposed standards would have a significant economic effect, the Agency requests information updating their response to the economic survey and forecasts they may have of production costs, prices, capacity utilization, markets, and any other variables relevant to a closure

decision. The bases of their forecasts should also be given. In addition, the Agency also requests information concerning costs of process modification (e.g. from wet process to dry process hardboard manufacture) and whether this would be a more cost effective method for severely affected facilities to comply with the regulation. The Agency also requests comments on the economic impact methodology and closure decision indicators employed in the wood preserving and insulationboard/hardboard segment economic analyses. If alternative assumptions are recommended, the bases for these assumptions should be clearly stated. EPA plans to review all criticisms of the analyses and additional economic impact information it receives and will incorporate it into its final decision making process prior to promulgation of these guidelines. At that time, the Agency will consider setting standards on the basis of other identified control alternatives, which have less severe economic effects.

(14) The Agency considered requiring biological pretreatment with and without a size cut-off for the twenty-seven indirect discharging wood preserving plants treating with pentachlorophenol. Comments are solicited on the selected option, without including the size cut-off, and the other options considered, especially the environmental tradeoffs. Also, the Agency solicits comment on the predicted economic impacts of the options considered.

(15) Comments are solicited on the practicability of wood preserving plants that are currently treating wood with PCP, substituting creosote and/or inorganic salt treated wood for marketing in place of PCP treated wood. That is, will indirect discharging plants treating with PCP be able to reduce the estimated economic effect of these proposed regulations by substituting products?

Dated: October 16, 1979.

Douglas M. Costle,
Administrator.

XXX. Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act
Agency—The U.S. Environmental Protection Agency
BADT—Best Available Demonstrated Technology
BAT—The best available technology economically achievable, under Section 301(b)(2)(A) of the Act
BCT—The best conventional pollutant control technology, under Section 301(b)(2)(E) of the Act

BMP—Best management practices, under Section 304(e) of the Act
BPT—The best practicable control technology currently available, under Section 301(b)(1) of the Act
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95-217)
Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States
FR—Federal Register
Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works
NPDES—National Pollutant Discharge Elimination System, under Section 402 of the Act
NSPS—New source performance standards, under Section 306 of the Act
POTW—Publicly owned treatment works
PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the Act
PSNS—Pretreatment standards for new sources of direct discharges, under Section 307 (b) and (c) of the Act
RCRA—Resource Conservation and Recovery Act of 1976, Amendments to Solid Waste Disposal Act (Pub. L. 94-580)

Appendix B—Toxic Pollutants Not Detected in Treated Effluents

Insulation Board and Hardboard

chloromethane
dichlorodifluoromethane
bromomethane
vinyl chloride
chloroethane
methylene chloride
trichlorofluoromethane
1,1-dichloroethylene
1,1-dichloroethane
1,2-trans-dichloroethylene
chloroform
1,2-dichloroethane
1,1,1-trichloroethane
carbon tetrachloride
dichlorobromomethane
bis(chloromethyl) ether
1,2-dichloropropane
2-chloroethyl vinyl ether
bromoform
tetrachloroethylene
1,1,2,2-tetrachloroethane
chlorobenzene
acrolein
acrylonitrile
trichloroethylene
chlorodibromomethane
1,2-dichloropropylene
bis(2-chloroethyl) ether
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
hexachloroethane
bis(2-chloroisopropyl) ether
hexachlorobutadiene
1,2,4-trichlorobenzene
naphthalene
hexachlorocyclopentadiene
nitrobenzene
bis(2-chloroethoxy)methane

2-chloronaphthalene
acenaphthylene
acenaphthene
isophorone
fluorene
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
N-nitrosodiphenylamine
hexachlorobenzene
4-bromophenyl phenyl ether
phenanthrene
anthracene
dimethyl phthalate
diethyl phthalate
fluoranthene
pyrene
di-n-butyl phthalate
benzidine
butyl benzyl phthalate
chrysene
bis(2-ethylhexyl)phthalate
benzo(a)anthracene
3,4-benzofluoranthene
benzo(k)fluoranthene
benzo(a)pyrene
indeno(1,2,3-ed)pyrene
dibenzo(a,h)anthracene
benzo(g,h,i)perylene
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
4-chlorophenyl phenyl ether
3,3'-dichlorobenzidine
2,3,7,8-tetrachlorodibenzo-p-dioxin
2-chlorophenol
2,4-dichlorophenol
2-nitrophenol
parachlorometa cresol
2,4,6-trichlorophenol
2,4-dimethylphenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
4-nitrophenol
pentachlorophenol
aldrin
dieldrin
chlordane (technical mixture and metabolites)
4,4'-DDT
4,4'-DDE (p,p'-DDX)
4,4'-DDD (p,p'-TDE)
a-endosulfan-Alpha
b-endosulfan-Beta
endosulfan sulfate
endrin aldehyde
heptachlor
heptachlor epoxide
a-BHC-Alpha
b-BHC-Beta
r-BHC (lindane)-Gamma
g-BHC-Delta
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
toxaphene

Wood Preserving

chloromethane
dichlorodifluoromethane
bromomethane
vinyl chloride
chloroethane
methylene chloride
trichlorofluoromethane
1,1-dichloroethylene
1,1-dichloroethane
1,2-trans-dichloroethylene

1,2-dichloroethane
 1,1,1-trichloroethane
 carbon tetrachloride
 dichlorobromomethane
 bis-chloromethyl ether
 1,2-dichloropropane
 1,1,2-trichloroethane
 2-chloroethyl vinyl ether
 bromoform
 tetrachloroethylene
 1,1,2,2-tetrachloroethane
 chlorobenzene
 acrolein
 acrylonitrile
 trichloroethylene
 chlorodibromomethane
 1,2-dichloropropylene
 bis(2-chloroethyl)ether
 1,2-dichlorobenzene
 1,3-dichlorobenzene
 1,4-dichlorobenzene
 hexachloroethane
 bis(2-chloroisopropyl)ether
 hexachlorobutadiene
 1,2,4-trichlorobenzene
 hexachlorocyclopentadiene
 nitrobenzene
 bis(2-chloroethoxy)methane
 2-chloronaphthalene
 isophorone
 2,4-dinitrotoluene
 2,6-dinitrotoluene
 1,2-diphenylhydrazine
 N-nitrosodiphenylamine
 hexachlorobenzene
 4-bromophenyl phenyl ether
 dimethyl phthalate
 diethyl phthalate
 di-n-butyl phthalate
 benzidine
 butyl benzyl phthalate
 dibenzo(a,h) anthracene
 N-nitrosodimethylamine
 N-nitrosodi-n-propylamine
 4-chlorophenyl phenyl ether
 3,3'-dichlorobenzidine
 2,3,7,8-tetrachlorodibenzo-p-dioxin
 2,4-dichlorophenol
 2-nitrophenol
 parachlorometa cresol
 2,4-dinitrophenol
 4,6-dinitro-o-cresol
 4-nitrophenol
 aldrin
 dieldrin
 chlordane (technical mixture and metabolites)
 4,4'-DDT
 4,4'-DDE (p,p'-DDX)
 4,4'-DDD (p,p'-TDE)
 a-endosulfan-Alpha
 b-endosulfan-Beta
 endosulfan sulfate
 endrin aldehyde
 heptachlor
 heptachlor epoxide
 a-BHC-Alpha
 b-BHC-Beta
 r-BH(lindane)-Gamma
 g-BHC-Delta
 PCB-1242 (Arochlor 1242)
 PCB-1254 (Arochlor 1254)
 toxaphene

Appendix C—Toxic Pollutants Detected in Treated Effluents

Wood Preserving

fluoranthene
 3,4-benzofluoranthene
 benzo(k)fluoranthene
 pyrene
 benzo(a)pyrene
 indeno(1,2,3-cd)pyrene
 benzo(ghi)perylene
 naphthalene
 acenaphthylene
 fluorene
 chrysene
 bis(2-ethylhexyl)phthalate
 phenol
 pentachlorophenol
 arsenic
 copper
 chromium
 nickel
 zinc

Insulation Board and Hardboard

copper
 nickel
 zinc

Appendix D—Toxic Pollutants Detected in Treated Effluents at Two Plants or Less

Wood Preserving

chloroform
 ethylbenzene
 2-chlorophenol
 2,4,6-trichlorophenol
 2,4-dimethylphenol
 beryllium

Insulation Board and Hardboard

benzene
 toluene
 phenol
 beryllium

Appendix E—Toxic Pollutants Detected in Treated Effluents at or Below the Nominal Limit of Detection (10 ug/l)

Insulation Board and Hardboard

lead
 arsenic
 beryllium
 antimony
 cadmium
 chromium
 selenium
 silver
 thallium
 mercury

Wood Preserving

benzene
 chloroform
 ethylbenzene
 2-chlorophenol
 2,4,6-trichlorophenol
 lead
 antimony
 selenium
 cadmium
 silver
 thallium
 mercury
 beryllium

It is proposed to revise 40 CFR Part 429—Timber Products Processing Point Source Category to read as follows:

PART 429—TIMBER PRODUCTS PROCESSING POINT SOURCE CATEGORY

General Provisions

Sec.

429.10 Applicability
 429.11 General definitions
 429.12 Reserved

Subpart A—Barking Subcategory

429.20 Applicability; description of the barking subcategory.
 429.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
 429.22 [Reserved]
 429.23 [Reserved]
 429.24 New source performance standards (NSPS).
 429.25 Pretreatment standards for existing sources (PSES).
 429.26 Pretreatment standards for new sources (PSNS).

Subpart B—Veneer Subcategory

429.30 Applicability; description of the veneer subcategory.
 429.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
 429.32 [Reserved]
 429.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
 429.34 New source performance standards (NSPS).
 429.35 Pretreatment standards for existing sources (PSES).
 429.36 Pretreatment standards for new sources (PSNS).

Subpart C—Plywood Subcategory

429.40 Applicability; description of the plywood subcategory.
 429.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
 429.42 [Reserved]
 429.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
 429.44 New source performance standards (NSPS).
 429.45 Pretreatment standards for existing sources (PSES).
 429.46 Pretreatment standards for new sources (PSNS).

Subpart D—Hardboard—Dry Process Subcategory

429.50 Applicability; description of the hardboard dry process subcategory.

Sec.

- 429.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.52 [Reserved]
- 429.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.54 New source performance standards (NSPS).
- 429.55 Pretreatment standards for existing sources (PSES).
- 429.56 Pretreatment standards for new sources (PSNS).

Subpart E—Wet Process Hardboard Subcategory

- 429.60 Applicability; description of the wet process hardboard subcategory.
- 429.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
- 429.63 [Reserved]
- 429.64 New source performance standards (NSPS).
- 429.65 Pretreatment standards for existing sources (PSES).
- 429.66 Pretreatment standards for new sources (PSNS).

Subpart F—Wood Preserving—Water Borne or Non-Pressure Subcategory

- 429.70 Applicability; description of the wood preserving—water borne or non-pressure subcategory.
- 429.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.72 [Reserved]
- 429.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.74 New source performance standards (NSPS).
- 429.75 Pretreatment standards for existing sources (PSES).
- 429.76 Pretreatment standards for new sources (PSNS).

Subpart G—Wood Preserving—Steam Subcategory

- 429.80 Applicability; description of the wood preserving—steam subcategory.
- 429.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.82 [Reserved]
- 429.83 [Reserved]
- 429.84 New source performance standards (NSPS).
- 429.85 Pretreatment standards for existing sources (PSES).

Sec.

- 429.86 Pretreatment standards for new sources (PSNS).

Subpart H—Wood Preserving—Boulton Subcategory

- 429.90 Applicability; description of the wood preserving—Boulton subcategory.
- 429.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.92 [Reserved]
- 429.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.94 New source performance standards (NSPS).
- 429.95 Pretreatment standards for existing sources (PSES).
- 429.96 Pretreatment standards for new sources (PSNS).

Subpart I—Wet Storage Subcategory

- 429.100 Applicability; description of the wet storage subcategory.
- 429.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.102 [Reserved]
- 429.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.104 New source performance standards (NSPS).
- 429.105 Pretreatment standards for existing sources (PSES).
- 429.106 Pretreatment standards for new sources (PSNS).

Subpart J—Log Washing Subcategory

- 429.110 Applicability; description of the log washing subcategory.
- 429.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.112 [Reserved]
- 429.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.114 New source performance standards (NSPS).
- 429.115 Pretreatment standards for existing sources (PSES).
- 429.116 Pretreatment standards for new sources (PSNS).

Subpart K—Sawmills and Planing Mills Subcategory

- 429.120 Applicability; description of the sawmills and planing mills subcategory.
- 429.121 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.122 [Reserved]

Sec.

- 429.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.124 New source performance standards (NSPS).
- 429.125 Pretreatment standards for existing sources (PSES).
- 429.126 Pretreatment standards for new sources (PSNS).

Subpart L—Finishing Subcategory

- 429.130 Applicability; description of the finishing subcategory.
- 429.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.132 [Reserved]
- 429.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.134 New source performance standards (NSPS).
- 429.135 Pretreatment standards for existing sources (PSES).
- 429.136 Pretreatment standards for new sources (PSNS).

Subpart M—Particleboard Manufacturing Subcategory

- 429.140 Applicability; description of the particleboard manufacturing subcategory.
- 429.141 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.142 [Reserved]
- 429.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.144 New source performance standards (NSPS).
- 429.145 Pretreatment standards for existing sources (PSES).
- 429.146 Pretreatment standards for new sources (PSNS).

Subpart N—Insulation Board Subcategory

- 429.150 Applicability; description of the insulation board subcategory.
- 429.151 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.152 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
- 429.153 [Reserved]
- 429.154 New source performance standards (NSPS).
- 429.155 Pretreatment standards for existing sources (PSES).
- 429.156 Pretreatment standards for new sources (PSNS).

Subpart O—Wood Furniture and Fixture Production Without Water Wash Spray Booth(s) or Without Laundry Facilities Subcategory

Sec.

- 429.160 Applicability; description of the wood furniture and fixture production without water wash spray booth(s) or without laundry facilities subcategory.
- 429.161 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.162 [Reserved]
- 429.163 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.164 New source performance standards (NSPS).
- 429.165 Pretreatment standards for existing sources (PSES).
- 429.166 Pretreatment standards for new sources (PSNS).

Subpart P—Wood Furniture and Fixture Production With Water Wash Spray Booth(s) or With Laundry Facilities Subcategory

- 429.170 Applicability; description of the wood furniture and fixture production with water wash spray booth(s) or with laundry facilities subcategory.
- 429.171 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
- 429.172 [Reserved]
- 429.173 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
- 429.174 New source performance standards (NSPS).
- 429.175 Pretreatment standards for existing sources (PSES).
- 429.176 Pretreatment standards for new sources (PSNS).

Authority.—Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 United States 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 429.10 Applicability.

This part applies to any timber products processing operation, and any plant producing insulation board with wood as the major raw material, which discharges or may discharge pollutants to the waters of the United States, or which introduces or may introduce pollutants into a publicly owned treatment works.

§ 429.11 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

- (a) Hydraulic barking means a wood processing operation that removes bark from wood by the use of water under a pressure of 6.8 atm (100 psi) or greater.
- (b) The term cubic feet or cubic meters of production in Subpart A means the cubic feet or cubic meters of logs from which bark is removed.
- (c) The term "process wastewater" in this part specifically excludes non-contact cooling water, material storage yard runoff (either raw material or processed wood storage) and boiler blowdown.
- (d) Gross production of fiberboard products in this part means the air dry weight of hardboard or insulation board following formation of the mat prior to trimming and finishing operations.
- (e) The term hardboard means a panel manufactured from interfelted ligno-cellulosic fibers consolidated under heat and pressure to a density of 0.5 g/cu cm (31 lb/cu ft) or greater.
- (f) The term insulation board means a panel manufactured from interfelted ligno-cellulosic fibers consolidated to a density of less than 0.5 g/cu cm (less than 31 lb/cu ft).
- (g) Smooth-one-side (S1S) hardboard means hardboard which is produced by the wet-matting, wet-pressing process.
- (h) Smooth-two-sides (S2S) hardboard means hardboard which is produced by the wet-matting, dry-pressing process.
- (i) The term "debris" means a woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1.0 in) diameter round opening that might be present in the discharge from a wet storage facility.

(g) Smooth-one-side (S1S) hardboard means hardboard which is produced by the wet-matting, wet-pressing process.

(h) Smooth-two-sides (S2S) hardboard means hardboard which is produced by the wet-matting, dry-pressing process.

(i) The term "debris" means a woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1.0 in) diameter round opening that might be present in the discharge from a wet storage facility.

§ 429.12 [Reserved]

Subpart A—Barking Subcategory

§ 429.20 Applicability; description of the barking subcategory.

This subpart applies to discharges to waters of the United States and introduction of pollutants into publicly owned treatment works resulting from the barking of logs being processed by plants in SIC major group 24, and plants producing insulation board, in SIC group 2661.

§ 429.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided 40 CFR §§ 125.30-.32, any point source subject to this subpart must achieve the following effluent limitations attainable by the

application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to all mechanical barking installations: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for hydraulic barking installations:

Subpart A—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Metric units (kilograms per cubic meter of production)		
BOD ₅	1.5	0.5
TSS.....	6.9	2.3
pH.....	Within the range 6.0 to 9.0 at all times	
English units (pounds per cubic foot of production)		
BOD ₅	0.10	0.08
TSS.....	0.50	0.15
pH.....	Within the range 6.0 to 9.0 at all times	

§ 429.22 [Reserved]

§ 429.23 [Reserved]

§ 429.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) The following limitations apply to all mechanical barking installations: There shall be no discharge of process wastewater pollutants into navigable waters.

(b) The following limitations constitute the maximum permissible discharge for hydraulic barking installations:

Subpart A—NSPS Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
Metric units (kilograms per cubic meter of production)		
BOD ₅	1.5	0.5
TSS.....	6.9	2.3
pH.....	Within the range 6.0 to 9.0 at all times	
English units (pounds per cubic foot of production)		
BOD ₅	0.10	0.03
TSS.....	0.50	0.15
pH.....	Within the range 6.0 to 9.0 at all times	

§ 429.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this

subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart B—Veneer Subcategory

§ 429.30 Applicability; description of the veneer subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plant which manufactures veneer and does not store or hold raw materials in wet storage conditions.

