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Highlights

Briefings on How to Use the Federal Register—For details on briefings in **Washington, D.C.; Los Angeles, and San Francisco, Calif.**, see announcement in the Reader Aids Section at the end of this issue.

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34089 **Steel Imports** Presidential proclamation extending import relief

34095 **Trade With Romania and Hungary** Presidential determination

34167 **Local Educational Agencies** HEW/OE proposes rules to govern the awarding of special grants to LEA with especially high concentrations of children from low-income families, comments by 8-13-79

34418, 34422 **Aircraft Accident/Incident Investigation Procedures** NTSB issues rules effective 6-14-79 and extends comment period (2 documents) (Part IV of this issue)

34097 **Interest on Deposits** FRS issues rule concerning temporary suspension of early withdrawal penalty; effective 4-11-79

34346 **National Pollutant Discharge Elimination System** EPA proposes revisions of rules, comments by 9-12-79 (Part III of this issue)

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Presidential Documents

Title 3—

The President

Proclamation 4665 of June 12, 1979

Extension of Temporary Quantitative Limitation on the Importation Into the United States of Certain Articles of Stainless Steel or Alloy Tool Steel

By the President of the United States of America

A Proclamation

1. On June 11, 1976, by Proclamation 4445, the President proclaimed, pursuant to the Constitution and the statutes of the United States (including section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (the Trade Act)), the imposition of temporary quantitative limitations on the importation into the United States of certain articles of stainless steel or alloy tool steel. These limitations were effective as to those articles entered, or withdrawn from warehouse, for consumption on or after June 14, 1976, and were to continue for a period of three years from that date unless earlier modified, or terminated. Proclamation 4445 was subsequently modified by Proclamation 4477 of November 16, 1976, Proclamation 4509 of June 15, 1977, and Proclamation 4559 of April 5, 1978. Import relief currently in effect under Proclamation 4445, as amended, with respect to articles provided for in items 923.20 through 923.26, inclusive, of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is scheduled to terminate at the close of June 13, 1979, unless extended by the President pursuant to section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)).

2. Pursuant to sections 203(i)(2) and (i)(3) of the Trade Act (19 U.S.C. 2253(i)(2) and (i)(3)), the United States International Trade Commission (USITC), on April 24, 1979, reported to the President (USITC Report 203–5) the results of its investigation under section 203(i) of the Trade Act (19 U.S.C. 2253(i)). The USITC advised that it was evenly divided on the question of the probable economic effect on the domestic industry concerned of the termination of the import relief provided for in items 923.20 through 923.26, inclusive, of the TSUS.

3. Section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)) provides that any import relief provided pursuant to section 203 may be extended by the President, at a level of relief no greater than the level in effect immediately before such extension, if the President determines, after taking into account the advice received from the USITC under section 203(i)(2) of the Trade Act (19 U.S.C. 2253(i)(2)) and after taking into account the considerations described in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), that such extension is in the national interest.

4. In accordance with section 203(h)(3) of the Trade Act (19 U.S.C. 2253(h)(3)), having taken into account the advice received from the USITC under section 203(i)(2) of the Trade Act (19 U.S.C. 2253(i)(2)), and the considerations described in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I have determined that the extension of the import relief provided for in items 923.20 through 923.26, inclusive, of the TSUS is in the national interest.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including section 203 of the Trade Act (19 U.S.C. 2253), and in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786), do proclaim that—

(1) Items 608.52, 608.76, 608.78, 608.85, 608.88, 609.06, 609.07 and 609.08 in Part I of Schedule XX to the GATT are modified to conform with the Quantitative restrictions set forth in the Annex to this proclamation.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

(3) The authority to make changes in the quantitative restrictions provided for in this proclamation, as set forth in the Annex to this proclamation, is hereby delegated to the Special Representative for Trade Negotiations.

(4) This proclamation shall be effective as to those articles entered, or withdrawn from warehouse, for consumption on or after June 14, 1979, and before the close of February 13, 1980, unless the period of its effectiveness is earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

ANNEX

Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified—

(a) by deleting paragraph (i) of headnote 2(a) and inserting the following new paragraph (i):

"(i) The term *"restraint period"* refers to the 2-month period beginning June 14, 1979, and ending August 13, 1979, and thereafter to the three subsequent 2-month periods ending at the close of February 13, 1980;";

(b) by deleting headnotes 2 (b), (c), (d), (e), and (f);

(c) by inserting the following new headnote 2(b):

"(b) *Carryover.*—Whenever the quota quantity for item 923.22 or 923.26 has not been entered during any restraint period, the shortfall may be entered under the same item during the following restraint periods and not be counted against the quota quantity therefor. Whenever any quota quantity for a country or instrumentality under item 923.20, 923.21, or 923.23 has not been entered during any restraint period, the shortfall may be entered under the quota for that country or instrumentality under the same item during the following restraint periods and not be counted against the quota quantity therefor;";

(d) by inserting the following new headnote 2(c):

"(c) *Shortfall.*—During the second month of the third restraint period, should the Special Representative for Trade Negotiations determine that any quota quantity for a country or instrumentality under item 923.20, 923.21, or 923.23 is unlikely to be used during the remainder of the third restraint period or during the fourth restraint period, the Special Representative may modify the quota quantities for that item for the fourth restraint period by reallocating the shortfall to other suppliers, such modification to be effective with respect to articles entered, or withdrawn from warehouse, for consumption nonor after December 13, 1979. Notice of such modification is to be published in the *Federal Register* prior to December 13, 1979;";

(e) by redesignating headnote 2(g) as headnote 2(d); and

(f) by deleting items 923.20 through 923.26, inclusive, and inserting the following new items in lieu thereof:

"Item	Articles	Quota Quantity (in short tons) Effective on or after— June 14, 1979	August 14, 1979	October 14, 1979	December 14, 1979
	Whenever, in any restraint period the respective aggregate quantity of articles specified below for items 923.20, 923.21, 923.22, 923.23, or 923.26 the product of a specified foreign country or instrumentality has been entered (whether, for tariff purposes, in schedule 6 or in parts 1, 2, and 5 of schedule 8), no article in such item the product of such country or instrumentality may be entered during the remainder of such restraint period:				
923.20	Sheets and strip of stainless steel (except razor blade steel) of the types provided for in items 608.85, 608.88, 609.06, 609.07, and 609.08:				
	Japan	7,341	8,022	8,757	9,071
	European Economic Community	3,062	3,346	3,652	3,783
	Canada	1,696	1,854	2,024	2,097
	Sweden	1,365	1,492	1,628	1,687
	Other:				
	Countries entitled to the rate of duty in rates of duty column numbered 1 (total)	535	585	638	661
	Other (total)	1	1	1	1
923.21	Plates of stainless steel of the types provided for in items 608.85 and 608.88:				
	Japan	1,198	1,265	1,287	1,331
	European Economic Community	589	622	633	655
	Canada	95	100	102	106
	Sweden	685	723	735	760
	Other				
	Countries entitled to the rate of duty in rates of duty column numbered 1 (total)	133	140	143	148
	Other (total)	None	None	None	None
923.22	Bars of stainless steel of the types provided for in item 608.52	4,800	5,200	5,500	5,600
923.23	Wire rods of stainless steel of the types provided for in items 608.76 and 608.78:				
	Japan	1,061	1,111	1,160	1,193
	European Economic Community	1,397	1,462	1,528	1,571
	Canada	None	None	None	None
	Sweden	742	777	812	836
	Other:				
	Countries entitled to the rate of duty in rates of duty column number 1 (total)	None	None	None	None
	Other (total)	None	None	None	None
923.26	Alloy tool steel of the types provided for in items 608.52, 608.76, 608.78, 608.85, 608.88, 609.06, 609.07, and 609.08 within the specifications of headnote 2(a)(iii)	4,100	4,500	4,800	5,000

".

[FR Doc. 79-18678
Filed 6-12-79; 2:55 pm]

Billing code 3195-01-M

Presidential Documents

Memorandum of June 12, 1979

Energy Emergency—Florida

Memorandum for the Administrator of the Environmental Protection Agency

Based on a request submitted to me by the Governor of the State of Florida to extend my May 5, 1979 determination that a regional energy emergency continues to exist in the State of Florida of such severity that a temporary suspension of certain particulate and opacity control regulations which apply to fossil-fuel fired electric generating plants under the Florida Air Quality Implementation Plan may be necessary, and that other means of responding to the energy emergency may be inadequate, I hereby extend that determination for thirty days from June 5 to and including July 4, 1979. This extension is limited by the same conditions as my original determination.

If, during the extension, I find that a regional energy emergency no longer exists in Florida, I will direct that this extension be rescinded, and that all suspension orders issued by the Governor be terminated on the day of that rescission. Please continue to work with State officials to monitor carefully the residual oil supply in Florida, and to inform me if the emergency should cease to exist. You will continue to retain full authority to disapprove temporary suspension of regulations in Florida and to exercise your emergency powers authority under Section 303 of the Clean Air Act, when and if necessary. It is important to keep suspensions to an absolute minimum since Section 110(f) of the Clean Air Act limits each suspension to a maximum duration of 120 days.

I commend Governor Graham for his continued efforts in energy conservation and his commitment that no extension of any suspension will be granted if the result would be a violation of any national ambient primary or secondary air quality standard.

This determination shall be published in the **Federal Register.**

Jimmy Carter

THE WHITE HOUSE,
Washington, June 12, 1979.

[FR Doc. 79-18679
Filed 6-12-79; 2:56 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 79–10 of June 1, 1979

Determination Under Subsections 402(d)(5) and (d)(5)(C) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, (Public Law 93–618, January 3, 1975; 88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to Subsections 402(d)(5) and (d)(5)(C) of the Act, that the further extension of the waiver authority granted by Subsection 402(c) of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that continuation of the waivers applicable to the Socialist Republic of Romania and to the Hungarian People's Republic will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the **Federal Register.**

Jimmy Carter

THE WHITE HOUSE,
Washington, June 1, 1979.

[FR Doc. 79–18723
Filed 6–12–79; 3:51 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 44, No. 116
Thursday, June 14, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 616]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period June 15–21, 1979. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that the action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 12, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is weak.

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

§ 908.916 Valencia Orange Regulation 616.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period June 15, 1979, through June 21, 1979, are established as follows:

(1) District 1: 300,000 cartons;

(2) District 2: 200,000 cartons;

(3) District 3: Unlimited.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" mean the same as defined in the marketing order.

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

Dated: June 13, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-18856 Filed 6-13-79; 11:21 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q, Docket No. R-0232]

Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q penalty normally imposed upon the withdrawal of funds from deposits prior to maturity.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by the severe storms and tornadoes beginning on or about April 8, 1979, in the State of Arkansas.

EFFECTIVE DATE: April 11, 1979.

FOR FURTHER INFORMATION CONTACT: Paul S. Pilecki, Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452–3281).

SUPPLEMENTARY INFORMATION: On April 11 and 13, 1979, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. § 5141) and Executive Order 11795 of July 11, 1974, the President, acting through the Administrator of the Federal Disaster Assistance Administration, designated the following counties of the State of Arkansas a major disaster area: Ashley, Bradley, Calhoun, Howard, Jackson, Nevada, Ouachita, and Polk. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions has occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional

measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty.[1] The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster area as a result of the severe storms and tornadoes. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to April 11, 1979, and will remain in effect until 12 midnight October 15, 1979.

Section 19(j) of the Federal Reserve Act (12 U.S.C. § 371b) provides that no member bank shall pay any time deposit before maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board. The Board has determined it to be in the overriding public interest to suspend the penalty provision in § 217.4(d) of Regulation Q for the benefit of depositors suffering disaster-related losses within those geographical areas of the State of Arkansas officially designated a major disaster area by the President. The Board, in granting this temporary suspension, encourages member banks to permit penalty-free withdrawal before maturity of time deposits for depositors who have suffered disaster-related losses within the designated disaster area.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons directly affected by the severe damage and destruction occasioned by the storms and tornadoes in the designated counties of Arkansas, good cause exists for dispensing with notice and public participation referred to in section 553(b) of Title 5 of the United States Code with respect to this action and public procedure with regard to this action would be contrary to the public interest. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make the action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority (12 CFR 265.2(a) (18)), June 8, 1979.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 79-18600 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

[1] Sec. 217.4(d) of Regulation Q provides that where a time deposit issued prior to July 1, 1979, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed for a savings deposit and that the depositor shall forfeit three months of interest payable at such rate. Time deposits issued on or after July 1, 1979, will be subject to a new penalty rule (refer to 44 FR 32646).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-SO-39; Amdt. 39-3485]

Airworthiness Directives; Piper Model PA-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: An emergency Airworthiness directive by priority mail was adopted on May 1, 1979, and made effective immediately upon receipt of the letter to all known U.S. operators of certain Piper Model PA-28 series airplanes. This directive requires repetitive checks until the Parker-Hannifin unions and fittings in the fuel system are retorqued, repaired, or replced within 100 hours time in service after receipt of the letter. This AD was needed to inspect for fuel leakage and/or fumes and to retorque, repair, or replace leaking unions to prevent a possible fire hazard.

DATES: This AD is effective June 8, 1979, and was effective upon receipt for all recipients of the emergency Airworthiness Directive dated May 2, 1979.

ADDRESSES: Piper Service Bulletin No. 638 may be obtained from Piper Aircraft Corporation, Lock Haven, Pennsylvania 17745, telephone (707) 748-6711. A copy of the bulletin is contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Whipple Street, East Point, Georgia 30320, telephone (404) 763-7407.

FOR FURTHER INFORMATION CONTACT: John J. Lyness, Manufacturing Inspection Section, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7280.

SUPPLEMENTARY INFORMATION: There have been reports of fuel leakage at the Parker-Hannifin unions installed in certain Piper Aircraft Corporation Model PA-28 series airplanes. Fuel leaks and/or fumes at these unions could possibly result in a fire. Since this condition is likely to exist or develop in other airplanes of the same type design, an emergency Airworthiness Directive was issued on May 2, 1979, which required checks prior to the next flight and prior to each flight thereafter until the Parker-Hannifin unions and fittings in the fuel system were retorqued, repaired, or replaced within 100 hours time in service after receipt of the letter.

Since a situation existed that required immediate corrective action, it was found that notice and public procedure thereon were impractical and contrary to the public interest, and good cause existed for making the AD effective immediately to all known U.S. operators of certain Piper Aircraft Corporation Model PA-28 series airplanes by the emergency Airworthiness Directive dated May 2, 1979. This condition still exists and is hereby published in the **Federal Register.**

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Piper Aircraft Corporation. Applies to the following Piper models of aircraft certified in all categories: PA-28-161, S/N 28-7816340 through 28-7916410; PA-28-181, S/N 28-7890276 through 28-7990429; PA-28-236, S/N 28-7911001 through 28-7911167; PA-28-201T, S/N 28-7921001 through 28-7921028; PA-28R-201, S/N 28R-7837150 through 28R-7837317; PA-28R-201T, S/N 28R-7803185 through 28R-7803373; PA-28RT-201, S/N 28R-7918001

through 28R-7918128; PA-28RT-201T, S/N 28R-7931001 through 28R-7931187.

Compliance is required as indicated, unless already accomplished.

To prevent a potential fire hazard, accomplish the following:

(a) Prior to the next flight after the effective date of this AD and prior to each flight thereafter until compliance with the requirements of paragraphs (b)(1) through (b)(7) have been accomplished, check for evidence of fuel leads, wetting, fuel stains, and/or fumes at inboard area of both wings and in the cabin area. Make appropriate maintenance record entry.

(b) If, as a result of checks required by paragraph (a), leakage, wetting, fuel stains or fumes are evident, accomplish the following prior to further flight:

(1) Gain access to all Parker-Hannifin unions (identified D1 or D1PH6) located at inboard areas of both wings, under the left cabin side panel and in the spar box area. For 201T models only, include vent line fitting at lower aft corner of the door.

(2) Torque each fitting to the requirements of Table I.

(3) Measure the distance between the face of union and face of tubing fitting. Refer to Figure I.

(4) If Torque and/or dimensions are not in accordance with the requirements of Table I and Figure I, comply with paragraph (c).

(5) Fill the airplane tanks full of fuel and run engine for three (3) to five (5) minutes on each tank.

(6) Inspect fittings for leakage and if no leaks are found, no further action is necessary except for the appropriate maintenance record entry.

(7) If leakage is still evident, comply with the requirements of paragraph (c).

(c) If as a result of checks or inspections required by this Airworthiness Directive, the fittings or unions are found damaged, they continue to leak, or they do not comply with the requirements of Table I and Figure I, correct in accordance with (1), (2), or (3) below and accomplish paragraphs (b)(4), (b)(5), and (b)(6).

(1) Remove the leaking union and replace it using a standard "AN" fitting as outlined in AC 43.13-1A, paragraphs 393 and 709, or

(2) Replace with Piper preswaged and preseated tube and union and apply thread lube as outlined in Table II. Carefully align the tube, snug up the nut finger tight, and tighten the nut one (1) to two (2) flats (⅙ to ⅓ of a turn). Maintain dimensional tolerance of Figure I, or

(3) Repair by using the same size Parker-Hannifin unions and fittings which have not been preswaged or preseated. Apply thread lube as outlined in Table II, snug up the nut finger tight, and using a tube wrench tighten the nut one and one-quarter (1¼) turns.

(d) Within the next 100 hours time in service after the effective date of this Airworthiness Directive, comply with the requirements of paragraphs (b)(1) through (b)(7), unless already accomplished.

(e) Checks specified in paragraph (a) may be accomplished by the pilot.

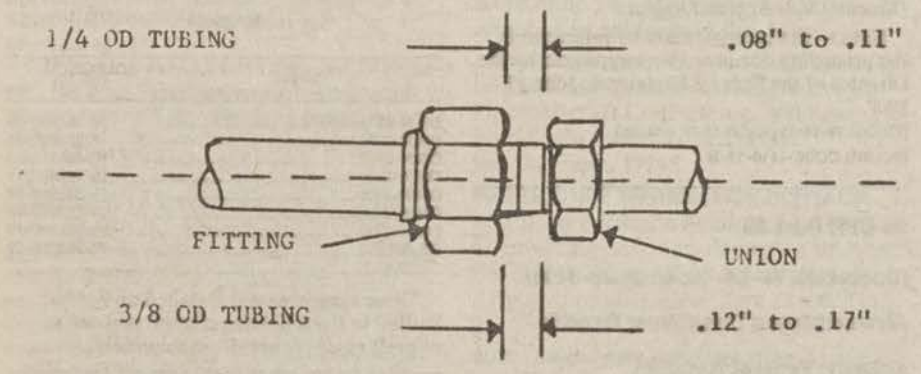
(f) Compliance with the provisions of this Airworthiness Directive may be accomplished in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, Southern Region.

Table I

Tube Size	Applied torque	Equipment
¼ OD	75–95 inch pounds.	Use a tubing crows foot.
⅜ OD	175–195 inch pounds.	Use a tubing crows foot.

Table II

Slip spray lubricant (Dupont), or equivalent.
Perulube (Parker-Hannifin), or equivalent.
Apply the lubricant to the male connector thread.
Do not allow lubricant to enter the throat of the connector seat or contact the ferrule seat face.



Piper Service Bulletin No. 638 pertains to this subject.

This amendment becomes effective June 8, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Issued in East Point, Ga., on June 1, 1979.

Phillip M. Swatek,

Director, Southern Region.

[FR Doc. 79-18124 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-NE-07; Amdt. 39-3496]

Sikorsky S-61 Series Helicopters Certificated in All Categories; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 21, 1979, a telegraphic airworthiness directive (AD) was issued requiring repetitive inspections of the honeycomb tail rotor blades and an inspection of the tail rotor gearbox of Sikorsky S-61 type helicopters equipped with honeycomb tail rotor blades. The AD also required the replacement of the components prior to further flight, if cracks were found. These cracks could lead to failures of these components and loss of control of the helicopter.

DATES: Effective date—June 14, 1979.

ADDRESSES: To obtain copies of the service bulletin referenced in the AD contact Sikorsky Aircraft Division of United Technologies Corporation, Stratford, Connecticut 06602.

FOR FURTHER INFORMATION CONTACT: William E. Garlock, Airframe Section, ANE-212, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7336.

SUPPLEMENTARY INFORMATION: On April 21, 1979, a telegraphic AD was adopted and made effective immediately to all known United States operators of Sikorsky S-61 type helicopters. This airworthiness directive required an initial dye penetrant inspection of the tail rotor blades and tail rotor gearbox mounting feet, repetitive visual inspections of the blades, and repetitive ultrasonic inspections of the blades with more than 1200 hours of service. It also required replacement of these components prior to further flight, if cracks were found.

This AD was necessary because of the failures found in a tail rotor blade and the tail rotor gearbox of an S–61L helicopter that was involved in a recent accident while in commercial operation. In the accident investigation, a laboratory examination revealed that a fatigue failure had caused the separation of part of tail rotor blade. This type of failure of the blade can cause the loss of control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed for making and AD effective immediately to all known United States operators of Sikorsky model S–61 helicopters by individual telegrams dated April 21, 1979.

Since the telegraphic AD was issued, operators have recommended that it is not necessary to require a daily ultrasonic inspection in addition to the six hour interval ultrasonic inspection. The FAA agrees with this recommendation. The visual and ultrasonic inspections have therefore been revised to clarify these requirements.

These conditions still exist, and the telegraphic AD as revised is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator (14 CFR 11.89) § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, effective 1979, by addition of the following new AD:

Sikorsky Aircraft. Applies to S–61 series helicopters certificated in all categories, including FAA certificated military counterparts, equipped with P/Ns S6115–30001 or S6117–30001 series tail rotor blades.

To preclude the possibility of failure of the tail rotor blade, accomplish the following:

1. Inspect tail rotor blades, P/Ns S6115–30001 and S6117–30001, series for cracks in accordance with the following:

a. Prior to further flight, unless already accomplished, dye penetrant inspect the inboard 32 inch section in accordance with Sikorsky Aircraft Service Bulletin 61B15–26.

b. Thereafter, prior to the first flight of the day, conduct visual inspections of the blades in accordance with Sikorsky Service Bulletin 61B15–1E.

c. Within the next six hours time in service, unless already accomplished, ultrasonically inspect the blades for spar and skin cracks in accordance with Sikorsky Service Bulletin 61B15–26. Thereafter for blades with over 1200 hours time in service, inspect ultrasonically at intervals not to exceed six hours time in service in accordance with Sikorsky Service Bulletin 61B15–26.

2. Prior to further flight, unless already accomplished, perform a one-time dye penetrant or Zyglo inspection of the tail rotor gearbox mounting feet for cracks in accordance with Sikorsky Service Bulletin 61B15–26.

3. If a crack is found during the inspection of paragraph 1 or 2 above, replace the cracked blade or gearbox with a new or serviceable component, prior to further flight. A serviceable blade or gearbox is one that has been inspected in accordance with the subject service bulletins and found to be free of cracks.

4. Report in writing any cracks found during the inspections of paragraph 1 or 2 above to: Chief, Engineering and Manufacturing Branch, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. Each report must include the length and location of the cracks and total time in service of the blade or gearbox. Reporting approved by the Office of Management and Budget under OMB No. 04–R0174.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Stratford, Connecticut 06602. These documents may also be examined at FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts, and at FAA Headquarters, 800 Independence Avenue, SW., Washington, D.C. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its Headquarters in Washington, D.C., and at the FAA, New England Headquarters, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on June 6, 1979.

Robert E. Whittington,

Director, New England Region.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 79–18495 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 79–EA–18; Amdt. 39–3495]

Airworthiness Directives; Bendix

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Bendix Models D–2000/D–2200 six and eight cylinder magnetos and requires a repetitive inspection of the distributor block bushings for movement between the bushing and the block. The purpose of the inspection is to preclude failure of the magneto in flight.

DATE: June 19, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Bendix Service Bulletins may be acquired from the manufacturer at the Electrical Components Division, Sidney, New York 13838.

FOR FURTHER INFORMATION CONTACT: A. Farrar, Propulsion Section, AEA–214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212–995–2894.

SUPPLEMENTARY INFORMATION: There had been reports of failure of the right side of a D–2000 magneto in flight due to a detachment of the distributor gear bushing. This could lead to loss of both sides of the magnetos which incorporate the green blocks for movement between the bushing and the blocks. An emergency airmail transmittal had been distributed on April 19, 1979, to all known owners of airplanes incorporating the magneto. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Applies to Bendix Model D–2000/D–2200 series (green distributor block only) six-and-eight-cylinder magnetos identified as follows:

Magneto	
Model	Part No.
D6LN–2031	10–382560–53
D6LN–2200	10–382620–51
D6LN–2230	10–382910–53
D8LN–2200	10–382920–51
D6RN–2230	10–382910–56
D6RN–2230	10–382910–12
D6LN–2230	10–382910–17
D6LN–2230	10–382610–53

These magnetos are installed on but not limited to the following aircraft engines or aircraft engine/aircraft combinations:

AVCO Lycoming engines	Installations
TIO–540–R2AD	
TIO–540–F2BD	
TIO–540–N2BD	
IO–720–B1BD	
IO–720–D1CD	
IO–720–D1CD	Piper, PA–36–375.
IO–720–B1BD	Cessna 414 per Riley STC SA2680–SW.

AVCO Lycoming engines	Installations
IO-720-B1BD	Rockwell 500S, 560S, and 680S modified by STC SA2691WE.
IO-720-B1BD	Rockwell 680F, 680FL and 680 FLP modified by STC SA 2891WE.

