

**PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R020-99**

July 7, 1999

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-16, NRS 445A.425.

**Section 1.** NAC 445A.228 is hereby amended to read as follows:

445A.228 *1. Except as otherwise provided in subsection 2, a person shall not discharge a pollutant from a point source into any waters of this state without obtaining a permit from the department.*

*2.* Although not exempted from complying with all other applicable laws, rules and regulations regarding pollution, the following are specifically exempted from the requirements to obtain a permit:

~~[1.]~~ *(a)* Persons utilizing *an* individual sewage disposal ~~[systems which do not discharge pollutants into the waters of the state, other than toxic materials,]~~ *system or other sewage disposal system that uses a soil absorption system for the treatment and disposal of domestic wastes, with accumulative flows of less than 5000 gallons per day,* providing the system is approved and is installed, operated and maintained in accordance with the rules and regulations and other requirements of the district health departments or the state board of health. This exemption does not preclude the possibility that health authorities will require permits.

~~[(2.—Persons)]~~ (b) *Except as otherwise provided in this paragraph, persons* discharging pollutants ~~[other than toxic materials]~~ into a publicly owned or privately owned sewerage system, if the owner of such sewerage system has a valid permit from the department. In such cases, the owner of the sewerage system assumes ultimate responsibility for controlling and treating the pollutants which he allows to be discharged into the system. *The department may require an industrial user who discharges pollutants into a publicly owned treatment works which does not have an approved pretreatment program to obtain a permit pursuant to NAC 445A.257.*

~~[(3.)]~~ (c) Discharges of pollutants from agricultural and silvicultural activities, including, *without limitation*, irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except that this ~~[exclusion]~~ *exemption* does not apply to the following:

~~[(a)]~~ (I) Discharges from facilities which confine animals if the facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

- ~~[(1)]~~ (I) Slaughter and feeder cattle, 1,000;
- ~~[(2)]~~ (II) Mature dairy cattle (whether milkers or dry cows), 700;
- ~~[(3)]~~ (III) Swine weighing over 55 pounds, 2,500;
- ~~[(4)]~~ (IV) Horses, 500;
- ~~[(5)]~~ (V) Sheep, 10,000;
- ~~[(6)]~~ (VI) Turkeys, 55,000;
- ~~[(7)]~~ (VII) Laying hens and broilers, if the animal confinement facility has continuous overflow watering, 100,000;

~~[(8)]~~ (VIII) Laying hens and broilers, if the animal confinement facility has liquid manure handling systems, 30,000; or

~~[(9)]~~ (IX) Ducks, 5,000.

~~[(b)]~~ (2) Discharges from facilities which confine animals if such facility or facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, a combination of animals such that the sum of the following numbers is 1,000 or greater: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

~~[(e)]~~ (3) Discharges from production facilities for aquatic animals.

~~[(d)]~~ (4) Discharges of irrigation return flow (such as tailwater, tile drainage, surfaced ground water flow or bypass water) operated by public or private organizations or natural persons if the source of water is effluent from a treatment works.

~~[(e)]~~ (5) Discharges from any agricultural or silvicultural activity which have been identified by the administrator or the director as a significant contributor of pollution.

Sec. 2. NAC 445A.230 is hereby amended to read as follows:

445A.230 1. ~~[(The applicant shall file a complete permit application no later than 60 days following receipt of notice from the director that the applicant's previously filed Refuse Act or NPDES application is so deficient as not to have satisfied the filing requirements.)~~

~~—2.]~~ Any person wishing to commence future discharges of pollutants must file a complete permit application ~~[(either:~~

~~—(a) Not]~~ *on forms provided by the department, not* less than 180 days in advance of the date on which ~~[(it is desired)]~~ *the person desires* to commence the discharge of pollutants ~~[- or~~

~~—(b) In sufficient time prior to the commencement of the discharge of pollutants to ensure compliance with the requirements of § 306 of the Act, any applicable zoning or siting requirements established pursuant to § 208(b)(2)(c) of the Act and any other water quality standards or limitations.~~

~~—3.]~~, unless the department has granted permission for a later date.

2. The director:

(a) May require the submission of additional information after a permit application has been filed; and

(b) Shall ensure that if a permit application is incomplete or otherwise deficient, processing of the application is not completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

~~[4.]~~ 3. If, upon review of an application, the department determines that a permit is not required, the department shall notify the applicant in writing of this determination. The notification constitutes final action by the department on the application.