§ 429.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.32 [Reserved]

§ 429.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.34 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): there shall be no discharges of process wastewater pollutants into navigable waters.

§ 429.35 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, an existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.36 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a

publicly owned treatment works must comply with 40 CFR Part 403.

Subpart C—Plywood Subcategory

§ 429.40 Applicability; description of the plywood subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plywood producing plant that does not store or hold raw materials in wet storage conditions.

§ 429.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.42 [Reserved]

§ 429.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.44 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.45 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.46 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart D—Hardboard-Dry Process Subcategory

§ 429.50 Applicability; description of the hardboard-dry process subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plant that produces hardboard using the dry matting process for forming the board mat.

§ 429.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.52 [Reserved]

§ 429.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.54 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.55 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.56 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart E—Wet Process Hardboard Subcategory

§ 429.60 Applicability; description of the wet process hardboard subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly

owned treatment works from any plant which produces hardboard products using the wet matting process for forming the board mat.

§ 429.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30-.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to plants which produce smooth-one-side (S1S) hardboard:

Subpart E (S1S)—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (lb/1,000 lb) of gross production		
BOD ₅	20.7	6.0
TSS.....	37.4	14.0
pH.....	Within the range 6.0 to 9.0 at all times	

(b) The following limitations apply to plants which produce smooth-two-sides (S2S) hardboard:

Subpart E (S2S)—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (lb/1,000 lb) of gross production		
BOD ₅	36.5	12.1
TSS.....	132.7	26.6
pH.....	Within the range 6.0 to 9.0 at all times	

§ 429.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR §§ 125.30-.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best conventional pollutant control technology (BCT):

(a) The following limitations apply to plants which produce smooth-one-side (S1S) hardboard:

Subpart E (S1S)—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (lb/1000 lb) of gross production		
BOD ₅	4.3	1.15
TSS.....	14.0	4.30
pH.....	Within the range 6.0 to 9.0 at all times	

(b) The following limitations apply to plants which produce smooth-two-sides (S2S) hardboard:

Subpart E (S2S)—BCT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (lb/1000 lb) of gross production		
BOD ₅	15.0	5.0
TSS.....	39.8	7.9
pH.....	Within the range 6.0 to 9.0 at all times	

§ 429.63 [Reserved]

§ 429.64 New source performance standards (NSPS):

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.65 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.66 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart F—Wood Preserving—Water Borne or Nonpressure Subcategory

§ 429.70 Applicability; description of the wood preserving water borne or non-pressure subcategory.

This subpart applies to discharges and introductions of pollutants into publicly owned treatment works from all non-pressure processes, and all pressure processes employing water borne inorganic salts.

§ 429.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.72 [Reserved]

§ 429.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.74 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.75 Pretreatment standards for existing sources (PSES).

Any existing source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must achieve the following pretreatment standards for existing sources (PSES): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

§ 429.76 Pretreatment standards for new sources (PSNS).

Any new source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart G—Wood Preserving Steam Subcategory

§ 429.80 Applicability; description of the wood preserving—steam subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from wood preserving processes that use direct steam impingement on wood as the predominant conditioning method; processes that use the vapor drying process as the predominant conditioning method; processes which use the same retort to treat with both salt and oil and oil type preservatives; and processes which steam condition and which apply both salt type preservatives to the same stock.

§ 429.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR § 125.30-.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

The following limitations apply to plants in this subpart:

Subpart G—BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
English units (lb/1000 cubic feet of product)		
COD.....	68.5	34.5
Phenols.....	.14	.04
Oil and grease.....	1.5	.75
pH.....	Within the range of 6.0 to 9.0 at all times	
Metric units (kg/1000 cu m of product)		
COD.....	1,100	550
Phenols.....	2.18	.65
Oil and grease.....	24.0	12.0
pH.....	Within the range of 6.0 to 9.0 at all times	

§ 429.82 [Reserved]

§ 429.83 [Reserved]

§ 429.84 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.85 Pretreatment standards for existing sources (PSES).

Any source subject to this subpart which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403 and meet the following pretreatment standards for existing sources (PSES):

Subpart G—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day (mg/l)
Pentachlorophenol.....	0
Oil and grease.....	100

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance.

Subpart G—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day
Grams per cu m of production	
Pentachlorophenol.....	0
Oil and grease.....	20.5

§ 429.86 Pretreatment standards for new sources (PSNS).

Any new source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart H—Wood Preserving—Boulton subcategory

§ 429.90 Applicability; description of the wood preserving—Boulton subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from those wood preserving processes which use the Boulton process as the predominant method of conditioning stock.

§ 429.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.92 [Reserved]

§ 429.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.94 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.95 Pretreatment standards for existing sources (PSES).

Any source subject to this subpart which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403, and meet the following pretreatment standards for existing sources (PSES):

Subpart H—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day (mg/l)
Pentachlorophenol.....	0
Oil and grease.....	100

In cases where POTWs find it necessary to impose mass limitations, the following equivalent mass limitations are provided as guidance.

Subpart H—PSES Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day
Grams per cu m of production	
Pentachlorophenol.....	0
Oil and grease.....	20.5

§ 429.96 Pretreatment standards for new sources (PSNS).

Any new source, subject to this subpart, which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no introduction of process wastewater pollutants into publicly owned treatment works.

Subpart I—Wet Storage Subcategory

§ 429.100 Applicability; description of the wet storage subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works resulting from the holding of unprocessed wood, i.e., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or land storage where water is sprayed or deposited intentionally on the logs (wet decking).

§ 429.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30-.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best

practicable control technology currently available (BPT): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.102 [Reserved]

§ 429.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30–32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best available technology economically achievable (BAT): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.104 New source performance standards.

Except as provided in 40 CFR §§ 125.30–32, any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no debris discharged and the pH shall be within the range of 6.0 to 9.0.

§ 429.105 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.106 Pretreatment standards for sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart J—Log Washing Subcategory

§ 429.110 Applicability; description of the log washing subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works resulting from the process of passing logs through an operation where water under pressure is applied to the log for the purpose of removing foreign material from the surface of the log before further processing.

§ 429.111 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30–32, any point source subject to this subpart must achieve the following effluent limitations, attainable

by the application of the best practicable control technology currently available (BPT):

(a) The following limitations apply to all log washing operations: There shall be no discharge of process wastewater pollutants to navigable waters containing a total suspended solids concentration greater than 50 mg/l and the pH shall be within the range of 6.0 to 9.0.

§ 429.112 [Reserved]

§ 429.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.114 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.115 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.116 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart K—Sawmills and Planning Mills Subcategory

§ 429.120 Applicability; description of the sawmills and planing mills subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from the timber products processing procedures that include all or part of the following operations: bark removal (other than hydraulic barking as defined in Section 429.11 of this part) sawing, resawing, edging, trimming, planing and machining.

§ 429.121 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.122 [Reserved]

§ 429.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.124 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.125 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.126 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart L—Finishing Subcategory

§ 429.130 Applicability; description of the finishing subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from drying, planing, dipping, staining, end coating, moisture proofing, fabrication, and by-product utilization not otherwise covered by specific guidelines and standards.

§ 429.131 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best

practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.132 [Reserved]

§ 429.133 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.134 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.135 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.136 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart M—Particleboard Manufacturing Subcategory

§ 429.140 Applicability; description of the particleboard manufacturing subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from any plant which manufactures particleboard.

§ 429.141 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best

practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.142 [Reserved]

§ 429.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.144 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.145 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.146 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart N—Insulation Board Subcategory

§ 429.150 Applicability; description of the insulation board subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from plants which produce insulation board using wood as the raw material. Specifically excluded from this subpart is the manufacture of insulation board from the primary raw material bagasse.

§ 429.151 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–

.32, any point source subject to this subpart must achieve the following effluent limitations, attainable by the application of the best practicable control technology currently available (BPT):

Subpart N—BPT Effluent Limitations

Pollutant or Pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (lb/1,000 lb of gross production)		
BOD ₅	8.25	2.94
TSS.....	6.27	2.09
pH.....	Within the range 6.0 to 9.0 at all times	

§ 429.152 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR § 125.30–.32, any point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Subpart N—BCT Effluent Limitations

Pollutant or Pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (lb/1,000 lb of gross production)		
BOD ₅	8.25	2.94
TSS.....	6.27	2.09
pH.....	Within the range 6.0 to 9.0 at all times	

§ 429.153 [Reserved]

§ 429.154 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.155 Pretreatment standards for existing sources (PSES).

Any source, subject to this subpart, which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403.

§ 429.156 Pretreatment standards for new sources (PSNS).

Any source, subject to this subpart, which introduces pollutants into publicly owned treatment works must comply with 40 CFR 403.

Subpart O—Wood Furniture and Fixture Production Without Water Wash Spray Booth(s) or Without Laundry Facilities Subcategory

§ 429.160 Applicability; description of the wood furniture and fixture production without water wash spray booth(s) or without laundry facilities subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from the manufacture of wood furniture and fixtures at establishments that (a) do not utilize water wash spray booths to collect and contain the overspray from spray applications of finishing materials and (b) do not maintain on-site laundry facilities for fabric utilized in various finishing operations.

§ 429.161 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.162 [Reserved]

§ 429.163 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.164 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants into navigable waters.

§ 429.165 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.166 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart P—Wood Furniture and Fixture Production With Water Wash Spray Booth(s) or With Laundry Facilities Subcategory

§ 429.170 Applicability; description of the wood furniture and fixture production with water wash spray booth(s) or with laundry facilities subcategory.

This subpart applies to discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from the manufacture of wood furniture and fixtures that either (a) utilize water wash spray booth(s) to collect and contain the overspray from spray applications of finishing materials, or (b) utilize on-site laundry facilities for fabric utilized in various finishing operations, or (c) do both.

§ 429.171 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Any existing source subject to this subpart must achieve the following best practicable control technology limitations (BPT): Settleable solids shall be less than or equal to 0.2 ml/l and pH shall be between 6.0 and 9.0 at all times.

§ 429.172 [Reserved]

§ 429.173 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Any existing source subject to this subpart must achieve the following best available technology economically achievable limitations (BAT): There shall be no discharge of process wastewater pollutants.

§ 429.174 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS): Settleable solids shall be less than or equal to 0.2 ml/l and pH shall be between 6.0 and 9.0 at all times.

§ 429.175 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 429.176 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR § 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

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Part VI

Department of Energy

Economic Regulatory Administration

Crude Oil Reseller Regulations; Proposed
Rulemaking and Public Hearings

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-79-48]

Crude Oil Reseller Regulations

AGENCY: Economic Regulatory Administration, Department of Energy.**ACTION:** Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is proposing alternative amendments to Subpart L of 10 CFR Part 212 which sets forth the price regulations applicable to resales of crude oil. The primary proposal would substantially revise the regulatory scheme in Subpart L to provide for the computation of maximum permissible selling prices to which all resales of crude oil would be subject. The alternative proposal would establish a uniform, maximum permissible average markup for all crude oil resellers while continuing to permit resellers to generally charge any prices in individual transactions. In addition, under each alternative we are proposing amendments to establish a separate price rule applicable to resales of crude oil which the reseller has not gathered or otherwise transported, since such transactions not only represent a significantly lower level of investment and risk but also appear in many instances to be deliberate attempts to subvert the intent of the price regulations. We are also requesting comments on several other proposals, including a proposed amendment to establish a specified permissible average markup for resellers first doing business on or after December 1, 1977 which would be applicable to sales by such resellers on or after January 1, 1978 but prior to the effective date of any final rule we may adopt in this rulemaking proceeding.

DATES: Proposed effective date: February 1, 1979; Comments by December 31, 1979, 4:30 p.m.; Requests to speak at a hearing by November 28, 4:30 p.m.; Hearing Dates: Houston hearing, December 6, 1979, 9:30 a.m.; Washington hearing, December 11, 1979, 9:30 a.m.

ADDRESSES: All comments to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-48, 2000 M Street NW., Washington, D.C. 20461. Requests to speak at Houston hearing to

Department of Energy, 2626 West Mockingbird Lane, P.O. Box 352228, Dallas, Texas 75234, Attn. Mac L. Lacefield. Requests to speak at Washington hearing to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-48, 2000 M Street NW., Washington, D.C. 20461.

HEARING LOCATIONS: Houston hearing: Federal Building, Ninth Floor, Court No. 4, 515 Rusk Avenue, Houston, Texas; Washington hearing: Room 2105, 2000 M Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert C. Gillette (Office of Public Hearings Management), Economic Regulatory Administration, Room 2222-A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-5201.

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

Daniel J. Thomas (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2304, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-7477.

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

SUPPLEMENTARY INFORMATION

- I. Background
- II. Primary Proposal to Establish Maximum Permissible Price Rule for All Crude Oil Resellers for Application on Transaction-by-Transaction Basis
- III. Alternative Proposal to Establish Specified Permissible Average Markup
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 - E. Resellers First Selling Crude Oil after May 1973 but prior to December 1977 which has no Sales in November 1977
 - F. Provisions of Subpart L Remaining Essentially Unchanged
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I. Background

On December 23, 1977, we issued a final rule which amended the Mandatory Petroleum Price Regulations to provide, through the adoption of a Subpart L for 10 CFR Part 212, a new regulatory system applicable to the pricing of crude oil by resellers and refiners, effective January 1, 1978 (42 FR 64856, December 29, 1977). Prior to January 1, 1978, prices in crude oil resales were subject to the limitations of

Subpart F of 10 CFR Part 212, which provides generally for the computation of a maximum lawful price in every sale of a covered product (now other than crude oil) by a reseller. Our decision to adopt Subpart L was based primarily on our determination at that time that resellers should be permitted more flexibility in pricing crude oil resale transactions and, therefore, that it would be appropriate to establish a regulatory scheme for crude oil resellers separate from that for reseller's of other covered products.

Subpart L permits a reseller to charge any price in a particular sale of crude oil so long as the reseller's average markup (over allowed costs) for all crude oil sales in a month does not exceed its permissible average markup and provided that the reseller does not unreasonably discriminate among purchasers. The method to be used by a reseller in determining its permissible average markup for purposes of Subpart L depends on the time period during which the reseller first resold crude oil.

Under the regulations, the permissible average markup of a reseller which resold crude oil in May 1973 is defined as the reseller's total lawful revenues from sales of crude oil in the month May 1973, less all of the reseller's allowed costs and expenses associated with sales of crude oil in that month, divided by the number of barrels sold in that month. A reseller which entered the crude oil reselling business after May 1973 but before December 1, 1977 is required to impute a permissible average markup based on what the reseller's total revenues from sales in the month November 1977 would have been if the prices charged by the reseller in all sales that month has been correctly imputed, as required by the new item rule in § 212.111, from prices charged by the reseller's nearest comparable outlet for a particular grade and regulatory tier of crude oil on the day the reseller first sold such crude oil.

We announced our intent to establish at a later time the permissible average markup for crude oil resellers first doing business on or after December 1, 1977. We provided in the regulations, however, that if in any month a post-November 1977 reseller's average markup should exceed the permissible average markup subsequently established by ERA the reseller would nevertheless be deemed to have complied with the price rule if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was priced in transactions of the

nearest comparable reseller in the month.

In the December 1977 Notice adopting the new Subpart L regulations we solicited further comments both generally and with respect to a number of specific issues to aid us in determining whether modifications to the amendments would be necessary. Although the majority of resellers commenting supported the average markup approach of Subpart L, many firms suggested various regulatory changes relating to various aspects of Subpart L, including the basis for determining permissible average markups, the length of the compliance period, margin disparities among crude oil resellers entering the business at different times, the treatment of exchanges, and the passthrough of transportation costs.

In addition, numerous commenters objected to the requirement under Subpart L that the methods for determining the permissible average markups of resellers entering the business after May 1973 require application of the new item rule of § 212.111. Specifically, these commenters indicated that the complexities involved in ascertaining a reseller's nearest comparable outlet had created uncertainties for resellers operating under Subpart F and, therefore, that any continued reliance on the new item rule would be inappropriate. A number of commenters also raised questions concerning the applicability of Subpart F generally to crude oil resellers.

In response to the concerns expressed by resellers regarding Subpart F, we indicated that we would issue a further notice pertaining to the general applicability of Subpart F to crude oil resellers. However, based on further examination of crude oil reselling activities since May 1973, we determined that a reseller acting prudently and in good faith could have applied the provisions of Subpart F including the requirements of the new item rule, so as to have been assured that its activities were in substantial compliance with the regulations. Therefore, we concluded that further clarification of those provisions in a general manner, such as that typically provided in a formal Ruling, was not only unnecessary but would have been inappropriate, since a reseller encountering difficulties in applying the provisions of Subpart F or Subpart L could have sought assistance by requesting an interpretation specifically addressing its own particular circumstances. In addition, in any

situation where a reseller believed that adherence to the regulations would create a hardship or result in a gross inequity vis-a-vis other resellers, the reseller's appropriate course of action would have been to seek relief through the exceptions process. Finally, we believe in view of these considerations, that incorporation of the new item rule into the regulatory scheme of Subpart L should have created no significant additional burdens on resellers and, therefore, was not inappropriate.

Since the adoption of Subpart L, we have monitored the crude oil reselling industry to assess the impact of the new regulations on resellers specifically and on the petroleum industry in general. We have been especially interested in the effects on reselling activities resulting from the requirement under § 212.185 of Subpart L that a reseller refund any profit it realizes in a transaction in which the reseller failed to certify the crude oil sold in accordance with the requirements of § 212.131. This improper certification rule was included in Subpart L as a means of strengthening existing certification provisions requiring that resellers maintain the certification of specific volumes of crude oil without deviation or obfuscation. In addition to adopting new regulatory provisions regarding certifications, we announced in the preamble to Subpart L that we would continue to audit resellers' transactions in order to detect possible regulatory violations. Based on information obtained in audits completed since the adoption of Subpart L, we have referred to the U.S. Department of Justice several cases we believe to involve improper certifications. Several of these cases have already resulted in indictments against a number of companies and individuals. We wish to restate at this time that we will continue to investigate reseller activities and take appropriate remedial action in any instance where we determine that a reseller has failed to comply with our regulatory provisions requiring that all resellers maintain proper certifications in crude oil sales.