To detect loose distributor block bushings, accomplish the following within the next 10 hours in service after the effective date of this A.D. unless previously accomplished, and every 25 hours thereafter until green distributor blocks are replaced by comparable black distributor blocks with part numbers as follows:

P/N 10-382978 by 10-382998 and P/N 10-382976 by 10-382972, or equivalent FAA approved parts and procedures.

a. Remove the ventilator plugs, threaded bushing, or solid plug from both ends of the magneto housing, as applicable.

b. Remove gear axle retaining ring P/N 10-92815-37, plain washer P/N 10-50753, and felt washer P/N 10-50752 from both distributor gear axle positions.

c. Fabricate a ¼ in. round probe of non-metallic material, preferably wood dowel rod, approximately six inches long, with one end approximately ⅛ in. wide by ⅛ in. thick by 1 in. long to resemble a screw driver blade.

d. Insert the formed end of the tool thru the inspection hole at one end of the magneto housing and between two teeth of the distributor gear. Gently so as not to damage the gear teeth, attempt to push the gear back and forth sideways, while observing the corresponding bronze bushing in the distributor block. If there is no movement between the bushing and the block, insert the tool under the flat surface of the gear on its outside diameter. Exert pressure on the end of the tool to lift the gear towards the distributor block. Inspect for movement between the bushing and the block. If no bushing movement is detected by either of these two inspections, repeat the procedures at the gear bushing location at the opposite end of the magneto.

e. If no movement is detected, re-assemble the magneto per maintenance and overhaul instructions listed in Bendix publications L-928-1 and L-945 or other approved procedures.

f. If bushing movement is detected at either end, the distributor block must be replaced prior to further flight. When replacing distributor block, center the block relative to any lateral movement of block.

g. Tighten distributor block screws to a torque value of 25 to 30 inch lbs. Reassemble the magneto according to applicable instructions in D-2000/D-2200 series magneto over-haul publication, Bendix Form L-945 and tighten the magneto cover screws to a torque value of 30-35 in. lb. for black magnetos and 40-45 in. lb. for gray magnetos.

h. If replacing the green distributor block with a black distributor block, reidentify the magneto system P/N and magneto P/N by stamping the numeral 1 over the first digit of the dash number suffixes. For example:

System P/N-201 becomes -101; Magneto P/N-51 becomes -11.

Record magneto serial number in aircraft engine log. Equivalent methods of compliance must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region. As permitted by FAR 21.197, aircraft may be flown to a base where maintenance required by this airworthiness directive can be accomplished.

Bendix Service Bulletin No. 606 pertains to this problem.

Effective Date: This amendment is effective June 19, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on June 5, 1979.

Thomas C. Halloran,

Acting Director, Eastern Region.

[FR Doc. 79-18487 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-EA-5; Amdt. 39-3494]

Airworthiness Directives; Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-36-285 type airplanes and requires an inspection of the gusset welds on the fuselage where the engine mount is attached to the fuselage for cracks and alteration where necessary. The purpose of the requirement is to preclude failure of the weld and compromise of the engine structure.

DATE: June 19, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: I. Mankuta, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: There had been reports of cracks in the welds in the engine mount attachment brackets. The manufacturer has issued S/B 615 and a Modification Kit No. 763877 for an inspection and installation of reinforcement fitting and gussets which are welded to the mount junction. Since this deficiency affects air safety, notice and public procedure hereon are impractical and good cause exists for making the rule effective in less than 30 days.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Piper Aircraft Corp. Applies to Model PA-36-285 serial numbers 36-736000, through 36-7660135 airplanes certificated in all categories. To detect cracks in the engine mount attachment brackets, accomplish the following:

(a) Within the next 50 hours in service from the effective date of this AD, unless accomplished within the previous 50 hours in service, and at intervals thereafter not to exceed 100 hours in service from the last inspection, inspect welds for cracks on the aft side of the gussets on the fuselage where the engine mount is attached using dye check or fluorescent penetrant inspection procedures or equivalent.

(b) If cracks are found, install Piper Engine Mount Attachment Modification Kit No. 763877, or equivalent, prior to further flight. During the installation of the kit, inspect the welds for cracks on the forward side of the gussets on the fuselage where the engine mount is attached using dye check or fluorescent penetrant inspection procedures or equivalent. If cracks are found, remove weld from cracked area and reweld.

(c) Upon incorporation of Piper Modification Kit No. 763877 or equivalent, compliance with this AD may be cancelled.

(d) Equivalent inspections and repairs must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the inspection intervals specified in this AD.

Piper S/B No. 615 dated 9/21/78, pertains to this subject.

Effective date: This amendment is effective June 19, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on June 5, 1979.

Thomas C. Halloran,

Acting Director, Eastern Region.

[FR Doc. 79-18486 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 78-EA-112; Amdt. 39-3493]

Airworthiness Directives; Piper Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Piper PA-24-400, PA-30 and PA-39 type airplanes and requires repetitive check for possible fuel selector valve leakage and repetitive check for ice contamination of the fuel supply. The purpose of the requirement is to preclude engine failure due to inadvertent fuel mismanagement or ice blockage.

DATE: June 19, 1979. Compliance is required as set forth in the AD.

ADDRESSES: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: F. Covelli, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: There had been a report of an inflight failure due to leakage of fuel through the selector valve from one tank to another. There have also been reports of power failure due to ice blockage of the fuel lines and strainers.

Adoption of the Amendment

Accordingly, and pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by issuing a new airworthiness directive, as follows:

Piper

Applies to series PA-24-400 S/N 26-2 through 26-148; PA-30 S/N 30-2 through 30-2000; and PA-39 S/N 39-1 through 39-155 aircraft.

Part A

This part applies to all aircraft listed above. Compliance required within 50 hours of operation after the effective date of this AD and at each 50 hours of operation thereafter.

To prevent fuel mismanagement from interport leakage within the fuel selector valve causing fuel to transfer from one tank to another, accomplish checks in accordance with the Instructions paragraph in Piper Service Letter No. 851, Part A or an approved equivalent. Item 3 is to be *repeated* only twice. If drainage still exceeds one half (½) fluid ounce of fuel then comply with Item 5. Item 5 is maintenance and must be performed by a certified mechanic.

Part B

This part applies to the cited Models PA-30 and PA-39 aircraft.

If the airplane has been exposed to below freezing temperatures, compliance is required prior to the first flight of the day and after each refueling operation.

To eliminate water contamination of the aircraft fuel supply, accomplish a check in accordance with the Instructions paragraph of Piper Service Letter 851, Part B, Item 2a and 2b or an approved equivalent check.

Part C

This part applies to the cited Model PA-24-400 aircraft.

If the airplane has been exposed to below freezing temperatures, compliance is required prior to the first flight of the day and after each refueling operation.

To eliminate water contamination of the aircraft fuel supply, accomplish a check in accordance with the Instructions paragraph in Piper Service Letter No. 851, Part C, Item 2a or an approved equivalent check.

Upon submission of substantiating data through an FAA maintenance inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, may adjust the repetitive intervals. The checks required by this AD may be performed by the pilot.

Equivalent checks, inspections, and maintenance must be approved by Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Effective date: This amendment is effective June 19, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89.)

Issued in Jamaica, New York, on June 5, 1979.

L. J. Cardinali,

Acting Director, Eastern Region.

[FR Doc. 79-18488 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-RM-34]

Designation of Alternate Airway Segment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates V-211W, an alternate airway segment, between Durango and Cortez, Colorado. This airway provides an additional arrival and departure route for Durango to help reduce the congestion at this location.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On March 19, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate an east alternate segment to V-95 between Durango and Gunnison, Colorado (44 FR 16439). Also a west alternate segment to V-211 between Durango and Cortez. Since that time it has been determined that the proposed segment of V-95E could not be used at the desired altitudes. For this reason V-95 will not be changed at this time. With this exception, this amendment is the same as proposed in the notice. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The only comment received expressed no objection. Section 71.123 of Part 71 was republished in the **Federal Register** on January 2, 1979 (44 FR 307).

Rule

This amendment to Part 71 of the Federal Aviation Regulations adds a west alternate segment to V-211 from Durango, Colorado to Cortez, Colorado, via the INT of Durango 249°T (235°M) and the Cortez 150°T (136°M) radials.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979 as follows:

Under V-211 all after "Cortez, Colorado, 115° radials;" is deleted and "to Cortez, including a W alternate via INT Durango 249° and Cortez 150° radials." is substituted therefor.

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this

action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18493 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-EA-17]

Alteration of Federal Airways and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In a rule published in the **Federal Register** of June 4, 1979, Volume 44, page 31944, the effective date of August 9, 1979, is incorrect and is hereby changed to October 4, 1979, because of technical problems encountered in the installation process for the Calverton, N.Y., VORTAC.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: FR Doc. 79-17237 was published on June 4, 1979, (44 FR 31944) with an effective date of August 9, 1979, and alters several airways and a reporting point caused by the relocation of the Riverhead, N.Y. VORTAC to Calverton, N.Y. Technical problems arising from this relocation will not be resolved in time to flight check and commission the navigation aid prior to August 9, 1979. For this reason the effective date of this action is changed to October 4, 1979.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, FR Doc. 79-17237 as published on June 4, 1979, page 31944, is amended effective upon publication in the **Federal Register** as follows: In the "EFFECTIVE DATE" and in the "Adoption of the Amendment" "August 9, 1979." is deleted and "October 4, 1979." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18510 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-NE-1]

Designation of Airway Segments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends V-151 eastward from Providence, R.I., to Hyannis, Mass., via an intersection northwest of Hyannis on V-141, and extends V-203 eastward from Norwich, Conn., to Nantucket, Mass., via an intersection southwest of Nantucket on V-46. This action reduces the congestion in the Hyannis and Nantucket areas, additionally flight planning and communication time are reduced by designating two new routes as airways.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On May 7, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to extend V-151 eastward from Providence to the INT of Providence 079°T(094°M) and Hyannis 318°T(333°M) radials and to extend V-203 southeastward from Norwich to the INT of Norwich 120°T(134°M) and Nantucket 255°T(270°M) radials (44 FR 26748). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection to the proposal. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854. Section 71.123 of Part 71 was republished in the **Federal Register** on January 2, 1979, (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations adopts the rule as proposed and adds airway segments to V-151 and V-203. It extends V-151 to overlie V-141 from its described intersection to Hyannis and V-203 to overlie V-46 from its described intersection to Nantucket. By extending these airways to overlie present airways a reduction in flight planning and communication time is made without adjusting any controlled airspace. "Nantucket, Mass., 255°" under the proposed amendment in the notice should have been "Nantucket, Mass. 255°" the same as the proposal in the notice and is corrected herein. With these exceptions, this amendment is the same as initially proposed.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979, as follows:

Under V-151

"From Providence, R.I.," is deleted and "From Hyannis, Mass., via INT Hyannis 318° and Providence, R.I., 079° radials; Providence;" is substituted therefor.

Under V-203

"From Norwich, Conn.," is deleted and "From Nantucket, Mass., via INT Nantucket 255° and Norwich, Conn., 120° radials; Norwich" is substituted therefor.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on June 7, 1979

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18513 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-11]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment establishes a 700' and a 1,200' transition area at New Town, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the New Town Municipal Airport, New Town, North Datota.

EFFECTIVE DATE: 0901 G.m.t. August 9, 1979.

FOR FURTHER INFORMATION CONTACT: David M. Laschinger, Operations, Procedures and Airspace Branch Air, Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1979, the FAA published for comment a Notice of Proposed Rulemaking (NPRM) to establish a 700' and a 1,200' transition area at New Town, North Dakota (44 FR 23260). No objections were received in response to this Notice.

Rule

This Amendment to Subpart G of Part 71 of the Federal Aviation Regulations (FAR's) establishes a 700' and a 1,200' transition area at New Town, North Dakota. This action is necessary to provide controlled airspace for aircraft executing the new NDB standard instrument approach procedure to New Town Municipal Airport, New Town, North Dakota.

Drafting Information

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., August 9, as follows:

By amending Subpart G, § 71.181 by designating the following 700' and 1,200' transition areas:

New Town, North Dakota

That airspace extending upward from 700' above the surface within a 5-mile radius of the New Town Municipal Airport (latitude 47°57'59" N., longitude 102°28'36" W.) and within 3 miles each side of the 142° bearing from the New Town NDB (latitude 47°58'15" N., longitude 102°28'40" W.) extending from the 5-mile radius to the 8.5 miles southeast of the New Town NDB, and that airspace extending upward from 1,200' above the surface bounded on the east by the Minot, North Dakota 1,200' transition area and longitude 102°00'00" W., on the south and west by V71, on the north by V430 excluding the Williston, North Dakota 1,200' transition area.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves and established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 4, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18483 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-RM-09]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment establishes a 700' and a 1,200' transition area at Watford City, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the Watford City Municipal Airport, Watford City, North Dakota.

EFFECTIVE DATE: 0901 G.m.t. August 9, 1979.

FOR FURTHER INFORMATION CONTACT: David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On April 19, 1979, the FAA published for comment, A Notice of Proposed Rulemaking (NPRM) to establish a 700' and a 1,200' transition area at Watford City, North Dakota (44 FR 23259). No objections were received in response to this Notice.

Rule

This Amendment to Subpart G of Part 71 of the Federal Aviation Regulations (FAR's) establishes a 700' and a 1,200' transition area at Watford City, North Dakota. This action is necessary to provide controlled airspace for aircraft executing the new NDB standard instrument approach procedure to Watford City Municipal Airport, Watford City, North Dakota.

Drafting Information

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., August 9, 1979, as follows:

By amending Subpart G, § 71.181 by designating the following 700' and 1,200' transition areas:

Watford City, North Dakota

That airspace extending upward from 700' above the surface within a 5.5-mile radius of the Watford City Municipal Airport (latitude 47°47'58" N., longitude 103°15'24" W.) and within 3 miles each side of the 303° bearing from the Watford City NDB (latitude 47°47'58" N., longitude 103°15'09" W.) extending from the 5.5-mile radius to the 8.5 miles northwest of the Watford City NDB, and airspace extending upward from 1,200' above the surface bounded on the south by latitude 47°30'00" N., on the west and northwest by V465E, on the northeast and east by V71 excluding Williston, North Dakota, 1,200' transition area.

(Sec. 307(a), Federal Aviation Act of 1958, as amended, (49 U.S.C. 1348(a)); sec. 6(c),

Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 4, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18484 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-AL-7]

Revocation of Annette Island, Alaska, Control Zone

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Annette Island, Alaska, control zone. Revocation of the control zone will allow more efficient use of the airspace. The requirement for the control zone no longer exists. The 700-foot transition area within a 14-mile radius of Annette Island VORTAC shall remain in effect to protect a special instrument approach procedure which utilizes the Annette Island VORTAC to Ketchikan airport.

EFFECTIVE DATE: 0901 G.m.t., August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Jerry M. Wylie, Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513, telephone 907-271-5903.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revoke the Annette Island, Alaska, control zone. The Annette Island, Alaska, control zone was last described in § 71.171 of the Federal Aviation Regulations (44 FR 353) on January 2, 1979. All prescribed instrument approach procedures to Annette Island have been canceled and there is no longer a control tower in operation at the airport. Consequently, the requirement for a control zone no longer exists. The FAA believes that revocation of the control zone will allow more efficient use of this airspace. The aforementioned action will reduce the constraints and impact on the public in the affected airspace. Therefore, I find that notice and public procedure thereon are not necessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 353) is amended by revoking the Annette Island control zone.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 1134, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, and anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Anchorage, Alaska, on June 1, 1979.

Robert L. Faith,

Director, Alaskan Region.

[FR Doc. 79-18485 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-SO-78]

Alternation of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns Victor airway V-159 in the vicinity of Fort Lauderdale, Florida. This action provides an alternate route for traffic between Fort Lauderdale and Vero Beach, Florida and increases efficient use of the airspace by reducing congestion in the Palm Beach, Florida, area.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign a segment of V-159 between Fort Lauderdale and Vero Beach, Florida, to provide for more efficient use of the airspace (44 FR 18688). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to FAA. No objections were received. This amendment is that proposed in the notice. Subpart C of Part 71 was republished in the **Federal Register** on January 2, 1979 (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) realigns a segment of V-159 between Fort Lauderdale and Vero Beach, Florida. The realignment provides more flexibility for traffic operations in the area and reduces the potential for traffic congestion in the Palm Beach, Florida area. This action improves ATC services and provides for more efficient use of the airspace.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979, as follows:

Under V-159—"From Miami, Fla., INT Miami 337° and Palm Beach, Fla., 222° radials; Palm Beach; INT Palm Beach 326° and Vero Beach, Fla., 178° radials; Vero Beach;" is deleted and "From Fort Lauderdale, Fla., via Fort Lauderdale 339° and Vero Beach, Fla., 178° radials; Vero Beach;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18492 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-AL-5]

Rescission of Reporting Point

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment rescinds HAPIT as a compulsory reporting point at the intersection of bearings from Ocean Cape, Alaska, Nondirectional Radio Beacon (NDB) and Cape Spencer, Alaska, NDB. This action relieves pilots of the responsibility of reporting at this position without being asked to do so by air traffic control. This action also helps to simplify chart depiction.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Part 71 is to rescind the HAPIT reporting point in Alaska. This action will relieve a burden on pilots using Amber 1 and Blue 37 airways who have been required to report their position at this location without being asked to do so. Because this action merely rescinds a reporting point in accordance with the requirements of current air traffic control procedures without altering any route structure or designated airspace, it is a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to be by the Administrator, § 71.211 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 650) is amended, effective 0901 G.M.T., August 9, 1979, as follows:

HAPIT: title and text is deleted.

(Secs. 307(a), and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18497 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-RM-05]

Establishment of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a 700' and 1,200' transition area at Hettinger, North Dakota to provide controlled airspace for aircraft executing the new nondirectional radio beacon (NDB) standard instrument approach procedure developed for the Hettinger Municipal Airport, Hettinger, North Dakota.

EFFECTIVE DATE: 0901 G.m.t., August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On Monday, March 19, 1979, the FAA published for comment (44 FR 16438) a proposal to establish a 700' and 1,200' transition area at Hettinger, North Dakota. In the NPRM, it was noted that a typographical error was made in the description of the 700' transition area. In the fourth line it showed the 132° bearing; this should read the 157° bearing. This error was considered minor and is corrected in the final rule. The only comment received was from W. L. Marcy of the Experimental Aircraft Association (EAA), Rocky Mountain Region Chapter 301, objecting to the following:

a. The proposed 1,200' transition area could restrict VFR traffic and force VFR traffic to fly at relatively unsafe altitudes.

b. Off-airway IFR operations at large distances from an IFR airport as low as 1,500' AGL is unduly hazardous and creates an excessive area which must be monitored by ATC.

c. The 1,200' transition area is excessive in size.

In consideration of the objections by W. L. Marcy of the EAA, Rocky Mountain Chapter 301, is was disclosed that:

a. VFR aircraft are not restricted from controlled airspace as they can operate in controlled airspace in accordance with FAR 91.105. Additionally, the establishment of controlled airspace with its increased meteorological requirements will enhance aviation by virtue of enabling the air traffic control system to provide separation and enhance the pilot's responsibility when meterorological conditions permit, to see and avoid other traffic, terrain, or other obstacles, regardless of type of flight plan and whether or not under control of radar facility.

b. The minimum obstruction clearance altitude (MOCA) is 1,000' above the highest obstacle within a horizontal distance of 5 statue miles from the course to be flown. The 1,200' transition floor is designed to provide controlled airspace to assure air safety and allow flexibility to utilize all available airspace for all traffic control purposes.

c. The 1,200' transition area was designed to give the air traffic control system the flexibility to allow the IFR pilot to transition from the surrounding en route structure and navigational aids for expeditious routing and fuel economy to execute the new NDB standard instrument approach procedure developed for Hettinger Municipal Airport, Hettinger, North Dakota.

Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Administration regulations (FAR's) establishes 700' and 1,200' transition areas at Hettinger, North Dakota to provide controlled airspace for aircraft transitioning from the existing en route structure, navigational aids to execute the new NDB standard instument approach procedure developed for the Hettinger Municipal Airport, Hettinger, North Dakota.

Drafting Information

The principal authors of this document are Pruett B. Helm, Operations, Procedures and Airspace

Branch, Air Traffic Division, and Daniel J. Peterson, Office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., August 9, 1979, as follows:

By amending Subpart G, § 71.181 to establish the following transition area to read:

Hettinger, North Dakota

That airspace extending upward from 700' above the surface within a 5.5 mile radius of the Hettinger Municipal Airport (latitude 46°00'48" N., longitude 102°39'00" W.), and within 3 miles each side of the 157° bearing from the Hettinger NDB (latitude 46°00'59" N., longitude 102°38'55" W.) extending from the 5.5 mile radius area to 8.5 miles southeast of the Hettinger NDB, and that airspace extending upward from 1,200' above the surface bounded on the north by V-2, on the east by V-169, on the south by V-120, and on the west by the Bowman, North Dakota 1,200' transition area excluding the Bismark, North Dakota 1,200' transition area.

(Sec. 307(a) Federal Aviation Act of 1958 (49 U.S.C. 1348 (a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 5, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18500 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-RM-20]

Establishment and Alteration of Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment alters the existing 700' transition area and establishes a 1,200' transition area at Moab, Utah to provide controlled airspace for aircraft executing the new VOR/DME Runway 33 standard instrument approach procedure developed for Canyonlands Field Airport, Moab, Utah and additional controlled airspace for air traffic control purposes.

EFFECTIVE DATE: 0901 GMT August 9, 1979.

FOR FURTHER INFORMATION CONTACT: David M. Laschinger, Operatons, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1979, the FAA published for comment a Notice of Proposed Rulemaking (NPRM) to alter the 700' transition area and establish a 1,200' transition area at Moab, Utah. Two letters of objection were received as a result of this circular. The United States Air Force objected to the proposal based upon potential effect on military training routes. However, subsequent coordination resulted in the withdrawal of their objection. W. L. Marcy from the Experimental Aircraft Association (EAA), Chapter 301, objected to the proposal contending the following:

a. The 700' transition area as proposed is much larger than it needs to be.

b. With the establishment of a 1,200' transition area, VFR traffic attempting to traverse this region in IFR conditions, and therefore flying at 1,200' AGL or less, will be constrained to fly circuitous routes along canyons and washes, and dangerously near peaks and ridges which are often awash with severe up and downdrafts.

c. The FAA should consider the number of IFR flights per year anticipated at Canyonlands Field, the percentage of that number that may require the use of off-airway controlled airspace for holding purposes, the number of VFR operations per year at all five airports within this area, and the number of those operations that can be expected to be rerouted, curtailed, or canceled by being forced to avoid controlled airspace in IFR conditions.

d. The 1,200' transition area should be reduced and changed to a level floor zone appropriate to the needs of IFR flight and the ability of the ATC radar system to monitor it.

In consideration of the objections of Mr. Marcy it was disclosed:

a. The proposed 700' transition area was designed to contain arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface. Therefore, the size is deemed appropriate.

b. The establishment of controlled airspace, with its increased meteorological requirements, will enhance aviation safety by virtue of enabling the air traffic control system to provide separation and enhance the pilot's responsibility when meteorological conditions permit, to see and avoid other traffic, terrain or other obstacles, regardless of type of flight plan and whether or not under control of a radar facility.

c. The minimum obstruction clearance altitude (MOCA) is 1,000' above the highest obstacle within a horizontal distance of 5 statute miles from the course to be flown. The 1,200' transition floor is consistent with FAA policy to provide controlled airspace to assure air safety and allow flexibility to utilize all available airspace for air traffic control purposes.

Rule

This amendment to Subpart G of Part 71 of the Federal aviation Regulations (FAR's) alters the 700' transition area and establishes a 1,200' transition area at Moab, Utah. This action is necessary to provide controlled airspace for aircraft executing the new VOR/DME Runway 33 standard instrument approach procedure to Canyonlands Field Airport, Moab, Utah and additional controlled airspace for air traffic control purposes.

Drafting Information

The principal authors of this document are David M. Laschinger, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71 is amended effective 0901 G.M.T., August 9, 1979, as follows:

By amending Subpart G, § 71.181 by designating the following 700' and 1,200' transition areas:

Moab, Utah

That airspace extending upward from 700' above the surface within a 10 mile radius of the Canyonlands Field Airport, Moab, Utah (latitude 38°45'34.3" N., longitude 109°44'46.1" W.) and within 7 miles northeast and 10 miles southwest of the Moab VOR (latitude 38°45'23" N., longitude 109°44'55" W.) 301° radial extending from the 10 mile radius area to 18.5 miles northwest of Moab, Utah; and that airspace extending upward from 1,200' above the surface bounded on the north by

V-134, on the east by V-187W, on the south by V-244 and on the west by V-208, excluding the Price, Utah and Grand Junction, Colorado transition areas and all Federal airways.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on June 4, 1979.

M. M. Martin,

Director, Rocky Mountain Region.