~~[5.— A person presently discharging pollutants must have filed a complete Refuse Act or NPDES application with the Federal Government.]~~

**Sec. 3.** NAC 445A.231 is hereby amended to read as follows:

445A.231 1. ~~[Application]~~ *Except as otherwise provided in subsection 3, application* and reporting forms submitted to the department must be signed by:

(a) A principal executive officer of the corporation (of at least the level of vice president) or his authorized representative who is responsible for the overall operation of the facility from which the discharge described in the application or reporting form originates.

(b) A general partner of the partnership.

(c) The proprietor of the sole proprietorship.

(d) A principal executive officer, ranking elected official or other authorized employee of the municipal, state or other public facility.

2. Each application must contain a certification by the person signing the application that he is familiar with the information provided, that to the best of his knowledge and belief the information is complete and accurate and that he has the authority to sign and execute the application.

*3. A discharge monitoring report must be signed by the senior certified operator of the facility from which the discharge described in the report originates or the person directly responsible for operating the facility.*

**Sec. 4.** NAC 445A.234 is hereby amended to read as follows:

445A.234 1. Public notice of every complete application for a discharge permit, except *for a temporary permit or* a permit for pretreatment discharge or the poisoning of trash fish, must be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the proposed determination to issue or deny a permit for the discharge. Procedures for the circulation of public notice must include at least the following:

(a) Notice must be circulated within the geographical area of the proposed discharge by publishing in a local newspaper or periodical or, if the local newspaper is not a daily newspaper, in a daily newspaper of general circulation; and

(b) Notice must be mailed to any person or group on the mailing list maintained by the department or upon request.

2. The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for permit applications.

3. The director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the application. All written comments submitted during the 30-day comment period must be retained by the director and considered in the formulation of his final determinations with respect to the permit application. The period for comment may be extended at the director's discretion.

4. The contents of the public notice of applications for permit must include at least the following:

- (a) The name, address and phone number of the department;
- (b) The name and address of each applicant;
- (c) A brief description of each applicant's activities or operations which result in the discharge described in the application, for example, municipal waste treatment plant, steel manufacturing or drainage from mining activities;
- (d) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway, indicating whether such discharge is existing or new;
- (e) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;
- (f) A brief description of the procedures for the formulation of final determinations including the required 30-day comment period and any other means by which interested persons may influence or comment upon those determinations; and

(g) The address and phone number of the premises at which interested persons may obtain further information, request a copy of the draft permit prepared pursuant to subsection 2 of NAC 445A.233, request a copy of the fact sheet and inspect and copy relevant forms and documents.

**Sec. 5.** NAC 445A.235 is hereby amended to read as follows:

445A.235 The director shall notify other appropriate governmental agencies of each complete application for a permit , *except for a temporary permit*, and shall provide the agencies with an opportunity to submit their written views and recommendations. Procedures for such notification must include the following:

1. At the time of issuance of a public notice, pursuant to NAC 445A.234, transmission of a fact sheet to any other states whose waters may be affected by the issuance of a permit and, upon request, providing such states with a copy of the application and a copy of the ~~proposed~~ *draft* permit prepared pursuant to subsection 2 of NAC 445A.233. Each affected state must be given an opportunity to submit written recommendations to the director and to the regional administrator which the director may incorporate into the permit if issued. Should the director fail to incorporate any written recommendations thus received, he shall provide to the affected state or states, and to the regional administrator, a written explanation of his reasons for failing to accept any of the written recommendations.

2. A procedure, similar to that prescribed by subsection 1, for notifying any interstate agency having water quality control authority over waters which may be affected by the issuance of a permit.

3. At the time of issuance of a public notice pursuant to NAC 445A.234, transmission of a fact sheet to the appropriate district engineer of the Army Corps of Engineers for applications involving discharges to navigable waters. A copy of any written agreement made pursuant to this

subsection between the director and a district engineer must be forwarded to the regional administrator and must be made available to the public for inspection and copying.

4. A procedure for mailing copies of fact sheets of applications for permits to any other federal, state or local agency upon request and providing such agencies an opportunity to respond, comment or request a public hearing pursuant to NAC 445A.238.

5. Procedures for notice to and coordination with appropriate public health agencies for the purpose of assisting the applicant in coordinating the applicable requirements of the Act with any applicable requirements of such public health agencies.