Our observations since adopting Subpart L have also led to our tentative conclusion that the additional pricing flexibility afforded resellers under Subpart L may be creating significant regulatory problems. We are especially concerned that application of the current provisions of the Subpart L regulations, which provide for the establishment of different permissible markups for resellers depending on when reselling activities first began, are resulting in unjustified disparities in the markups

being realized by resellers. In addition, it is our conclusion that the average markup rule may not provide effective control over reseller margins. Specifically, it appears that the flexibility in the regulations facilitates such abuses as intentional failure to utilize a correctly calculated permissible average markup or the insertion of sham transactions in calculations of monthly average markups so as to make it appear that the permissible average markup has not been exceeded. The averaging approach in Subpart L makes detection of these violations difficult.

In view of the developments discussed above, we believe extensive revisions to Subpart L may be necessary. We have set forth in the sections below the substance of various proposals, and alternatives thereto, to amend the price regulations applicable to resales of crude oil, effective February 1, 1980. We may adopt one or any combination of these proposals and alternatives which we determine would further our objective of providing an appropriate, as well as administratively enforceable, regulatory scheme for crude oil resellers.

II. Primary Proposal to Establish Maximum Permissible Price Rule for All Crude Oil Resellers for Application on Transaction-by-Transaction Basis

In view of the regulatory scheme in Subpart L and the operation of the new item rule, the permissible average markup of any reseller should be roughly consistent with that of another reseller providing essentially the same services and which is otherwise comparable. However, our auditing experience under Subpart L and the comments received in response to the adoption of Subpart L indicate that there have been wide disparities in the average markups of apparently comparable resellers. Moreover, it appears that in many instances the per barrel profit margins of resellers which do not gather or transport crude oil or perform any other function or service historically associated with the reselling industry have exceeded the profit margins realized by resellers which engage in those activities.

We believe that many of the current inconsistencies in resellers' markups are largely unjustified and in many instances may be resulting from pricing practices designed to evade the restrictions of Subpart L. In view of these considerations, we have tentatively concluded that the regulations applicable to resales of crude oil should be amended in order to achieve the objective of the price regulations in Subpart L that a reseller's

per barrel markup appropriately reflect the functions and services provided by the reseller in moving crude oil from the production site into the refinery. Accordingly, we are proposing to amend Subpart L to establish a maximum permissible price rule applicable to each resale of crude oil which we believe would insure that a reseller's profit margins appropriately reflect the gathering and transportation services provided by the reseller.

1. General Price Rule. We are proposing to amend Subpart L to provide that a reseller may not charge in any resale of crude oil, except as provided below, a price exceeding the sum of (1) the "acquisition cost" of the crude oil sold; plus (2) any amounts associated with the transportation of the crude oil between the reseller's points of acquisition and sale which were (a) actually paid by the reseller to an unaffiliated common carrier or other third party or (b) actually incurred by a common carrier or other entity affiliated with the reseller; plus (3), in sales in which the reseller has transported crude oil by means of its own facilities, a "transportation allowance" to include an amount permitting a return on investment in transportation and storage facilities; plus (4) one cent per barrel to permit the reseller a return on any services, other than transportation by means of its own facilities, that the reseller performs. We invite comments generally with respect to each of these components of the proposed maximum permissible price rule. However, we request that comments regarding the computation of a reseller's acquisition costs and transportation allowance be prepared in view of the discussion of these aspects of the proposal set forth below.

A. Acquisition cost

Under today's proposal, a reseller's acquisition cost in a particular transaction would be the price (not in excess of the applicable price permitted under Part 212) actually paid by the seller for the crude oil sold. As is currently the case under the Subpart L definition of acquisition cost, a reseller's acquisition cost when selling a volume of crude oil received in an exchange (or in a matching purchase and sale transaction having the same effect as an exchange) would be deemed to be the price paid by the seller for the crude oil given up in the exchange, adjusted to appropriately reflect any differentials paid or received in connection with the exchange. (As discussed below, we are proposing today a definition of the term "exchange" in order to emphasize the

appropriate treatment of such transactions.)

The proposed definition of acquisition cost would permit a reseller to continue to use any generally accepted accounting practice it has consistently and historically used in determining the acquisition cost of crude oil sold, as long as the reseller (1) maintains separate inventory records accounting separately in each transaction for the acquisition costs of lower tier, upper tier, imported and each category of exempt domestic crude oil sold in that transaction; (2) uses actual prices paid as the basis of the costs; and (3) uses the same accounting method for both valuing its inventory of crude oil and determining costs of crude oil sold that it used in May 1973 or (if the reseller entered the crude oil reselling business after May 1973) in the first month it resold crude oil.

Our proposal to permit continued reliance by a reseller on those generally accepted accounting practices consistently and historically used by the reseller in determining acquisition costs is based on our understanding that resellers generally account for such costs in a manner reflecting actual costs with respect to specific volumes of crude oil. However, we are requesting that comments in this proceeding include a discussion concerning the accounting practices relied upon by crude oil resellers and the extent to which you believe accounting practices would not yield an "acquisition cost" that reflects actual costs associated with specific crude oil volumes. We will consider such comments to aid in our determination as to whether any restrictions as to the type of accounting practices which may be utilized by resellers would be appropriate or necessary either with respect to resellers generally or with respect to any particular class of resellers, such as resellers which first sold crude oil after November 1977 or resellers which may begin reselling operations following the issuance of this notice.

B. Transportation Allowance

As indicated above, we believe a reseller's markup over expenses in any sale of crude oil should appropriately reflect the services performed by that reseller in bringing the crude oil into the refinery. Accordingly, we are proposing to permit resellers to include in their prices a "transportation allowance" formulated to recoup not only actual expenses but also an adequate return on their investments in transportation facilities. We are proposing two alternative methods for computing the

"transportation allowance" in any sale, as discussed below.

1. Comparable Common Carrier Tariff. Under the first alternative, a reseller which uses its own facilities to perform any part of the transportation of the crude oil occurring between the reseller's points of acquisition and sale would be permitted to include in its price, regardless of the actual transportation expenses incurred by the reseller, an amount equal to the expense the reseller would have incurred if it had used a common carrier to transport the crude oil that distance the crude oil was actually transported by means of the reseller's own facilities. In determining its transportation allowance under this alternative, a reseller would be required to utilize a comparable common carrier tariff filed with the appropriate State or Federal agency. Since State and Federal authorities review a common carrier's circumstances in order to determine the appropriate tariff so as to permit an adequate return on investment, we believe reliance on the comparable common carrier tariff in determining a seller's transportation allowance would permit the reseller to realize an adequate profit on reselling activities.

2. Transportation Expenses plus Return on Investment. Under the second alternative, a reseller's transportation allowance in any sale would be equal to the expenses incurred by the reseller in using its own facilities to transport the crude oil plus an additional amount to permit return on investment. For purposes of this alternative, we are proposing that a reseller's transportation expenses and allowance for return on investment be determined as discussed below.

(a) Computation of transportation expenses. We recognize that in many instances a reseller cannot determine at the time of sale its actual expenses associated with moving the crude oil sold from the reseller's acquisition point to its point of sale. Therefore, in order to insure the recoupment of such expenses in a manner reflecting to the extent possible actual costs, we are proposing that a reseller will be permitted to include in its "transportation allowance" in any sale an amount based on its actual transportation and gathering costs in the month prior to the preceding month. Specifically, a reseller's transportation allowance in any sale would include an amount equal to the expense that reseller would have incurred in transporting the crude oil the same distance by the same mode of transportation in the month prior to the preceding month.

The proposed formula for use in determining expenses includible in a

reseller's transportation allowance is intended to provide for the passthrough of expenses associated with the operation and maintenance of reception stations and trucks, pipelines, and other modes of transportation owned and used by the reseller to transport crude oil from the reseller's points of acquisition to its reception stations and/or points of sale.

As currently permitted under Subpart L, expenses associated with trucks which the proposal would allow to be passed through as transportation and gathering costs include fuel, repairs and maintenance, drivers' salaries, truck rentals, and depreciation. Pipeline and reception station expenses would include fuel, operators salaries, repairs and maintenance, rental payments, and depreciation, and the expense incurred in upgrading crude oil to meet pipeline quality specifications, such as the reduction of basis sediment and water, the reduction of impurities, and the adjustment of viscosity and gravity.

As we stated in the preamble to Subpart L, where, pursuant to any applicable ceiling price rule certain services are required to be provided by a crude oil producer, expenses associated with such services would not be permitted to be passed through by the reseller, regardless of whether actually incurred by the reseller or not. Furthermore, expenses associated with locating or acquiring sources of crude oil, such as, for example, the purchase of options to buy lease production, would not be includible in a reseller's allowed transportation and gathering costs or in any other component of a reseller's maximum permissible price.

We request your comments as to any modifications to today's proposal pertaining to transportation and gathering expenses which you believe would be appropriate. In this regard, we are specifically requesting comments as to whether it would be appropriate in any final rule we may adopt in this proceeding to provide that a reseller may treat as a transportation expense and thereby passthrough in its prices a per barrel amount reflecting interest payments made by the reseller in connection with financing the construction or purchase of reception stations, pipelines, and other crude oil transportation facilities.

We are also specifically requesting comments as to whether it would be feasible to require that a reseller determine its transportation costs in any sale at the time of the sale. In the event we determine that such an approach would be feasible, we may adopt a final rule providing that the transportation expenses included in a reseller's

transportation allowance must reflect actual expenses in that sale, as opposed to per barrel transportation expenses in the month preceding the prior month.

(b) *Return on investment.* As indicated above, we are also proposing under this alternative that a reseller's transportation allowance include in addition to its transportation expenses an amount to permit a return on the reseller's investment in transportation, gathering and storage facilities. We propose two means of accomplishing this objective.

First, we are proposing that a reseller's transportation allowance include a fixed per barrel amount. Based on available information, we believe the appropriate amount would be approximately twenty-five cents per barrel. However, we request comments in this regard.

Second, we are proposing in the alternative that a reseller be permitted to include an amount in its transportation allowance equal to either (1) an amount equal to a percentage of its transportation expenses associated with that particular sale or (2) the product of an amount equal to a percentage of the reseller's depreciated original cost of investment in transportation and storage facilities multiplied by the number of barrels in that sale that are transported in facilities (other than common carrier facilities) owned and used by the reseller and divided by the total number of barrels sold in the month that are transported by all modes of transportation (other than common carrier) owned and used by the reseller. We request comments as to what the appropriate percentages would be in the event we adopt either of these methods.

(c) *Relationship of transportation allowance to general and administrative expenses.* Based on our observations of reseller activities to date, we have tentatively concluded that the current provisions of Subpart L which permit a reseller to separately compute and passthrough certain general and administrative expenses have unnecessarily increased the opportunity for price manipulation through exaggeration of such costs. Furthermore, the separate itemization of such expenses necessarily entails a substantially greater enforcement burden. Therefore, we are proposing to limit the passthrough of general and administrative expenses by providing for the inclusion of such costs in a reseller's transportation allowance in sales where the reseller has transported the crude oil by means of its own facilities. We request comments as to any modifications you believe necessary

to account for such expenses under any of the proposed methods for determining a reseller's transportation allowance. Since the proposed price rule would permit a reseller to include in its price an additional one cent per barrel, regardless of whether the reseller has actually transported the crude oil, we believe the proposal would also permit the recoupment of general and administrative expenses, as well as an adequate profit return, in sales in which the reseller has not transported by means of its own facilities.

2. *Permissible Markup in Resales of Crude Oil Not Subject to General Price Rule.*—Based on information and knowledge gained since the adoption of Subpart L, we now believe that in many more instances than we had previously supposed crude oil resellers sell crude oil which they have neither gathered, transported nor stored in association with such operations. We have also observed the entrance into the crude oil reselling market of many new firms which obtain and pass title to crude oil without ever taking any volume of product into actual physical possession.

It appears that the large number of resellers in the marketplace today has resulted in long chains of resales through which much crude oil has been bought and sold prior to being refined. This passage of title to crude oil from reseller to reseller results, through the accumulation of numerous, successive markups, in significantly greater prices for such crude oil when it enters a refinery and, therefore, in increased prices to consumers of refined petroleum products. Moreover, it appears in many instances that such chains of resales have camouflaged violations of the crude oil pricing regulations.

We believe that most resales of crude oil in which a reseller has neither transported nor stored the crude oil in its own facilities do not represent any service or other function traditionally and historically associated with the movement of crude oil from producer to refiner. Therefore, these transactions would appear in most instances to be in contravention of the layering clause in § 212.186, as well as the normal business practice rule of § 210.62. Furthermore, even if a reseller can demonstrate it is providing some limited services in a sale of crude oil which has never been in its physical possession, the reseller's levels of investment and risk in such sales are nevertheless relatively much lower.

In view of the above considerations, we are proposing a separate price rule to provide that, notwithstanding the provisions of the general price rule, if between the time of purchase of crude oil by a reseller and the time of resale of

that crude oil by the reseller (a) the crude oil remained in the same physical location or (b) the reseller did not take actual physical possession of the crude oil, the reseller may not charge a price in excess of its acquisition cost of the crude oil, except in the following circumstances. If the reseller (1) sold the crude oil directly to a refiner certifying to the reseller that the crude oil was being purchased for refining purposes, or (2) receives certification from the refiner which ultimately refines the crude oil that the refiner would not have received that volume of crude oil but for the reseller's service or (3) purchased the crude oil from the producer, or (4) in the case of imported crude oil, was the importer of record, the reseller would be permitted a markup of one cent per barrel.

We welcome comments responding generally to the issue as to under what circumstances it would be appropriate to permit a markup in resales of crude oil in which the reseller has not taken physical possession of the crude oil sold. However, we request that comments in this regard discuss in as much detail as possible the nature of and appropriate markup for any such transactions which you believe to represent an important function in bringing crude oil into the refinery.

III. Alternative Proposal To Establish Specified Permissible Average Markup

We recognize that the primary proposal presented above represents a significant departure from the regulatory scheme in Subpart L. Inasmuch as many resellers expressed support for the average markup concept for determining compliance, we are soliciting comments on an alternative to the primary proposal which would retain Subpart L in basically its present form, but which would limit resellers to a fixed average markup of twenty-five cents per barrel. For the reasons indicated above, we have taken general and administrative expenses into account in determining to propose a twenty-five cent permissible average markup, as opposed to providing for the separate itemization and passthrough of such expenses.

We are also proposing under this alternative to further modify the current Subpart L price rule by adopting the provision discussed in the primary proposal which, while generally prohibiting profit margins in resales of crude oil which the reseller has not stored or transported, would permit a one cent per barrel markup in any such sale in which the reseller (1) sold the crude oil directly to a refiner certifying to the reseller that the crude oil was being purchased for refining purposes,

or (2) receives certification from the refiner which ultimately refines the crude oil that the refiner would not have received that volume of crude oil but for the reseller's service, or (3) purchased the crude oil from its producer, or (4), in the case of imported crude oil, was the importer of record.

We are proposing under this alternative, as requested by many commenters following the adoption of Subpart L, to extend from one to three months the compliance period for purposes of determining whether a reseller's average markup has exceeded its permissible average markup. In view of this proposal to extend the compliance period, we are also proposing to eliminate the self-correcting refund provisions of § 212.185 and the *per se* rule set forth in § 212.185(b) which provides that, notwithstanding the self-correcting refund provisions, a reseller will be deemed to be in violation of the price regulations if its prices result in average markups in excess of that reseller's permissible average markup during three consecutive months. However, we are requesting comments as to whether it would be appropriate to simply modify these mechanisms or adopt analogous procedures to reflect any extension of the compliance period beyond one month.

IV. Miscellaneous Proposals

A. Applicability of Subpart L to Crude Oil Exchanges

The manner in which the crude oil reseller price regulations apply to a particular transaction is affected by whether that transaction is categorized as an exchange or as a sale. However, whether a particular transaction would be appropriately characterized as an exchange or as a sale is often difficult to ascertain due to the nature of such transactions. Based on our observations of reselling activities, we believe that some firms are frequently capitalizing on the generally recognized difficulties in determining the true nature of such transactions as a means of subverting the intent of the price regulations. Therefore, we believe it would be appropriate to add a definition of the term "exchange" to Subpart L which reflects our understanding of the historical nature and legitimate purposes of such arrangements.

Generally, each firm participating in an exchange receives something of essentially the same value as that which was given up. When a firm gives up crude oil of lesser per barrel value than the crude oil received, the value difference is generally offset by the

payment of cash or an additional volume of crude oil. Differences in the market values of the crude oil volumes exchanged are generally due to differences in the quality or locations of the crude oil volumes.

Based on this understanding, we believe that a transaction may be appropriately characterized as an exchange only if the intent of both firms is to receive crude oil of equal value to that given up. We recognize that in many instances it may not be practicable for the exchanged volumes to have precisely the same value and that the firm receiving crude oil of greater value may have to make a compensating payment to the other firm. Nevertheless, when in an exchange it is not commercially practicable to equalize values through adjustments to the amount of crude oil received, compensating payments should not exceed the amount necessary to account for quality, location and time differentials between the volumes of crude oil exchanged.

In view of the above considerations, we are proposing a definition of the term "exchange" to emphasize that a transaction between a reseller and any other firm will be deemed to be an exchange only if the circumstances and terms of the arrangement indicate an intent, to the extent commercially practicable, on the part of each firm to transfer to each other volumes of crude oil of equal value. Therefore, the proposed definition would provide that any compensating payment should not exceed the quality, location, or time differences between the values of the volumes exchanged. The proposed definition would also provide that exchange transactions include matching purchase and sale agreements (also known as buy/sell agreements). We are proposing to define a matching purchase and sale, for purposes of Subpart L, as a transaction in which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the cash paid and received by each firm are dependent on the value of the volumes received.