[FR Doc. 79-18501 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 79-CE-7]

Designation of Transition Area—Emmetsburg, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Emmetsburg, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Emmetsburg, Iowa Airport, based on the Non-Directional Radio Beacon (NDB), a navigational aid being installed on the airport. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Emmetsburg, Iowa Airport, is being established based on a Non-Directional Radio Beacon (NDB), a navigational aid being installed on the airport. This radio facility provides new navigational guidance for aircraft utilizing the airport. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Emmetsburg, Iowa, at an above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On pages 21815 and 21816 of the **Federal Register** dated April 12, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Emmetsburg, Iowa. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442), is amended effective 0901 G.M.T. August 9, 1979, by adding the following new transition area:

Emmetsburg, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Emmetsburg Airport (latitude 43°06'12" N., longitude 94°42'24" W.) and within 3 miles each side of the 121° bearing from the Emmetsburg NDB (latitude 43°06'04" N., longitude 94°42'25" W.), extending from the 5-mile radius area to 8½ miles southeast of the airport and within 3 miles each side of the 326° bearing from the Emmetsburg NDB extending from the 5-mile radius area to 8½ miles northwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-18502 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-WA-7]

Designation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a very short segment of a Canadian airway V367 for a distance of less than 5 miles from the International Falls, Minnesota, VORTAC to the U.S./Canadian boundary on a direct radial to the Sioux Lookout, Ontario, radio beacon. This action would help to provide air traffic services, published radial/bearing and minimum altitudes on a route that is presently being used without these advantages.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to Part 71 is to designate the United States segment of Canadian airway V-367 between International Falls and Sioux Lookout as requested by the Canadian Government. This segment of airway is relatively short and is in an area that is presently designated as controlled airspace in Part 71; therefore, this action will add no new controlled airspace. Thus, it is a minor matter on which the public would have no particular desire to comment. Therefore, notice and public procedure are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979 by adding the following:

"V-367 From International Falls, Minnesota, to Sioux Lookout, Ontario, Canada, excluding the portion within Canada."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a));

sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18503 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 78-EA-74]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Stone Harbor, N.J., transition area. This action lowers the floor of controlled airspace outside the United States to permit a lower minimum en route altitude to accommodate helicopter activity to and from oil rig sites east of the state of New Jersey.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a Stone Harbor, N.J., transition area (44 FR 25865). This action would lower the floor of controlled airspace from 2,000 feet MSL to 1,200 feet MSL. Such action would permit a reduction in the available minimum en route altitude from 2,300 feet MSL to 1,500 feet MSL to accommodate IFR helicopter over water operations to and from oil rig sites east of the state of New Jersey. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received. Section 71.181 was republished in the **Federal Register** on January 2, 1979 (44 FR 442).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a Stone Harbor, N.J., transition area to lower the floor of controlled airspace to permit a reduction in minimum en route altitude from 2,300 feet MSL to 1,500 feet MSL. This reduction would permit the use of lower altitudes to accommodate IFR helicopter over water operations to and from off-shore oil rig sites.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 G.M.T., August 9, 1979, as follows:

Under § 71.181 add—"Stone Harbor, N.J. That airspace extending upward from 1,200 feet MSL beginning at Lat. 39°10'00" N., Long. 74°40'00" W.; to Lat. 38°48'00" N., Long. 74°08'00" W.; to Lat. 38°59'00" N., Long. 74°45'00" W.; to point of beginning."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18504 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-SW-3]

Alternation of VOR Federal Airway V-17

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment rescinds a segment of V-17E between San Antonio, Tex., and Austin, Tex., and also establishes a standard west alternate (V-17W) between McAllen, Tex., and Laredo, Tex. This alternate airway helps to expedite the movement of air traffic northwest of McAllen. V-17E is not used north of San Antonio.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On April 12, 1979, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to rescind a segment of V-17E between San Antonio, and Austin, because it is not used and designate a segment of V-17W between McAllen, and Laredo to help expedite the movement of air traffic northwest of McAllen, (44 FR 21814).

Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection to the proposal. Section 71.123 of Part 71 was published in the **Federal Register** on January 2, 1979, (44 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations rescinds an unused segment of alternate airway between San Antonio and Austin. This will help to reduce chart clutter and possible confusion in that area. This amendment also designates a new segment of alternate airway between McAllen and Laredo to help reduce congestion and increase air traffic handling capability in that area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 307) is amended, effective 0901 G.m.t., August 9, 1979 as follows:

Under V-17 "Laredo, Tex.;" is deleted and "Laredo, Tex., including a W alternate;" is substituted therefor. Also, "Austin, including an east alternate via the INT of San Antonio 058° and Austin 211° radials, and also" is deleted and "Austin," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 6, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18505 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-GL-7]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate controlled airspace near Warroad, Minnesota to accommodate a new instrument approach into Warroad International Airport (Swede Carlson Field), Warroad, Minnesota, established on the basis of a request from the Warroad Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual conditions. The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 22471 of the **Federal Register** dated April 16, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Warroad, Minnesota. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective August 9, 1979, as follows:

In § 71.181 (44 FR 442), the following addition should be made to the existing Warroad, Minnesota transition area:

Warroad, Minnesota

That airspace extending upward from 700 feet above the surface within a 6 statute mile radius (5.3 nautical miles) of the Warroad International, Swede Carlson Field (latitude 48°65'15"N., longitude 95°20'30"W., estimated) excluding that area north of latitude 49° (Canadian airspace) and within three statute miles (2.5 nautical miles) each side of the 108° true bearing from the Warroad International, Swede Carlson Field, extending from the six statute mile (5.3 nautical miles) radius to 8.5 statute miles (7 nautical miles) east southeast of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 79-GL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Issued in Des Plaines, Ill., on June 8, 1979.

Wayne J. Barlow,

Acting Director, Great Lakes Region.

[FR Doc. 79-18126 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-GL-3]

Designation of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate controlled airspace near Neilsville, Wisconsin to accommodate a new non-directional beacon (NDB) Runway 27 instrument approach into Neilsville Municipal Airport, Neilsville, Wisconsin, established on the basis of a request from the Neilsville Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual conditions.

The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedures necessitates the FAA to lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 20448 of the **Federal Register** dated April 5, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Neilsville,

Wisconsin. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective August 9, 1979, as follows:

In § 71.181 (44 FR 442), the following addition should be made to the existing Neilsville, Wisconsin transition area:

Neilsville, Wisconsin

That airspace extending upward from 700 feet above the surface within a five (5) mile radius of Neilsville Municipal Airport (latitude 44°33'16" N., longitude 90°30'43" W.) and within three (3) miles each side of the 092° bearing from the Neilsville Airport, extending from the five (5) mile radius area to eight (8) miles east of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (47 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61)).

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 79-GL-3, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Ill., on June 8, 1979.

Wayne J. Barlow,

Acting Director, Great Lakes Region.

[FR Doc. 79-18125 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 79-NW-2]

Establishment of Temporary Restricted Areas and Alteration of Continental Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish temporary joint use restricted areas in the Yakima, Wash., area to contain a military joint readiness exercise called BRAVE SHIELD 20. This action provides for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the temporary restricted areas during the hours this area is activated August 16 through August 23, 1979.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1979, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish Temporary Restricted Areas identified as R-6714A, R-6714B, R-6714C, R-6714D, R-6714E, R-6714G and R-6714H in the Fort Lewis/Yakima, Wash., area to contain a military joint service exercise known as BRAVE SHIELD 20. Since these restricted areas penetrate the Continental Control Area, they are added to Subpart D of Part 71 to provide controlled airspace for the duration of their designation (44 FR 23877). Interested persons were invited to participate in the rulemaking by submitting written comments on the proposal to the FAA. No comments were received. Sections 71.151 and 73.67 were republished in the **Federal Register** on January 2, 1979 (44 FR 344 and 716).

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations designate Temporary Restricted Areas in the vicinity of Yakima, Wash., to protect nonparticipating aircraft during the time that BRAVE SHIELD 20 readiness exercise is in operation. In addition, the airspace at above 14,500 feet MSL within these Temporary Restricted Areas during the designated period is included in the Continental Control Area. Headquarters Tactical Air Command has provided certification that the requirements of the National Environmental Policy Act has been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart D of Part 71 and Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 344 and 716) is amended, effective 0901 G.M.T., August 9, 1979 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

§ 71.151 [Amended]

Under § 71.151 (44 FR 344) the following temporary restricted areas are added for the duration of their time of designation from 0001 local time August 16, 1979 to 2359 local time August 23, 1979.

R-6714E BRAVE SHIELD 20, Wash.
R-6714F BRAVE SHIELD 20, Wash.
R-6714G BRAVE SHIELD 20, Wash.
R-6714H BRAVE SHIELD 20, Wash.

PART 73—SPECIAL USE AIRSPACE

§ 73.67 [Amended]

Under § 73.67 (44 FR 716) the following temporary restricted areas are added:

R-6714E BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°37'00" N., Long. 120°20'00" W.; to Lat. 46°39'00" N., Long. 120°29'00" W.; to Lat. 46°45'00" N., Long. 120°38'00" W.; to Lat. 46°56'00" N., Long. 120°31'00" W.; to Lat. 46°59'00" N., Long. 119°57'00" W.; to Lat. 46°54'30" N., Long. 120°15'00" W.; along the western boundary of R-6714A to point of beginning.
Designated altitudes. 200 feet AGL up to and including 6,000 feet MSL.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6714F BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°59'00" N., Long. 119°57'00" W.; to Lat. 46°58'00" N., Long. 119°19'00" W.; to Lat. 46°52'00" N., Long. 119°15'00" W.; to Lat. 46°49'00" N., Long. 119°15'00" W.; to point of beginning.
Designated altitudes. 15,000 feet MSL up to and including FL 200.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6714G BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°54'30" N., Long. 120°15'00" W.; to Lat. 46°59'00" N., Long. 119°57'00" W.; to Lat. 46°49'00" N., Long. 119°15'00" W.; to Lat. 46°46'00" N., Long. 119°15'00" W.; to Lat. 46°46'00" N., Long. 119°03'00" W.; to Lat. 46°40'00" N., Long. 118°57'00" W.; to Lat. 46°39'00" N., Long. 119°22'00" W.; to Lat. 46°27'00" N., Long. 119°41'00" W.; to Lat. 46°33'00" N.,

Long. 120°09'00" W.; thence along the southern boundaries of R-6714C/B and the eastern boundaries of R-6714B/A to the point of beginning, but excluding the airspace at and below 2,200 feet MSL within a 1½ NM radius of Vantage, Wash., Airport, and within a corridor extending northward from the airport and conforming to the boundaries of the Columbia River.

Designated altitudes. 200 feet AGL up to and including FL 200.

Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.

Controlling agency. Federal Aviation Administration, Seattle ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R-6714H BRAVE SHIELD 20, Wash.

Boundaries. Beginning at Lat. 46°27'00" N., Long. 119°41'00" W.; to Lat. 46°39'00" N., Long. 119°22'00" W.; to Lat. 46°40'00" N., Long. 118°57'00" W.; to Lat. 46°20'00" N., Long. 119°15'00" W.; to point of beginning.

Designated altitudes. 15,000 feet MSL up to and including FL 200.

Time of designation. Continuous, 0001 August 16 to 0001, local time, August 23, 1979.

Controlling agency. Federal Aviation Administration, Seattle ARTC Center.

Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18511 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 78-EA-73]

Alteration of Federal Airways and Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments divide the Warren Grove, N.J., restricted area (R-5002) into five areas and increase the overall restricted airspace. They also alter airways to bypass or exclude the restricted areas. These actions permit greater use of the separate areas for military and nonmilitary use.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On March 26, 1979, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to increase the size of the Warren Grove, N.J., restricted area and divide it into five areas, and to alter several airways to bypass or exclude the restricted areas (44 FR 18043). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objection to the proposal except for one commentor who objected to that part of the proposal to expand R-5002B over a small part of the Garden State Parkway which is occasionally used as a VFR flyway. Action is taken herein to reduce the proposed expansion of R-5002B to the extent that it will not conflict with this flyway. This reduction is satisfactory to the objector and to the military proponent. This rule is the same as the Notice of Proposed Rule Making (NPRM) except that the size of R-5002B is reduced as stated above and the alteration of V-44 is an addition of a south alternate via the proposed route rather than the realignment of the present airway between Atlantic City and Deer Park. Retention of the present alignment of V-44 will permit the use of this shorter route when the restricted areas are not in use. Because these changes from the NPRM merely retain the segment of V-44, renumber the new segment as V-44S and reduce the proposed size of R-5002B, they are minor matters on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon are unnecessary. § 71.123 of Part 71 and § 73.50 of Part 73 were published in the **Federal Register** on January 2, 1979 (44 FR 307, 702) and amended (44 FR 1087).

Since these actions involve in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations alter the Warren Grove restricted area by enlarging it and dividing it into five separate areas and alter V-44, V-229, V-1, V-16, and V-312 airways to bypass or exclude the Warren Grove restricted areas. Alignment of a segment of V-44E via the INT of Atlantic City, N.J., 055°T (065°M) and Deer Park, N.Y., 209°T (221°M) radials and the realignment of a segment of V-229 via the INT of Altantic City 055°T (065°M) and Kennedy, N.Y., 194°T (205°M) radials cause these airways to bypass the restricted areas sufficiently to permit their simultaneous use. Segments of these airways are reduced slightly in width. Dividing the restricted areas provide for a greater use of the airspace by permitting different areas (upper, lower, side by side) to be used for military and nonmilitary operation at the same time.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 307, 702) and amended (44 FR 1087) is further amended, effective 0901 G.m.t., August 9, 1979 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

§ 71.123 [Amended]

In § 71.123; Under V-1 "R-5002 is excluded." is deleted and "R-5002A, R-5002C and R-5002D are excluded during their times of use." is substituted therefor.

Under V-16 "The airspace within R-5002A, R-5002C and R-5002D is excluded during their times of use." is added.

Under V-44 all after "Atlantic City;" is deleted and "INT Atlantic City 048° and Deer Park, N.J., 209° radials, including a south alternate via INT Atlantic City 055° and Deer Park 209° radials; to Deer Park. The airspace within R-4001B, R-5002A, R-5002B and R-5002E is excluded during their times of use. The airspace within V-139, V-308 airways is excluded. The airspace below 2,000 feet MSL outside the United States is excluded." is substituted therefor.

Under V-229 "INT of Atlantic City 048° and Kennedy, N.Y., 195° radials;" is deleted and "INT of Atlantic City 055° and Kennedy, N.Y., 194° radials;" is substituted therefor. All after "Burlington, Vt., 160° radials;" is deleted and "Burlington. The airspace within R-5002A, R-5002B and R-5002E is excluded during their times of use. The airspace within V-139, V-308 airways; the airspace below 2,000 feet MSL outside the United States and the airspace above 7,000 feet MSL between the INT of Atlantic City 055° and Kennedy 194° radials and Kennedy is excluded." is substituted therefor.

Under V-312 "R-5002" is deleted and "R-5002D" is substituted therefor.

PART 73—SPECIAL USE AIRSPACE

§ 73.50 [Amended]

In § 73.50 R-5002 Warren Grove, N.J., title and text is deleted.

R-5002A Warren Grove, N.J., is added as follows:

R-5002A Warren Grove, N.J.

Boundaries: Beginning at lat. 39°43'25" N., long. 74°17'37" W.; to lat. 39°38'25" N., long. 74°24'20" W.; to lat. 39°38'30" N., long. 74°29'30" W.; to lat. 39°39'20" N., long. 74°30'00" W.; to lat. 39°44'50" N., long. 74°24'40" W.; to lat. 39°44'50" N., long. 74°19'20" W.; to the point of beginning.
Designated altitudes: Surface to 14,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Adminstration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002B Warren Grove, N.J., is added as follows:

R-5002B Warren Grove, N.J.

Boundaries: Beginning at lat. 39°41'00" N., long. 74°20'52" W.; to lat. 39°40'10" N., long. 74°20'15" W.; to lat. 39°38'50" N., long. 74°21'20" W.; to lat. 39°36'00" N., long. 74°26'30" W.; to lat. 39°36'00" N., long. 74°27'30" W.; to lat. 39°37'00" N., long. 74°28'50" W.; to lat. 39°38'30" N., long. 74°29'30" W.; to lat. 39°38'25" N., long. 74°24'20" W.; to the point of beginning.
Designated altitudes: 1,000 feet MSL to 14,000 feet MSL.
Time of designation: Sunrise to sunset Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002C Warren Grove, N.J., is added as follows:

R-5002C Warren Grove, N.J.

Boundaries: Beginning at lat. 39°39'20" N., long. 74°30'00" W.; to lat. 39°40'30" N., long. 74°30'40" W.; to lat. 39°44'50" N., long. 74°27'30" W.; to lat. 39°44'50" N., long. 74°24'40" W.; to the point of beginning.
Designated altitudes: Surface to 3,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002D Warren Grove, N.J., is added as follows:

R-5002D Warren Grove, N.J.

Boundaries: Beginning at lat. 39°44'50" N., long. 74°24'40" W.; to lat. 39°45'20" N., long. 74°23'45" W.; to lat. 39°45'50" N., long. 74°20'00" W.; to lat. 39°44'50" N., long. 74°19'20" W.; to the point of beginning.
Designated altitudes: Surface to 4,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

R-5002E Warren Grove, N.J., is added as follows:

R-5002E Warren Grove, N.J.

Boundaries: Beginning at lat. 39°43'25" N., long. 74°17'37" W.; to lat. 39°41'00" N., long. 74°20'52" W.; to lat. 39°40'10" N., long. 74°20'15" W.; to the point of beginning.
Designated altitudes: 3,500 feet MSL to 14,000 feet MSL.
Time of designation: Sunrise to sunset, Tuesday through Saturday; other days by NOTAM 48 hours in advance.
Controlling agency: Federal Aviation Administration, New York ARTCC.
Using agency: Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, N.J.

(Secs. 307(a), 313(a) and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a) and 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18514 Filed 6-13-79; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 78-RM-35]

Designation of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments designate a restricted area at Blanding, Utah, to contain the launching and patterns of Advanced Strategic Air Launched Missiles (ASALM). These actions provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations within the restricted area during its time of designation.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Watterson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On may 10, 1979, the FAA proposed to amend Parts 71 and 73 of Federal Aviation Regulations (14 CFR Parts 71 and 73) to designate a restricted area identified as R-6410, Blanding, Utah, to contain the launching and patterns of Advanced Strategic Air Launched Missiles (ASALM) (44 FR 27434). Since the restricted area would penetrate the Continental Control Area, the FAA proposed to list it under § 71.151 to provide controlled airspace above 14,500 feet MSL. The affected airspace would be prohibited to nonparticipating aircraft during its time of use by the military. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to FAA. No objections were received. Sections 71.151 and 73.64 were republished in the **Federal Register** on January 2, 1979 (44 FR 344 and 713).

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations designate restricted area airspace at

Blanding, Utah, to protect nonparticipating aircraft during the time that the area is used for the launching patterns of Advanced Strategic Air Launched Missiles (ASALM). Additionally, the airspace at and above 14,500 feet MSL within the restricted area is included in the Continental Control Area during its time of designation. The U.S. Army has advised that the requirements of the National Environmental Policy Act (NEPA) have been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 344 and 713) are amended, effective 0901 G.m.t., August 9, 1979 as follows:

Under § 71.151 (44 FR 344), the following restricted area is added: "R–6410, Blanding, Utah"

Under § 73.64 (44 FR 713), the following is added:

"R–6410 Blanding, Utah

Boundaries. Beginning at Lat. 37°34'08" N., Long. 109°34'16" W.; to Lat. 37°16'10" N., Long. 109°16'00" W.; to Lat. 37°11'40" N., Long. 109°25'15" W.; to Lat. 37°32'36" N., Long. 109°36'54" W.; to point of beginning.

Designated altitudes. Surface to unlimited.

Time of designation. To be activated by NOTAM at least 12 hours in advance.

Controlling agency. Federal Aviation Administration, Denver Air Route Traffic Control Center.

Using Agency. Deputy for Air Force, Armament Development and Testing Center, White Sands Missile Range, New Mex."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note: The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18498 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 78-RM-32]

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Restricted Area R–7001 from its current designated hours and date to "Intermittent," and divides the restricted area vertically as R–7001A and R–7001B. There is no change to the current lateral and vertical limits of the restricted area.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

SUPPLEMENTARY INFORMATION: On March 1, 1979, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the description of Restricted Area R–7001 by changing the time of designation to "Intermittent" (44 FR 11559). At the present time it is designated as "From 0430 to 2400 local time, March 1 through November 30." Also, R–7001 is vertically segmented as R–7001A and R–7001B. The lateral and vertical limits of the restricted area remain the same. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No objections were received. The amendment is the same as that proposed in the notice. Section 73.70 was republished in the **Federal Register** on January 2, 1979 (44 FR 718).

The Rule

The purpose of this amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is to change the time of designation of R–7001A and R–7001B from its present designation "From 0430 to 2400 local time March 1 through November 30." to "Intermittent." This action will give the U.S. Army more flexibility for training and increased air-to-ground firing.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 718) is amended, effective 0901 G.m.t., August 9, 1979, as follows:

R–7001 Guernsey, Wyo., is rewritten as follows:

R–7001A Guernsey, Wyo.

Boundaries. Beginning at Lat. 42°27'30" N., Long. 104°52'30" W.; to Lat. 42°27'30" N., Long. 104°42'30" W.; to Lat. 42°22'30" N., Long. 104°42'30" W.; to Lat. 42°20'00" N., Long. 104°52'30" W.; to the point of beginning.

Designated altitudes. Surface to but not including 8,000 feet MSL.

Time of designation. Intermittent, 24 hours in advance by NOTAM.

Controlling agency. Federal Aviation Administration, Denver ARTCC.

Using agency. Adjutant General, State of Wyoming.

R–7001B Guernsey, Wyo.

Boundaries. Beginning at Lat. 42°27'30" N., Long. 104°52'30" W.; to Lat. 42°27'30" N., Long. 104°52'30" W.; to Lat. 42°27'30" N., Long. 104°42'30" W.; to Lat. 42°22'30" N., Long. 104°42'30" W.; to Lat. 42°20'00" N., Long. 104°52'30" W.; to the point of beginning.

Designated altitudes. 8,000 feet MSL to 23,500 feet MSL.

Time of designation. Intermittent, 24 hours in advance by NOTAM.

Controlling agency. Federal Aviation Administration, Denver ARTCC.

Using agency. Adjutant General, State of Wyoming.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1345(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

Note: The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of regulatory evaluation.

Issued in Washington, D.C. on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18494 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 79-NW-3]

Temporary Restricted Area Designation and Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a temporary restricted area in the vicinity

of Fort Lewis, Wash., and alters the Fort Lewis restricted areas R–6703A, B, C and D temporarily by changing their upper limits to include 9,000 feet MSL to contain a major military exercise (BRAVE SHIELD 20). This action provides for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the joint use restricted airspace during the time the areas are in use from August 16 to August 23 inclusive.

EFFECTIVE DATE: August 9, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3715.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1979, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to designate a temporary restricted area in the vicinity of Fort Lewis and alter the present four restricted areas there temporarily to contain a major military exercise for approximately ten days (44 FR 23878). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 73.67 of Part 73 was published in the Federal Register January 2, 1979, (44 FR 716).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) designates a temporary restricted area R–6703 Subarea E and alters restricted areas R–6703 Subareas A, B, C and D to contain the BRAVE SHIELD 20 military exercise. This action provides for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the joint use restricted airspace during the times the areas are in use. Headquarters Tactical Air Command has provided certification that the requirements of the National Environmental Policy Act have been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 § 73.67 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 716) is amended, effective 0901 G.M.T., August 9, 1979, as follows:

1. In R–6703 Subarea A, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

2. In R–6703 Subarea B, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

3. In R–6703 Subarea C, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

4. In R–6703 Subarea D, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

5. In R–6703 Subarea E is added as follows:

Boundaries. Beginning at Lat. 47°04'35"N., Long. 122°41'05"W.; to Lat. 47°04'21"N., Long. 122°42'15"W.; to Lat. 46°59'47"N., Long. 122°47'00"W.; to Lat. 46°54'23"N., Long. 122°47'07"W.; to Lat. 46°52'50"N., Long. 122°44'07"W.; to Lat. 46°52'50"N., Long. 122°42'05"W.; to Lat. 46°54'11"N., Long. 122°39'12"W.; to Lat. 46°54'50"N., Long. 122°35'26"W.; to Lat. 46°56'07"N., Long. 122°34'11"W.; to Lat. 46°56'33"N., Long. 122°33'09"W.; to Lat. 46°59'43"N., Long. 122°32'32"W.; to Lat. 47°01'00"N., Long. 122°31'37"W.; to Lat. 47°01'48"N., Long. 122°31'36"W.; to Lat. 47°03'38"N., Long. 122°35'36"W.; to Lat. 47°04'42"N., Long. 122°38'15"W.; to point of beginning.

Excluding the airspace 2,000 feet AGL and below within a 1NM radius of the center of the town of Yelm, (Lat. 46°56'30"N., Long. 122°36'20"W.) and within a ½ NM radius of the center of the town of Roy, (Lat. 47°05'00"N., Long. 122°32'30"W.); the airspace 1,000 feet AGL and below within a ½NM radius of the center of the town of Nisqually, (Lat. 47°03'40"N., Long. 122°41'50"W.) and within a ½NM radius of the center of the town of Rainier, (Lat. 46°53'10"N., Long. 122°41'05"W.) and within a 1NM radius of the center of the Western Airpark Airport, (Lat. 46°55'29"N., Long. 122°33'02"W.) and within a ½NM radius of the center of the Flying Carpet Airport, (Lat. 46°57'55"N., Long. 122°47'45"W.).