**Sec. 6.** NAC 445A.236 is hereby amended to read as follows:

445A.236 1. For every discharge ~~[ ]~~ *for which public notice was required pursuant to NAC 445A.234*, the director shall prepare and, following *the* public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets must include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;

(b) A quantitative description of the discharge described in the ~~[NPDES]~~ application which includes at least the following:

(1) The rate or frequency of the proposed discharge ~~[ ]~~ *and*, if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(2) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and



(3) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under § 301, 302, 306 or 307 of the Act, *33 U.S.C. §1311, 1312, 1316 or 1317*, and regulations published thereunder;

(c) The tentative determinations required under NAC 445A.233;

(d) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and limitations applied to the proposed discharge; and

(e) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(1) The 30-day comment period required by subsection 3 of NAC 445A.234;

(2) Procedures for requesting a public hearing and the nature thereof; and

(3) Any other procedures by which the public may participate in the formulation of the final determinations.

2. The director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

**Sec. 7.** NAC 445A.241 is hereby amended to read as follows:

445A.241 1. The duration of permits is fixed and does not exceed 5 years. The expiration date must be recorded on each permit issued. A new application must be filed with the department to obtain renewal or modification of a permit. Applications for renewal must be filed at least 180 days prior to expiration of the permit.

2. For the reissuance of a permit, the same procedures must be followed as for the initial issuance of a permit.

*3. A person who holds an expired permit and who has submitted a timely application for renewal of the permit in the manner set forth in subsection 1 may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the department takes final action on the application unless:*

*(a) The department determines that the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a compliance schedule designed to bring the permittee in compliance with the terms and conditions of the expired permit;*

*(b) The department, as a result of an action or the failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or*

*(c) The permittee has submitted an application with major deficiencies or has failed to supplement properly the application in a timely manner after being informed of deficiencies.*

**Sec. 8.** NAC 445A.243 is hereby amended to read as follows:

445A.243 In establishing an effluent limitation **[H]** *to carry out the policy of this state set forth in NRS 445A.305*, consideration must be given to, but is not limited by, the following:

1. The effect of the discharge on the receiving waters and its beneficial use.
2. The need for standards that specify by chemical, physical, biological or other characteristics the extent to which pollution by various substances will not be tolerated.
3. Standards for water quality *and effluent limitations* promulgated from time to time by the United States Environmental Protection Agency, including the following:

- (a) Effluent limitations under §§ 301 and 302 of the Act **[H]**, *33 U.S.C. §§ 1311 and 1312.*
- (b) Standards of performance for new sources under § 306 of the Act **[H]**, *33 U.S.C. §1316.*
- (c) Effluent standards, effluent prohibitions and pretreatment standards under § 307 of the Act **[H]**, *33 U.S.C. §1317.*

(d) Any more stringent limitations, including those:

- (1) Necessary to meet standards for water quality and treatment or schedules of compliance, established pursuant to any state law or regulation;
- (2) Necessary to meet any other federal law or regulation; or
- (3) Required to carry out any applicable standards for water quality.

FLUSH Such limitations must include any legally applicable requirements necessary to carry out total maximum daily loads established pursuant to § 303(d) of the Act, *33 U.S.C. §1303(d)*, and incorporated in the continuing planning process approved under § 303(e) of the Act, *33 U.S.C. §1303(e)*, and any regulations and guidelines issued thereunder.

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to § 208(b) of the Act.

4. In the application of water quality standards and limitations and other legally applicable requirements pursuant to subsection 3, the director shall, for each issued *NPDES* permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge ~~in terms of weight~~ *in terms of weight, except quantitative limitations that are not appropriately expressed in terms of weight, including, without limitation, pH, temperature and radiation.*

**Sec. 9.** NAC 445A.244 is hereby amended to read as follows:

445A.244 1. In addition to the application of the water quality standards and limitations and other legally applicable requirements pursuant to subsection 3 of NAC 445A.243, the director shall adhere to the following procedures in establishing schedules of compliance:

(a) A permit issued for any discharge not in compliance with the requirements listed in subsection 3 of NAC 445A.243 must contain a schedule to reach compliance with those requirements. The schedule must set forth interim requirements and the dates for their

achievement. *Except as otherwise provided in this paragraph, the dates for the achievements of the interim requirements must not be greater than one year apart. If the time necessary for completion of an interim requirement, including, without limitation, the construction of a works facility, is greater than one year and cannot be readily divided into stages for completion, the dates for the achievements of the interim requirements may be greater than one year apart, and interim dates for the submission of reports of progress towards completion of the interim requirement must be set forth.*

(b) Not later than 14 days following each interim date and the final date for compliance contained in the schedule, the holder of the permit shall provide the director with written notice of the holder's compliance or noncompliance with the interim or final requirement.