We believe the proposed definition of the term "exchange" would reflect the historical nature of exchanges. However, we wish to emphasize that, notwithstanding any definition of the term "exchange" which we may adopt, we will continue to look to the nature of resellers' transactions to determine whether there exists, regardless of the reseller's characterization of the transaction as a sale or an exchange,

and intent to utilize exchange arrangements in derogation of the normal business practice rule of § 210.62 or the layering clause of § 212.186 as a means of subverting the intent of the crude oil reseller price regulations or any other provisions of the petroleum regulations. In this regard, we are particularly concerned that exchanges in a series of transactions involving the same volume of crude oil may be used as a means to obscure illegal changes of certification. In view of these considerations, we are requesting comments as to any modifications to the provisions of § 211.67(g) pertaining to the certification of crude oil received in an exchange, as well as other regulatory modifications, which you believe should be made to provide for the appropriate treatment of exchanges. Comments in this regard should describe in detail or provide examples of situations in which you believe exchange arrangements indicate an intent to violate the regulations.

B. Certification of Imported Crude Oil by Resellers

Section 212.131(b)(1) of the price regulations currently requires each reseller of crude oil to certify in writing to any purchaser the respective volumes of and respective per barrel prices for each regulatory tier or category of domestic crude oil sold. We believe that enforcement efforts, as well as administration of the entitlements program, would be facilitated by requiring that resellers also make such certification with respect to any volumes of imported crude oil they sell. Accordingly, we are proposing to amend § 212.131 to add such a requirement.

C. Definition of Reseller

We are proposing today a definition of the term "reseller" to emphasize that a reseller is permitted a markup under Subpart L with respect to any volume of crude oil only if no other firm or entity with which the reseller shares significant affiliations has realized a profit associated with that volume of crude oil. Accordingly, the proposed definition would provide that a "reseller" means, for purposes of Subpart L, a firm which carries on the trade or business of purchasing crude oil for resale in substantially unchanged form and that a "reseller" includes generally the parent of the reseller and the consolidated and unconsolidated entities which the parent of the reseller or the reseller directly or indirectly controls,

D. Affiliated Common Carriers

Since the adoption of Subpart L, we have observed that some crude oil resellers have established common carrier affiliates and then transferred or sold to the affiliates the reseller's transportation facilities. These firms then include the common carrier tariffs paid to their affiliates for the transportation of crude oil in computing their transportation and gathering costs. Because common carrier tariffs normally include a return on capital investment, use of the common carrier tariff in computing transportation and gathering cost can be expected to add a margin which represents this return on capital investment to the prices of crude oil resales. In Interpretation 1978-25, the DOE held that a firm may utilize the tariff paid an affiliate for purposes of computing transportation and gathering costs under Subpart L.

As discussed above, we believe that it may be necessary to modify the price rule of § 212.183 to insure that a reseller's markup in any sale appropriately reflects the extent of such reseller's investment in gathering and transportation facilities. Furthermore, we have today proposed alternative means which we believe might be appropriate in accomplishing this objective. It is our determination, however, that it would create inequitable disparities in reseller margins to permit resellers which establish affiliated common carriers to obtain an additional return on investment by using the common carrier tariffs paid to such affiliates for transporting crude oil in computing transportation and gathering costs. Therefore, we are proposing amendments today to provide that, in the event we do not adopt a rule permitting all resellers to use a comparable common carrier tariff, as discussed above, in computing their transportation and gathering allowances, a reseller may include in its recoverable transportation and gathering costs only those expenses incurred by the common carrier affiliate in transporting the crude oil, regardless of the applicable tariff.

E. Resellers First Selling Crude Oil After May 1973 but Prior to December 1977 Which Had No Sales in November 1977

A reseller which entered the crude oil reselling business after May 1973 but prior to December 1977 is required to determine an imputed permissible average markup based on its lawful revenues in November 1977. Some resellers have requested guidance as to

how they should apply the regulations in the event they had no sales in November 1977. Therefore, we are proposing an amendment to Subpart L to provide that a reseller first selling crude oil after May 1973 but prior to December 1977 but which made no sales in November 1977 would determine its permissible average markup in reliance on its lawful revenues in the month first preceding November 1977 in which it did sell crude oil. This proposal would not be applicable prospectively in the event we adopt certain aspects of the proposals set forth above. However, we are requesting comments as to whether it would be appropriate to adopt this proposed method for determining regulatory compliance by this group of resellers during the period January 1, 1978 through the effective date of any final rule we adopt in this proceeding.

F. Provisions of Subpart L Remaining Essentially Unchanged

Today's proposed amendments pertaining to resales of crude oil which the reseller has never taken into its physical possession are intended to eliminate what we believe to be layering violations in many instances. However, since we have determined that these proposals would be most effectively framed as separate price rules, the layering provisions in § 212.186 will remain in unchanged form.

The recordkeeping and reporting requirements of § 212.187 and the provisions of § 212.188 pertaining to depreciation and § 212.185 pertaining to improper certifications will also remain in essentially unchanged form. Technical amendments will be made to these sections, however, as necessary to reflect the provisions of any final rule we may adopt in this proceeding.

We are not proposing to amend § 212.183(b) which provides that sales by a refiner, *qua* refiner, such as accommodation sales and sales to adjust inventory, are to be priced in accordance with the refiner's consistent and historical accounting practice, provided that the price charged in any sale of crude oil by the refiner *qua* refiner may not exceed the price paid by the refiner for the crude oil plus any transportation cost incurred by the refiner to transport the crude oil from the point at which the refiner takes title to the crude oil to the point of sale. However, we wish to emphasize that a refiner may not realize a markup over costs in any sale of crude oil if the sale was of such a nature that historically and customarily it would have been treated as an accommodation sale or sale to adjust refinery inventories or if

the crude oil sold was obtained or at any time held for refinery purposes.

G. Proposed Permissible Average Markup for Resellers First Reselling Crude Oil on or After December 1, 1977

As discussed above the preamble to Subpart L announced our intent to establish at a later date a permissible average markup for resellers first doing business on or after December 1, 1977. We recognize that in the event we adopt either of the alternative proposals discussed above the time period during which a reseller first entered the crude oil reselling business would no longer be relevant. However, we are proposing today a permissible average markup which would be applicable to sales by post-November 1977 resellers on or after January 1, 1978 but prior to the effective date of any final rule we adopt in this proceeding.

Based on available information, we are proposing to establish a permissible average markup of fifteen cents per barrel with respect to resellers first doing business on or after December 1, 1977. We believe such a markup would be consistent with the profit margins realized by most resellers in May 1973, a period of relative stability and strong competition in the crude oil reselling market. Furthermore, since pre-December 1977 resellers generally have not been permitted under either Subpart F or Subpart L to obtain markups in excess of May 1973 profit margins, it is our further belief that post-November 1977 resellers which established their prices with reference to their nearest comparable resellers in reliance on § 212.183(c) would not be prejudiced by the adoption of the proposed fifteen cents per barrel average markup.

We are now collecting information regarding resellers' margins on the recently adopted Form ERA-69. We will reconsider the fifteen cents per barrel permissible average markup proposed above, as well as other aspects of today's proposals, in view of the information submitted on this form by crude oil resellers. To further aid us in reaching a final determination as to the appropriate permissible average margin for post-November 1977 resellers, we request that comments on this issue provide, with as much specificity as possible, information and data regarding average markups (as currently defined in Subpart L) realized by crude resellers currently, in January 1978, in November 1977, and in May 1973. In this regard, we request that all written comments be submitted under oath as to the accuracy of any factual information or data set forth therein since it is essential that our final determination in this matter be

based on a record that is as accurate and reliable as possible. We recognize that information and data regarding actual pricing components involve matters of a proprietary nature. Therefore, as indicated below in Section V regarding comment procedures, you should designate any information set forth in your comments which you believe to be of a proprietary nature. We will preserve to the full extent we deem appropriate the confidentiality of any information you indicate to be proprietary.

V. Comments Procedures

A. Written Comments

You are invited to participate in this rulemaking proceeding by submitting views, data, or arguments with respect to the proposals set forth in this notice. Comments should be submitted to the address set forth in the "ADDRESSES" section of this notice and should be identified on the outside envelope and on the documents submitted with the docket number and the designation "Crude Oil Resellers." Fifteen copies should be submitted. All comments received by 4:30 p.m., December 31, 1979 and all other available relevant information will be considered before final action is taken on the proposed amendments. All comments received will be available for public inspection in the DOE Reading Room GA-152, 1000 Independence Avenue, S.W., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

If you submit any information or data you believe to be confidential, it must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. Procedure for Requesting Opportunity To Present Oral Statement.—The times and places for the hearings are indicated in the "Dates" and "Addresses" sections of this notice. If necessary to present all testimony, a hearing will be continued to 9:30 a.m. of the first business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation at a hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where

you may be contacted through the day before the hearing.

If you are selected to be heard at a hearing, we will notify you before 4:30 p.m. December 3, 1979. You will be required to bring your statement to the hearing location before 9:30 a.m. on the day of the hearing.

2. Conduct of the Hearings.—We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard at a hearing.

An ERA official will be designated to preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Questions to be asked of any person making a statement at a hearing should be submitted to the address indicated above for requests to speak, for the location concerned, before 4:30 p.m. on the day prior to the hearing. You may also submit any questions, in writing, to the presiding officer at a hearing. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

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

Transcripts of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained and made available for inspection at the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase copies of the transcripts from the reporter.

VI. Other Matters

In accordance with Section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended) a copy of this notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the

potential impact of this proposal on the quality of the environment. On September 21, 1979, the Administrator informed the ERA that he does not foresee as the result of the implementation of today's proposed actions an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

We are currently reviewing the effects of these proposals on the quality of the human environment and will perform any environmental analysis required by the National Environmental Policy Act (NEPA, 32 U.S.C. 4321 *et seq.*) and the applicable DOE regulations for compliance with NEPA.

We have determined that the proposals contained in this notice will not have a major impact as that term is defined in Section VI of the proposed DOE Directive issued April 25, 1978, (43 FR 18634, May 1, 1978) to implement Executive Order 12044, and, therefore, no regulatory analysis pursuant to Executive Order 12044 is required.

Pursuant to the requirements of Section 404 of the Department of Energy Organization Act (Pub. L. 95-91), a copy of this Notice has been referred to the Federal Energy Regulatory Commission for a determination as to whether, in its discretion, this proposed rule may significantly affect any function within the Commission's jurisdiction pursuant to section 412(a)(1), (b) and (c)(1) of that Act. The Commission will have until December 31, 1979, the date the public comment period closes, to make this determination.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II, of Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., October 25, 1979.

David J. Bardin,
Administrator, Economic Regulatory
Administration.

1. The heading and paragraphs (b) (c) and (d) of § 212.131 are amended to read as follows:

§ 212.131 Certification of crude oil sales.

(b)(1) Each seller of crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of crude oil other than an allocation sale pursuant to § 211.65 of Part 211 of this chapter, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of Part 211 of this chapter, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) Lower-tier ("old") crude oil (separately identifying any California lower tier crude oil as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(ii) Upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of Part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) Crude oil transported through the trans-Alaska pipeline;

(iv) Stripper well crude oil;

(v) Incremental tertiary crude oil;

(vi) Other domestic crude oils the first sale of which is exempt from the provisions of this part; and

(vii) Imported crude oil—included in the volume of crude oil so sold. The certification shall also contain a statement that the price charged for the crude oil is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of crude oil, other than a producer of domestic crude oil, shall make the certification required by this paragraph as soon as practicable after receipt of the required certifications from its sellers, but in no event later than 30 days following such receipt. However, if the crude oil is not sold until after the expiration of the thirty-day period, the certification required by this paragraph shall be made within ten days following the sale of the crude oil.

(3) All certifications required by this paragraph shall relate only to the actual volumes of crude oil included in any mixed blend of crude oil and other refined petroleum products and residual fuel oil.

(c) No firm may sell crude oil unless it provides the certification required by this section. No firm may knowingly purchase crude oil for which there is no certification as required by this section: *Provided, however,* That the provisions

of this paragraph do not apply to the sale of crude oil to a firm under circumstances of economic or other coercion in which the buyer, because of its need for crude oil, had no reasonable alternative but to purchase the crude oil for which there is no certification, and such firm promptly reports the purchase to the ERA for investigation.

(d) All certifications required by this section shall be in writing, either upon an invoice or billing or by separate instrument, and shall be effective only when delivered to and received by the purchaser of crude oil.

* * * * *

2. Principal Proposal

Subpart L is revised to read as follows:

§ 212.181 Applicability.

This subpart applies to each sale of crude oil, other than the first sale.

§ 212.182 Definitions.

"Acquisition cost" means the price (not in excess of the applicable prices permitted under this part) which a reseller actually paid for the crude oil sold in a resale. The acquisition cost for crude oil received in an exchange shall be deemed to be the acquisition cost of the crude oil given up in that exchange plus or minus the total cash paid or received in that exchange. The cost of crude oil sold by a reseller in any sale shall be determined in accordance with the same accounting practice used by the reseller to determine the cost of crude oil sold during (i) May 1973 (if the reseller sold crude oil before or during May 1973 or (ii) the reseller's first month of sales (if the reseller did not sell crude oil before or during May 1973). For purposes of determination of acquisition cost, the cost of lower tier crude oil, upper tier crude oil, stripper well crude oil, and other crude oil exempt under this part shall each be determined separately and maintained in separate records.

"Exchange" means, for purposes of this subpart, a transaction in which two firms reciprocally give up and receive crude oil, provided any payment in cash or other property by one firm to compensate the other firm does not exceed quality, location or time differences in the values of the volumes exchanged. The term also includes matching purchase and sale transactions.

"Matching purchase and sale" means, for purposes of this subpart, a transaction to which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the

cash paid and received by each firm are dependent on the value of the volumes received.

"Permissible average markup" with respect to a reseller which (1) first sold crude oil after May 1973 but prior to December 1977 and which (2) had no sales in November 1977 means for any month beginning January 1, 1978 but prior to [February 1, 1980] the total lawful revenues from sales of crude oil by such reseller during the first month preceding November 1977 in which the reseller sold crude oil, less the total costs and expenses associated with sales of crude oil for that month, divided by the number of barrels of crude oil sold in that month, plus the per-barrel increase in general and administrative expense and transportation and gathering cost incurred since such reseller's first month of crude oil sales.

"Reception station" means a facility to which crude oil is gathered for resale, generally consisting of storage tanks and associated equipment, including a facility used to upgrade crude oil to meet pipeline quality specifications.

"Reseller" means, for purposes of this subpart, a firm which carries on the trade or business of purchasing crude oil for resale in substantially unchanged form. A "reseller" includes (except as provided in § 212.183(b) the parent of the reseller and the consolidated and unconsolidated entities which the parent of the reseller or the reseller directly or indirectly controls.

"Sale" means a sale other than the first sale. For purposes of this Subpart, a sale does not include an exchange or matching purchase and sale transaction having the same effect as an exchange.

"Transportation allowance" means in any sale of crude oil in which the reseller transported the crude oil between the point of acquisition and point of sale partially or entirely by means of facilities owned by the reseller (a) an amount equal to the amount the reseller would have incurred in transporting the crude oil such distance by means of a common carrier, or (b) an amount determined in accordance with the following formula:

$$B_1(D)(M) + B_2(R) + [I_1 \text{ or } I_2 \text{ or } I_3]$$

where
B = total number of barrels transported by all modes of transportation (other than common carrier) owned and used in that month by the reseller;

B₁ = number of barrels transported by the mode of transportation (other than common carrier) owned and used by the reseller in the sale;

B₂ = number of barrels sold in that sale which had been gathered to a reception station owned by the reseller;

D = number of miles crude oil is transported by the mode of transportation (other than common carrier) used in the sale;

M = per barrel per mile actual transportation and gathering cost for the mode of transportation used in the sale in the month prior to the preceding month: *Provided*, That, if the reseller did not employ that mode of transportation in the month prior to the preceding month, the per barrel per mile actual transportation and gathering cost in the sale shall be determined in accordance with generally accepted accounting practices consistently and historically applied by the reseller;

R = per barrel expenses, including depreciation (and interest) expenses, associated with the operation and maintenance of reception stations in the month prior to the preceding month;

Alternative provisions for return on investment:

$$I_1 = [\%] [B_1(D) (M) + B_2(R)];$$

$$I_2 = \$0.25(B_1); \text{ or}$$

$$I_3 = \frac{B_1}{B} [\%]$$

[depreciated original cost of investment in transportation and storage facilities].

"Transportation and gathering cost" means with respect to a particular mode of transportation, the actual expenses, including depreciation expense [and interest expense associated with financing the construction or purchase of reception stations, pipelines and other modes of transporting crude oil], associated with the operation and maintenance of that mode of transportation.

§ 212.183 Price rule.

(a) *General*. (1) In a sale of crude oil, a reseller may not charge a price which exceeds (i) the acquisition cost of the crude oil sold plus (ii) any amounts actually paid to an unaffiliated common carrier or other third party to transport the crude oil between the reseller's points of acquisition and sale plus (iii) any expenses actually incurred by an affiliated common carrier or other entity to transport the crude oil between the reseller's points of acquisition and sale plus (iv) the transportation allowance in that sale plus (v) one cent per barrel.

(2) Notwithstanding the provisions of subparagraph (a)(1) of this section, if between the time of purchase and the time of resale of crude oil by a reseller (i) the crude oil remained in the same physical location or (ii) such reseller did not take actual physical possession of the crude oil, the reseller may not charge a price for that crude oil which exceeds the acquisition cost of that crude oil. *Provided, however*, If (A) the reseller was the importer of record, or (B) the reseller purchased the crude oil from the producer of that crude oil, or (C) the reseller sells the crude oil to a refiner

which certifies in writing to the reseller that the crude oil is being purchased for refining purposes, or (D) the reseller receives certification from the refiner which refines the crude oil that such refiner would not have received the crude oil but for the reseller's service, the reseller may not charge a price for that crude oil which exceeds the sum of the acquisition cost of that crude oil plus one cent per barrel.