Designated altitudes. 500 feet AGL to and including 9,000 feet MSL.

Time of designation. From 0001 PDT August 16 to 0001 PDT August 24, 1979.

Controlling agency. Federal Aviation Administration, McChord Approach Control.

Using agency. U.S. Air Force Tactical/ Readiness Command, Langley AFB, Va.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79–18512 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 19241; Amdt. No. 1140]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Lewis O. Ola, Flight Procedures and Airspace Branch (AFS–730), Aircraft Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

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

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

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

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

Adoption of the Amendment

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

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

** * * Effective August 9, 1979:*

Hayward, CA—Hayward Air Terminal, VOR-A, Amdt. 6
Hayward, CA—Hayward Air Terminal, VOR/DME/B, Amdt. 1
Danville, IL—Vermilion County, VOR Rwy 21, Amdt. 8
Danville, IL—Vermilion County, VOR/DME Rwy 3, Amdt. 6
Springfield, KY—Lebanon-Springfield, VOR/DME Rwy 11, Original
Fond du Lac, WI—Fond du Lac County, VOR/DME Rwy 18, Amdt. 4
Fond du Lac, WI—Fond du Lac County, VOR/DME Rwy 36, Amdt. 4

** * * Effective July 26, 1979:*

Fayetteville, AR—Drake Field, VOR-A, Amdt. 18
Kendallville, IN—Kendallville Municipal, VOR-A, Amdt. 2
Ironwood, MI—Gogebic County, VOR Rwy 9, Amdt. 8
Ironwood, MI—Gogebic County, VOR/DME Rwy 27, Amdt. 4
Sparta, MI—Sparta, VOR-A, Amdt. 1
Tecumseh, MI—A1 Meyers, VOR-A, Amdt. 4
Corvallis, OR—Corvallis Muni, VOR-A, Amdt. 4
Corvallis, OR—Corvallis Muni, VOR-B, Amdt. 2
Corvallis, OR—Corvallis Muni, VOR/DME Rwy 17, Amdt. 2
Corvallis, OR—Corvallis Muni, VOR/DME Rwy 35, Amdt. 5
Newport, OR—Newport Muni, VOR-A, Amdt. 1
Newport, OR—Newport Muni, VOR/DME Rwy 16, Amdt. 4
Roseburg, OR—Roseburg Muni, VOR-A, Amdt. 3
Beaumont, TX—Beaumont Muni, VOR/DME Rwy 12, Original
Beaumont, TX—Beaumont Muni, VOR/DME Rwy 30, Amdt. 1
Houston, TX—William P. Hobby, VOR/DME or TACAN Rwy 4, Amdt. 12

** * * Effective July 12, 1979:*

Spokane, WA—Spokane Int'l, VOR Rwy 3, Amdt. 12

** * * Effective June 5, 1979:*

Chattanooga, TN—Lovell Field, VOR Rwy 32, Amdt. 13

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

** * * Effective August 9, 1979:*

Danville, IL—Vermilion County, LOC Rwy 21, Original
Glasgow, KY—Glasgow Municipal, SDF Rwy 7, Amdt. 2
Muskegon, MI—Muskegon County, LOC Rwy 23, Original
Temple, TX—Draughon-Miller Muni, LOC BC Rwy 33, Amdt. 5
Fond du Lac, WI—Fond du Lac County, SDF Rwy 36, Amdt. 3

** * * Effective July 26, 1979:*

Fayetteville, AR—Drake Field, LOC Rwy 16, Amdt. 7
Beaumont—Port Arthur, TX—Jefferson County, LOC BC Rwy 29, Amdt. 14
Houston, TX—William P. Hobby, LOC BC Rwy 22, Amdt. 19

** * * Effective July 12, 1979*

Enid, OK—Enid Woodring Muni, LOC Rwy 35, Amdt. 1
Spokane, WA—Spokane Int'l, LOC Rwy 3, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective August 9, 1979:*

French Lick, IN—French Lick Municipal, NDB Rwy 26, Amdt. 4
Washington, IN—Daviess County, NDB Rwy 18, Amdt. 4
Glasgow, KY—Glasgow Municipal, NDB Rwy 7, Amdt. 3
Warroad, MN—Warroad Intl-Swede Carlson Field, NDB Rwy 31, Original
Fond du Lac WI—Fond du Lac County, NDB Rwy 9, Amdt. 3
Neillsville, WI—Neillsville Municipal, NDB Rwy 27, Original

** * * Effective July 26, 1979:*

Kankakee, IL—Greater Kankakee, NDB Rwy, Amdt. 4, cancelled
Patterson, LA—Harry P. Williams Memorial, NDB Rwy 5, Amdt. 5
Houston, TX—William P. Hobby, NDB Rwy 4, Amdt. 29

** * * Effective June 4, 1979:*

Olathe, KS—Johnson County Industrial, NDB Rwy 35, Amdt. 1

4. By amending § 97.29 ILS–MLS SIAPs identified as follows:

** * * Effective August 9, 1979:*

Temple, TX—Draughon-Miller Muni, ILS Rwy 15, Amdt. 5

** * * Effective July 26, 1979:*

Miami, FL—Miami International, ILS Rwy 27L, Amdt. 18
Beaumont-Port Arthur, TX—Jefferson County, ILS Rwy 11, Amdt. 17
Galveston, TX—Scholes Field, ILS Rwy 13, Amdt. 4
Houston, TX—Houston Intercontinental, ILS Rwy 14, Amdt. 5
Houston, TX—William P. Hobby, ILS Rwy 4, Amdt. 30
Houston, TX—William P. Hobby, ILS Rwy 13, Amdt. 4

** * * Effective July 12, 1979:*

Oxnard, CA—Oxnard, ILS Rwy 25, Amdt. 3

** * * Effective June 4, 1979:*

Olathe, KS—Johnson County Industrial, ILS Rwy 35, Amdt. 1

** * * Effective May 30, 1979:*

Wilmington, DE—Greater Wilmington, ILS Rwy 1, Amdt. 14

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

Note.—The FAA published an amendment in Docket No. 19154, Amdt. No. 1138 to Part 97 of the Federal Aviation Regulations (Vol 44 FR No. 97 page 28789; dated Thursday, May 17, 1979) under § 97.31 effective June 28, 1979, which is hereby amended as follows:

Fairbanks, AK—Fairbanks INTL, Radar-1, Original. Change Effective Date to June 14, 1979.

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on June 8, 1979.

James M. Vines,

Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 79-18509 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

[Regulation ER-1130; Amdt. 66; Docket 29387]

14 CFR Part 288

Exemption of Air Carriers for Military Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule establishes a 3.11 percent fuel surcharge rate applicable to the minimum military charter rates (ER–1045, December 27, 1977) for foreign and overseas air transportation services performed for the Department of Defense (DOD) and procured by the Military Airlift Command (MAC). This surcharge amendment is effective May 1, 1979, and is triggered by an increase in the average fuel price for the participating MAC carriers of 5.65 cents per gallon—from 41.31 cents per gallon to 46.96 cents per gallon.

DATES: Adopted: June 7, 1979. Effective: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: James E. Gardner, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, Phone: 202–673–5364.

SUPPLEMENTARY INFORMATION: As indicated in ER–1024 (42 FR 58902, November 11, 1977), dated November 3, 1977, the Board monitors fuel price changes and will establish a fuel surcharge rate adjustment when the average price of fuel for participating MAC carriers changes one cent or more per gallon. ER–1111, effective March 21, 1979, established a fuel surcharge of 1.40 percent based on January 1979 data.

The Board has completed its review of the latest available fuel cost data as reported on C.A.B. Form 41, Schedule P–12(a) for foreign and overseas MAC air transportation services for the month of April 1979, and is establishing surcharge provisions in Part 288 of its Economic Regulations (14 CFR Part 288) applicable to the rates established for those services.[1] The basis for issuing this surcharge amendment is the increase in average fuel price for the participating MAC carriers of 5.65 cents per gallon—from 41.31 cents per gallon reflected in the currently effective base rates to the latest reported average price of 46.96 cents per gallon.

The attached Appendix sets forth the results of the surcharge rate computation for the reported fuel price changes for commercial and military fuels consumed in military charter service for the month of April 1979, and the rate impact of the changes in current average fuel prices from those reflected in the base rates. Accordingly, we will establish the fuel surcharge rate applicable to the current base final rates, effective May 1, 1979, to increase the Category B and Category A rates by 3.11 percent.

In our notice of Final Action on Revised Procedures for Part 288 Fuel Surcharge Amendments, Docket 29759, December 22, 1976, we stated that "in the event that we are unable to issue a fuel surcharge amendment reasonably within the customary period of time after the fuel reports are filed, we shall examine our established procedure and determine whether any modifications are warranted at that time."

Our last two fuel surcharge rule amendments were effective three months apart—December 21, 1978 and March 21, 1979, and the carriers had to wait between seven and eleven weeks from the time fuel prices escalated to the level which triggered the surcharge amendment procedure to the date when the revised rates became effective. Fuel prices are now increasing more frequently and at a much steeper rate than in the past so that any significant time lapse between the time fuel prices escalate and the time revised MAC rates become effective can work a hardship on the carriers. Therefore, in order to reduce this time lapse, we find it reasonable to make this and future fuel surcharge amendments effective the first day of the month following the month of the latest fuel price report used as a basis for determining a revised fuel surcharge. Since the fuel surcharge determined here is based on reported data for the month of April 1979, the revised surcharge shall become effective May 1, 1979.

In view of the present need for a fuel surcharge to the minimum rates set forth in Part 288, we find that good cause

[1] This and future surcharge amendments will be made applicable to the minimum MAC rates established in ER–1045, effective December 27, 1977, until such time as new final base rates may be established.

exists for adopting these amendments without notice and public procedure and for making them effective on less than thirty (30) days' notice.

In consideration of the foregoing, the Board amends Part 288 of its Economic Regulations (14 CFR Part 288), as follows:

1. Amend § 288.7(a) by amending the paragraph following the tables so as to reflect an additional proviso, and amend the proviso to paragraphs (d) (1) and (2) to read as follows:

§ 288.7 Reasonable level of compensation.

* * * * *

(a) * * *

* * * * *

Provided, That subject to the provisions of § 288.8, the minimum rates set forth above shall not be applicable to passengers or cargo carried on a particular trip in excess of the amount that the contract calls for DOD to supply and the carrier to provide space: *And provided further,* That if a carrier performs a one-way charter flight carrying nonmilitary traffic for a nonmilitary user, the carrier may charter the return flight of that aircraft to DOD at a published one-way charter traffic rate that is in fact available to the general public for equivalent services: *Provided, however,* That the total minimum compensation pursuant to the rates set forth in paragraph (a)(1) above for services performed on or after May 1, 1979, with regular jet, wide-body jet and DC-8-61/63 aircraft shall be increased by a surcharge of 3.11 percent.

* * * * *

(d) * * *

(1) * * *

(2) * * *

Provided, That the total minimum compensation pursuant to the rates specified in paragraphs (a)(1) and (a)(2) of § 288.7 shall be increased by a surcharge of 3.11 percent for services performed on or after May 1, 1979.

* * * * *

(Secs. 204, 403 and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758 and 771, as amended: 49 U.S.C. 1324, 1373 and 1386.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

Appendix.—*MAC Long-Range Carriers*

[Computation of fuel surcharge based on April 1979 P-12(a) fuel data reports]

Carriers	April 1979 P-12(a) data			Price per gallon used in latest surcharge computation [1] (cents)	Currently effective base average price [2] (cents)	Percent price increase (decrease) current/base (percent)	Fuel cost as a percent of total economic cost [3] (percent)	Fuel price change impact on base economic costs (percent)	Rate impact weighting factor [4] (percent)	Base rate impact for fuel price change (percent)
	Cost	Gallons	Average cost per gallon (cents)							
Airlift	$236,968	474,176	49.97	45.43	45.68	9.39	37.25	3.50	4.38	0.153
Capitol	44,667	98,536	45.35	43.25	38.96	16.40	32.36	5.31	1.49	0.079
Flying Tiger	1,043,476	2,406,825	43.35	42.37	40.32	7.51	27.81	2.09	18.91	0.395
Northwest	87,371	198,638	43.99	42.66	40.69	8.11	29.34	2.38	16.82	0.400
Pan American	84,095	183,388	45.86	45.84	41.21	11.28	24.27	2.74	25.95	0.711
Seaboard	85,481	183,808	46.51	43.46	45.98	1.15	32.23	0.37	9.81	0.036
Trans Int'l	552,437	1,117,661	49.43	42.74	40.65	21.60	30.01	6.48	13.07	0.847
World	845,446	1,682,569	50.25	44.54	42.83	17.32	29.50	5.11	9.57	0.489
Totals	2,979,961	6,345,601	46.96	43.65	41.31		28.51		100.00	3.110

[1] ER-1111.
[2] Average per gallon fuel costs used in determining currently effective base rates (ER-1045) as set out in ER-1024.
[3] ER-1088, Appendix B.
[4] ER-1088, Appendix D.

[FR Doc. 79-18445 Filed 6-13-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 323

[Regulation PR-207; Procedural Regulations Amendment No. 1]

Terminations, Suspensions and Reductions of Service; Notice of Approval by the General Accounting Office

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: This final rule gives notice that the General Accounting Office has approved the reporting requirements contained in a regulation which governs (1) notices of terminations, suspensions, and reductions of air transportation by air carriers, and (2) objections asking the Board to prohibit those terminations, suspensions or reductions that appear to affect essential air transportation (PR-200, 44 FR 20635, April 6, 1979). This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated May 29, 1979.

DATES: Adopted: June 6, 1979. Effective: June 6, 1979.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Chief, Data Requirements Division, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6044.

SUPPLEMENTARY INFORMATION: A line was inadvertently dropped from the summary of Regulation PR-207 published in 44 FR 33397, June 11, 1979. The corrected summary appears above.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18590 Filed 6-13-79; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 385

[Regulation OR-148A; Finalization of Interim Rule; Docket 34969; Dated June 7, 1979]

Delegations and Review of Action Under Delegation: Nonhearing Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. June 7, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Finalization of Interim Rule.

SUMMARY: By OR-148,[1] the Board delegated authority to the Directors of the Bureau of Pricing and Domestic Aviation (now Bureau of Domestic Aviation) and the Bureau of International Aviation to grant or deny applications of air carriers, intrastate air carriers and foreign air carriers for temporary authority to provide substitute service during any work stoppage in the domestic and foreign markets normally served by the struck carrier. These grants of authority were reflected in 14 CFR 385.13(qq) and 385.26(u). The Board also requested comments on these final rules by ODR-16.[2]

[1] 44 FR 15659, March 15, 1979.
[2] 44 FR 15733, March 15, 1979.

A comment was filed by United Air Lines, which objected to the rules as an unwarranted intermeddling in labor disputes. Its objection is not, however, relevant to the rule, which merely delegates the authority to implement established Board policy. In any event, we are unpersuaded that the underlying policy should be changed. We refer to out rationale in Order 79–5–40, which confirmed exemptions granted to carriers during the strike against United Air Lines. Accordingly, the final rules will remain in the form in which they were issued.

DATE: Adopted: June 7, 1979.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, Washington, D.C. 20428, phone: (202) 673–5442.

(Sections 102, 204, 401, 402, 403 and 416 of the Federal Aviation Act of 1958, as amended; 92 Stat 1706; 72 Stat. 743, 758; 49 U.S.C. 1302, 1324, 1371, 1372, 1373 and 1386.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18612 Filed 6-13-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-79-557]

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending Paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in Paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: July 16, 1979.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. Telephone: (202) 755–5603.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755–7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

§ 300.11 [Amended]

1. Paragraph (c) of § 300.11 is amended by adding the following names to the current list of attorneys-in-fact:

Name and Region

Elizabeth Brouwer-Ancher, Philadelphia, Pennsylvania
Mark Spencer, Philadelphia, Pennsylvania
Marie A. Thompson, Philadelphia, Pennsylvania

(Sec. 309(d), National Housing Act, 12 U.S.C. 1723a(d), and sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d))).

Issued at Washington, D.C., June 4, 1979.

R. Frederick Taylor,

Acting Executive Vice President, Government National Mortgage Association.

[FR Doc. 79-18521 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

24 CFR Part 1914

[Docket No. FI 5556]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency. [1]

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the food map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

[1] The functions of the Federal Insurance Administration, U.S Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979)

§ 1914.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Pennsylvania	Bucks	West Rockhill, township of	421123-A	June 1, 1979, emergency.	Sept. 13, 1974.
Connecticut	New Haven	Ledyard, town of	090157-A	Aug. 22, 1978, emergency, Apr. 2, 1979, suspended, June 1, 1979, reinstated.	May 27, 1977.
Kansas	Allen	Unincorporated areas	200568-A	June 4, 1979, emergency.	May 24, 1977.
Missouri	Boone	do	290034-A	do	Apr. 25, 1978.
North Carolina	Hoke	do	370397	do	June 12, 1978.
Pennsylvania	Union	West Buffalo, township of	422106	do	Nov. 1, 1974.
Massachusetts	Bristol	Norton, town of	250060-A	June 1, 1979, suspension withdrawn.	June 28, 1974 and May 10, 1977.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18343 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1915

[Docket No. 5555]

List of Withdrawal of Flood Insurance Maps Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, Federal Emergency Management Agency.[1]

ACTION: Final Rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Federal Insurance Administration, have been temporarily withdrawn for administrative or technical reasons. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATES: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, Office of Flood Insurance, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The list includes the date that each map was withdrawn, and the effective date of its republication, if it has been republished. If a flood prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, requires, at Section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) For acquistion and construction of buildings, and

(2) For buildings located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction of buildings in these areas unless the community has entered the program. The denial of such financial assistance has no application outside of the identified special flood hazard areas of such flood-prone communities.

Prior to July 1, 1975, the statutory requirement for the purchase of flood insurance did not apply until and unless the community entered the program and the special flood hazard areas were identified by the issuance of a flood insurance map. However, after July 1, 1975, or one year after identification, whichever is later, the requirement applies to all communities in the United States that are identified as having special flood hazard areas within their community boundaries, so that, no such financial assistance can legally be provided for buildings in these areas unless the community has entered the program.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Insurance Administration's (FIA's) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FIA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new applications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 24 CFR Part 1909 et seq.).

As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication. Accordingly, Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended as follows:

1. Present § 1915.6 is revised to read as follows:

§ 1915.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).* The following is a cumulative list of withdrawals pursuant to this part:

[1] The functions of the Federal Insurance Administration, U.S. Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

40 FR 5149
40 FR 17015
40 FR 20798
40 FR 46102
40 FR 53579
40 FR 56672
41 FR 1478
41 FR 50990
41 FR 13352
41 FR 17726
42 FR 8895
42 FR 29433
42 FR 46226
42 FR 64076
43 FR 24019
44 FR 815
44 FR 6383
44 FR 16485
44 FR 25636
44 FR 34120

(b) *Flood Insurance Rate Maps (FIRM's).* The following is a cumulative list of withdrawals pursuant to this part:

40 FR 17015
41 FR 1478
42 FR 49811
42 FR 64076
43 FR 24019
44 FR 25636

2. The following additional entries (which will not appear in the Code of Federal Regulations) are made pursuant to § 1915.6:

State, community name, and number	County	Hazard ID date	Rescission date	Reason
Kansas, Mission Woods, City 200172	Johnson	10-1-76	5-11-79	1
Kansas, Spring Hill, City, 200178	Johnson	2-6-76	5-11-79	1
Louisiana, Ashland, Vil, 220263	Natchitoces	8-13-76	5-11-79	1
Louisiana, Boyce, TN, 220147A	Rapides	4-5-74	5-11-79	1
Louisiana, Converse, Vil, 220268	Sabine	8-29-75	5-11-79	1
Louisiana, Epps, Vil, 220283	West Carroll	6-4-76	5-11-79	1
Louisiana, Evergreen, TN, 220284	Avoyelles	9-26-75	5-11-79	1
Louisiana, Forest, Vil, 220286	West Carroll	11-26-76	5-11-79	1
Louisiana, Forest Hill, Vil, 220287	Rapides	11-12-76	5-11-79	1
Louisiana, Grambling, TN, 220328	Lincoln	11-19-76	5-11-79	1
Louisiana, Grayson, Vil, 220329	Caldwell	8-13-76	5-11-79	1
Louisiana, Greenwood, TN, 220292	Caddo	4-23-76	5-11-79	1
Louisiana, Heflin, Vil, 220243	Webster	3-26-76	5-11-79	1
Louisiana, Hessmer, Vil, 220294	Avoyelles	11-19-76	5-11-79	1
Louisiana, Keatchi, TN, 220297	DeSoto	11-12-76	5-11-79	1
Louisiana, Kilbourne, Vil, 220298	West Carroll	6-11-76	5-11-79	1
Louisiana, Martin, Vil, 220372	Red River	11-12-76	5-11-79	1
Louisiana, McNary, Vil, 220299A	Rapides	12-17-76	5-11-79	1
Louisiana, Noble, Vil, 220301	Sabine	8-13-76	5-11-79	1
Louisiana, North Hodge, Vil, 220341	Jackson	11-5-76	5-11-79	1
Louisiana, Olla, TN, 220343	LaSalle	11-12-76	5-11-79	1
Louisiana, Pioneer, Vil, 220244	West Carroll	6-4-76	5-11-79	1
Louisiana, Pleasant Hill, Vil, 226344	Sabine	5-6-76	5-11-79	1
Louisiana, Powhattan, Vil, 220306	Natchitoches	10-29-76	5-11-79	1
Louisiana, Sikes, Vil, 220310	Winn	4-25-75	5-11-79	1
Louisiana, Simpson, Vil, 220311	Vernon	8-8-75	5-11-79	1
Louisiana, Tullos, TN, 220350	LaSalle	6-11-76	5-11-79	1
Louisiana, Vivian, TN, 220351	Caddo	3-26-76	5-11-79	1
Louisiana, Woodworth, Vil, 220260	Rapides	3-26-76	5-11-79	1
Missouri, Fair Grove, City, 290591	Greene	6-27-75	5-11-79	1
New Mexico, Corona, Vil, 350099	Lincoln	6-4-76	5-11-79	1
New Mexico, Cuba, Vil, 350095	Sandoval	12-31-76	5-11-79	1
New Mexico, Encino, Vil, 350102A	Torrance	4-15-79	5-11-79	1
New Mexico, San Ysidro, Vil, 350138	Sandoval	7-2-76	5-11-79	1
New Mexico, Vaughn, TN, 350118	Guadalupe	7-9-76	5-11-79	1
New Mexico, Willard, Vil, 350109	Torrance	9-5-75	5-11-79	1
New Jersey, Tavistock, Boro, 340544	Camden	11-29-74	5-11-79	1
Oklahoma, Eldorado, TN, 400372	Jackson	7-2-76	5-11-79	1

KEY TO SYMBOLS

E—The community is participating in the Emergency Program. It will remain in the Emergency Program without an FHBM.
C—The community is participating in the Emergency Program. It will be converted to the Regular Program without an FIA map.
R—The community is participating in the Regular Program.
1. The Community appealed its flood-prone designation and FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.
1A. FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.
2. The Flood Hazard Boundary Map (FHBM) contained printing errors or was improperly distributed. A new FHBM will be prepared and distributed.
3. The Community lacked land-use authority over the special flood hazard area.
4. A more accurate FIA map is the effective map for this community.
5. The FHBM does not accurately reflect the Community's special flood hazard areas (i.e., sheet flow flooding, extremely inaccurate map, etc.). A new FHBM will be prepared and distributed.
6. The Flood Insurance Rate Map was rescinded because of inaccurate flood elevations contained on the map.
7. The Flood Insurance Rate Map was rescinded in order to re-evaluate the mudslide hazard in this Community.
8. The T&E or H&E Map was rescinded.
9. A revision of the FHBM within a reasonable period of time was not possible. A new FHBM will be prepared and distributed.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: June 6, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18342 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-3024]

Final Flood Elevation Determination for the City of St. Peter, Nicollett County, Minn., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of St. Peter, Nicollett County, Minnesota.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of St. Peter, Nicollett County, Minnesota.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of St. Peter, Nicollett County, Minnesota, are available for review at the City Hall, 227 South Front Street, St. Peter, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the City of St. Peter, Nicollett County, Minnesota.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Minnesota River	St. Julien Street (extended)	758
	Broadway Avenue (State 99) Downstream	758
	Upstream	759
	Locust Street (extended)	760
	Jackson Street	761
	Upstream Corporate Limits	763

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18337 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-2858]

Final Flood Elevation Determination for the Borough of Sellersville, Bucks County, Pa., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Borough of Sellersville, Bucks County, Pennsylvania.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Borough of Sellersville, Bucks County, Pennsylvania.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Sellersville, Bucks County, Pennsylvania, are available for review at the Municipal Building, 140 East Church Street, Sellersville, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Borough of Sellersville, Bucks County, Pennsylvania.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch Perkiomen Creek	Downstream Corporate	302
	Limits Main Street Bridge	305
	Upstream Corporate Limits	308

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18338 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

24 CFR Part 1917

[Docket No. FI-2570]

Final Flood Elevation Determination for the Town of North Providence, Providence County, R.I., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of North Providence, Providence County, Rhode Island.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of North Providence, Providence County, Rhode Island.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of North Providence, Providence County, Rhode Island, are available for review at the bulletin board at the Town Hall, 2008 Smith Street, North Providence, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of North Providence, Providence County, Rhode Island.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Woonasquatucket River.	Greystone Avenue	113
	Smith Street	105
	Redeem Street (Extended)	99
	Allendale Street	89
	Southwest Corporate Limits	72
West River	Pinewood Drive	186
	Apartment Roadway	173
	Brook Farm Road	164
	West River Parkway	136
	Mineral Spring Avenue	121
	Alexander Street (Extended)	110
	Douglas Avenue	90
	South Corporate Limits	81
East Branch West River.	Conifer Street	150
	Brook Farm Road	141
	Side Drive (Extended)	137
	Brook Dale Road	135
Lincoln Downs Brook	Angell Road	181
	Benjamin Drive	169
	Mineral Spring Avenue	167
	Alexander Street	150
	Lexington Avenue	117
Upper Canada Pond Brook.	Garfield Street	92
	Charles Street	91
	Mineral Spring Avenue	82
	Southeast Corporate Limits	60

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18339 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

24 CFR Part 1917

[Docket No. FI–2885]

Final Flood Elevation Determination for the Town of Lyndon, Caledonia County, Vt. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Lyndon, Caledonia County, Vermont.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Lyndon.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Lyndon, are available for review at Town Hall, 24 Main Street, Lyndonville, Vermont.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the Town of Lyndon, Vermont.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to then National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain mangement in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Passumpsic River	Railroad Bridge	689
	U.S. 5	707
	Vermont 122	708
	At confluence with Millers Run.	709
	U.S. 5	709
	Vermont 114	711
	Railroad Bridge	716
	Vermont 114	717
	TH 36	718
	TH 40	741
	Vermont 114	752
Calendar Brook	Route 5	734
Hawkins Brook	TH 69	689
	TH 6	706
Millers Run	Vermont 122	709
	I–91	714
	TH 31	718
Wheelock Branch	SA 10	708
	I–91	708
	TH 1	708
	TH 82	709

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979

Gloria M. Jimenez.