(c) If a holder of a permit fails or refuses to comply with an interim or final requirement in a permit, such noncompliance constitutes a violation of the permit for which the director may suspend or revoke the permit or take direct enforcement action.

2. A compliance schedule to bring an existing point source into compliance with a discharge limitation based on a water quality standard may be established in a permit for the point source if:

(a) The schedule requires compliance with the discharge limitation as soon as practicable; and

(b) The owner or operator of the point source demonstrates that the requirements of §§ 301(b) and 306 of the Act, *33 U.S.C. §§1311(b) and 1316*, have been satisfied and that the point source cannot comply immediately with the discharge limitation through the application of existing water pollution control technology or operational changes.

**Sec. 10.** NAC 445A.250 is hereby amended to read as follows:

445A.250 1. Any discharge authorized by a permit may be subject to such monitoring requirements as may be reasonably required by the director including the installation, use and maintenance of monitoring equipment or methods, including, where appropriate, biological monitoring methods.

2. Any discharge authorized by a permit which:

(a) Is not a minor discharge; *or*

(b) The regional administrator requests, in writing, be monitored . ~~or~~

~~—(c) Contains]~~

3. *Any discharge authorized by an NPDES permit which contains* toxic pollutants for which an effluent standard has been established by the *regional* administrator pursuant to section 307(a) of the Act, must be monitored by the holder of the permit for at least the following:

~~[(1)]~~ (a) Flow, in gallons per day; and

~~[(2)]~~ (b) All of the following pollutants:

~~[(1)]~~ (1) Pollutants either directly or indirectly through the use of accepted correlation coefficients or equivalent measurement which are subject to reduction or elimination under the terms and conditions of the permit;

~~[(2)]~~ (2) Pollutants which the director finds, on the basis of information available to him, could have a significant impact on the quality of the waters of the state;

~~[(3)]~~ (3) Pollutants specified by the administrator, in regulations issued pursuant to the Act, as subject to monitoring ~~is]~~ *as a requirement of an NPDES permit*; and

~~[(4)]~~ (4) Any pollutants in addition to the above which the regional administrator requests, in writing, be monitored ~~is]~~

~~—(3)] as a requirement of an NPDES permit.~~

4. Each effluent flow or pollutant required to be monitored pursuant to this subsection must be monitored at intervals sufficiently frequent to yield data which reasonably characterize the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels.

**Sec. 11.** NAC 445A.253 is hereby amended to read as follows:

445A.253 1. Any disposal of pollutants into wells must be regulated to protect the public health and welfare and to prevent pollution of the ground and surface water resources of the state.

2. If an applicant for a permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of a permit, the director shall specify additional terms and conditions in the final permit which must prohibit the proposed disposal or must control the proposed disposal in order to prevent pollution of ground and surface waters of the state and to protect the public health and welfare.

3. Any permit issued for the disposal of pollutants into wells must be issued in accordance with the procedures and requirements specified in NAC 445A.070 to 445A.340, inclusive ~~§~~, *and NAC 445A.810 to 445A.925, inclusive.*

4. The director shall utilize in his review of any permits proposed to be issued for the disposal of pollutants into wells any policies, technical information or requirements specified by the administrator in regulations issued pursuant to the Act or in directives issued to the regional offices of the United States Environmental Protection Agency.

**Sec. 12.** NAC 445A.257 is hereby amended to read as follows:

445A.257 1. Any industrial user who discharges into a publicly owned treatment works which does not have a state approved pretreatment program ~~must~~ *may* be granted a permit by the state. The division of environmental protection shall administer the program of pretreatment for any publicly owned treatment works that does not have a pretreatment program and shall ensure the compliance of each user of the program with the requirements of 33 U.S.C. §§ 1284(b), 1317 and 1318 and 40 C.F.R. §§ 401.10 et seq.

2. The division of environmental protection of the state department of conservation and natural resources shall administer the pretreatment program for any publicly owned treatment works which does not have a state approved pretreatment program and ensure compliance by any industrial user, subject to the pretreatment program with the requirements of sections 204(b), 307 and 308 of the Act, *33 U.S.C. §§ 1284(b), 1317 and 1318*, and any regulations adopted thereunder.