(b) *Sales by a refiner*. Notwithstanding the provisions of paragraph (a) of this section, a refiner, in sales not made by a reselling business operated by the refiner, shall determine prices in sales of crude oil in accordance with the refiner's consistent and historical accounting practice: *Provided*, That the price charged in any sale of crude oil subject to this subparagraph shall not exceed the price paid by the refiner for the crude oil plus any transportation cost incurred by the refiner to transport the crude oil from the point at which the refiner takes title to the crude oil to the point of sale.

(c) *Resellers which did not sell crude oil before December 1, 1977*. If in any month prior to [February 1, 1980] the average markup of a reseller which did not sell crude oil prior to December 1, 1977 exceeded 15 cents per barrel, the reseller shall be deemed to have complied with the price regulations of this part only if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was priced in transactions of the nearest comparable reseller in the month.

§ 212.184 Improper certifications.

If with respect to any sale of crude oil a reseller (a) improperly certifies lower tier crude oil as upper tier or stripper (or other exempt) crude oil; (b) improperly certifies upper tier crude oil as stripper (or other exempt) crude oil; or (c) sells oil without a proper certification as required under § 212.131; the reseller shall, within the first calendar month succeeding the month during which no certification was made or such improper certification was made, deliver to the purchaser to which such improper certification was made a proper certification as required by § 212.131. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to lower tier crude oil or has improperly certified lower tier crude oil as upper tier or stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude

oil and the reseller's weighted average acquisition cost of lower tier crude oil for the month during which no certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to upper tier crude oil has improperly certified upper tier crude oil as stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude oil and the reseller's weighted average acquisition cost of upper tier crude oil for the month during which no certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller for such crude oil and the reseller's weighted average acquisition cost of stripper and other exempt crude oil for the month during which no certification was made, times the number of barrels not certified. Refunds required by this paragraph shall accompany the proper certifications required by this paragraph.

§ 212.185 Layering.

The price for crude oil charged by a reseller which in a sale performs no service or other function traditionally and historically associated with the resale of crude oil shall not exceed the actual price paid by the reseller for the crude oil, less any amount received in an exchange and any amount received in excess of the amount paid in a matching purchase and sale transaction having the same effect as an exchange, plus any amount paid in an exchange and any amount paid in excess of the amount received in a matching purchase and sale transaction having the same effect as an exchange.

§ 212.186 Recordkeeping and reporting.

(a) *Recordkeeping.* Each reseller of crude oil shall, with respect to each transaction, maintain at its principal place of business, (1) original source documents (e.g. original invoices) substantiating acquisition cost (including certifications received for crude oil purchased and certifications given for crude oil sold), gathering and transportation cost, and general and administrative costs relative to the

purchasing and selling of crude oil, (2) original company accounting worksheets substantiating the computation of acquisition cost, gathering and transportation cost, (3) for those firms engaged in other petroleum activities besides crude oil reselling, original company accounting worksheets substantiating the allocation of acquisition cost, gathering and transportation cost to the crude reselling activity, (4) official inventory records showing valuations of inventory in quantity and dollar amount with the additions to and deletions from inventory, (5) official ledgers and supporting worksheets used to develop the reports required by the Department of Energy, (6) an itemized summary of all crude oil purchases containing with respect to each purchase, the supplier's name and invoice number, the date of purchase, and the number of barrels of crude oil of each regulatory category (lower tier, upper tier, and imported and each category of exempt domestic crude oil) purchased in the month, (7) an itemized summary of all crude oil sales containing with respect to each sale, the purchaser's name, the sales invoice number, the date of sale, and the number of barrels of crude oil of each regulatory category sold in the month and (8) an itemized summary of all exchanges containing with respect to each exchange, the exchange partner's name, the invoice number, the date of the exchange, and the number of barrels of crude oil exchanged, and full accounting of any differentials received by or paid to any party to the exchange.

(b) *Reporting.* Each firm engaged in the business of reselling crude oil shall submit to ERA periodic reports in accordance with forms and instructions issued by ERA.

§ 212.187 Depreciation.

For purposes of determining a reseller's transportation and gathering cost associated with any sale of crude oil, depreciation shall be determined in accordance with the accounting practice used by the reseller in preparing its Form 10-k filed with the Securities and Exchange Commission or an analogous report filed with a state regulatory agency covering the period which included (a) May 1973 in the case of a reseller which sold crude oil before or during May 1973 or (b) the first month of sales of crude oil in the case of a reseller which did not sell crude oil before or during May 1, 1977. If the reseller did not file a Form 10-k or such analogous report covering such period, depreciation shall be determined in accordance with the accounting practice applied by the reseller for a certified

annual report covering such period prepared by an independent accounting firm. If the reseller neither filed a Form 10-k or an analogous report nor had a certified annual report prepared by an independent accounting firm, depreciation shall be determined in accordance with the accounting practice used by the reseller to determine depreciation for purposes of the reseller's income tax for the reseller's taxable year which included the month of May 1973 or the reseller's first month of sales, as applicable.

3. Alternative to Primary Proposal

Subpart L is revised to read as follows:

§ 212.181 Applicability.

This subpart applies to each sale of crude oil, other than the first sale.

§ 212.182 Definitions.

"Acquisition cost" means the total of the lawful prices actually paid by the reseller for crude oil sold by the reseller in a particular calendar quarter, determined in accordance with generally accepted accounting practices consistently and historically applied by the reseller; less the amounts received in exchanges and the amounts received in excess of the amounts paid in matching purchase and sale transactions having the same effect as exchanges, plus the amounts paid in exchanges and the amounts paid in excess of the amounts received in matching purchase and sale transactions having the same effect as exchanges.

"Average markup" means the total revenues in all sales of crude oil, other than those sales to which § 212.183(a)(2) is applicable, by the reseller in a particular calendar quarter less the total costs and expenses associated with such sales of crude oil in the calendar quarter, divided by the number of barrels of crude oil sold in such sales by the reseller in the calendar quarter.

"Costs and expenses associated with sales of crude oil" means the sum of the following items determined in accordance with generally accepted accounting practices consistently and historically applied by the reseller:

(a) The acquisition cost of the crude oil sold in the calendar quarter;

(b) The transportation and gathering cost associated with the crude oil sold in the calendar quarter;

"Exchange" means, for purposes of this subpart, a transaction in which two firms reciprocally give up and receive crude oil, provided any payment in cash or other property by one firm to compensate the other firm does not exceed quality, location or time

differences in the values of the volumes exchanged. The term also includes matching purchase and sale transactions.

"Matching purchase and sale" means, for purposes of this subpart, a transaction in which two firms sell crude oil to each other, pursuant to an agreement that the sale by one firm is incident to the sale by the other, and in which the volumes transferred and the cash paid and received by each firm are dependent on the value of the volumes received.

"Permissible average markup" with respect to a reseller which (1) first sold crude oil after May 1973 but prior to December 1977 and which (2) had no sales in November 1977 means for any month beginning January 1, 1978 but prior to [February 1, 1980] the total lawful revenues from sales of crude oil by such reseller during the first month preceding November 1977 in which the reseller sold crude oil, less the total costs and expenses associated with sales of crude oil for that month, divided by the number of barrels of crude oil sold in that month, plus the per-barrel increase in general and administrative expense and transportation and gathering cost incurred since such reseller's first month of crude oil sales.

"Reception station" means a facility to which crude oil is gathered for resale, generally consisting of storage tanks and associated equipment, including a facility used to upgrade crude oil to meet pipeline quality specifications.

"Reseller" means, for the purposes of this subpart, a firm which carries on the trade or business of purchasing crude oil for resale in substantially unchanged form. A "reseller" includes (except as provided in § 212.183(b) of this subpart) the parent of the reseller and the consolidated and unconsolidated entities which the parent of the reseller or the reseller directly or indirectly controls.

"Sale" unless otherwise specified means a sale other than the first sale. For purposes of this subpart, the term does not include an exchange or matching purchase and sale transaction having the same effect as an exchange.

"Transportation and gathering cost" means (a)(1) any common carrier tariff actually paid by a reseller to an unaffiliated common carrier to transport crude oil from the reseller's reception station or point of acquisition to a point of sale or (2) the expenses incurred by a reseller's affiliate in transporting crude oil from the reception station or point of acquisition to the reseller's point of sale, or (b) the actual expenses, including depreciation expense [and interest expense associated with financing the

construction or purchase of trucks, pipelines and other modes of transporting crude oil], associated with the operation and maintenance of trucks, pipelines, and other modes of transportation used to transport crude oil sold from the reseller's points of acquisition to point of sale directly or through reception stations, plus the expenses, including depreciation expense [and interest expense associated with financing the construction or purchase of reception stations], associated with the operation and maintenance of reception stations.

§ 212.183 Price rule.

(a) *General.* (1) A reseller may charge any price in a sale of crude oil: *Provided*, That the reseller's average markup for each calendar quarter shall not exceed 25 cents per barrel, and provided that a reseller shall not unreasonably discriminate or grant unreasonable preferences in the pricing of crude oil among its purchasers.

(2) Notwithstanding the provisions of subparagraph (a)(1) of this section, if between the time of purchase and the time of resale of crude oil by a reseller (i) the crude oil remained in the same physical location or (ii) such reseller did not take actual physical possession of the crude oil, the reseller may not charge a price for that crude oil which exceeds the acquisition cost of that crude oil: *Provided, however*, If (A) the reseller was the importer of record, or (B) the reseller purchased the crude oil from the producer of that crude oil, or (C) the reseller sells the crude oil to a refiner which certifies in writing to the reseller that the crude oil is being purchased for refining purposes, or (D) the reseller receives certification from the refiner which refines the crude oil that such refiner would not have received the crude oil but for the reseller's service, the reseller may not charge a price for that crude oil which exceeds the sum of the acquisition cost of that crude oil plus one cent per barrel.

(b) *Sales by a refiner.* Notwithstanding the provisions of paragraph (a) of this section, a refiner, in sales not made by a reselling business operated by the refiner, shall determine prices in sales of crude oil in accordance with the refiner's consistent and historical accounting practice: *Provided*, That the price charged in any sale of crude oil not subject to this subparagraph shall not exceed the price paid by the refiner for the crude oil plus any transportation cost incurred by the refiner to transport the crude oil from the point at which the refiner takes title to the crude oil to the point of sale.

(c) *Resellers which did not sell crude oil before December 1, 1977.* If in any month prior to [February 1, 1980], the average markup of a reseller which did not sell crude oil prior to December 1, 1977 exceeded 15 cents per barrel, the reseller shall be deemed to have complied with the price regulations of this part only if the prices charged by the reseller for each grade of lower tier, upper tier, and stripper well and other exempt crude oil did not exceed the prices at which such crude oil was priced in transactions of the nearest comparable reseller in the month.

§ 212.184 Inventory rule.

(a) The cost of crude oil sold by a reseller in a calendar quarter shall be determined in accordance with the same accounting practice used by the reseller to determine the cost of crude oil sold during (1) May 1973 in the case of a reseller which sold crude oil before or during May 1973, (2) November 1977 in the case of a reseller which sold crude oil before December 1, 1977, but not before or during May 1973, or (3) the reseller's first month of sales in the case of a reseller which did not sell crude oil before December 1, 1977.

(b) For purposes of determination of acquisition cost, the cost of lower tier crude oil, upper tier crude oil, stripper well crude oil, and other crude oil exempt under this part shall be determined separately and maintained in separate inventory records.

§ 212.185 Improper certifications.

If with respect to any sale of crude oil a reseller (a) improperly certifies lower tier crude oil as upper tier or stripper (or other exempt) crude oil; (b) improperly certifies upper tier crude oil as stripper (or other exempt) crude oil; or (c) sells any crude oil without a proper certification as required under § 212.131; the reseller shall, within the first calendar month succeeding the month during which no certification was made or such improper certification was made, deliver to the purchaser to which such improper certification was made, a proper certification as required by § 212.131. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to lower tier crude oil or has improperly certified lower tier crude oil as upper tier or stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude oil and the reseller's weighted average acquisition cost of lower tier crude oil for the month during which no

certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to upper tier crude oil or has improperly certified upper tier crude oil as stripper (or other exempt) crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller to that purchaser for such improperly certified or uncertified crude oil and the reseller's weighted average acquisition cost of upper tier crude oil for the month during which no certification or such improper certification was made, times the number of barrels so improperly certified or not certified. With respect to any purchaser to which the reseller has failed to deliver a proper certification with respect to stripper or other exempt crude oil, the reseller shall refund to such purchaser the difference between the price charged by the reseller for such crude oil and the reseller's weighted average acquisition cost of stripper and other exempt crude oil for the month during which no certification was made, times the number of barrels not certified. Refunds required by this paragraph shall accompany the proper certifications required by this paragraph.

§ 212.186 Layering.

The price for crude oil charged by a reseller which in a sale performs no service or other function traditionally and historically associated with the resale of crude oil shall not exceed the actual price paid by the reseller for the crude oil, less any amount received in an exchange and any amount received in excess of the amount paid in a matching purchase and sale transaction having the same effect as an exchange, plus any amount paid in an exchange and any amount paid in excess of the amount received in a matching purchase and sale transaction having the same effect as an exchange.

§ 212.187 Recordkeeping and reporting.

(a) *Recordkeeping.* Each reseller of crude oil shall, with respect to each transaction, maintain at its principal place of business, (1) original source documents (e.g. original invoices) substantiating average markup, acquisition cost (including certifications received for crude oil purchased and certifications given for crude oil sold), gathering and transportation cost, and general and administrative costs relative to the purchasing and selling of crude oil, (2) original company accounting worksheets substantiating

the computation of average markup, acquisition cost, gathering and transportation cost, and general and administrative costs, (3) for those firms engaged in other petroleum activities besides crude oil reselling, original company accounting worksheets substantiating the allocation of acquisition cost, gathering and transportation cost, and general and administrative costs to the crude reselling activity, (4) official inventory records showing monthly valuations of inventory in quantity and dollar amount with the monthly additions to and deletions from inventory, (5) official ledgers and supporting worksheets used to develop the reports required by the Department of Energy, (6) an itemized summary of all crude oil purchases containing with respect to each purchase, the supplier's name and invoice number, the date of purchase, and the number of barrels of crude oil of each regulatory category (lower tier, upper tier, and exempt crude oil) purchased in the month, (7) an itemized summary of all crude oil sales containing with respect to each sale, the purchaser's name, the sales invoice number, the date of sale, and the number of barrels of crude oil of each regulatory category sold in the month and (8) an itemized summary of all exchanges containing with respect to each exchange, the exchange partner's name, the invoice number, the date of the exchange, and the number of barrels of crude oil exchanged, and full accounting of an differentials received by or paid to any party in the exchange.

(b) *Reporting.* Each firm engaged in the business of reselling crude oil shall submit to ERA periodic reports in accordance with forms and instructions issued by ERA.

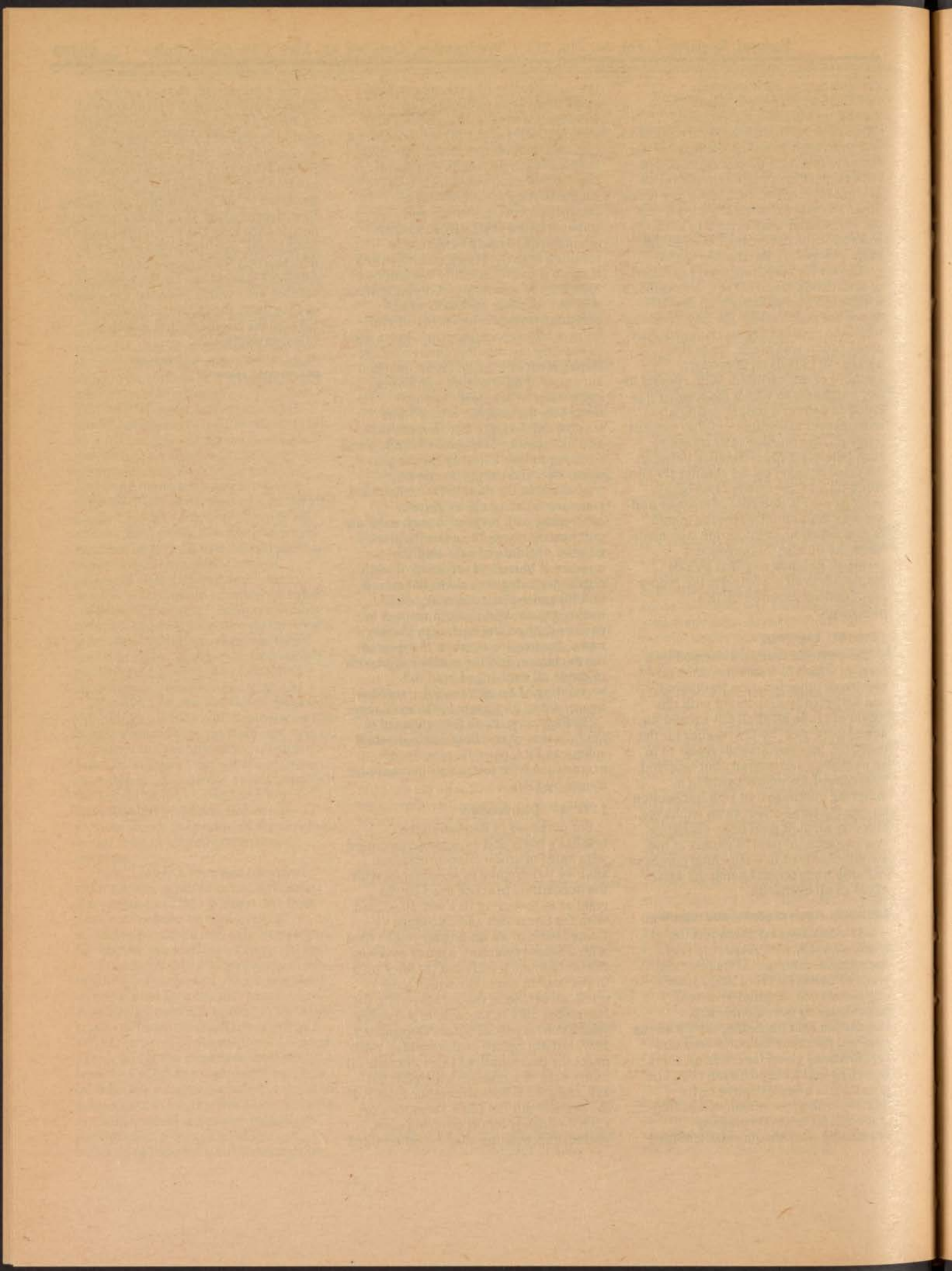
§ 212.188 Depreciation.