Federal Insurance Administrator.

[FR Doc. 79–18340 filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

24 CFR Part 1917

[Docket No. FI–3432]

Final Flood Elevation Determination for the County of Douglas, Wash. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the County of Douglas, Washington.

These base (100-year) flood elevations are the basis for the flood plain management measures that the

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the County of Douglas, Washington.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the County of Douglas, Washington, are available for review on the bulletin board in the Courthouse, Douglas County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the County of Douglas, Washington.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community of individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed based flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Douglas Creek	Burlington Northern Railroad at Palisades.	971
	U.S. Route 2 Bridge at Douglas.	2,370
Kummer Draw	Douglas Avenue	2,374

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18341 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 306

General Regulations Governing United States Securities

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of this amendment of the General Regulations governing United States securities is to extend the tables contained in the appendix to Subpart E to provide decimal factors for daily interest computations for interest payable on a semiannual or annual basis for interest rates of up to 12 percent per annum.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: A. E. Martin, Attorney-Advisor, Bureau of the Public Debt, (202) 376-0636.

SUPPLEMENTARY INFORMATION: Tables I and II in the appendix to Subpart E of the regulations provide decimal factors which are used to compute daily accrued interest on a security, based on the annual interest rate paid thereon. Both Table I, which provides the decimal factors for interest payable on a semiannual basis, and Table II, which provides the decimal factors for interest payable on an annual basis, now only cover interest rates extending to 6 percent per annum. In view of current interest rates being paid on United States securities, these tables are being extended to cover interest rates of up to 12 percent per annum.

Accordingly, Department of the Treasury Circular No. 300, Fourth Revision, dated March 15, 1973 (31 CFR, Part 306), is hereby amended by the deletion of Tables I and II in the Appendix to Subpart E and the addition of new Tables I and II.

The foregoing amendment was effected under authority of the Second Liberty Bond Act (40 Stat. 288, as amended; 31 U.S.C. 752, et seq.) and 5 U.S.C. 321. Since this amendment involves the fiscal policy of the United States and does not meet the Department's criteria for significant regulations, it has been determined that notice and public procedures thereon are unnecessary.

Dated: June 5, 1979.

Paul H. Taylor,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

TABLE I-DECIMAL FOR 1 DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMIANNUALLY OR ON A SEMIANNUAL BASIS IN REGULAR YEARS OF 365 DAYS AND IN LEAP YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE "COMPUTATION OF INTEREST ON SEMIANNUAL BASIS")

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
1/8	$0.003396739	$0.003415301	$0.003434066	$0.003453039
1/4	.006793478	.006830601	.006868132	.006906077
3/8	.010190217	.010245902	.010302198	.010359116
1/2	.013586957	.013661202	.013736264	.013812155
5/8	.016983696	.017076503	.017170330	.017265193
3/4	.020380435	.020491803	.020604396	.020718232
7/8	.023777174	.023907104	.024038462	.024171271
1	.027173913	.027322404	.027472527	.027624309
1 1/8	.030570652	.030737705	.030906593	.031077348
1 1/4	.033967391	.034153005	.034340659	.034530387
1 3/8	.037364130	.037568306	.037774725	.037983425
1 1/2	.040760870	.040983607	.041208791	.041436464
1 5/8	.044157609	.044398907	.044642857	.044889503
1 3/4	.047554348	.047814208	.048076923	.048342541
1 7/8	.050951087	.051229508	.051510989	.051795580
2	.054347826	.054644809	.054945055	.055248619
2 1/8	.057744565	.058060109	.058379121	.058701657
2 1/4	.061141304	.061475410	.061813187	.062154696
2 3/8	.064538403	.064890710	.065247253	.065607735
2 1/2	.067934783	.068306011	.068681319	.069060773
2 5/8	.071331522	.071721311	.072115385	.072513812
2 3/4	.074728261	.075136612	.075549451	.075966851
2 7/8	.078125000	.078551913	.078983516	.079419890
3	.081521739	.081967213	.082417582	.082872928
3 1/8	.084918478	.085382514	.085851648	.086325967
3 1/4	.088315217	.088797814	.089285714	.089779006
3 3/8	.091711957	.092213115	.092719780	.093232044
3 1/2	.095108696	.095628415	.096153846	.096685083
3 5/8	.098505435	.099043716	.099587912	.100138122
3 3/4	.101902174	.102459016	.103021978	.103591160
3 7/8	.105298913	.105874317	.106456044	.107044199
4	.108695652	.109289617	.109890110	.110497238
4 1/8	.112092391	.112704918	.113324176	.113950276
4 1/4	.115489130	.116120219	.116758242	.117403315
4 3/8	.118885870	.119535519	.120192308	.120856354
4 1/2	.122282609	.122950820	.123626374	.124309392
4 5/8	.125679348	.126366120	.127060440	.127762431
4 3/4	.129076087	.129781421	.130494505	.131215470
4 7/8	.132472826	.133196721	.133928571	.134668508
5	.135869565	.136612022	.137362637	.138121547
5 1/8	.139266304	.140027322	.140796703	.141574586
5 1/4	.142663043	.143442623	.144230769	.145027624
5 3/8	.146059783	.146857923	.147664835	.148480663
5 1/2	.149456522	.150273224	.151098901	.151933702
5 5/8	.152853261	.153688525	.154532967	.155386740
5 3/4	.156250000	.157103825	.157967033	.158839779
5 7/8	.159646739	.160519126	.161401099	.162292818
6	.163043478	.163934426	.164835165	.165745856
6 1/8	.166440217	.167349727	.168269231	.169198895
6 1/4	.169836957	.170765027	.171703297	.172651934
6 3/8	.173233696	.174180328	.175137363	.176104972
6 1/2	.176630435	.177595628	.178571429	.179558011
6 5/8	.180027174	.181010929	.182005495	.183011050
6 3/4	.183423913	.184426230	.185439560	.186464088
6 7/8	.186820652	.187841530	.188873626	.189917127

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
7	.190217391	.191256831	.192307692	.193370166
7 1/8	.193614130	.194672131	.195741758	.196823204
7 1/4	.197010870	.198087432	.199175824	.200276243
7 3/8	.200407609	.201502732	.202609890	.203729282
7 1/2	.203804348	.204918033	.206043956	.207182320
7 5/8	.207201087	.208333333	.209478022	.210635359
7 3/4	.210597826	.211748634	.212912088	.214088398
7 7/8	.213994565	.215163934	.216346154	.217541436
8	.217391304	.218579235	.219780220	.220994475
8 1/8	.220788043	.221994536	.223214286	.224447514
8 1/4	.224184783	.225409836	.226648352	.227900552
8 3/8	.227581522	.228825137	.230082418	.231353591
8 1/2	.230978261	.232240437	.233516484	.234806630
8 5/8	.234375000	.235655738	.236950549	.238259669
8 3/4	.237771739	.239071038	.240384615	.241712707
8 7/8	.241168478	.242486339	.243818681	.245165746
9	.244565217	.245901639	.247252747	.248618785
9 1/8	.247961957	.249316940	.250686813	.252071823
9 1/4	.251358696	.252732240	.254120879	.255524862
9 3/8	.254755435	.256147541	.257554945	.258977901
9 1/2	.258152174	.259562842	.260989011	.262430939
9 5/8	.261548913	.262978142	.264423077	.265883978
9 3/4	.264945652	.266393443	.267857143	.269337017
9 7/8	.268342391	.269808743	.271291209	.272790055
10	.271739130	.273224044	.274725275	.276243094
10 1/8	.275135870	.276639344	.278159341	.279696133
10 1/4	.278532609	.280054645	.281593407	.283149171
10 3/8	.281929348	.283469945	.285027473	.286602210
10 1/2	.285326087	.286885246	.288461538	.290055249
10 5/8	.288722826	.290300546	.291895604	.293508287
10 3/4	.292119565	.293715847	.295329670	.296961326
10 7/8	.295516304	.297131148	.298763736	.300414365
11	.298913043	.300546448	.302197802	.303867403
11 1/8	.302309783	.303961749	.305631868	.307320442
11 1/4	.305706522	.307377049	.309065934	.310773481
11 3/8	.309103261	.310792350	.312500000	.314226519
11 1/2	.312500000	.314207650	.315934066	.317679558
11 5/8	.315896739	.317622951	.319368132	.321132597
11 3/4	.319293478	.321038251	.322802198	.324585635
11 7/8	.322690217	.324453552	.326236264	.328038674
12	.326086957	.327868852	.329670330	.331491713

TABLE II - DECIMAL FOR 1 DAY's INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE ANNUALLY OR ON AN ANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN LEAP YEARS OF 366 DAYS

RATE PER ANNUM percent)	REGULAR YEAR, 365 DAYS	LEAP YEAR, 366 DAYS
1/8	.003424658	.003415301
1/4	.006849315	.006830601
3/8	.010273973	.010245902
1/2	.013698630	.013661202
5/8	.017123288	.017076503
3/4	.020547945	.020491803
7/8	.023972603	.023907104
1	.027397260	.027322404
1 1/8	.030821918	.030737705
1 1/4	.034246575	.034153005
1 3/8	.037671233	.037568306
1 1/2	.041095890	.040983607
1 5/8	.044520548	.044398907
1 3/4	.047945205	.047814208
1 7/8	.051369863	.051229508
2	.054794521	.054644809
2 1/8	.058219178	.058060109
2 1/4	.061643836	.061475410
2 3/8	.065068493	.064890710
2 1/2	.068493151	.068306011
2 5/8	.071917808	.071721311
2 3/4	.075342466	.075136612
2 7/8	.078767123	.078551913
3	.082191781	.081967213
3 1/8	.085616438	.085382514
3 1/4	.089041096	.088797814
3 3/8	.092465753	.092213115
3 1/2	.095890411	.095628415
3 5/8	.099315068	.099043716
3 3/4	.102739726	.102459016
3 7/8	.106164384	.105874317
4	.109589041	.109289617
4 1/8	.113013699	.112704918
4 1/4	.116438356	.116120219
4 3/8	.119863014	.119535519
4 1/2	.123287671	.122950820
4 5/8	.126712329	.126366120
4 3/4	.130136986	.129781421
4 7/8	.133561644	.133196721
5	.136986301	.136612022
5 1/8	.140410959	.140027322
5 1/4	.143835616	.143442623
5 3/8	.147260274	.146857923
5 1/2	.150684932	.150273224
5 5/8	.154109589	.153688525
5 3/4	.157534247	.157103825
5 7/8	.160958904	.160519126
6	.164383562	.163934426
6 1/8	.167808219	.167349727
6 1/4	.171232877	.170765027
6 3/8	.174657534	.174180328
6 1/2	.178082192	.177595628
6 5/8	.181506849	.181010929
6 3/4	.184931507	.184426230
6 7/8	.188356164	.187841530

RATE PER ANNUM percent)	REGULAR YEAR, 365 DAYS	LEAP YEAR, 366 DAYS
7	.191780822	.191256831
7 1/8	.195205479	.194672131
7 1/4	.198630137	.198087432
7 3/8	.202054795	.201502732
7 1/2	.205479452	.204918033
7 5/8	.208904110	.208333333
7 3/4	.212328767	.211748634
7 7/8	.215753425	.215163934
8	.219178082	.218579235
8 1/8	.222602740	.221994536
8 1/4	.226027397	.225409836
8 3/8	.229452055	.228825137
8 1/2	.232876712	.232240437
8 5/8	.236301370	.235655738
8 3/4	.239726027	.239071038
8 7/8	.243150685	.242486339
9	.246575342	.245901639
9 1/8	.250000000	.249316940
9 1/4	.253424658	.252732240
9 3/8	.256849315	.256147541
9 1/2	.260273973	.259562842
9 5/8	.263698630	.262978142
9 3/4	.267123288	.266393443
9 7/8	.270547945	.269808743
10	.273972603	.273224044
10 1/8	.277397260	.276639344
10 1/4	.280821918	.280054645
10 3/8	.284246575	.283469945
10 1/2	.287671233	.286885246
10 5/8	.291095890	.290300546
10 3/4	.294520548	.293715847
10 7/8	.297945205	.297131148
11	.301369863	.300546448
11 1/8	.304794521	.303961749
11 1/4	.308219178	.307377049
11 3/8	.311643836	.310792350
11 1/2	.315068493	.314207650
11 5/8	.318493151	.317622951
11 3/4	.321917808	.321038251
11 7/8	.325342466	.324453552
12	.328767123	.327868852

[FR Doc. 79-18278 Filed 6-13-79; 8:45 am]
BILLING CODE 4810-40-C

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Parts 2000 and 2001

Re-titling of Chapter; Deletion of Obsolete Regulation; Designation of Published Regulations

AGENCY: Information Security Oversight Office.

ACTION: Final rules.

SUMMARY: Executive Order 12065 (43 FR 28949, July 3, 1978) provided for the classification, downgrading, declassification and safeguarding of national security information. The executive order is intended to increase openness in Government by limiting classification and accelerating delassification but at the same time, provide improved protection in the interest of national security. The executive order provides for the Information Security Oversight Office (ISOO) to develop and promulgate directives to implement the Order. This document makes technical and editorial changes to the chapter in which the directives are and will be published.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Robert W. Wells, (202) 633–6880.

SUPPLEMENTARY INFORMATION: Information Security Oversight Office administrative procedures will be published at a later time. The regulations published on October 5, 1978 (43 FR 46280) set forth guidelines to agencies on original and derivative classification, downgrading, declassification and safeguarding of national security information.

Title 32 of the Code of Federal Regulations is amended as follows:

CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE

1. The title of Chapter XX is revised by deleting the present heading "Interagency Classification Review Committee" and inserting "Information Security Oversight Office."

PART 2000—ADMINISTRATIVE PROCEDURES [RESERVED]

2. In Chapter XX, "Part 2000—Administrative Procedures" is deleted and reserved.

PART 2001—NATIONAL SECURITY INFORMATION; CLASSIFICATION; DECLASSIFICATION AND DOWNGRADING; SAFE GUARDING; IMPLEMENTATION AND REVIEW; GENERAL PROVISIONS

3. The regulations appearing at 43 FR 46280, October 5, 1978 are designated as "Part 2001—National security information; classification; declassification and downgrading; safeguarding; implementation and review; general provisions."

4. The authority citation for Part 2001 is:

Authority: Sec. 6–204, E.O. 12065, 43 FR 28949, July 3, 1978.

Michael T. Blouin,

Director, Information Security Oversight Office.

June 12, 1979.

[FR Doc. 79–18533 Filed 6–13–79; 8:45 am]

BILLING CODE 6820–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80 and 95

[CGD 76–109]

Pilot Rules for Inland Waters and for Western Rivers; Flashing Yellow Light at the Head of Tows Being Pushed Ahead

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This document amends the regulations governing the lighting of barges by requiring the use of a flashing yellow light at the head of barges being pushed ahead on Inland Rules waters and by making the Western Rivers Rules requirement for flashing yellow lights more flexible.

EFFECTIVE DATE: This amendment is effective on May 1, 1980, but compliance with it is optional immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Llana, Office of Marine Environment and Systems (G–WLE–4/73), Department of Transportation, Washington, DC 20590, (202) 426–4958.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this subject was published on July 13, 1978 (43 FR 30256). Interested persons were given until August 14, 1978 to submit comments.

Drafting Information

The principal persons involved in the drafting of this rule are Chris Llana, Project Manager, Office of Marine Environment and Systems, and Michael Mervin, Project Counsel, Office of the Chief Counsel.

Discussion of Comments

We received six letters of comment in response to the notice of proposed rulemaking. Three of these favored the proposal and three were generally opposed.

One comment suggested that there might be insufficient justification for the new requirement, and questioned whether the 1973 accident cited in the preamble to the notice of proposed rulemaking was the only basis for the proposed rule. The 1973 accident, which caused three deaths, was cited because it was the particular incident prompting the change in the lighting requirements. Other similar accidents, although not frequently involving fatalities, occur regularly. A search of the reported accidents for 1977, for example, revealed at least three such accidents causing personal injury and property damage. In addition, other preventable incidents may not have been reported, especially where damage was minor or in the case of "close calls".

Two commented that the proposed language allowing the horizontal arc of visibility to extend to either on the beam or up to 2 points abaft the beam was not clear. We agree and have reworded that provision to eliminate the confusion.

One commented that the flashing yellow light would not increase safety because pleasure boat operators would steer toward it rather than away from it. We disagree. The danger this requirement attempts to counter is that the tow may not be seen at all. We believe that the flashing yellow light is the most effective way to draw attention to the tow, and that once it is seen, it will be properly identified.

One comment objected to the proposed requirement for a flashing yellow light at the head of barges being towed alongside. We reviewed that part of the proposal and agree that barges being towed alongside do not pose the same hazard (of not being seen) as do barges being pushed ahead, and so we are not requiring the use of a flashing yellow light at the head of barges being towed alongside.

Two commented that a flashing yellow light at the head of a tow could be confused with the intermittent flashing yellow light carried by submarines. We disagree. The flash characteristic for tows (50 to 70 flashes per minute) is sufficiently different from the flash characteristic for submarines (one flash per second for 3 seconds

followed by a 3 second off period) to make mistaken identity very unlikely.

The proposed rule expressed arcs of the horizon in points of the compass. This has been changed to read in degrees in keeping with modern navigation rule practice.

Evaluation

This final rule has been reviewed under the Department of Transportation's "Improving Government Regulations, Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A final evaluation of the rule has been prepared, and has been included in the public docket. A copy of this evaluation is available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW, Washington, DC 20590.

In consideration of the foregoing, Parts 80 and 95 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 80—PILOT RULES FOR INLAND WATERS

1. In § 80.16, by adding a sentence at the end of paragraph (f) and by revising paragraph (g) to read as follows:

§ 80.16 Lights for barges, canal boats, scows and other nondescript vessels on certain inland waters on the Atlantic and Pacific coasts.

* * * * *

(f) Barges, canal boats or scows must when being propelled by pushing ahead of a steam vessel, display a red light on the port bow and a green light on the starboard bow of the head barge, canal boat or scow, carried at a height sufficiently above the superstructure of the barge, canal boat or scow as to permit said sidelights to be visible; and if there is more than one barge, canal boat or scow abreast, the colored lights must be displayed from the outer side of the outside barges, canal boats or scows. Additionally, a flashing yellow light must be displayed at the forward end of the tow, so placed to be as nearly as practicable on the centerline of the tow.

(g)(1) The colored sidelights referred to in this section shall be fitted with inboard screens so as to prevent them from being seen across the bow, and of such character as to be visible on a dark night, with a clear atmosphere, at a distance of at least 2 miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of 10 points of the compass, and so fixed as to throw the light from right ahead to 2 points abaft the beam on either side.

(2) The flashing yellow light must—

(i) be visible on a dark night with a clear atmosphere at a distance of at least 2 miles;

(ii) flash 50 to 70 times per minute; and

(iii) be constructed to show a uniform light over an arc of the horizon from right ahead to at least 90 degrees, but no more than 112.5 degrees on each side of the tow.

* * * * *

2. In § 80.16a, by substituting for the word "amber" in paragraph (b) the word "yellow" and by revising paragraph (j) to read as follows:

§ 80.16a Lights for barges, canal boats, scows and other nondescript vessels on certain inland waters on the Gulf Coast and the Gulf Intracoastal Waterway.

* * * * *

(b) When one or more barges, canal boats, scows, or other vessels of nondescript type not otherwise provided for, are being towed by pushing ahead of a steam vessel, or by a combination of pushing ahead or towing alongside of a steam vessel, such tow must be lighted by a flashing yellow light at the extreme forward end of the tow, so placed as to be as nearly as practicable on the centerline of the tow, a green light on the starboard side of the tow, so placed as to mark the maximum projection of the tow to starboard, and a red light on the port side of the tow, so placed as to mark the maximum projection of the tow to port.

* * * * *

(j) The flashing yellow light must—

(1) be visible on a dark night with a clear atmosphere at a distance of at least 2 miles;

(2) flash 50 to 70 times per minute; and

(3) be constructed to show a uniform light over an arc of the horizon from right ahead to at least 90 degrees, but no more than 112.5 degrees on each side of the tow.

* * * * *

PART 95—PILOT RULES FOR WESTERN RIVERS

3. In § 95.29, by substituting for the word "amber" in paragraph (a) the word "yellow" and by revising paragraph (d) to read as follows:

§ 95.29 Lights for barges towed ahead or alongside.

(a) When one or more barges are being towed by pushing ahead of a steam vessel, or by a combination of pushing ahead and towing alongside of a steam vessel, such tow must be lighted by a flashing yellow light at the extreme forward end of the tow, so placed as to be as nearly as practicable on the centerline of the tow, a green light on the starboard side of the tow, so placed to mark the maximum projection of the tow to starboard, and a red light on the port side of the tow, so placed as to mark the maximum projection of the tow to port.

* * * * *

(d) The flashing yellow light must—

(1) be visible on a dark night with a clear atmosphere at a distance of at least 2 miles;

(2) flash 50 to 70 times per minute; and

(3) be constructed to show a uniform light over an arc of the horizon from right ahead to at least 90 degrees, but no more than 112.5 degrees on each side of the tow.

* * * * *

(33 U.S.C. 353, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

Dated: June 4, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 79-18604 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 79-075]

Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: At the request of the State of Washington Department of Transportation (DOT) the Coast Guard is amending the telephone requests procedure contained in the regulations governing the operation of the pontoon bridge across Lake Washington between Foster Island and Evergreen Point to delete the "Toll Office" as the place to call and insert the "Highway Radio" in its stead. This is due to the closing of the Toll Office as of June 22, 1979. The change from call letters "KOW" to "KOH" for the Seattle Marine Operator Station was also requested by the Washington DOT.

EFFECTIVE DATE: This amendment is effective on June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: Since this action merely brings the regulation into conformity with present circumstances, and does not change the operating procedures for the bridge, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) for not issuing a general notice of proposed rulemaking. So that the regulatory revision may be concurrent with the change that it reflects, the Coast Guard finds good cause under 5 U.S.C. 553(d)(3) for making it effective in less than 30 days.

Drafting Information

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Coleman Sachs, Project Attorney, Office of the Chief Counsel.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.801(b)(1) to read as follows:

§ 117.801 Lake Washington, Wash.; pontoon bridge between Foster Island and Evergreen Point, Wash.

* * * * *

(b) * * *

(1) Telephone requests for bridge openings will be directed as collect calls to the Highway Radio. The call may also be made by direct telephone communication, through the Seattle Marine Operator, Station KOH, or through other marine wire or radiotelephone service.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).)

Dated: June 8, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 79-18587 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5664

[N-058648]

Nevada; Revocation of Public Land Orders No. 3501, No. 3574, and No. 3814

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This order revokes three public land orders which withdrew 15,216 acres of land for the proposed Moapa Valley Pumping Project. This action will restore the lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: July 13, 1979.

FOR FURTHER INFORMATION CONTACT: Louis B. Bellesi, 202-343-8731.