**Sec. 13.** NAC 445A.260 is hereby amended to read as follows:

445A.260 In accordance with the powers granted in NRS 33.010 ~~and subsections 1, 9 and 12~~, *subsection 1* of NRS 445A.445 and NRS 445A.675 ~~[, 445A.685, 445A.690, 445A.695, 445A.700]~~ and *445A.685 to 445A.705, inclusive*, the director may take any appropriate action authorized under the law against a pollution source or any combination of sources which the director has evidence is presenting an imminent and substantial endangerment to the health and welfare of persons, where such endangerment is to the livelihood of such persons.

**Sec. 14.** NAC 445A.261 is hereby amended to read as follows:

445A.261 The permit may be modified, suspended or revoked in whole or in part for cause including, but not limited to, the following:

1. A violation of any term or condition of the permit.

2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.
3. A change in conditions or the existence of a condition, which requires either a temporary or permanent reduction or an elimination of the permitted activity. Any such revocation, modification or suspension is effective no later than 30 days after the holder of the permit receives written notice, issued by the director, of the facts or conduct warranting such action.
4. *A determination by the department that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by modifying, suspending or revoking the permit.*
5. *Material and substantial alterations or additions to the permitted facility or activity that occurred after the permit was issued which justify the application of new permit conditions or permit conditions that differ from the permit conditions in the existing permit.*
6. *The department receives new information which was not available at the time the permit was issued that would have justified the application of different conditions of the permit.*
7. *The standards or regulations on which the permit was based have changed.*
8. *The department receives notification of a proposed transfer of the permit.*
9. A demonstration by any interested person that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user. The demonstration must be made in accordance with 40 C.F.R. § 403.13.
- ~~5.~~ 10. A demonstration by any interested person that a publicly owned treatment works consistently removes a pollutant for which a categorical pretreatment standard has been established. The demonstration must be in accordance with 40 C.F.R. § 403.7.



**Sec. 15.** NAC 445A.263 is hereby amended to read as follows:

445A.263 1. ~~The~~ *Except as otherwise provided in this section, the* director may, after notice and opportunity for a public hearing, modify, suspend or revoke any permit in whole or in part during its term for cause including, but not limited to, the causes listed in NAC 445A.261 or for failure or refusal of the holder of the permit to carry out the requirements of NAC 445A.247.

2. The director may, upon the request of the holder of the permit, revise or modify a schedule of compliance in an issued permit if:

(a) He determines good and valid cause, such as an act of God, strike, flood, materials shortage or other event over which the holder has little or no control, exists for such revision; and

(b) Within 30 days following receipt of notice from the director, the regional administrator does not object in writing.

3. *The director may, upon request of the holder of a permit, modify or revoke and reissue a permit to identify a new permittee and incorporate such other requirements as necessary if:*

*(a) The current permittee notifies the department at least 30 days before the proposed date of the transfer; and*

*(b) The notice provided pursuant to paragraph (a) includes, without limitation, a written agreement between the existing and new permittees containing a specific date for transfer of the permit responsibility, coverage and liability.*

4. *With the consent of the permittee and without public notice, the director may make minor modifications to a permit to:*

*(a) Correct typographical errors;*

*(b) Clarify the language of the permit;*

*(c) Require more frequent monitoring or reporting by the permittee;*

*(d) Change an interim compliance date;*

*(e) Allow for a change in ownership or operational control of a facility if the department determines that no other change in the permit is necessary and a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the department;*

*(f) Change the construction schedule for a discharger which is a new source if such change does not affect an obligation of the discharger to have all pollution control equipment installed and in operation before discharge; or*

*(g) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.*

*5. The director may reissue a permit that has been revoked and may require an updated application from the permittee of the revoked permit.*

*6. If a permit is to be modified, only the conditions that are subject to modification may be considered or affected by the modification. If a permit is to be revoked and reissued, the entire permit may be considered and is subject to revision.*

7. A person aggrieved by the modification, suspension or revocation of a permit may file a notice of appeal with the commission within 10 days after the date of notice of action of the department, except as otherwise provided by law.

**Sec. 16.** NAC 445A.105 and 445A.246 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**445A.105 “Refuse Act application” defined.** “Refuse Act application” means the application for a permit under section 13 of the River and Harbor Act of March 3, 1899.

**445A.246 Application of more stringent standards of performance.** Notwithstanding any other provision of NAC 445A.070 to 445A.340, inclusive, any industrial point source, the construction of which is commenced after the date of enactment of the Act and which is so constructed as to meet all applicable standards of performance, is not subject to any more stringent standards of performance during a 10-year period beginning on the date of completion of the construction or during the period of depreciation or amortization of the facility for the purposes of section 167 or 169, or both, of the Internal Revenue Code of 1954, whichever period ends first.