For purposes of determining a reseller's costs and expenses associated with sales of crude oil, depreciation shall be determined in accordance with the accounting practice used by the reseller in preparing its Form 10-k filed with the Securities and Exchange Commission or an analogous report filed with a State regulatory agency covering the period which included (a) May 1973 in the case of a reseller which sold crude oil before or during May 1973; (b) November 1977 in the case of a reseller which sold crude oil before December 1, 1977, but not before or during May 1973; or (c) the first month of sales of crude oil in the case of a reseller which did not sell crude oil before December 1, 1977. If the reseller did not file a Form 10-k or such analogous report covering such period, depreciation shall be determined

in accordance with the accounting practice applied by the reseller for a certified annual report covering such period prepared by an independent accounting firm. If the reseller neither filed a Form 10-k or an analogous report nor had a certified annual report prepared by an independent accounting firm, depreciation shall be determined in accordance with the accounting practice used by the reseller to determine the depreciation for purposes of the reseller's income tax for the reseller's taxable year which included the month of May 1973, the month of November 1977, or the reseller's first month of sales, as applicable.

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Food Stamp Report

Wednesday
October 31, 1979

Part VII

Department of Agriculture

Food and Nutrition Service

Food Stamp Program: 1979 Amendments
on Social Security Numbers, Fraud, and
Group Homes

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 278

[Amdt. No. 154]

1979 Amendments to the Food Stamp Act of 1977: Provision of Social Security Numbers; Fraud Disqualification and Recoupment; and Group Living Arrangements

AGENCY: Food and Nutrition Service.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking amends the regulations, published October 17, 1978 (43 FR 47846), which implemented major portions of the Food Stamp Act of 1977. All of the amendments proposed in this rulemaking are the result of changes in the Food Stamp Act brought about by the enactment of Pub. L. 96-58, 93 Stat. 389, August 14, 1979.

The amendment sets forth procedures by which social security numbers will be obtained for all members of food stamp households as authorized by Section 4 of Pub. L. 96-58. That section amended the Food Stamp Act of 1977 to enable the Department to require as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their social security account number or numbers.

In addition, this proposal would amend the regulations so that individuals subject to disqualification from program participation for fraudulent conduct would be required to agree to either a reduction in the household's food stamp allotment or to a repayment in cash in order to again participate in the Food Stamp Program as mandated by Section 5 of Pub. L. 96-58.

This proposal would also amend Part 273 to permit each State agency to retain 50 percent of the value of all funds or allotments recovered or collected through prosecutions or other State activities directed against individuals who fraudulently obtain food stamp allotments to reflect changes brought about by Section 6 of Pub. L. 96-58. The proposed rulemaking also sets forth procedures for implementing a provision for certain blind and disabled residents of State certified small group living arrangements to participate in the Food Stamp Program as mandated by Sections 7 and 8 of Pub. L. 96-58.

DATE: Comments must be received on or before December 17, 1979, in order to be assured of consideration. The

Department is under a statutory mandate to issue final rulemaking on the changes dealing with social security numbers, fraud disqualification and recoupment 150 days from the date the law was enacted, August 14, 1979.

Because of this mandate, Robert Greenstein, Administrator, Food and Nutrition Service, has determined that there be a 45-day comment period; a 60-day comment period would preclude the Department from meeting the mandated time for publishing final rules. While the changes by Sections 7 and 8 of Public Law 96-58 are not under the same legislative deadline, the Department believes that the legislative intent was for expeditious processing of all changes required by the amendments.

Consequently, these changes were included as part of the proposed rulemaking on Sections 4 through 6 of the statute. The Department urges interested parties to comment as early as possible within the 45 day comment period since comment analysis must begin immediately after the comment period in order to publish final rules within 150 days of enactment. The Department will carefully review all comments received by the 45th day and will give them serious consideration before final rulemaking is published. The Department cannot guarantee consideration of comments received after the 45th day.

ADDRESS: Comments should be submitted to: Alberta C. Frost, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at Room 678, 500 12th Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Susan McAndrew, Chief, Program Standards Branch, Program Development Division, Food and Nutrition Service, Washington, D.C. 20250. Phone (202) 447-6535.

SUPPLEMENTARY INFORMATION:**Social Security Numbers**

Provision of social security numbers. Public Law 96-58 amended the Food Stamp Act of 1977 to allow the Secretary to require, as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their social security number (SSN) (or numbers, if they have more than one.)

In addition, this amendment specifically allows State agencies to use

social security numbers "in the administration of the Food Stamp Program" and grants the Secretary and State agencies the same access to data pertaining to Supplemental Security Income (SSI) recipients as the access provided to the Security of the Department of Health, Education and Welfare (DHEW) to the extent the Secretary and the Secretary of DHEW determine necessary for the purpose of determining or auditing a household's eligibility to receive assistance or the amount thereof under the program or verifying information related thereto.

Implementation. Although the legislation does not mandate a specific implementation date, it does require that final regulations implementing Section 4 of the act be issued within 150 days after the date of enactment. In keeping with Congress' mandate to promulgate these regulations expeditiously, the Department proposes that State agencies begin obtaining household members' SSN's as soon as possible after final rules are published, but no later than 120 days from the date of publication of final rules. It is the Department's opinion that the impact of obtaining SSN's for food stamp applicants and/or participants will be lessened since SSN's are already available for significant portions of the food stamp caseload. For that portion of the caseload which also receives public assistance (PA) there will already be recorded SSN's for all household members since this is already a requirement for PA households. In addition, individuals receiving social security or SSI benefits and the working members of non-assistance households will also have SSN's. The Department estimates that less than half the food stamp caseload will not have or will not know their SSN's. The Department is proposing that State agencies obtain individuals' SSN's at the time of application, recertification or at any office contact. This would eliminate the need for a massive desk review effort and gives State agencies an opportunity to gradually meet this requirement; this should avoid seriously increasing a State agency's workload.

Requiring the SSN as a condition of eligibility. The amendment states that "the Secretary and State agencies may (1) require, as a condition of eligibility for participation in the Food Stamp Program, that each household member furnish to the State agency their social security account numbers * * *

In proposing that social security numbers be required as a condition of eligibility, the Department researched the Congressional intent in passing this

amendment. It is clear from the legislation background that Congress views the requiring of an SSN as a condition of eligibility as an antifraud provision (Cong. Rec. July 27, 1979 p. S10778). The intent is to use social security numbers in computer matching and other techniques to prevent duplicate participation and to allow States to more readily identify those households that have unreported earnings or have reported their earnings incorrectly (Cong. Rec. July 27, 1979, p. S10779). The Department shares the concerns of Congress expressed in the legislative history and is therefore proposing to mandate the requiring of SSN's as a condition of eligibility.

While it is clear, as explained above, that obtaining household members' SSN's must be a requirement for applicants and participants, it is also apparent that Congress intended that provisions be made to allow an individual's participation pending receipt of an SSN from the Social Security Administrative (SSA). In Cong. Rec. August 2, 1979 H7067, it is stated that individuals not previously assigned a social security number would be eligible to participate while waiting for the SSN to be assigned, as long as the individuals apply for and subsequently furnish SSN's. Congress also specifically indicated that individuals entitled to expedited service would be permitted to furnish a social security number after receiving their first allotment; this is intended to avoid delay in benefits simply because a social security number cannot be immediately furnished (Cong. Rec. August 2, 1979, H7076). Consequently, the Department is proposing that any household member who does not have an SSN, does not know the SSN, or does not know if he or she has an SSN, and does apply for the SSN, may continue to participate for 90 days pending receipt of the number. The Department researched with SSA the length of time it takes to process an application for an SSN. Based on study information, the average processing time from the completion of the application for an SSN to the date of SSN issuance is approximately 31 days. However, because the processing time may vary depending on the difficulty in obtaining required verification and on the particular office handling the application, the Department believes that the proposed 90 day time frame (for participation pending receipt) is needed to allow ample time.

In this situation the Department feels it is justifiable to ask individuals to provide documentation that they have, in fact, applied for an SSN and why it

is delayed (e.g. problems with locating a birth certificate etc.) and this is reflected in the proposed rules. As long as the individual has applied for an SSN and has provided SSA, to the best of ability, with all necessary information, it is the Department's opinion that the household member should not be penalized for processing delays and thus may continue to participate. Further, a household's certification will not be delayed solely to validate an SSN provided for any household member. The Department is proposing that as soon as all other steps necessary for certification have been completed a household must be certified rather than wait for validation of a social security number. If all other certification steps are completed in less than 30 days, the household should be certified at that point, rather than be required to wait until later in the 30 day period because the State agency has not completed validation of an SSN.

Obtaining and verifying the SSN. The proposed rules state that for those household members who have an SSN, the State agency shall, at the time of application, recertification, or any office contact, record the SSN and verify it either by matching the reported number with computer tapes from SSA (such as BENDEX or SDX tapes) or printouts from SSA, or by viewing a document with the social security number on it, (such as a driver's license, or a social security card). It is the Department's opinion, after discussion with SSA, that verification of the SSN is important; reporting the numbers verbally often results in inaccurate transcription and if there is anything questionable about an SSN it should be completely validated to avoid the confusion caused by an incorrect SSN. Once an SSN has been validated, verification must be recorded by the State agency to prevent the need for reverification in the future.

The Department is proposing two possible procedures for obtaining SSN's of household members who do not have a number, do not know their SSN or do not know if they have a number. The individual needing an SSN may either apply for the number directly at the SSA office or the State agency can offer to complete the application for a social security number, Form SS-5, and note on the SS-5 the documentation provided by the individual as verification of identity, age, and citizenship/alien status. However, the latter procedure shall only be used in States which have an agreement with SSA which allows the States to take the SS-5 application and record the necessary verification in the same way an SSA staff person does in

their District Offices. Currently, 33 State agencies have such an agreement with SSA and handle obtaining SSN's for AFDC and/or medicaid in this manner. These States will need to renegotiate their agreements with SSA since most of the existing agreements apply only to AFDC and/ medicaid. The remaining State agencies require their clients for those two programs to apply directly at SSA offices. The Department does want to offer the household members all assistance possible in meeting the SSN requirement and consequently proposes that, when individuals opt to apply directly to SSA, the State agency inform the individual where to apply and discuss with them what they will need to present as evidence of identity, age, and citizenship or alien status.

Failure to comply. The legislative background to the amendment clearly indicates the Congressional intent relative to those individuals failing to comply with this requirement. In the Cong. Rec. August 2, 1979, p. H7067, it is stated that the provision requiring social security numbers as a condition of eligibility

*** would permit an individual to be barred from receiving food stamps if that individual had been assigned a social security number, but refused to provide it to the State agency. Individuals not previously assigned a social security number could also be prevented from participating unless the individual applied for and subsequently furnished a social security number. The income and resources of the individual disqualified for failure to provide a social security number would be counted in the same way an individual's income and resources are counted when a person is disqualified for fraud or for failure to meet the student work registration requirement during the school year.

The proposed regulations follow the Congressional intent. In addition, the Department is proposing a good cause provision. It is the Department's position that household members should not be penalized when they have applied for an SSN, and through no fault of their own, do not receive it in a timely manner. Consequently, if the State agency determines that a household member has been unable to obtain an SSN, with good cause, that individual will not be disqualified. Examples of good cause would include a delay in SSA processing the application for an SSN, a delay in obtaining a birth certificate, a delay in obtaining alien status papers, etc.

The Department discussed with SSA whether or not all legal aliens can obtain an SSN. Currently, SSA issues SSN's to aliens admitted for permanent residence, for refugees, and for those legal temporary aliens who are given

employment authorization by the Immigration and Naturalization Service (INS). Legal temporary aliens who do not have documentation to show that they are "employment authorized" are only issued SSN's when they have valid nonwork reasons.

Preliminary discussions with SSA indicate that eligibility for food stamps would be considered a justification for a legal temporary alien to be issued an SSN.

Use of SSN. The Department believes it was Congress' intent that SSN's be used as an antifraud device. The legislative background indicates that Congress envisioned State agencies using the SSN's to prevent duplicate participation and to detect underreported or unreported income by matching reported income against data from other federal programs.

The amendment, as enacted, specifies that State agencies shall have the same access that has been provided to HEW to the information regarding individual food stamp program applicants and participants who receive benefits under title XVI of the Social Security Act, provided that the Secretary of DHEW concurs that access to SSI information is within the purposes set forth in the statute. This access will enable State agencies to determine SSI households' eligibility to receive benefits, the amount of the benefits and to verify reported income information. The proposed regulations provide for this type of usage of SSN's.

Mass changes. The Department believes that prompt implementation of the SSN requirement will greatly facilitate making mass changes, specifically the SSI and social security cost-of-living changes which occur annually. In the past, some States have made cost-of-living increases for recipients of social security and SSI benefits automatically while other have made such changes on an as reviewed or as reported basis. This has resulted in a lack of uniformity and inequity in benefit levels since some individuals' benefits were reduced more quickly than others. Because of the availability of information on these changes from SSA, by social security number, the Department expects mass changes in social security and SSI benefits to be reflected more promptly. Therefore, tighter time frames for making these changes are incorporated into this proposal. For the July 1980 changes, States must adjust benefit levels within 180 days and beginning in July 1981, within 90 days. If, by July 1980, all cases containing individuals who receive SSI or social security benefits, have not had SSN's obtained or recorded through

recertification or any office contact, the State agency will have to identify these individuals by means of a desk review. The desk review will serve to identify individuals for whom SSN's are needed and will allow the State agency to contact these individuals and obtain their SSN's for use in making the annual cost-of-living increase adjustments. Since all individuals receiving social security or SSI will already have SSN's, obtaining them for food stamp purposes should be neither costly nor time consuming. The Department expects that the availability of SSN's in the future will readily identify persons affected by benefit changes from other programs as well, since SSN's are widely used as an identifier. The use of SSN's to make changes for increases in social security and SSI benefits is of particular significance given the cost constraints on the program.

The Department's proposal to allow 180 days for the July 1980 changes and 90 days thereafter is designed to allow State agencies which cannot make these changes by computer to schedule recertifications for households with SSI or social security income during these periods.

Fraud Disqualification and Recoupments

Section 5 of Pub. L. 96-58 amends Section 6(b) of the Food Stamp Act of 1977 to provide that following any disqualification from the program for fraud no individuals shall be eligible to participate in the program unless he or she agrees to repayment of the fraudulently received benefits. Repayment may be made through either a reduction in the allotment the household would otherwise receive or through repayment in cash, in accordance with a reasonable schedule, over a period of time sufficient to reimburse the amount of the fraudulently received benefits. If the individual elected repayment in cash but failed to meet the repayment schedule, the household is subject to appropriate allotment reductions.

Implementation. State agencies would implement the program changes contained in this proposal on fraud disqualification and recoupments on or before July 1, 1980. Within 120 days of implementation the Food and Nutrition Service would begin returning to each State agency 50 percent of the value of all funds or allotments recovered or collected through prosecution or other State activities directed against individuals who fraudulently obtain food stamps.

Disqualification for failure to repay. If the individual who committed fraud does not agree to a reduction in the

household's allotment or does not agree to pay the fraud claim in cash, this proposed rulemaking would allow the State agency to disqualify the individual until the person agrees to repay in cash or agrees to the allotment reduction. The household would be sent an agreement letter at the time of disqualification, and a follow-up letter sent the month prior to the end of the disqualification period if the household failed to respond initially. The period of disqualification would then be extended immediately if the household again failed to respond. The income and resources of the individual disqualified for failure to repay the fraud claim would be counted in the same way an individual's income and resources are currently counted when that person is disqualified for fraud or for failure to meet the student work registration requirement during the school year. The income of the disqualified member is prorated and the amount, less the disqualified member's share, is considered available to the remaining members. The disqualified members resources are considered available in total.

Collection of fraud claims. In order to collect fraud claims, States must currently rely on voluntary repayment by the household or incur the expense of initiating a civil court action to obtain repayment. The 1979 Amendments provide, through allotment reduction, a simple and efficient mechanism for collecting fraud claims if the household cannot or will not make cash repayments. As a result, it is anticipated that the percentage of fraud claims collected will substantially increase without increasing the administrative costs of collecting these claims. These collection procedures should also discourage persons from committing fraud.

State share of recovery. States are currently required to return to the Federal Government all funds collected from households that have repaid the value of any food stamps overissued to them. The Food Stamp Act Amendments of 1979 revise Section 16(a) of the Food Stamp Act of 1977 to allow each State to retain 50 percent of the funds it recovers or collects from persons that have committed fraud as determined in accordance with the Food Stamp Act of 1977. This provision will provide an incentive for States to pursue collection of fraud claims, particularly in those cases where recoupment of disqualification is currently ineffective because the household is ineligible.

The Department is proposing a new method for States to submit funds recovered from all types of

overissuances. States would no longer forward checks to FNS for overissuance recoveries. The letter of credit would be amended quarterly to reflect 50 percent retention of funds recovered from fraud claims and to reflect the full value of nonfraud claims which are still fully payable to FNS. If needed, the letter of credit would also be adjusted to reflect recovery of funds from claims resulting from State negligence. States would continue to report claims on Form FNS-209, Status of Claims Against Households. The amount of fraud claims would be indicated on the FNS-209 and on other letter of credit documents as required by FNS. This new method will permit States to retain funds to meet administrative costs until such time as the letter of credit is adjusted.