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

1. Public Land Orders No. 3501 of December 2, 1964, No. 3574 of March 26, 1965, and No. 3814 of September 7, 1965, which withdrew the following described lands for use by the Bureau of Reclamation for the proposed Moapa Valley Pumping Project are hereby revoked:

Mount Diablo Meridian

T. 14. S., R. 65 E.
sec. 13, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
sec. 15, N½NE¼;
sec. 16, SW¼;
sec. 22, SE¼NE¼;
sec. 24, E½NE¼, SW¼NE¼,SE¼SW¼, SE¼;
sec. 25, NE¼SE¼;
sec. 35, W½NW¼;
sec. 36, Lots 6 and 7.
T. 13. S., R. 66 E.
sec. 32, S½;
sec. 33, S½.
T. 14 S., R. 66 E.
sec. 4, All;
sec. 5, All;
sec. 8, E½;
sec. 9, All;
sec. 10, W½;
sec. 15, All;
sec. 16, All;
sec. 17, E½;
sec. 18, Lots 1, 2, 3, 4, and E½W½;
sec. 19, All;
sec. 20, N½, N½S½;
sec. 21, N½, SE¼;
sec. 22, E½;
sec. 23, W½NW¼, SW¼, SW¼SE¼;
sec. 25, SW¼SW¼;
sec. 26, W½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼,SE¼;
sec. 27, S½NW¼, SW¼, S½SE¼;
sec. 28, N½NE¼, SE¼NE¼;
sec. 31, Lot 2 and SE¼NW¼, NE¼SW¼, NW¼SE¼, S½SE¼;
sec. 34, N½, SW¼, W½SE¼;
sec. 35, N½, NE¼SE¼;
sec. 36, W½, SW¼SE¼.
T. 15 S., R. 66 E.
sec. 1, Lot 2 and SW¼NE¼, SE¼NW¼, NW¼SE¼, SE¼SE¼;
sec. 3, Lots 3, 4, and S½NW¼;
sec. 4, Lots 1, 2, 3, 4, and S½N½, N½SW¼, SW¼SW¼;
sec. 5, Lots 1, 2, 3, 4, and S½NE¼, SW¼NW¼, N½SE¼;
sec. 6, Lots 1 and 7;
sec. 8, S½NE¼, NW¼NW¼;
sec. 9, S½NE¼.
T. 15 S., R. 67 E.
sec. 7, Lot 1 and SE¼NE¼, NE¼SE¼, SW¼SE¼;
sec. 8, SW¼NW¼, N½SW¼, SE¼SW¼;
sec. 14, W½;
sec. 15, NE¼, N½NW¼;
sec. 16, NE¼SE¼, SW¼SE¼;
sec. 17, N½NW¼, SW¼NW¼, NW¼SW¼, SE¼SW¼;
sec. 20, N½NE¼;
sec. 21, W½E½, N½NW¼;
sec. 22, E½NE¼;
sec. 23, SE¼NW¼;
sec. 26, N½NW¼, SE¼NW¼;
sec. 28, E½E½;
sec. 34, SW¼NW¼, W½SW¼;
sec. 35, NE¼SE¼;
sec. 36, NW¼SE¼, SE¼SE¼.
T. 16 S., R. 67 E.
sec. 3, Lot 3 and SW¼NE¼, W½SE¼.
T. 15 S., R. 68 E.
sec. 31, Lot 4, SE¼SW¼.
T. 16 S., R. 68 E.
sec. 6, Lots 3, 4, 5, 6, 7, and SE¼NW¼, E½SW¼;
sec. 7, Lots 1, 2, and E½NW¼.

Containing approximately 15,216 acres in Clark County.

2. At 10 a.m., on July 13, 1979, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on July 13, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on July 13, 1979, the lands will be open to location under the United States mining laws. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, 300 Booth Street, Reno Nevada 89509.

Guy R. Martin,

Assistant Secretary of the Interior.

June 7, 1979.

[FR Doc. 79-18515 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 5665

[OR-16933]

Oregon; Revocation of Public Land Order No. 2883

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This order revokes a public land order which withdrew 40 acres of

land as a seismological observatory for use by the Department of the Air Force. This action will restore the land to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: July 13, 1979.

FOR FURTHER INFORMATION CONTACT:
Louis B. Bellesi, 202–343–8731

SUPPLEMENTARY INFORMATION:

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

1. Public Land Order No. 2883 of January 18, 1963, which withdrew the following described public land for use by the Department of the Air Force as a seismological observatory, is hereby revoked:

Willamette Meridian

T. 8 S., R. 44 E.,
Sec. 28, NE¼NE¼
Containing 40 acres in Baker County.

2. At 10 a.m., on July 13, 1979, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on July 13, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m., on July 13, 1979, the land will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

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

Guy R. Martin,
Assistant Secretary of the Interior.
June 7, 1979.

[FR Doc. 79–18516 Filed 6–13–79; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 34, 76, 95, 108, 162, 181, and 193

[CGD 77–039]

Wheeled Semiportable Fire Extinguishers

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This document amends the firefighting and fire protection equipment requirements to allow limited use of wheeled semiportable fire extinguishers on merchant vessels, offshore structures, and mobile offshore drilling units. Previous regulations contained a blanket prohibition against the approval and use of wheeled extinguishers. In certain vessel operations, however, wheeled extinguishers can be used effectively in conjunction with non-wheeled extinguishers to provide increased fire protection capability. On offshore structures, a prohibition against wheeled extinguishers is unnecessary. These amendments also include stowage and installation requirements for wheeled semiportable extinguishers.

EFFECTIVE DATE: These amendments become effective on July 11, 1979.

ADDRESS: The final evaluation for these regulations is available for examination and copying at the Marine Safety Council (G-CMC/81), U.S. Coast Guard, Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426–1477.

FOR FURTHER INFORMATION CONTACT:
Frank K. Thompson, Office of Merchant Marine Safety (G–MMT/83), Room 8213, U.S. Coast Guard, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202 426–2174).

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rule making in the November 9, 1978 issue of the **Federal Register** (43 FR 52201). Interested persons were invited to submit comments on the proposed amendments before December 26, 1978. Only one comment was received in response to the notice and the commenter was in favor of the proposal.

These amendments have been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). They have been determined to be non-significant regulations.

The principal persons involved in drafting these rules are: Frank K. Thompson, Office of Merchant Marine Safety; and William R. Register, Office of the Chief Counsel.

In consideration of the foregoing, the proposed amendments published in the November 9, 1978 **Federal Register** are adopted without change as set forth below.

Dated: June 4, 1979.

R.H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

Chapter I of Title 46, Code of Federal Regualtions is amended as follows:

Subchapter C—Uninspected Vessels

PART 25—REQUIREMENTS

1. In § 25.30–20, by adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 25.30–20 Fire extinguishing equipment required.

* * * * *

(b) * * *

(3) The frame or support of each Type B-III fire extinguisher required by paragraph (b)(2)(ii) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

(4) If an approved semiportable fire extinguisher has wheels and is not required by this section, it must be securely stowed when not in use to prevent if from rolling out of control under heavy sea conditions.

Subchapter D—Tank Vessels

PART 34—FIRE FIGHTING EQUIPMENT

2. By adding a new § 34.50–20 to read as follows:

§ 34.50–20 Semiportable fire extinguishers—TB/ALL

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 34.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If a size III, IV, or V fire extinguisher has wheels and is not required by Table 34.50–10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter H—Passenger Vessels

PART 76—FIRE PROTECTION EQUIPMENT

3. By adding a new § 76.50–20 to read as follows:

§ 76.50–20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 76.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 76.50–10(a), it must be

securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter I—Cargo and Miscellaneous Vessels

PART 95—FIRE PROTECTION EQUIPMENT

4. By adding a new § 95.50–20 to read as follows:

§ 95.50–20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 95.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 95.50–10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter I–A—Mobile Offshore Drilling Units

PART 108—DESIGN AND EQUIPMENT

5. By adding a new § 108.496 to read as follows:

§ 108.496 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 108.495(a), except a wheeled size V extinguisher provided for a helicopter landing deck, must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If the following semiportable fire extinguishers have wheels, they must be securely stowed when not in use to prevent them from rolling out of control under heavy sea conditions:

(1) Each size V extinguisher required for a helicopter landing deck.

(2) Each size III, IV, and V extinguisher that is not required by Table 108.495(a).

Subchapter Q—Specifications

PART 162—ENGINEERING EQUIPMENT

§ 162.039–3 [Amended]

6. In § 162.039–3, by deleting the words "as a stationary unit" from paragraph (a), and by deleting the words "arranged for stowage in a fixed location (wheeled units not permitted)," from the first sentence of paragraph (b).

Subchapter T—Small Passenger Vessels (Under 100 Gross Tons)

PART 181—FIRE PROTECTION EQUIPMENT

7. By adding a new § 181.30–12 to read as follows:

§ 181.30–12 Semiportable fire extinguishers.

(a) The frame or support of each semiportable fire extinguisher permitted under § 181.30–10(b) in lieu of a portable fire extinguisher required by Table 181.30–01(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved semiportable fire extinguisher has wheels and is not required by Table 181.30–01(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

Subchapter U—Oceanographic Vessels

PART 193—FIRE PROTECTION EQUIPMENT

8. By adding a new § 193.50–20 to read as follows:

§ 193.50–20 Semiportable fire extinguishers.

(a) The frame or support of each size III, IV, and V fire extinguisher required by Table 193.50–10(a) must be welded or otherwise permanently attached to a bulkhead or deck.

(b) If an approved size III, IV, or V fire extinguisher has wheels and is not required by Table 193.50–10(a), it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

(46 U.S.C. 375, 390b, 416, 481, and 526p; 49 U.S.C. 1655; 49 CFR 1.46.)

[FR Doc. 79–18588 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78

[Docket No. 21505; RM–2208]

Expanding the Frequencies Available for Use by Cable Television Relay Service Stations and Setting Aside 13.15–13.20 GHz for Usage by Television and Cable Television Relay Service Pickup Stations on a Coequal Basis; Correction

AGENCY: Federal Communications Commission.

ACTION: First Report and Order in Docket No. 21505.

SUMMARY: The FCC is expanding the number of frequencies available for use by stations in the Cable Television Relay Service (CARS) from 12.7–12.95 GHz to 12.7–13.20 GHz. The band 13.15–13.20 GHz is set aside for use by Television and Cable Pickup stations in one hundred metropolitan areas.

EFFECTIVE DATE: July 6, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Melvin Muray, Spectrum Allocation Division, Office of Science and Technology (202) 632–6350.

In the matter of Amendment of Parts 2 and 78 of the Commission's rules and regulations to Expand the Frequencies Available for use by Cable Television Relay Service Stations and, amendment of Parts 74 and 78 of the Commission's rules and regulations to set aside 13.15–13.20 GHz for usage by Television and Cable Television Relay Service Pickup Stations on a coequal basis and, an inquiry to determine public interest and need to establish similar technical standards for both the Cable Television Relay Service and the Broadcast Auxiliary Service in the 12.7–13.20 GHz band, Docket No. 21505, RM–2208.

Released: June 5, 1979.

In FR Doc. 79–17498 appearing at page 32377 in the issue of Wednesday, June 6, 1979, in the third column on page 32380, paragraph 24 of the Commission's First Report and Order in Docket No. 21505, FCC 79–309, released June 1, 1979, is corrected as follows:

"1. Substitute *Office of Science and Technology* in lieu of *Office of Chief Engineer.*"

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79–18520 Filed 6–13–79; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[Docket No. 21350]

Private Land Mobile Radio Service; Simplifying Certain Procedures for Filing Applications; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: The FCC amends its rules to delete paragraph (g) of § 90.464 of its rules to eliminate the requirement for

prior Commission approval for the addition of control points, and to bring this section of the rules into conformity with the Commission's action in Docket 21350, FCC 78–839.

EFFECTIVE DATE: January 22, 1979.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene C. Bowler, Private Radio Bureau, Room 5120, (202) 632–6497.

Released: June 8, 1979.

In the matter of amendment of Part 90 of the Commission's rules to simplify certain procedures for filing applications, Docket No. 21350.

In its Report and Order adopted December 7, 1978, and released December 15, 1978, (FCC 78–839), and published at 43 FR 59071, December 19, 1978 and 44 FR 27994, Monday, May 14, 1979, the Appendix is corrected by the deletion of paragraph (g) of § 90.463, of the Commission's rules. The Appendix is corrected to read:

Part 90 is amended as follows:

Section 90.463 is amended by the deletion of paragraph (g) and the substitution of (Reserved)

§ 90.463 Transmitter control points.

(a) * * *

* * * * *

(g) [Reserved]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Note.—Rules changes herein will be covered by T.S.V(78)–1.

[FR Doc. 79–18519 Filed 6–13–79; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 44, No. 116
Thursday, June 14, 1979

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Ch. IX]

[Docket No. AO-383]

Ruby Seedless Grapes Grown in California; Recomended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of Ruby Seedless grapes grown in California. It provides interested persons with the opportunity to file written exceptions concerning the recommendations made in this decision. The proposed order would: Establish a committee of growers for local administration; authorize grade, size, quality, maturity, pack, and container regulations; and allow the committee to engage in production and marketing research and development projects financed by handler assessments. The primary objective is to authorize establishment of minimum quality requirements for Ruby Seedless grapes shipped to market. Consumers would thereby be assured of satisfactory quality and growers would benefit from an expanded market.

DATE: Written exceptions to this recommended decision may be filed by July 16, 1979.

ADDRESSES: Written exceptions should be filed in duplicate with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone: (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: Issued November 24, 1978, and published in the **Federal Register** (43 FR 56045) on November 30, 1978.

PRELIMINARY STATEMENT: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of Ruby Seedless grapes (also referred to herein as "this variety" and "grapes") grown in California.

This notice of filing of this decision and of opportunity to file exceptions thereto is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed marketing agreement and order, herefinafter referred to collectively as the "order", were formulated on the record of a public hearing held at Reedley, California, February 1-2, 1979. Notice of the hearing was published in the November 30, 1978, issue of the **Federal Register.** The notice set forth a proposed order submitted by the "Proponents for Ruby Seedless Marketing Order" on behalf of producers and handlers of Ruby Seedless grapes grown in the proposed production area.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and the determination of the production area to be covered by the proposed order;

(4) The identity of the persons and the marketing transactions to be regulated; and

(5) The specific terms and provisions of the proposed order including:

(a) The definition of the terms used herein which are necessary and incidental to attain the declared policy and objectives of the act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the proposed order;

(c) The authority to incure expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish production and marketing research and market development projects;

(e) The method of regulating the handling of Ruby Seedless grapes grown in the production area;

(f) The authority for inspection and certification of shipments of regulated grapes;

(g) The establishment of requirements for handler reporting and recordkeeping;

(h) The requirement of compliance with all provisions of the proposed order and with regulations issued under it; and

(i) Additional terms and conditions as set forth in § .62 through § .71 of the Notice of Hearing published in the **Federal Register** of November 30, 1978 (43 FR 56045) which are common to all marketing agreements and marketing orders, and certain other terms as set forth in § .72 through § .74 which are common to marketing agreements only.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Ruby Seedless grapes are grown commercially in five counties in the San Joaquin Valley in California. Principal areas of production are Fresno and Tulare counties. The primary outlets for this variety are the fresh table grape markets within the State of California, in other States, and export. This variety is not ordinarily grown for drying into raisins or for sale to wineries, though some minor quantities may be disposed of in these outlets. Small quantities of this variety are also canned or frozen, though the market for frozen grapes appears to be still in the early stages of development.

Harvesting of the grapes begins in the early part of August. Since all grapes do not mature at the same time, the vineyards are usually picked three times. The first picking accounts for

about 25 percent of the production of a given vineyard; the second picking for about 60 percent; and the final picking for the remainder.

Current packing practices in the Ruby Seedless grape industry make it impracticable to separate the grapes on the basis of the intended market; i.e., intrastate, interstate, or export. The grapes may be harvested and packed at the vineyard or they may be harvested and transported to a central location for packing. Subsequent to packing, the grapes are precooled. Immediately thereafter they may be shipped or they may be placed in cold storage for later shipment. Some of the grapes may be held in storage for as long as six months. Generally, a handler does not know the destination of the grapes at the time they are packed.

Ruby Seedless grapes are marketed in the major market areas in the United States. In addition, they are shipped to such countries as England, Canada, New Zealand, and to Hong Kong, Singapore, and the Caribbean Islands. The record indicates that the movement of grapes in the channels of commerce is so intermingled as to make it impracticable to differentiate between those shipped only to destinations within the production area and those shipped in interstate and foreign commerce. Any handling of Ruby Seedless grapes for the fresh market exerts an influence on all other handling of such grapes. Sellers of Ruby Seedless grapes, as with any other commodity, seek to conduct their business so as to secure the best return for the grapes they have for sale. The seller continually surveys the available markets in order to take advantage of the best possible opportunity to market grapes. Markets within the State of California provide opportunities to dispose of grapes the same as do markets in other States, or for export; and the sale of a quantity of grapes in a market within California exerts an influence on sales of such grapes in a market in any other State. If shipments of grapes to markets outside California were regulated while those within the State were unregulated, growers and handlers would likely attempt to market within the State all the lower quality grapes which could not be shipped under regulation. This would depress the price of Ruby Seedless grapes in California markets to a level below that prevailing in markets outside the State. The existence of a lower price level for grapes marketed within California would tend to depress the price for such grapes sold in interstate markets. Buyers generally have ready access to market information and knowledge of prices in one market is used in bargaining for the same commodity to be shipped into other markets, including markets outside California. Some grapes are initially shipped to larger markets, such as Los Angeles, and later reshipped from there to markets located outside California. Thus, it is concluded that the shipment and sale of Ruby Seedless grapes, whether to a market within the State of California or outside thereof, affect the price of all such grapes grown in the production area. Therefore, it is found that the handling of this variety of grapes grown in the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, except as hereinafter otherwise provided, all handling of Ruby Seedless grapes grown in the production area should be subject to the authority of the act and the order.

(2) Ruby Seedless grapes were first produced on a commercial basis in 1968. Currently there are about 1,000 acres planted. All of this acreage is not in full production, however, it is expected that it will be within the next two years. During the hearing, it was indicated that 500 to 600 acres of new Rudy Seedless grape vineyards would be planted in early 1979. The records indicates that there is sufficient rootstock available to plant an additional 5,000 acres; thus, the potential exists to increase the acreage of this variety at a rapid rate.

This grape has a number of characteristics that make it desirable as a fresh market table grape. It is seedless, and has the red color of the Emperor, a fresh market seeded variety. The absence of seeds is a desirable quality in grapes for fresh market. The berries are firm, and have good storage quality. The vines are vigorous and more productive than the Emperor variety. Ruby Seedless grapes can be harvested over a relatively longer period than other varieties of table grapes. However, this variety may produce fruit which fails to have desirable fresh market quality attributes unless proper cultural and packing practices are followed. In recent marketing efforts, growers and handlers found that shipment of grapes manifesting desirable berry and bunch sizes, color and types of pack could be marketed most advantageously. As greater numbers of growers and handlers become involved in producing and marketing the Rudy Seedless variety, quality control on a voluntary basis would be extremely difficult if not impossible.

It is particularly important in view of the prospective increase in production which will have to be absorbed by the market, that demand not be adversely affected by the marketing of poor quality grapes. The use of authority to establish quality requirements could be used to assure consumers that the grapes offered in the market place are of satisfactory quality. In the absence of such regulation, grapes of low quality, lacking in flavor, small in size, and off-color could be marketed. Marketing of such grapes would tend to destroy the reputation of the variety with consumers and with wholesalers, retailers, and others at all levels in the marketing channel. Shipment of unsatisfactory grapes tends to depress prices, demoralize the market, and reduce grower returns. The establishment of regulations with respect to grade, quality, size, and maturity such as are contemplated under the order would provide a method whereby orderly marketing could be promoted. Also authority to establish minimum standards of quality or maturity, or both, as permitted by the act, during any period when prices are above the parity level could promote orderly marketing in the public interest. All such actions would tend to effectuate the declared policy of the act.

The containers used in the shipment of Rudy Seedless grapes are mainly those which have been developed for the shipment of other varieties of table grapes. Concern was expressed that, in the absence of authority to regulate containers, containers closely resembling the standard containers could be used. A multiplicity of containers with different dimensions and capacities could result in buyer confusion and in a loss of trade confidence. Regulation of the size, capacity, dimensions, markings, and pack of containers used in the marketing of Rudy Seedless grapes could provide a means of enabling buyers and handlers alike to know the quantity of grapes covered by prices quoted, thereby tending to increase trade confidence and stability in the marketing of the fruit. The order should include authority to regulate markings on containers. The record indicates that such regulation could be used to assure that containers are properly marked as to weight of contents and the name of the variety. Weight is an important consideration in the sale of grapes. The requirement for marking the variety name on the containers would discourage improper identification of any container of Ruby Seedless grapes as a possible means of circumventing order requirements. It is not intended that any such regulation be used to exercise any control over proprietary brand labels, or the content

or design of any such labels. Furthermore, container regulations are not intended to discourage experimental use, under research authority, of new containers of superior design, construction, or material. The order provides for such contingency in § .45.

The proposed order would not prevent any person from planting the Rudy Seedless variety or from increasing existing acreage. Similarly, the order would not prevent any person from becoming a handler of the fruit.

The hearing record includes information on production and packing costs for Ruby Seedless grapes illustrating the substantial investment involved in vineyard establishment and in producing and marketing these grapes. In addition to the establishment of the vineyard, production demands sizable annual outlays for pruning, thinning, disease and pest control, and soil and water management. Hence, growers and handlers have a substantial interest in the establishment and maintenance of stable markets.

Exercise of the authority to regulate the quality of shipments and to establish uniform containers for such shipments could assure that unsatisfactory, low quality fruit would not undermine the market; this should encourage production of this variety of grape. Consumers would benefit by having an additional seedless table grape of uniform quality in the marketplace which, due to its storage qualities, would be available to them over a longer portion of the year.

In view of the foregoing, it is concluded that the proposed order could be used to establish orderly marketing conditions for Ruby Seedless grapes which, consistent with the declared policy of the act, would be in the public interest.

(3) The term "grapes" should be defined in the order to identify the commodity to be regulated. The term, as used in the order, means Rudy Seedless grapes. This variety of grape was originally developed at the University of California at Davis, California, in 1939. The commercial introduction and application of the name Ruby Seedless occurred in 1968. The grape is seedless with a distinctive red color, and is easily distinguished from other varieties of grapes. A representative of the Federal-State Inspection Service testified that the characteristics of Ruby Seedless grapes are different from those of any other variety of grape and there is no problem in identifying this variety.

The term "production area" should be defined in the order to mean the State of California. The evidence of record indicates that Ruby Seedless grapes are now produced in five California counties, but that they could be grown throughout most of the State. Other varieties of table grapes are grown in at least 26 of California's 57 counties and when wine and raisin variety grapes are included, grapes are grown in at least 42 of the 57 counties. In the future Ruby Seedless grapes may be grown in any of the areas suitable for production of grapes. Moreover, grapes are transported freely from one area to another and could be packed and handled at a location remote from that in which they were produced. Consequently, the production area should encompass the entire State. Therefore, it is concluded that the State of California is the smallest regional production area that is practicable consistently with carrying out the declared policy of the act.

(4) The term "handler" is synonymous with "shipper" and should be defined, as hereinafter set forth in the order, to identify the persons who would be subject to regulation under the program. Such term should apply to any person, except a common or contract carrier transporting grapes owned by another person, who performs any of the activities within the scope of the term as hereinafter defined. It should also apply to any person who causes such activities to be performed. Thus, any person who is responsible for the sale, consignment, delivery, transportation, or in any other way places Ruby Seedless grapes in the current of commerce should be a handler under the proposed order.

The term "handle" is defined in the proposed order to identify specific marketing functions which place Ruby Seedless grapes in the current of commerce within the production area or from within the production area to any point outside such area.

Specifically, the term should be defined as follows: "Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport grapes or cause grapes to be sold, consigned, delivered, or transported in the current of commerce between any point within the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the sale of grapes on the vine, or the transportation or delivery of grapes from the vineyard where grown to a packing facility located within such area for preparation for market.

Principally, three methods are employed in packing grapes. Grapes may be "field packed" directly from the vine into the container (a lug holding approximately 23 pounds) which is secured to the top of a portable pack stand and carried through the vineyard from vine to vine by the harvest worker. The worker selects and harvests mature grapes from the vine, trims each bunch with a scissors type of shear to remove immature and defective berries, and places the bunches directly into the lug, or in some instances first places the bunches into plastic bags each of which hold about two pounds, and then places the bags (11 to 12) into the lug. To complete the packing process, a "paper curtain" is placed over the grapes and a wooden slatted lid is placed on the lug. Field packed fruit is delivered to a cooling or cold storage facility where it is precooled or stored until shipped.

Another method of packing grapes utilizes a portable packing shed, moveable from site to site, consisting of an arrangement of scales and roller conveyors built on wheels. In the vineyard grapes are harvested and placed in "pick boxes". Packers at the packing shed remove the grapes from these boxes, trim them to remove undesirable berries and place them into the 23 pound lug shipping containers. Thus, the packing crew is in one location which is an advantage from the standpoint of supervision. This method also enables the salvage of cull fruit which may have economic value. A disadvantage is the expense of the extra labor involved in placing the fruit into and removing it from the pick boxes. After packing at the portable packing shed, the grapes are shipped to market or to cold storage facilities for precooling or holding for shipment.

The third packing method involves the use of a central packinghouse, a permanent installation. Grapes are harvested and placed stem up into pick boxes which contain 30 to 40 pounds, then moved by truck to the packinghouse. There, packers are located at individual stations equipped with a pack stand, scales, and packing supplies such as lug boxes, bags, and curtains. Each packer packs from a pick box, removing the bunches, trimming each to remove undesirable berries, and placing the bunches into 23 pound lugs. The lugs then move down a conveyor for lidding. After lidding, the lug is ready for shipment to market, or to cold storage facilities for cooling or holding.