This proposal, in accordance with the 1979 amendments, also provides that persons involved in making fraud determinations are not to benefit from the amount of such recoupments or collections. This prohibition on the use of revenues collected in this manner will assure the impartiality of officials making fraud adjudications.

Repayment schedules. As discussed earlier, the 1979 Amendments direct the Secretary to establish a reasonable restitution schedule, either through cash repayment or recoupment through allotment reduction, that will be sufficient over time to reimburse the Federal Government for the value of fraudulently obtained food stamps.

If the individual agrees to a repayment in cash, the Department proposes that the claim be collected in full if the individual is financially able to pay the indebtedness in one lump-sum. If, however, the individual is financially unable to pay the indebtedness in one lump-sum, the Department suggests that installment payments be accepted that are at least equal to the minimum allotment for the size of the household of which such individual is a member.

In developing a recoupment schedule, the Department considered three options: recoupment of a flat percentage of the food stamp allotment; recoupment of any amount over and above the minimum bonus; and recoupment of the whole allotment. The Department proposes to recoup a flat percentage of the food stamp allotment, primarily because it is a uniform standard and employs a single mathematical calculation. A flat percentage also has the advantage of encouraging households to continue program participation, thereby ensuring that the overissuances are recovered. The Department is proposing that 25 percent of the food stamp allotment be recouped, except in special

circumstances, but welcomes comments on this particular issue as we recognize that this proposal is of substantial concern.

In the event the household member found guilty of fraud joins another food stamp household, the Department proposes that the State agency initiate collection action against the household containing the fraudulent individual. This proposal conforms most closely to the language in the law which states that no disqualified individual shall be eligible to participate in the Food Stamp Program unless such individual agrees to a reduction in the allotment of the household of which such individual is a member.

In addition, the Department proposes that when a court of appropriate jurisdiction fails to specify a specific disqualification period for fraudulent conduct that a six-month disqualification period be employed since the Food Stamp Act of 1977 mandates a period of not less than six and not more than twenty-four months. This change is proposed to make the processing of court-handled cases more equitable with that of fraud cases processed through administrative hearings. A period of disqualification is always imposed where guilt is established in fraud hearings. This is also proposed to more closely follow the legislative history of the 1977 Act which indicates that persons committing fraud should be subject to separate actions—punishment and recovery.

Administrative fraud hearing. It has come to the Department's attention that some State agencies are not vigorously applying the administrative fraud hearing provisions specified in Section 273.16(d) of the Food Stamp Regulations. Some State agencies are choosing to interpret this regulatory language as being discretionary permitting them to either conduct or refuse to conduct administrative fraud hearings at their option on a Statewide basis. Regardless, this system is mandated and must be available for use.

The Department recognizes that there have been factors influencing State agency hesitancy to pursue fraud hearings in the past. However, with the new provisions on recoupment as a method of overissuance recovery as well as the 50 percent payment to the State for monies recovered, additional incentives to pursue fraud hearings will be in place. One additional change the proposed regulations will permit is that administrative fraud hearings for currently ineligible participants be initiated by the State agency to substantiate fraud and that a period of disqualification be instituted if the

household member ever becomes eligible for the program again.

Likewise, because the Department recognizes that some State agencies are concerned about the cost of conducting an administrative fraud hearing and have suggested that the \$35 limit, below which fraud hearings could not be conducted, be raised, the Department will accept comments on the limit to be imposed. These comments will be carefully considered in determining the amount below which fraud hearings would not be conducted.

It is hoped that intensive public scrutiny will assist the Department in drafting final regulations. In formulating comments, particular attention should be given in the area of percentages of allotments to be recouped. However, comments on all aspects of the proposed rules will be considered. In reading this proposed rulemaking on collection of fraud claims, it will be useful to refer to other rulemakings of the Department. These other publications are the final rules implementing major aspects of the Food Stamp Act of 1977 published on October 17, 1978, (43 FR 47846) and the preamble to the May 2, 1978 proposal (43 FR 18874).

Group Living Arrangements

One of the objectives of the 1979 amendments to the Food Stamp Act of 1977 is to provide that certain disabled or blind residents of State certified small group living arrangements are permitted to participate in the Food Stamp Program if otherwise eligible. These disabled or blind residents must be receiving social security benefits under title II (Social Security Disability) or title XVI (Supplemental Security Income—SSI), and they must be living in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency under regulations issued under Section 1616(e) of the Social Security Act.

In reading this proposed rulemaking on the group living arrangement provisions in the 1979 amendments to the Food Stamp Act of 1977, it will be helpful to refer to other rulemakings of the Department.

These other publications are the final rules implementing major aspects of the Food Stamp Act of 1977 published on October 17, 1978; the regulations pertinent to Authorized Firms published on September 22, 1978 (43 FR 43272) and Food Stamps' Miscellaneous Amendments and interpretations published on June 8, 1979 (44 FR 33380). This is of particular significance since treatment of these households has been structured much the same as for

residents of drug and alcoholic treatment facilities in keeping with legislative intent. Among the provisions carried over from the treatment facilities regulations are the disqualification of group homes found to have misappropriated coupons.

Implementation. The 1979 Amendments to the Food Stamp Act of 1977 require that the provision for certain disabled or blind residents of State certified small group living arrangements to be able to participate in the Food Stamp Program be implemented in all States by July 1, 1980.

Definitions. The Department proposes to amend definitions in Part 271 concerning: "Eligible food", and "Retail food store" and to add a new definition: "Group living arrangement."

Eligible food. A revision similar to the one described above is proposed to provide that meals prepared for elderly persons or SSI recipients, or both, are eligible foods. In addition, the eligible foods definition is revised to include, as eligible food, meals prepared for blind or disabled residents by authorized group living arrangement facilities. Public Law 96-58 calls for the participation of group living arrangements in the Program.

Group Living Arrangements. The Department has taken the definition of group living arrangements from Pub. L. 96-58 and has added a provision that group living arrangement facilities provide care and/or protective oversight for their residents. The regulations would require that group living arrangement facilities must provide care or protective oversight for no more than sixteen residents and must be certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act. Additionally, these residents must be receiving benefits under social security disability (title II) or Supplemental Security Income—SSI (title XVI)—of the Social Security Act.

Purpose. The proposed regulations provide for certain disabled or blind residents of State certified small group living arrangement facilities to participate in the Food Stamp Program under the same conditions currently in effect for drug addicts and alcoholics in residential treatment programs.

The proposed regulations exempt from the definition of institution public or private nonprofit group living arrangements that serve no more than sixteen residents and that are State certified under regulations issued under section 1616(e) of the Social Security Act. Basic policy is, and has been, that residents of institutions are not eligible because the institution provides all

meals to the individual. The intent here is to cover alternatives that come closer to family or household living arrangements in which individuals may assume some responsibility for food purchase and preparation even though these group living arrangement facilities provide care and/or protective oversight over their residents.

Certain disabled or blind residents in these group living arrangements may be able to participate in the Food Stamp Program since they will no longer be considered residents of an institution. However, disabled or blind residents who receive title II or title XVI benefits are not categorically eligible for Food Stamp Program benefits. They must meet all Food Stamp Program eligibility criteria. If eligible, these residents will be certified to participate in the Food Stamp Program as one-person households.

Responsible staff members of group living arrangements facilities will act as authorized representatives for residents. These authorized representatives will make application for and receive and spend the coupon allotments on behalf of eligible residents.

The group living arrangement facility may spend the coupon allotment in authorized retail food stores. If it wishes to redeem food coupons through wholesalers, the group living arrangement facility must be authorized by FNS as a retail food store.

Approval of retail food stores and wholesale food concerns. On June 8, 1979, the Department published final rules which included an amendment stating that alcoholic and drug addiction treatment and rehabilitation programs do not have to be authorized as retail food stores in order for their residents to be certified to participate in the Program. Therefore, treatment and rehabilitation programs will be authorized only if they wish to redeem food stamps through wholesalers. The proposed regulations include this provision. In addition, a paragraph is added to the section on approval of retail food stores to allow the participation of group living arrangement facilities in the program in accordance with Public Law 96-58.

Section 278 is amended to state that group living arrangement facilities authorized as retail food stores may not redeem food stamps at banks.

Therefore, it is proposed that Parts 271, 272, 273, and 278 be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2 it is proposed that the definitions of "eligible foods" and "retail food store" be amended and a new definition for "group living arrangement" be added to read as follows:

§ 271.2 Definitions

"Eligible foods" means (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption; (2) seeds and plants to grow foods for the personal consumption of eligible households; (3) meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by a communal dining facility for the elderly, or SSI households, or both, to households eligible to use coupons for communal dining; (4) meals prepared and served by an authorized drug addict or alcoholic treatment and rehabilitation center to households eligible to use coupons to purchase those meals; (5) meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled recipients of benefits under title II or XVI of the Social Security Act; and (6) in the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing, or shelter nor firearms, ammunition or other explosives.

"Group living arrangement" means a public or private nonprofit facility which provides care and/or protective oversight for no more than sixteen disabled or blind residents who are recipients of benefits and under title II (Social Security Disability) or title XVI (Supplemental Security Income (SSI)) of the Social Security Act, and which is certified by the appropriate State agency or agencies under regulations issued under Section 1616(e) of the Social Security Act.

"Retail food store" means (1) an establishment or recognized department of an establishment, or a house-to-house

trade route, whose eligible food sales volume is more than 50 percent staple food items for home preparation and consumption; (2) public or private communal dining facilities and meal delivery services and drug addict or alcoholic treatment and rehabilitation programs and public or private nonprofit group living arrangements; (3) any store selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible food; (4) any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and (5) a farmers' market.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. A new subparagraph (9) is added to § 272.1(g) to read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. * * *

(9) *Amendment 154.* State agencies shall implement the program changes required by Amendment 154 as follows:

(i) State agencies shall require social security numbers for all new applications and recertifications no later than 120 days from the date of publication of final rules. Participating households shall be requested to provide or apply for social security numbers (SSN) for all household members at recertification or at the time of office contact for any other reason. For those households which contain individuals receiving social security and/or SSI, and whose recertifications are not scheduled until after July 1980, the State agency, in order to meet the requirements for mass changes as contained in § 273.12(e)(3) as amended, shall review such cases in order to contact those households so that they may obtain SSN's within 180 days from July 1, 1980.

(ii) If any member(s) of a household cannot provide their SSN at the time of application, recertification, or any office contact they shall apply for a SSN in accordance with § 273.6 as amended.

(iii) State agencies shall implement the fraud disqualification procedures and the fraud claim procedures contained in §§ 273.16, 273.17 and 273.18 no later than 120 days from the date of publication of final rules.

(iv) FNS shall return to each State agency 50 percent of the value of all funds or allotments recovered or collected 120 days from the date of publication of final rules through

prosecutions or other State activities directed against individuals who fraudulently obtained food stamps.

(v) State agencies shall implement the provisions regarding group living arrangements on or before July 1, 1980.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.1, it is proposed that a new subparagraph (3) be added to § 273.1(e) and subparagraph § 273.1(f)(2) be amended to read as follows:

§ 273.1 Household concept.

(e) *Residents of institutions.* Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution's normal services and the institution has not been authorized to accept coupons. Residents of institutions are not eligible for participation in the program, with the following three exceptions:

(3) Disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents of group living arrangements as defined in § 271.2.

(f) *Authorized representatives.* * * *

(2) *Drug addict/alcoholic treatment centers and group homes as authorized representatives.* Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis and disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents of group living arrangement facilities as defined in § 271.2 may elect to participate in the Food Stamp Program. The residents shall apply and be certified for program participation through the use of an authorized representatives who shall be an employee of and designated by the private nonprofit organization or institution that is administering the treatment and rehabilitation program or public or private nonprofit group living arrangement. The organization or institution shall apply on behalf of each addict or alcoholic or each disabled or blind resident receiving benefits under title II or title XVI of the Social Security Act and shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic or disabled or blind resident receiving benefits under title II or title XVI of the Social Security Act. The organization or institution shall also be responsible for

complying with the requirements set forth in § 273.11(e).

4. In § 273.2, a new subparagraph (v) is added to § 273.2(f)(1), subparagraph (i) of § 273.2(f)(9) is revised, and subparagraphs 273.2(i)(3)(ii) and (4)(i) are amended to read as follows:

§ 273.2 Application processing.

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social Security Numbers.* The social security number(s) (SSN) reported to the State agency by the household shall be verified by the State agency. However, the State agency shall not delay certification of an otherwise eligible household solely to validate any member's SSN, even if the 30 day processing period has not expired. As soon as all other steps necessary to certify a household are completed except for validation of an SSN, the State agency must certify the household. Verification shall be completed either at initial application or at the time of or prior to the household's next recertification. The SSN (s) shall be verified in one of the following ways:

(A) Matching the reported SSN with information supplied by the Social Security Administration (SSA) (such as BENDEX or SDX computer tapes or printouts); or

(B) Observing the household member's social security card or any document containing the SSN. If the individual has no social security card or the social security number appears questionable, the State agency shall verify the number on the card either by matching it with SSA tapes or submitting or having the individual submit Form SS-5, Application for a Social Security Number, to the Social Security Administration. In the latter case, the State agency shall advise the individuals where to file and discuss with them what evidence will be needed. Once an SSN has been verified, the State must annotate its file accordingly to prevent the need for reverification in the future.

(9) *Verification subsequent to initial certification.* (i) *Recertification.* At recertification, the State agency shall verify a change in income, medical expenses or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than \$25 since the last time they were verified. State agencies may verify income, actual utility expenses, or medical expenses claimed by households which are unchanged or

have changed by \$25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section. Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in paragraph (f)(2) of this section. Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

(i) *Expedited service.* * * *

(3) *Processing Standards.* * * *

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangement facilities who are entitled to expedited service, the State agency shall mail an ATP or coupons or have the ATP or coupons available for pick-up no later than seven working days following the date the application was filed.

(4) *Special procedures for expediting service.* * * *

(i) To expedite the certification process, the State agency shall postpone the verification required by § 273.2(f). However, the household's identity and residency shall be verified through a collateral contact or readily available documentary evidence. Examples of acceptable documentary evidence which the household may provide include, but are not limited to, a driver's license, work or school I.D., voter registration card or birth certificate. Households entitled to expedited service shall be permitted to furnish or apply for a social security number after receiving their first allotment in accordance with paragraph (iii). The household's income statements shall be verified through a collateral contact, or readily available documentary evidence whenever it can be done in sufficient time to meet the expedited processing standards. However, benefits shall not be delayed beyond the delivery standard described in paragraph (i)(3) of this section solely because income has not been verified.

5. In § 273.6 SSI cash-out States is renumbered § 273.20 and § 273.6 is retitled Social Security Numbers. The new § 273.6 reads as follows:

§ 273.6 Social security numbers.

(a) *Requirement for participation.* (1) The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social

security number (SSN) (or numbers if they have more than one number) of each household member. The State agency shall explain to applicants and participants that refusal to provide an SSN will result in disqualification of the individual who refuses to comply in accordance with paragraph (c) of this section. The State agency shall also inform applicants and participants how the SSN will be used.

(2) If any household member(s) is unable to provide the State agency with an SSN prior to certification or recertification, the member who does not have an SSN, and therefore must apply for one, shall be allowed to participate for 90 days from the date of application pending receipt of the social security number.

(3) If the SSN has not been obtained within the 90 days and the participant cannot show good cause why an SSN has not been obtained, the participant shall be disqualified in accordance with subparagraph 273.6(c). If the SSN has not been obtained within the time limit but good cause has been established, then the participant may continue to participate provided the individual has documentation indicating they have, in fact, applied for the SSN. Household members without an SSN shall be eligible to participate while waiting for the Social Security Administration (SSA) to issue an SSN as long as they have applied for the number, made effort to provide SSA with the necessary information, and can document this. If SSA determines that an applicant will not qualify for an SSN then that individual shall be disqualified from participation in the Food Stamp Program.

(b) *Obtaining SSN's for all food stamp household members.* (1) for those individuals who provide SSN's prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall use one of the following two procedures:

(i) In a State where an agreement exists between the State agency and SSA which allows the State agency to complete the application for an SSN, Form SS-5, the State agency shall offer to and shall complete this form at the household's request. To complete the form, the State agency can complete the SS-5 only when this agreement between SSA and the State exists.

(ii) If the household member elects to complete the SS-5 and apply to the SSA directly, or in a State in which no agreement with SSA exists, the State agency shall inform the household

member where to apply and what information will be needed. The State agency should suggest that the household member ask for proof of application from SSA, in the event their application is not processed within the 90 days time period described in paragraph (a) of this section. The SSA normally uses the Receipt for Application for a Social Security Number, Form SSA-5028, as evidence that an individual has applied for an SSN.

(3) for those individuals who do not know if they have an SSN, or are unable to find their SSN, the State agency shall follow the procedures described in subparagraph (2) (i) and (ii) above.

(c) *Failure to comply.* If the State agency determines that a household member(s) has refused to provide an SSN or has failed without good cause to obtain an SSN, that individual(s) shall be ineligible to participate until that individual complies. This disqualification applies to the individual(s) alone and not to the entire household. The earned or unearned income of an individual disqualified from the household for failure to comply with this requirement shall be handled as outlined in § 273.9(b)(3) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to provide the State agency with an SSN, the State agency shall consider information from the household member, the Social Security Administration and the State agency (especially if the State agency was designated to send the SS-5 to SSA and either did not process the SS-5 or did not process it in a timely manner). Documentary evidence or collateral information that the household has applied for the number and made every effort to supply SSA with the necessary information shall be considered good cause for not complying timely with this requirement.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN or demonstrating that an application has been made at SSA for a social security number.

(f) *Use of SSN.* With the concurrence of the Secretary of the Department of Health, Education, and Welfare, the State agency shall use social security numbers in the administration of the Food Stamp Program. State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under title XVI of the Social Security Act to determine such a household's eligibility to receive

assistance and the amount of assistance, or to verify information related to the benefits of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSN's to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households.

6. In § 273.9, it is proposed that subparagraph (b)(3) be revised to read as follows:

§ 273.9 Income and deductions.

*(b) Definition of income. * * **

(3) The earned or unearned income of an individual disqualified from the household for fraud in accordance with § 273.16, for failing to comply with the student work registration requirements in § 273.7(b)(9)(i) or for failing to comply with the requirement to provide an SSN in accordance with § 273.6, shall continue to be counted as income, less the pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11.

7. In § 273.10(f)(3) it is proposed that a new subparagraph (iv) be added as follows:

§ 273.10 Determining household eligibility and benefit levels.

*(f) Certification periods. * * **

*(3) * * **

(iv) Households receiving SSI and social security benefits, in States which do not have the capability to effect at a point in time, mass changes in benefits due to the annual cost-of-living increases, shall be assigned certification periods that ensure that they are due for recertification at the time of or immediately after the SSI and social security cost-of-living increase. Households entitled to a certification period of up to 12 months as discussed in § 273.10(f)(3)(v) shall, on a one-time basis, be certified for less than a year in order to comply with this provision.

8. In § 273.11, it is proposed that a new subparagraph (iii) be added to (c)(5), paragraph (f) be relettered as paragraph (g) and the new paragraph (f) is added to read as follows:

§ 273.11 Action on households with special circumstances.

(c) Treatment of income and resources of disqualified members.

Individual household members may be disqualified for fraud, for failure to meet

the student work registration requirements during the school year or for failure to obtain, or refusal to provide, an SSN. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining household members shall be determined as follows:

(5) Reduction or termination of benefits within the certification period.

(iii) *SSN disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is being disqualified for failure to meet the SSN requirement, the State agency shall issue a notice of adverse action which informs the household that one or more of its members is being disqualified, the reason for the disqualification, and the eligibility and benefit level of the remaining members.

(f) *Residents of group living arrangements who receive social security disability or SSI payments.* (1) Disabled or blind recipients of social security disability or SSI payments who reside in a group living arrangement facility as defined in § 273.1(e)(3) may voluntarily apply for the Food Stamp Program. Resident disabled or blind recipients of social security disability or SSI payments shall have their eligibility determined as a one-person household. The State agency shall certify these individuals by using the same provisions that apply to all other households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(5). The guidelines for issuing FNS retailer authorizations to these group living arrangement facilities are set forth in § 278.1(e).

(2) Each group living arrangement facility shall provide the State agency with a certified list of currently participating residents. The State agency shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the listings and that the State agency's records are consistent and up to date.

(3) The following provisions apply to residents of group living arrangements who receive social security disability or SSI payments:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and

documentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The group living arrangement facility shall notify the State agency, as provided in § 273.12(a) of changes in the household's income or other household circumstances and of when the individual leaves the group living arrangement. The group living arrangement shall return to the State agency a household's ATP card or coupons if they are received after the household has left the group living arrangement facility.

(5) The group living arrangement facility shall provide resident disabled or blind recipients of social security disability or SSI payments with their ID card and any untransacted ATP cards issued for the household when the household leaves the group living arrangement. If the ATP card has already been transacted and the household leaves the group living arrangement prior to the 16th day of the month, the group living arrangement facility is no longer allowed to act as that household's authorized representative. The group living arrangement facility shall, if possible, provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement, and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(6) The group living arrangement facility shall be responsible for any misrepresentation or fraud which it knowingly commits in the certification of its residents. As an authorized representative, it must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The group living arrangement facility shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the

household is a resident of the group living arrangement.

(7) The group living arrangement facility may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FNS when it has reason to believe that a group living arrangement facility is misusing coupons in its possession. However, the State agency shall take no action prior to FNS action against the group living arrangement facility. The State agency shall establish a claim for overissuance of food coupons held on behalf of resident clients as stipulated in paragraph (f)(6) of this section if any overissuance are discovered during an investigation or hearing procedure for redemption violations. If FNS disqualifies a group living arrangement facility as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

9. In § 273.12, it is proposed that subparagraph (e)(3) be revised to read as follows:

§ 273.12 Reporting changes.

*(e) Mass changes. * * **

(3) *Mass changes in Federal benefits.* (i) State agencies shall treat cost-of-living increases received in July 1981 and all other subsequent years and any other mass changes in social security and SSI payments as a mass change for food stamp purposes. The household shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting a household's food stamp benefit level to reflect the change in accordance with the procedures in paragraph (e)(2) of this section, or as noted in paragraph (e)(3)(ii) of this section.

(ii) State agencies which do not have the capability to perform a point-in-time adjustment of the entire caseload as required by paragraph (e)(2) of this section, shall schedule all households containing one or more members who receive social security or SSI payments for recertification during July, August, and September of each year so that the cost-of-living increase can be reflected in a timely manner.

(iii) For cost-of-living increases scheduled for July 1980, State agencies which currently have the capability shall treat the increases as a mass change in accordance with the procedures in paragraph (e)(2) of this section. A State agency is capable of

treating these changes as a mass change if the State agency's computer system can identify by social security number individual household members receiving social security or SSI payments and the amount of these payments, and the computer system can extract on a timely basis the new income data from BENDEX and SDX for each recipient. All other State agencies shall, within 180 days of the effective date of the increase, identify cases receiving social security and SSI payments and reflect the cost-of-living increase in the household's allotment.

10. In § 273.16, it is proposed that paragraphs (a), (d), (d)(9)(ii), and (e)(3) be amended and a new subparagraph (4) be added to § 273.16(e) to read as follows:

§ 273.16 Fraud disqualification.

(a) *Fraud disqualification penalties.* Individuals found to have committed fraud through an administrative fraud hearing shall be ineligible to participate in the program for 3 months. Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than 6 months and not more than 24 months as determined by the court. If the court fails to specify a disqualification period for the fraudulent act, the State agency shall impose a six-month disqualification period. State agencies shall disqualify only the individual convicted of fraud and not the entire household. After any specified period of disqualification, the individual found guilty of fraud will continue to be ineligible to participate in the Food Stamp Program if the individual fails to agree to either a repayment in cash or a reduction in the food stamp allotment of the household of which such individual is a member in accordance with the procedures established in § 273.18(e)(2). After the disqualification period, if the individual fails to make cash payments in accordance with an agreed to schedule, the individual's household will be subject to allotment reductions in accordance with the procedures established in § 273.18(e)(2)(i). Individuals shall be permitted to make restitution during the period of disqualification in accordance with the established procedures for recoupment or cash repayment.

(d) Administrative disqualification.

Each State agency shall establish procedures for conducting fraud hearings which must conform with the procedures outlined in this section. An administrative fraud hearing should be initiated by the State agency in cases in

which the State agency has sufficient evidence to substantiate that an individual has committed one or more acts of fraud as defined in paragraph (b) of this section. Such cases may include those in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, or has previously referred the case for such prosecution and prosecution was declined by the appropriate legal authority. The State agency may initiate an administrative fraud hearing regardless of the current eligibility of the individual. The disqualification period for individuals no longer participating at the time the hearing decision is final shall be deferred until the individual applies for and is determined eligible for program benefits. Fraud hearings shall not be conducted if the amount the State agency suspects has been fraudulently obtained is less than \$35 or if the value of the ineligible items that have been purchased with food stamps is under \$35. The burden of proving fraud is on the State agency. The administrative fraud hearing may still be conducted regardless of whether other legal action is planned against the household member.

* * * * *

(9) Notification of hearing decision.

* * *

(ii) If the administrative fraud hearing finds that the household member committed fraud, the State agency shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification, or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. For State level decisions, the notice shall inform the household member of the date disqualification will take effect. For local level decisions, the notice shall inform the household member of the deadline for requesting a State level hearing, the date disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for

program benefits. A list of the household member's rights as contained in § 273.15(p) and the State level hearing procedures shall be enclosed with the local fraud hearing decision notice. In addition, the State agency shall initiate fraud claim collection activities in accordance with § 273.18(c).

(e) *Court imposed disqualifications.*

(3) State agencies shall disqualify an individual found guilty of fraud for the length of time specified by the court. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals with the first month following the date the disqualification was ordered. If the court fails to specify a specific disqualification period for the fraudulent conduct, the State agency shall impose a six-month disqualification period which shall begin the first month following the date the court found a currently eligible individual guilty of civil or criminal fraud. If the individual is not eligible for the program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits. A court ordered disqualification may run concurrently with the 3-month period of disqualification imposed as a result of an administrative fraud hearing. The State agency shall not initiate or continue a court imposed or administratively imposed fraud disqualification period contrary to a court order.

(4) If the court finds that the household member committed fraud, the State Agency shall mail a written notice to the household member prior, whenever possible, to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. The notice shall also inform the household member of the date disqualification will take effect. In addition, the State agency shall initiate fraud claim collection activities in accordance with § 273.18(c).

11. In § 273.18, it is proposed that paragraphs (c)(3), and (4) be deleted and

subparagraph (c)(2), and paragraphs (d) and (e) be amended; subparagraph (f)(2) renumbered as (f)(3) and subparagraphs (f)(1) and (f)(2) amended. The amended paragraphs read as follows:

§ 273.18 *Claims against households.*

(c) *Fraud claim.* ***

(2) *Collecting fraud claims.* (i) If a household member is found to have committed fraud by either an administrative fraud hearing or a court of appropriate jurisdiction, the State agency shall, prior whenever possible to disqualification, send the individual a written agreement letter for restitution, designed by FNS, which informs the individual of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, the types and terms of each restitution schedule which is offered, the date restitution must commence, the penalties involved for default as well as the household member's right to a fair hearing if the individual disagrees with the State agency's determination of the claim. In addition to the written agreement letter for restitution, a personal contact shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance as a result of nonfraud demand letters, the State agency has documentation which shows the household cannot be located, or the legal representative prosecuting a member of the household for fraud advises, in writing, that collection action will prejudice the case. In cases where a household member was found guilty of fraud by a court, the State agency shall request the matter of restitution be brought before the court.

(ii) Mandatory restitution shall begin the month following the month the period of disqualification ends. If the disqualified individual fails to agree to make restitution, their period of disqualification shall continue until an agreement is made. The individual who committed fraud or the household may begin restitution prior to or during the period of disqualification set by a hearing. However, the penalties in § 273.16(a) shall not apply except in cases of mandatory restitution. The State agency shall follow the procedures for collecting and submitting payments as well as the applicable accounting procedures prescribed in paragraphs (e), (f), (g), and (h) of this section. FNS may grant deviations from the designed demand letter under conditions specified in § 273.2(b). A written demand letter for a fraud claim shall be sent even if the household has previously received a nonfraud demand

letter, because the time period covered by the claim is different for fraud and nonfraud claims, unless the overissuance is repaid as a result of the nonfraud collection efforts. In addition to the written demand letter, a personal contact shall be made, if possible.

(iii) One month prior to the end of the specified period of disqualification, if the household member found guilty of fraud has not responded to the written agreement letter, the State agency shall send one additional follow-up letter advising the individual that he will continue to be ineligible to participate in the Food Stamp Program if the individual fails to agree to either a reduction in the household's food stamp allotment or to a repayment in cash in accordance with the procedures established in paragraph (e)(2) of this section. Individuals who fail to agree to make restitution in accordance with the terms of the written agreement shall continue to be ineligible to participate in the Food Stamp Program. The State agency shall mail a written notice to the household member informing such individual of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. The period of disqualification continues until the fraudulent individual agrees to make restitution. The State agency may also initiate civil court action to obtain the claim.

(iv) If after the specified period of disqualification, the household member agrees to make restitution, the State agency shall follow the procedures prescribed in paragraph (e)(2) of this section for collecting and submitting payments or the procedures for reducing the food stamp allotment of the household of which such individual found guilty of fraud is a member.

(v) The State agency shall suspend collection action at any time it has documentation that the household member found guilty of fraud cannot be located. A claim shall be determined uncollectible after it is held in suspense for three years. The State agency may use an uncollectible claim to offset benefits in accordance with § 273.17.

(d) *Changes in household composition.* (1) *Nonfraud claims.* If a household's membership has changed since the overissuance occurred, the State agency shall initiate collection action against the head of the

household. If the head of the household is no longer living or cannot be located, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred.

(2) *Fraud claims.* If the household member found guilty of fraud moves, resulting in a change in household membership, the State agency shall initiate collection action against the household currently containing the fraudulent individual.

(e) *Methods of collecting payments.* (1) State agencies shall collect payments for nonfraud claims in one of the following ways:

(i) *Lump-sum.* State agencies shall collect payments from households in one lump sum if the household is financially able to pay the claim in one lump sum.

(ii) *Installments.* If the household has insufficient liquid resources or is otherwise financially unable to pay the claim in one lump sum, payments shall be accepted by the State agency in regular installments. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim to offset in accordance with § 273.17.

(2) State agencies shall collect payments for fraud claims in one of the following ways:

(i) *Reduction in food stamp allotment.* If the household member found guilty of fraud agrees to a reduction in the household's food stamp allotment, the State agency shall discuss with the household the amount of food stamps to be recouped each month. The amount of food stamps to be recouped each month shall be 25 percent of the household's monthly allotment. Recoupment of less than 25 percent shall be accepted only if it results in equal increments or if the full amount can be recovered within a year using a lesser percentage. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim to offset benefits in accordance with § 273.17.

(ii) *Repayment in cash.* If the household member found guilty of fraud agrees to a repayment in cash, and the individual is financially able to repay the claim in full, the State agency shall collect the payment in one lump-sum. However, if the household has insufficient liquid resources or is

otherwise unable to pay the claim in one lump sum, payments shall be accepted in regular installments. If the full amount of the claim cannot be liquidated in 3 years, the State agency shall compromise the claim, by reducing it to an amount that will allow the individual to pay the claim in 3 years. A State agency may use the full amount of the claim to offset benefits in accordance with § 273.17. If the household member fails to make a payment in accordance with the established restitution schedule, the State agency shall initiate one of the following actions:

(A) If the household member fails to make any payments, the State agency shall send one follow-up notice. If the household member again fails to make any payments, the State agency shall follow the procedures prescribed in paragraph (e)(2)(i) of this section for reducing the household's food stamp allotment.

(B) If the household member makes a payment that is less than the amount established in the restitution schedule, the State agency shall determine if the household's economic circumstances have changed necessitating a reduction in the amount of the payments. If so, the State agency and the household member shall execute a revised repayment schedule. If, however, the household's economic circumstances have not changed and the household is still financially able to pay the established claim, then the State agency shall follow the procedures established in paragraph (e)(2)(i) of this section for reducing the household's food stamp allotment.

(3) State agencies may initiate civil court action to obtain payment of the claim prior to the end of the disqualification period. However, the State agency shall not deny, terminate or reduce a household's benefits for failure to repay a claim, to agree to a repayment schedule or to make the agreed upon payment, unless the State agency's request for repayment of a claim is after the period of disqualification and the household member found guilty of fraud fails to agree to make restitution in accordance with the procedures prescribed in this section.

(f) *Submission of payments.* (1) Effective July 1, 1980, the State agency shall no longer forward to FNS value of all funds collected for claims. This amount includes the total value of allotments recouped to repay fraud claims. Alternatively, FNS will amend the State's letter of credit on a quarterly basis. This amendment will reflect State's retention of 50 percent of the value of all funds collected or allotments recouped through prosecutions or other

State activities directed against individuals who fraudulently obtain food stamps as well as full retention by FNS of all nonfraud overissuance recoveries.

(2) Each State shall also submit a Form FNS-209, Status of Claims Against Households, monthly to FNS to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar month and shall be submitted even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from fraud claims each month on Form FNS-209, the State agency shall also report this amount on other letter of credit documents as required. In accounting for fraud claim collections, the State agency shall include in the collections cash repayments, and the value of the allotments recouped or offset by restoration of lost benefits. However, the value of allotments reduced during periods of disqualification, including disqualification due to an individual's failure to agree to repay a fraud claim, shall not be considered recouped allotments and shall not be used to offset a fraud claim. In addition, each State agency shall establish controls to ensure that officials responsible for fraud determinations will not benefit from the State share of recoveries.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS, AND BANKS

13. In § 278.1, it is proposed that paragraph (e) be revised and a new paragraph (f) added and paragraphs (f) through (1) relettered (g) through (m). The revised paragraph (e) and the new paragraph (f) reads as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their participants must, in addition to meeting the requirements of paragraph (a), (b) and (d)(1) of this section, be certified by the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts under Public Law 91-616, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1972," and Public Law 92-255, "Drug Abuse Office and Treatment Act of 1972," as providing

treatment that can lead to the rehabilitation of drug addicts and alcoholics. In addition, the certification must show that the treatment program meets the standards required of treatment programs under the supervision of the State agency or agencies designated by the Governor as responsible for the State's programs for alcoholics and drug addicts. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(f) *Group living arrangement facilities.* Group living arrangement facilities wishing to redeem through wholesalers food stamps received from or on behalf of their residents must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

* * * * *

§ 278.2 [Amended]

14. In § 278.2, it is proposed that paragraph (g) be revised by adding the words "and authorized group living arrangement facilities" after the word "programs" in the final sentence.

Note.—Food Stamp forms are being revised in accordance with the requirements of this amendment. The reporting and/or record keeping requirements anticipated in this amendment resulting from the forms revisions will be forwarded to the Office of Management and Budget for approval in accordance with the Federal Reports Act of 1942.

* * * * *

(91 Stat. 958 (7 U.S.C. 2011-2027))

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified as significant. Robert Greenstein, Administrator of the Food and Nutrition Service has determined that an emergency situation exists which warrants less than a full 60-day public comment period on this proposal because of the legislatively imposed publication and implementation dates. An impact statement has been prepared and is available from Claire Lipsman, Director, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C., 20250.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: October 26, 1979.

Carol Tucker Foreman,
Assistant Secretary.

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