Basically the foregoing describes the manner in which grapes are prepared for market. It is during these stages of preparation that grapes can be most conveniently graded, sized, and otherwise packed to meet any requirements of the order. It is therefore

concluded that grapes should meet any such requirements before being handled as the term "handle" is herein defined. However, it would be impractical to require grapes to meet regulatory requirements prior to the time they have been prepared for market. Hence, the activities and the movement which are necessary to facilitate such preparation should be exempt from the definition. Thus, the sale of grapes on the vine, and the transportation or delivery from the vineyard where the grapes are grown to a packing facility located within the production area for preparation for market should be excluded from the term.

The record indicates that grapes often are precooled or stored in cold storages prior to being placed in marketing channels. Hence, precooling and storage, if performed, should be considered as being a part of preparation for market of the grapes involved.

Although the record indicates that prior to being placed in the channels of commerce most grapes are prepared for market as heretofore described, some grapes may be shipped directly to market from the vineyard by the producer. In the event a producer transports grapes from the vineyard directly to the market, he would be placing the grapes in the current of commerce. In such instances, it is incumbent upon the producer to see that the grapes comply with all applicable requirements prior to such handling. Persons who purchase grapes on the vine and have them harvested and place them in maket channels likewise are performing the handling function and are responsible for compliance with all order requirements.

It was indicated that in many instances grapes are sold through commission merchants. In such cases, the commission merchants should make certain that the grapes meet the requirements of the order prior to their movement into marketing channels. However, the fact that the person with the proprietary interest in the grapes employs a commission merchant to sell such grapes would not absolve such person of responsibility for seeing to it that the grapes meet applicable requirements as the commission merchant may only be acting as agent of the person who holds proprietary interest. Persons with the proprietary interest in the grapes under whose direction preparation for market takes place normally are in the best position to assure that packed grapes meet any regulatory requirements prescribed under an order. Shipment of grapes which have by-passed any stage of normal preparation should nonetheless be required to comply with requirements of the order. Persons who ship an grapes which do not meet regulatory requirements should be accountable for the violation. It is necessary that persons who sell, consign, deliver, or transport or who cause grapes to be sold, consigned, delivered, or transported in the channels of commerce be responsible for compliance with order requirements to assure its effectiveness.

(5)(a) Certain terms and provisions of the proposed order should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

"Secretary" should be defined to mean not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, to recognize the fact that it is physically impossible for the Secretary to perform personally all functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act for the Secretary.

"Act" should be defined to provide the correct legal citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program is to be operative and avoids the need for referring to the citation throughout the order.

The definition of "person" should follow the definition of that term as set forth in the act. This will insure that the term will have the same meaning in the order as it has in the act.

"Producer" is synonymous with "grower" and should be defined to mean any person engaged in a proprietary capacity in the production of Ruby Seedless grapes for market. This definition is necessary for such purposes as determining eligibility of persons to vote for, and to serve as, members or alternate members of the Ruby Seedless Grape Committee, and to identify those eligible to vote in any referendum.

The term "fiscal year" should be synonymous with "crop year" and should be defined to mean the period with respect to which financial records of the Ruby Seedless Grape Committee—the agency which would administer the program locally—are to be maintained. The period should fix the beginning of each fiscal year at such time as would afford the committee time to plan and recommend any needed regulations for a crop year and encompass a period during which all of the production of any given season is likely to be handled. Furthermore, the period should allow sufficient time prior to harvest each year for the committee to organize and develop information necessary to its functioning during the fiscal year. The evidence of record indicates that at present such fiscal year should be the 12 month period beginning April 1 of a year and ending March 31 of the following year. However, it may develop that for reasons not now apparent, it would be desirable to establish a fiscal year other than the one beginning April 1. Therefore, authority should be included in the order to provide that the committee may prescribe a different fiscal period, subject to the approval of the Secretary. It should be recognized that if at some future dates there is a change in the fiscal year, such change could result in a transition year being more or less than 12 months. Also, since the order, if issued, will be issued after April 1, 1979, and the initial fiscal year would end on March 31, 1980, the initial fiscal year will be less than a full 12 month period.

The term "committee" should be defined to identify the administrative agency—the Ruby Seedless Grape Committee—established under the provisions of the order. Such a committee is authorized by the act, and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating the full name each time it is used.

"District" should be defined in the order to mean the State of California. Such a definition forms a basis for nomination and selection of committee members. At present, the production of Ruby Seedless grapes is located in a relatively compact area in five counties in the central Joaquin Valley in California, with most of that production coming from two counties. However, this variety of grape eventually may be produced over a much wider area within the State. In such event, the order should provide for redistricting the production area into a number of smaller districts if this is deemed necessary to achieve proper and equitable representation among producers.

The term "pack" should be defined in the order to mean the placement of grapes into containers for shipment as fresh grapes, or the specific arrangement of grapes within a particular type and size of container by size of grape, weight, grade, or any combination thereof, for shipment as fresh grapes. A

definition of pack is needed in conjunction with proposed authority to facilitate description of regulations and to assist inspection and certification.

"Container" should be defined in the order as follows: "Container means any box, lug, crate, carton, or any other receptacle used in the packing of grapes for shipment as fresh grapes, and includes the dimensions, capacity, weight, markings, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term also applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein". A definition of this term is needed to serve as a basis for differentiation among the various shipping receptacles in which grapes are shipped to the fresh market. The evidence of record indicates that the committee will likely adopt those container regulations currently effective under California law. However, the order should provide for establishment of different regulations applicable to containers or packages within a container as recommended by the committee and approved by the Secretary if it is found that any such regulations would tend to effectuate the declared policy of the act.

"Part" and "subpart" should be defined in the order to make clear the meaning of such terms whenever they are used throughout the order. Consistent with the Code of Federal Regulations, "part" should mean collectively the order regulating Ruby Seedless grapes grown in California and all rules and regulations issued thereunder. Likewise, the recommended order and the various subdivisions of the rules and regulations would each be referred to as subparts of the part.

(b) It is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the purposes of the order and of the act. A committee consisting of nine members would be appropriate and the term "Ruby Seedless Grape Committee" would be a proper identification of the agency and reflect its character. The committee should be composed of eight producer members and one public member, with an alternate for each member. At present, the Ruby Seedless grape industry is located in a relatively compact area. Some of the growers are also handlers of grapes. Under provisions of the proposed order, a grower who performs handler functions does not lose the grower status. Hence, the record indicates it is unneccessary to provide for handlers as such on the committee. It was testified without opposition that changes in the industry may make it desirable to enlarge the committee at some future time and the order should provide for this. It is therefore concluded that authority should be included whereby the Secretary could, upon recommendation of the committee, change the number of producer member positions on the committee. In the event any such change is made, the order should allow appropriate changes in the quorum requirements contained in § 32.

In addition to the eitht grower members on the committee, there should be an individual to serve as a public member. A public member could bring the viewpoint of the general public into committee deliberations. This could be particularly valuable in helping the committee to plan, implement, and evaluate marketing objectives. In addition, a public member could act as an intermediary and improve the understanding of the grape industry by the general public. The public member would thus serve an important purpose beneficial to the industry and the general public. Hence, the authority to change the number of committee members is not to be used to abolish the position of public member. It was testified by the proponent group that should the Ruby Seedless grape industry increase as anticipated, there are likely to be handlers of grapes who are not growers. It was advanced that it might be appropriate to provide that through rulemaking procedures the committee could be restructured to include such persons. However, no basis for qualificiations, nominating procedure and allocation of handler membership is provided in the record. It is therefore concluded that if in the future a need for such restructuring is manifest, this need would be more appropriately dealt with by an amendatory proceeding. Thus, authority to restructure the committee to include handler members is not included in the recommended order.

It is appropriate to specify in the order a term of office for members (and alternates) of the committee. The record indicates that a desirable term would be two fiscal years beginning April 1 of an odd numbered year and ending on the second succeeding March 31. In the event that the recommended order becomes effective, the term of office of the initial committee members should commence on the date such members are selected by the Secretary and end March 31, 1981.

So that there will be a committee at all times, members and alternates, after selection and qualification should continue to serve until their respective successors are selected and have qualified and the order should so provide. A term of office beginning April 1 would begin sufficiently in advance of the time when grape harvesting begins (about four months) to permit the committee to meet and organize; consider the prospective crop and marketing situation; develop an appropriate marketing policy; and consider the need for any administrative changes.

Each person selected to serve on the committee as a producer member should be an individual who is a producer, or an officer or employee of a corporate producer or other type of business unit engaged in the production of grapes. The public member should be a resident of the production area and should not be engaged in or have a financial interest in the production, processing, financing, or marketing (except as a consumer) of Ruby Seedless, or any other variety of grapes.

The order should provide for submission of the names of nominees for initial members of the Ruby Seedless Grape Committee by the group responsible for initiating the request for the order. This group was the "Proponents for Ruby Seedless Marketing Order." The record indicates that this group intends to secure such names by conducting nomination meetings among all known Ruby Seedless grape producers. Any nominations resulting from such meeting should be filed with the Secretary no later than the effective date of the order, should the order be promulgated. In the event no such nominations are made, the Secretary should be authorized to select the initial committee members from among qualified persons. A meeting for the purpose of nominating successors for poroducer members of the committee should be held, or caused to be held, by the committee not later than February 15 of each odd numbered year. Such meeting should be held at such time and place as will result in maximum grower participation. If the production area is divided into districts at some future date, the committee should consider whether or not meetings should be held in each district and act accordingly. The order should provide that only growers, including duly authorized representatives of growers, who are present at nomination meetings may participate in nominations. Each grower should be entitled to cast one vote for each nominee regardless of the number of business units in which that grower may be involved. A grower, including officers, or employees of such a grower, should be eligible to fill only

one position on the committee. The order should provide that the committee may appoint a subcommittee to locate prospective nominees for the public member and alternate member positions for consideration by the committee. While the subcommittee should function to identify possible candidates for the public member position, the committee should make the final nominations.

The order should provide that the members of the committee shall be selected by the Secretary from those nominated or from among other qualified persons. It should also provide that in the event nominations are not made within the time and in the manner hereinafter specified, the Secretary may select members and alternates without regard to nominations. Such selection should, of course, be from qualified persons as provided in the order.

The order should require that any person selected by the Secretary as a member or alternate shall qualify by promptly filing a written acceptance after being notified of selection.

The order should provide a method of filling any vacancies on the committee, including selection by the Secretary if nominations to fill any vacancies are not made as hereinafter provided. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. It is important to maintain full membership on the committee, thus the order should require the committee to nominate a person to fill a vacancy on the committee within a reasonable time after such vacancy occurs. In the event the committee should fail to so nominate, the order should authorize the Secretary to fill such vacancy without regard to nominations.

The order should provide that an alternate member shall be selected for each member of the committee. Each alternate selected should have the same qualifications for membership as the member. There could be occasions when a committee member is unable to attend a meeting or meetings. Provisions for alternates would help assure a quorum at meetings, and thus permit the committee to conduct business when members are absent. Moreover, in the event of death, removal, resignation, or disqualification of a member, the alternate should act until a new member is nominated and selected. The order should provide that, in the event a producer member and that member's alternate are both unable to attend a committee meeting, such member or the committee members present at the meeting should be permitted to designate any other producer alternate to serve in such member's place in the event such action may be necessary to secure the required quorum.

The chairman of the committee, or the committee should be authorized under the order to request attendance at meetings by any alternate without regard to the expected or actual attendance of the member. Likewise, the chairman or committee should be authorized to request any alternate to perform other necessary duties in conjunction with the order.

The committee should be given those specific powers which are set forth in Section 8c(7)(C) of the act. Such powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the recommended order, are necesssary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It should be recognized that these specified duties are not necessarily all-inclusive, and it may develop that there are other appropriate duties the committee may need to perform.

The order should provide that at least six members of the committee or alternates acting for members, are necessary to constitute a quorum and any action by the committee shall require the concurring vote of a majority of the members present. However, any committee actions relative to expenses and assessments or recomendations for regulations pursuant to §§ .50 through .55 should require at least six concurring votes. This requirement would insure that actions pertaining to committee expenses and regulations have substantial industry support. The record indicates there may be occasions where action should be taken but such action does not warrant the expense of an assembled meeting and the inconvenience to committee members of the travel involved. In such cases, it would be appropriate to authorize the committee to vote by telephone, telegraph, or by other means of communication. To enable this, the order should authorize such voting. However, actions so taken should require at least eight votes of which not less than six shall be affirmative. Any action relative to regulations pursuant to §§ .50 through .55 or assessments pursuant to § .41 should be taken at assembled meetings.

The order should provide that members of the committee, and alternates when acting as members, shall be reimbursed for out-of-pocket reasonable expenses incurred in performing committee business. It would be unfair to expect members to personally cover such expenses incurred on behalf of the industry. Primarily, most expenses would be incurred in attending committee meetings; however, there may be instances when a member or alternate would be assigned specific duties by the committee, and incur expenses in performance of such duties. In any such case, the member or alternate should be reimbursed for any reasonable expenses involved in performing such duties.

The order should include a provision whereby the committee may prepare and submit to the Secretary an annual report as soon as practicable after the end of each crop year. Any such report should be made available to any grower, handler, or any other person who requests a copy. The report should review the administrative, financial, regulatory and research activities of the committee. It should also include information on shipments, prices, available marketing information, and any other appropriate information that is available.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee and should include the funding of any committee activities as the Secretary may determine to be appropriate. Necessary expenses include such items as salaries for administrative employees, travel expenses, rent, utilities, equipment and supplies. These are expenses ordinarily associated with the operation of a business entity and are likely to be incurred in the operation and functioning of the committee. The comittee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the order during a fiscal year. Such budget, including an analysis of its components, should be submitted to the Secretary for approval prior to or near the beginning of each fiscal year. Any such budget should also include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year. The order should provide for assessment of handlers for maintenance and functioning of the committee throughout the period the order is in effect irrespective of whether particular provisions thereof are suspended or are inoperative. The act

authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and requires the order to contain provisions requiring handlers to pay their pro rata shares of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay the approved expenses, the Secretary should be authorized to increase such assessment rate in order to secure sufficient funds. Any such increase should be applicable to all grapes handled during the applicable fiscal year.

While the order should require each handler to pay to the committee a pro rata share of the expenses as the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year, provision should be made for financing previous to the time assessment income is available from assessments to defray expenses. Since the recommended fiscal year begins on April 1 and any assessment revenue would not be received by the committee until after grapes are handled (mid-August), the committee should be authorized to accept advance payment of assessments or to borrow money to pay expenses due before assessment income is received. In addition, the committee should be authorized to carry over any excess assessment funds, with the approval of the Secretary, into subsequent fiscal years, as a reserve. If excess assessment funds collected from handlers during a fiscal year are not carried over as a reserve, handlers should be entitled to a proportionate refund of any such excess funds. Such refund may be made by direct payment to a handler or by crediting such amount against such handler's assessment in the subsequent fiscal year. However, the order should provide that any such refund can be applied to offset any outstanding obligation due the committee from such handler. Funds carried in such reserve should not be allowed to exceed approximately one fiscal year's expense. Such funds should be available for all approved expenses during any fiscal year including those falling due prior to the time assessment income from that year is available; to cover any deficit in a fiscal year when assessment income is less than expenses; to defray expenses during any period when any or all of the provisions of the order may be suspended or are inoperative; and to cover necessary liquidation expenses in the event the order is terminated. Upon termination of the order, handlers would be entitled to a refund of their equities. However, should the order be terminated after many years of operation, it may be difficult to determine handler equities with precision. Therefore, the order should provide that in such event, the funds may be disposed of in such manner as the Secretary determines to be appropriate, but to the extent practicable any such funds shall be returned pro rata to the handlers from whom such funds were collected.

The order should provide authority to permit the committee, with the approval of the Secretary, to levy a late payment charge or interest, or both, on assessments that are not paid by the time specified by the committee. Nonpayment of assessments can have an adverse effect on the operation of the committee and may require it to borrow money and pay interest to continue operation. It is not fair for one handler to pay assessments on time while another does not. Delinquent accounts are costly to collect and time consuming and should be avoided if at all possible. By paying the obligation when due, handlers would not be subject to either the late payment charge or interest. The record indicates that any late payment charge and/or interest rate applicable to delinquent assessments should be established by issuance of appropriate rules and regulations recommended by the committee and approved by the Secretary.

All funds received by the committee under the order should be used solely for the purposes of the order. The Secretary should be authorized to require the committee, at any time, to account for all receipts and disbursements. Also, when any person ceases to be a member or alternate of the committee, such person should be required to account for all funds, property and other assets for which such person is responsible and to deliver to the committee any such funds, property, and assets. Such person should execute appropriate assignments and other instruments as may be appropriate to vest in the committee the right to all such funds and property and all claims vested in such person.

(d) The order should provide authority, as hereinafter set forth, for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of Ruby Seedless grapes. This authority is intended to permit research into propagation and cultural practices as well as marketing and distribution. It does not authorize any form of paid advertising because such advertising for Ruby Seedless grapes is not authorized by the act. Since the Ruby Seedless grape is a relatively new variety of grape and its production is expected to increase rapidly in the immediate future, research relative to pruning, fertilization, cultivation and pest control would be appropriate areas for research. With respect to research on marketing and distribution of such grapes, container and other packaging research should be included.

The foregoing are merely examples of the kinds of research that the committee may wish to undertake. They are not intended to be all inclusive. It is not possible to anticipate all the problems that may arise which may require research. Hence, it is desirable for the order to contain all the authority of the act so the committee may engage in any research projects relative to production and marketing designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of Ruby Seedless grapes.

The Committee should be empowered to engage in or contract for such projects, to spend funds for such purposes and to consult and cooperate with other agencies in the conduct of research projects. Approval by the Secretary would be required prior to engaging in any research project.

A representative of the California Table Grape Commission testified in opposition to inclusion in the proposed order of authorization for the committee to engage in marketing research and development projects. The Commission conducts advertising and research under the authority of the California Agricultural Code. The funds for such projects are obtained through assessments levied on grape producers. Under section 65501 of this code, if (a marketing agreement or) a marketing order under the jurisdiction of the United States Department of Agriculture contains provisions substantially similar to those in the California code, the code is inapplicable to any producer, shipper, or other person covered under the Federal marketing agreement or order.

Section 608c(6)(I) of the Agricultural Marketing Agreement Act of 1937, as amended, provides, in part, that inclusion in a Federal marketing order of provisions for research and marketing promotion shall not be deemed to preclude, preempt, or supersede any

such provisions in any State program covering the same commodity.

The evidence of record indicates that the proponent group have no objection to payment of assessments to the California Table Grape Commission. It was suggested at the hearing that the California Table Grape Commission and the Ruby Seedless grape industry could effect a memorandum of understanding to assure the Commission that the Federal order was not intended to preempt the provisions relative to production and market research and promotion. Since as heretofore noted, the wording of the act relative to this subject clearly indicates there is no preemption, any agreement between the Commission and the Ruby Seedless grape industry would be outside the authority and scope of the marketing order.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for Ruby Seedless grapes, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of Ruby Seedless grapes, as proposed to be authorized in the order, would provide a means for carrying out such policy.

To facilitate the operation of the program each year the committee should submit a marketing policy report to the Secretary. The report should be for the ensuing season and should be submitted by the committee prior to making any recommendations relative to regulations for such season. In developing its marketing policy, the committee should give consideration to factors which affect the production and marketing of Ruby Seedless grapes. Any such policy should be announced prior to the beginning of the harvesting period. The reason for such timely announcement is so growers and handlers will be apprised of the grade, maturity, color, size, pack, or container regulations that are likely to be in effect for the upcoming season and can plan accordingly.

The factors set forth in the recommended order which the committee should consider in developing its marketing policy are those that are appropriate and necessary for a proper evaluation of the overall supply and market outlook.

In considering its marketing policy, the committee needs to know the expected quantity and quality of the forthcoming crop. The committee should also have similar information about other varieties of table grapes. At present, almost all of the Ruby Seedless grapes produced are sold in the fresh market. However, in the future, quantities of these grapes may be sold for freezing or canning, dried into raisins, or sold to the wineries, therefore the expected demand conditions for such grapes should include an appraisal of the current and prospective conditions in all outlets. Information relative to the trend and level of consumer income and supplies of competing commodities should be included because of the influence such factors might exert on shipments of grapes. Since certain regulations are permitted only when the price to growers is below parity, the committee should indicate in its marketing policy the expected price for Ruby Seedless grapes and the relationship of any such price to the parity price. In addition to the foregoing information, the committee should include in its marketing policy report any other factors likely to have a bearing on the marketing of grapes.

The Ruby Seedless Grape Committee, as the local administrative agency under the proposed order, should be authorized to recommend regulations designed to effectuate the declared policy of the act and as provided in the order. As previously mentioned, authority for regulations should include grade, size, quality (including color), maturity, or any combination thereof, for grapes grown in the production area. The committee should also be authorized by the order to recommend regulations relative to the size, capacity, weight, dimensions, markings, or pack of any container or containers used in the handling of such grapes. In addition, the committee should have the authority to recommend such other terms and conditions as may be incidental to, and not inconsistent with, the regulatory authority, as hereinafter set forth, which may be necessary to effectuate the provisions of the order. It is appropriate that the committee should have the responsibility for recommending regulations to be considered by the Secretary and that the Secretary look to the committee for such recommendations.

The regulation of the grade, size, quality (including color), and maturity of grapes is a basic function of the proposed marketing order. The shipment of low grade, small size, and otherwise poor quality grapes destroys consumer confidence and depresses financial returns to growers.

The evidence of record indicates that the U.S. Standards for Grades of Table Grapes could serve as a basis for regulation under the order. It is intended that any minimum grade and quality standard could be made effective regardless of whether the price for Ruby Seedless grapes is above or below parity.

A number of attributes are related to quality in grapes. Maturity of grapes is an important element in palatability and may be determined by measuring the soluble solids. Color is an important factor because consumer selection of grapes is likely to be influenced by the "eye appeal" of the fruit. Uniformity of size of the individual grapes in a bunch is a significant factor in a consumer's decision to buy or not to buy. Small berries, referred to in the trade as "water berries" or "shot berries", are often immature and either sour or completely lacking in flavor. It is in the public interest to establish quality and maturity standards to prohibit the marketing of grapes that are materially disfigured, decayed, improperly colored and otherwise unacceptable.

Section 608c(6)(I) of the act authorizes inclusion in a marketing order of terms and conditions to fix size, capacity, weight, dimensions, or pack of the container or containers used in the handling of grapes. The Ruby Seedless grape industry is expected to increase substantially in the future. Marketing the increased production will demand trade confidence. Suitable containers, the different sizes of which are readily distinguishable one from another, could be mandated by regulation. Hence, authority should be included to regulate containers to the extent necessary as permitted by the act to maintain trade confidence, establish orderly marketing and improve returns to growers.

The recommended order should provide for modification, suspension, or termination of any regulation whenever such action would tend to advance the objectives of the act and the order. The order should authorize such based upon a recommendation of the committee, or other information available to the Secretary. The need for this authority is obvious in that there likely will be times when due to changes in circumstances, a given regulation would not tend to effectuate the declared policy of the act and thus should be modified, suspended, or terminated, as applicable.

The evidence of record indicates that the order should exempt grapes for certain uses from payment of assessments, quality, and container regulations, and inspection and certification requirements. Specifically, shipment of grapes for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products do not affect the marketing of grapes in commercial fresh fruit market channels.

Consequently, such shipments should be exempt from order requirements. At the present time, minor quantities of Ruby Seedless grapes are processed into raisins, frozen, or used in the production of wine. The order should also include discretionary authority to exempt the handling of grapes for such specified purposes or in such minimum quantities as may be found consistent with good administration. Grapes handled in gift packages, sold by a producer at his own roadside stand, or those shipped for use in conjunction with marketing research and development projects, are examples of handling which should be eligible for exemption from assessments, quality and container regulations, or inspection and certification requirements or a combination thereof. However, to prevent possible abuse of the exemption provisions, the committee should have authority to prescribe approriate rules, regulations, and safeguards to prevent grapes handled under exemptions from entering the channels of commerce for fresh grapes or for some purpose other than the specific purpose authorized, if such action is necessary.

The record indicates that there may be times when grapes held in storage will deteriorate and no longer meet the minimum quality requirements. It is likely that such grapes would be disposed of for commercial processing into products under the exemption provisions. In addition, in any grape packing operation there often is a quantity of cull fruit remaining after packing. Any such cull fruit may be disposed of to exempt uses under the exemption provisions. However, should abuses occur, such as diversion to non-exempt channels, the committee should have authority to establish appropriate controls. Such controls may include a requirement that handlers agree to observe specified requirements and comply with established safeguards to handle grapes under any such exemption.

(f) Inspection and certification of shipments are necessary to assure that the handling of grapes complies with regulations effective under the proposed order. The Federal-State Inspection Service has inspectors in the production area. At the hearing, a representative of this agency indicated that the agency is in a position to provide any necessary inspection and certification.

Responsibility for obtaining inspection would fall upon the handlers. All grapes should be inspected prior to handling. However, there may be some occasions when inspectors are not available in a reasonable time to perform the required inspection. Consequently, the order should provide that in such cases the inspection requirement may be waived. Subject to approval of the Secretary, the committee should prescribe rules and regulations governing the issuance of waivers of inspection to prevent the abuse of such provision. Moreover, any such waiver should not release the handler from complying fully with any other order requirements.

Grapes are perishable and may deteriorate over time, particularly if preventive steps are not taken. Therefore, the order should authorize establishment of a maximum time an inspection certificate is valid. Such authority could be used as necessary to require that grapes be inspected within a specified time prior to shipment, and if the grapes are not shipped within such time would be subject to reinspection.

The order should require that handlers furnish the committee a copy of the inspection certificate applicable to each lot of grapes. The certificates contain considerable data of value to the committee in conducting program operations which would otherwise have to be obtained by requiring reports from handlers. The certificates also can be used as a basis for assessment billing. This requirement may be accomplished by having the Federal-State Inspection Service forward to the committee a copy of each inspection certificate issued on Ruby Seedless grapes. The order should authorize the committee to enter into an agreement with the Federal-State Inspection Service for the required inspection and collect from handlers their respective pro rata share of inspection costs. The benefits of the order, including inspection, will accrue to the industry generally. Under a committee contract, it is contemplated that the inspection fee would be set as a uniform fee per carton or lug regardless of where or how many cartons or lugs are inspected at a particular time.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. Handlers have the necessary information in their possession and the requirement that they furnish it to the committee in the form of reports should not constitute an undue burden.

Reports are needed by the committee for such purposes as determining whether handlers are complying with order requirements; to aid in determining and collecting program assessments; and to enable computations of statistical data for use in marketing policy development and recommendations for regulations.

It is anticipated that information needed may include: the name of the shipper and the shipping point; identification of the carrier; date and time of shipment; number of containers in a shipment; destination of shipment; and inspection certificate or waiver of inspection applicable to the shipment. The foregoing, however, should not be construed as a complete list of information the committee might require. It is not possible at this time to anticipate every type of report or kind of information which the committee may find necessary for the proper conduct of operations under the order. Therefore, the order should authorize the committee, with the approval of the Secretary, to require each handler to furnish such information as it finds necessary for it to perform its duties under the order.

The order should require each handler to maintain such records of the grapes received and disposed of as may be necessary to verify the reports such handler submits to the committee. All such records should be maintained for two fiscal years after the fiscal year in which the transactions occurred.

The record indicates that the inspection certificate and shipping manifest applicable to each shipment of grapes would likely contain most of the information the committee would need, in the ordinary course of operations. Thus, the submission of reports directly by handlers should be kept to a minimum. As hereinafter specified in the order, all reports and records submitted by handlers for committee use should be kept confidential in the custody of a committee employee and the contents disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, release of information compiled from reports may be helpful to the committee and to the industry generally in planning operations under the order. However, any information released should be on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position or business operations of individual handlers.

(h) Except as provided in the recommended order, no handler should be permitted to handle Ruby Seedless grapes, the handling of which is prohibited by such order or prohibited

by any regulations issued under such order. If the program is to operate effectively, compliance with its requirements is essential and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to those handlers who are in compliance and could impair the effective operation of the program.

(i) The provisions of §§ —.62 through —.71 as contained in the notice of hearing published in the Federal Register on November 30, 1978, (43 FR 56045) and hereinafter set forth in the recommended order, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the act. The evidence of record supports inclusion of each such provision. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section numbers and heading are as follows: § —.62 Right of the Secretary; § —.63 Effective time; § —.64 Termination; § —.65 Proceedings after termination; § —.66 Effect of termination or amendment; § —.67 Duration of immunities; § —.68 Agents; § —.69 Derogation; § —.70 Personal liability; and § —.71 Separability. Those provisions applicable to the marketing agreement only are: § —.72 Counterparts; § —.73 Additional parties; and § —.74 Order with marketing agreement.

Rulings on briefs of interested parties. At the conclusion of the hearing the Administrative Law Judge fixed March 12, 1979, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based upon the evidence received at the hearing.

Two briefs were filed, both by the "Proponents For Ruby Seedless Marketing Order", the group that requested the hearing. One brief urged that the provision of the order authorize container regulations to the full extent permitted by the Act. Specific reference was made to the industry practice of packaging grapes in poly (film) bags, and to the testimony of an opposition witness who maintained that the regulation under the California State code applicable to packaging of table grapes would be sufficient. A review of the evidence of record with respect to container regulation is found to support petitioners position and provisions of the proposed order reflect such conclusion. This brief also urges that the order include to the extent possible, all the authority permitted by the Act for production and marketing research and development. Reference was made to the testimony of a representative of the California Table Grape Commission who testified that § —.45 should be stricken from the proposed order as it would negate the Commission's authority to collect research assessments on Ruby Seedless grapes. The record indicates that proponents of the order do not object to payments of Commission assessments and the Agriculture marketing Agreement Act of 1937, as amended, under which the order would be effective, specifically provides that the inclusion in a Federal marketing order of provisions for research and marketing development shall not be deemed to preclude, preempt or supersede any State program covering the same commodity. A review of the record supports a finding that authority for production research and marketing research and development should be included in the order, and the order reflects that conclusion.

The other brief contends that persons who were producers on April 3, 1979, should be entitled to participate in the voting for nominees to fill member and alternate positions on the committee. It also suggests that such date could be used as a guide in establishing the date of planting for eligibility or producers to vote in a referendum. The term "producer" is defined in the order and those who qualify as a producer under that definition at the time the voting occurs would be eligibile to vote for nominees to fill producer positions on the committee. As to the suggestion that April 3, 1979, be used to determine eligibility of producers for voting in any referendum on the proposed order, the conduct of referenda is governed by "Subpart—Procedures for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended" (7 CFR 900.400–900.407). Under such procedure persons eligibile to vote would be those who at the time of the referendum qualify as producers in terms of the definition of "producer" contained in the order and also were producers of the commodity during a "representative period" specified by the Secretary in a referendum order. The record ontains no evidence supporting any particular date or dates determining a representative period. In the event the proposed order is presented to producers in a referendum, the referendum order which would be published with the Secretary's Decision will specify beginning and ending dates determining the "representative period" for purposes of that referendum. The Secretary may, if he so chooses, observe the suggested date in establishing the representative period.

General Findings. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of Ruby Seedless grapes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistenly with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisons of the peoduction area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of Ruby seedless grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Ruby Seedless grapes grown in the production area, as defined in said marketing agreement and order, is in the current of interstate of foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement and order. The following marketing agreement and order [1] are recommended as the detailed means by which the foregoing conclusions may be carried out.

Definitions

§ —.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department who is or who may hereafter be authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ —.2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933) as amended

[1] The provisions identified with asterisks (***) apply only to the proposed marketing agreement and not to the proposed marketing order.

and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ —.3 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

§ —.4 Production area.

"Production area" means the State of California.

§ —.5 Grapes.

"Grapes" means all strains of Ruby seedless grapes grown in the production area.

§ —.6 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of grapes for the fresh market.

§ —.7 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, or transport grapes or cause grapes to be sold, consigned, delivered, or transported in the current of commerce between any point within the production area and any point outside thereof, or within the production area: *Provided*, That, the term handle shall not include the sale of grapes on the vine or the transportation or delivery of grapes from the vineyard where grown to a packing facility located within such area for preparation for market.

§ —.8 Handler.

"Handler" and "shipper" are synonymous and mean any person (except a common or contract carrier transporting grapes owned by another person) who handles grapes.

§ —.9 Fiscal year.

"Fiscal year" is synonymous with "crop year" and means the 12 month period beginning April 1 of any year and ending on March 31 of the following year, both dates inclusive, or such other period as the committee, with the approval of the Secretary, may prescribe.

§ —.10 Committee.

"Committee" means the Ruby seedless Grape Committee established pursuant to § —.20.

§—.11 District.

"District" means the State of California, or such other districts as may be prescribed pursuant to § .31(1).

§—.12 Pack.

"Pack" means (a) the placement of grapes into a container for shipment to market as fresh grapes, or (b) the specific arrangement of grapes within a particular type and size of container by size of grape, weight, grade, or any combination thereof, for shipment as fresh grapes.

§—.13 Container.

"Container" means a box, lug, crate, carton, or any other receptacle used in packing grapes for shipment as fresh grapes and includes the dimensions, capacity, weight, markings, and any pads, liners, lids, and any or all appurtenances thereto or parts thereof. The term applies, in the case of grapes packed in consumer packages, to the master receptacle and to any and all packages therein.

§—.14 Part and subpart.

"Part" means the Order Regulating the Handling of Ruby Seedless Grapes Grown in California and all rules and regulations and supplementary orders issued thereto. The aforesaid Order Regulating the Handling of Ruby Seedless Grapes Grown in California shall be in a "subpart" of such part.

Administrative Body

§—.20 Establishment and membership.

There is hereby established a Ruby Seedless Grape Committee consisting of nine members, each of whom shall have an alternate who shall have the same qualifications as the member. Eight members shall be growers (producer members), and one shall be a public member. Producer membes and their alternates shall be growers or employees of growers. Each member and alternate shall meet the eligibility requirements set forth in § .22. The Secretary, on recommendation of the committee, may change the number of members on the committee.

§—.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two fiscal years beginning on April 1 of an odd numbered year and ending on March 31 of an odd numbered year. Members and alternate members shall serve in such capacities for that portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§—.22 Eligibility.

Each producer member of the committee shall, at the time of selection and during the term of office, be a producer in the district for which selected. The public member of the committee, at the time of selection and during the term of office, shall not have a financial interest in or be associated with the production, processing, financing or marketing (except as consumers) of Ruby Seedless or any other variety of grapes.

§—.23 Nominations.

(a) *Initial members.* Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of a meeting or meetings of the growers in the production area. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate membes of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § .20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than February 15 of each odd numbered year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor producer members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers who are present at each such nomination meeting, or who are represented by duly authorized representatives approved by the committee, may participate in the nomination and election of nominees for producer members and their alternates. Each grower in attendance, or authorized representative of a grower, shall be entitled to cast only one vote, regardless of the number of business units the grower may represent, for each nominee to be selected.

(3) A particular grower, including officers or employees of such grower, shall be eligible for membership as member or alternate to fill only one position on the committee.

(4) Nominations for public member and alternate shall be made by the committee. The committee may appoint a subcomittee to select prospective nominees for the public member and alternate member positions on the

committee. The committee shall prescribe such procedure for the selection and voting for each candidate as shall be fair to all persons concerned.

§ —.24 Selection.

From the nominations made pursuant to § .23, or from other qualified persons, the Secretary shall select the nine members of the committee and an alternate for each such member.

§ —.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § .23, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § .20.

§ —.26 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ —.27 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in § .23 and § .24. If the names of the nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § .20.

§ —.28 Alternate members.

An alternate member shall act in the place of the member during such member's absence and may be assigned other program duties by the chairman or the committee. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. In the event that both a producer member and that member's alternate are unable to attend a committee meeting, the member or committee members present may designate any other alternate to serve in such member's place at that meeting provided such action is necessary to secure a quorum.

§ —.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ —.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such year;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to grapes;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the provisions of this part; and

(l) With the approval of the Secretary, to divide the production area into districts, and to redefine such districts, and, further, to apportion the representation on the committee among the districts or to reapportion such representation among the districts.

§ —.32 Procedure.

(a) Six members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ .50 through .54 shall require at least six concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any vote cast by telephone shall be confirmed promptly in writing: *Provided,* That voting other than in an assembled meeting shall require two-thirds affirmative vote of the committee in order to constitute approval and at least eight votes must be cast. If an assembled meeting is held, all votes shall be cast in person. Recommendations for regulation pursuant to § .51 and recommendations for assessments pursuant to § .41 may be made only at an assembled meeting.

§ —.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

§ —.34 Annual report.

The committee may, as soon as is practicable after the close of each crop year, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ —.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § .41.

§ —.41 Assessments.

(a) Each person who first handles grapes shall pay to the committee, upon

demand, such handler's pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such year and to accumulate and maintain a reserve fund equal to approximately one fiscal year's expenses. At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later findings by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all grapes handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

(c) Any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the period of time prescribed shall be subject to the interest or late payment charge, or both.

§ —.42 Accounting.

(a) If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal years as a reserve: *Provided,* That funds in the reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal year, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, or (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be diposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee under this part shall be used solely for the purpose specified and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropirate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Research and Market Development

§ —.45 Production research, marketing research and market development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of grapes. The expense of such projects shall be paid by funds collected pursuant to § .41.

Regulations

§ —.50 Marketing policy.

Each season prior to making any recommendations pursuant to § .51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(a) The estimated total production of grapes within the production area;

(b) The expected general quality of grapes in the production area;

(c) The expected demand conditions for grapes;

(d) The expected shipments of grapes produced in the production area;

(e) The probable prices for grapes;

(f) Supplies of competing commodities;

(g) Trend and level of consumer income;

(h) Other factors having a bearing on the marketing of grapes; and

(i) The type of regulations expected to be recommended during the marketing season.

§ —.51 Recommendation of committee.

(a) Whenever the committee deems it advisable to regulate the handling of grapes in the manner provided in § .52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for Ruby Seedless grapes during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request. The committee shall promptly give adequate notice to the handlers and growers of any such recommendation submitted to the Secretary.

§ —.52 Establishment of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of grapes whenever the Secretary finds, from the recommendation and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit during any period or periods the handling of any particular grade, size, quality, maturity, or any combination thereof, of grapes grown in the production area;

(2) Limit the handling of grapes by establishing in terms of grades, sizes, or both, minimum standards of quality or

maturity, or any combination thereof, during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of any container, or containers, which may be used in the handling of grapes.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ —.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § —.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of grapes in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ —.54 Special purpose shipment.

(a) Except as otherwise provided in this section, any person may without regard to the provisions of §§ —.41, —.51, —.52, and —.54 and the regulations issued thereunder, handle grapes (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ —.41, —.51, —.52, and —.54, the handling of grapes for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § —.45), or in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent grapes handled under provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle grapes pursuant to this section, and that such application be accompanied by a certification by the intended purchaser or receiver that the grapes will not be used for any purpose not authorized by this section.

§ —.55 Inspection and certification.

(a) Whenever the handling of any variety of grapes is regulated pursuant to §§ —.52 or —.53, each handler who handles grapes shall, prior thereto, cause such grapes to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for grapes which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such grapes.

The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata share of such costs.

Reports

§ —.60 Reports.

(a) Each handler shall furnish to the committee at such times and for such periods as the committee may designate certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of grapes as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The destination;

(6) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years after the end of the fiscal year in which the transactions occurred, such records of the grapes received and disposed of by such handler as may be necessary to verify the reports such handler submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ —.61 Compliance.

Except as provided in this part, no person shall handle grapes, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle grapes except in conformity with the provisions of this part and the regulations issued under this part.

§ —.62 Right of the Secretary.

The members of the committee (including successors and alternates) and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject ot the continuing right of the

Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ —.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § .64.

§ —.64 Termination.

(a) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(b) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current marketing season, produced more than 50 percent of the volune of grapes which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of April subsequent to the announcement thereof by the Secretary.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ —.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until dischanged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§—.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ —.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ —.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as agent or representative in connection with any of the provisions of this part.

§ —.69 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States:

(a) To exercise any powers granted by the act or otherwise; or

(b) In accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ —.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ —.71 Separability.

If any provisions of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ —.72 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ —.73 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ —.74 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of Ruby Seedless grapes in the same manner as is provided for in this agreement.

A Draft Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Divison, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: (202) 447–5975.

Copies of this Recommended Decision are being mailed to known interested persons. Others may obtain copies from Fruit and Vegetable Division, AMS, Department of Agriculture, Washington, D.C. 20250 or from Charles Fuqua, USDA-AMS, U.S. Federal Building, 1130 "O" Street, Room 3114, Fresno, California 93721.

Signed at Washington, D.C., on June 11, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

FR Doc. 79–18589 Filed 6–13–79; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Chapter 1]

Alteration of Philadelphia Teminal Control Area; Meeting

Correction

In FR Doc. 79-17480, published on page 32709, in the issue of Thursday, June 7, 1979, the heading should have appeared as set forth above.

BILLING CODE 1505-01-M

[14 CFR Ch. I]

[Summary Notice No. PR-79-6]

Petitions for Rule Making; Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rule making and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rule making (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rule making procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before: August 14, 1979.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. ———, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraghs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 8, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel Regulations and Enforcement Division.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
176	Aircraft Owners and Pilots Association.	DESCRIPTION OF RULE To amend FAR 61.23 to extend the duration of a third class medical certificate from 24 months to 36 months for operations requiring a private or student pilot certificate. PETITIONERS' REASON FOR RULE Such a change would not derogate aviation safety, but would save general aviation pilots some two and a half million dollars per year as well as ease FAA's workload in processing medical applications.

Petitions for Rulemaking: Denied

None during the period from June 1 through June 8, 1979.

[FR Doc. 79-18523 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-9]

Transition Area—New Madrid, Mo.; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at New Madrid, Missouri, to provide additional airspace for aircraft executing a new instrument approach procedure to the County Memorial Airport, New Madrid, Missouri, which is based on a nondirectional radio beacon (NDB), a navigational aid, being installed on the airport.

DATES: Comments must be received on or before July 20, 1979.

ADDRESSEES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE—530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 20, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace

Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at New Madrid, Missouri. To enhance airport usage a new instrument approach procedure is being developed for the County Memorial Airport, New Madrid, Missouri, utilizing an NDB being installed on the airport as a navigational aid. The establishment of an instrument approach procedure based on this navigational aid entails alteration of the transition area at New Madrid, Missouri, at and above 700 feet above ground level (AGL) within which aircraft are provided additional air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by altering the following transition area:

New Madrid, Missouri

That airspace extending upward from 700 feet above the surface within a 5-mile radius of County Memorial Airport (latitude 36°32'10"N, longitude 89°35'50"W); and within 2 miles each side of the Malden, MO, VOR 95° radial, extending from the 5-mile radius area to 8 miles east of the VOR, excluding the portion which overlies the Malden, MO, 700-foot floor transition area; and within 2.5 miles each side of the 360° bearing from the airport, extending from the 5-mile radius area to 6 miles north of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79–18489 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–13–M

[14 CFR Part 71]

[Airspace Docket No. 79–CE–11]

Transition Area—Albia, Iowa; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Albia, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Albia, Iowa, Municipal Airport utilizing the Ottumwa, Iowa, VORTAC as a navigational aid.

DATE: Comments must be received on or before July 20, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE–537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before July 20, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR, § 71.181) by designating a 700-foot transition area at Albia, Iowa. To enhance airport usage a new instrument approach procedure to the Albia, Iowa, Municipal Airport is being established utilizing the Ottumwa, Iowa, VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Albia, Iowa, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by adding the following new transition area:

Albia, Iowa

That airspace extending upward from 700 feet above the surface, within a six (6) mile radius of the Albia Municipal Airport (latitude 40°59'40" N, longitude 92°45'46" W).

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 69(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on June 1, 1979.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 79-18490 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-CE-12]

Transition Area—Maryville, Mo.; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Maryville, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Maryville, Missouri, Memorial Airport utilizing the St. Joseph, Missouri, VORTAC as a navigational aid.

DATES: Comments must be received on or before July 20, 1979.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kanas City, Missouri 64106. All communications received on or before July 20, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability fo NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedrues and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Maryville, Missouri. To enhance airport usage a new instrument approach procedure to the Maryville, Missouri, Memorial Airport is being established utilizing the St. Joseph VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Maryville, Missouri, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IRF) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442) by adding the following new transition area:

Maryville, Missouri

That airspace extending upards from 700 feet above the surface, within a 51—mile radius of the Maryville Memorial Airport (latitude 40°21'00"N., longitude 94°54'45"W.)

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

Note.— The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant perparation of a regulatory evaluation.

Issued in Kansas City, Missuori, on June 1, 1979.

John E. Shaw.

Acting Director, Central Region.

[FR Doc. 79-18491 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 71]

[Airspace Docket No. 79-ASW-16]

Proposed Alteration of Transition Area: Wichita Falls, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Wichita Falls, Tex. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Kickapoo Downtown Airpark. The circumstance which created the need for the action is the proposed establishment of a nondirectional radio beacon (NDB) 3.8 miles south of the airport.

DATES: Comments must be received by July 16, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedues Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region,

Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief, Airpace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Manuel R. Hugonnett, Airspace and Procedures Branch, ASW-536, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (44 FR 442) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Alteration of the transition area at Wichita Falls, Tex., will necessitate an amendment to this subpart

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before July 16, 1979, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must be also submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMS should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Wichita Falls, Tex. The FAA believes this action will enhance IRF operations at the Kickapoo Downtown Airpark by providing controlled airspace for aircraft executing proposed instrument approach procedures using the proposed NDB located 3.8 miles south of the airport. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1979 (44 FR 44).

The Proposed amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) by altering the Wichita Falls, Tex., transition area by adding the following:

Wichita Falls, Tex.

* * * and 3 miles each side of the 177° bearing from the Scotland RBN (latitude 33°47'24'N., longitude 98°29'10"W.) extending from the 20-mile radius area to 8.5 miles south of the RBN.

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas, on June 4, 1979.

Henry N. Stewart,

Acting Director, Southwest Region.

[FR Doc. 79-18496 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Part 75]

[Airspace Docket No. 79-WA-2]

Realignment of Jet Route; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to Notice of proposed rulemaking.

SUMMARY: in a Notice of Proposed Rule Making (NPRM), published in the **Federal Register** of May 21, 1979, Vol. 44, page 29485, under the Proposed Amendment on page 29486 the substitution of "Des Moines, Iowa;" should have been "Kansas City, Mo.; Des Moines, Iowa;" as explained in the Summary and in the Proposal. This correction reflects the correct proposed amendment.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 79-15717 was published on May 21, 1979 (44 FR 29485) and proposed to realign Jet Route No. J-25 between Tulsa, Oklahoma, and Des Moines, Iowa, via Kansas City, Mo. The amendatory language under the heading of the Proposed Amendment should have contained the words "Kansas City, Mo." This action corrects that omission.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration, **Federal Register** Document 79-15717 as published in the **Federal Register** on May 21, 1979, starting on page 29485 is amended in the center column of page 29486 by deleting the first line (is deleted and "Des Moines, Iowa;" is) and substituting (is deleted and "Kansas City, Mo.; Des Moines, Iowa;" is) therefor.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Issued in Washington, D.C., on June 7, 1979.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 79-18499 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

[16 CFR Part 433]

Amendment to Preservation of Consumers' Claims and Defenses

AGENCY: Federal Trade Commission.

ACTION: Placement of a staff summary of post-record comments and the final recommendations of the rulemaking staff and the Director of the Bureau of Consumer Protection on the Rulemaking Record, and announcement of the setting of a date for oral presentations before the Commission.

SUMMARY: The Federal Trade Commission has placed on the Rulemaking Record in the Amendment to the Preservation of Consumers' Claims and Defenses Trade Regulation Rule a summary of the comments filed by the public on the final reports of the staff and the presiding officer. In addition, the Commission has placed on the rulemaking record the final recommendations of the rulemaking staff and the Director of the Bureau of Consumer Protection on the rulemaking proceeding.

The Federal Trade Commission has also decided to afford interested parties the opportunity to make oral presentations before the Commission. Six prior participants have been invited to appear before the Commission. In addition, the Commission will consider requests from other interested parties. The participants in this meeting will be limited to persons who have participated in earlier stages of this proceeding.

DATES: Requests to participate in this oral presentation before the Commission at the meeting at 1 p.m. on July 10, 1979, must be received no later than June 29, 1979.

ADDRESSES: Send requests to participate in this oral presentation to: Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

The meeting will be held in Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David H. Williams or Sarah Jane Hughes Federal Trade Commission (202) 724–1100.

SUPPLEMENTAL INFORMATION: Pursuant to § 1.13(h) of the Commission's Rules of Practice, comments were invited from the public on the final reports of the staff and the presiding officer in the rulemaking proceeding concerning the Amendment to the Preservation of Consumers' Claims and Defenses Rule.

The Commission has directed the rulemaking staff to prepare a summary of those comments. That summary has been placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has also directed that the final recommendations of the rulemaking staff and the Director of the Bureau of Consumer Protection submitted to the Commission on the proposed rule after the conclusion of the post-record comment period specified in § 1.13(h) of the Commission's Rules of Practice be placed on the rulemaking record in this proceeding for public inspection.

The Federal Trade Commission has decided to allow interested parties to make oral presentations. Participation in this meeting before the Commission shall be restricted to persons who have participated in the proceeding to date. Participants will be permitted no more than thirty minutes to address comments to the Commission. The Commission reserves the right to limit the number of persons who may participate, as well as the amount of time allotted for comment, should such a need develop.

The prior participants in the proceeding who have been invited to appear include: (1) the American Bankers Association, Consumer Bankers Association, and Independent Bankers Association of America; (2) National Consumer Finance Association; (3) National Consumer Law Center; (4) Division of Consumer Affairs, Board of Governors of the Federal Reserve System; (5) National Credit Union Administration; and (6) Credit Union National Association. Other interested persons will have an opportunity to present their views.

Persons who desire to make such oral presentations to the Commission should submit a written request to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580 no later than June 29, 1979. If feasible and not burdensome, persons filing requests to participate should submit 3 copies of their requests. Each request must state the extent and the nature of the prior participation in this proceeding by the person seeking to address the Commission.

No additional written comments may be submitted to the Commission. Oral presentation at the meeting must be restricted to the evidence already in the Rulemaking Record in this proceeding.

The meeting before the Commission will commence on July 10, 1979 in Room 432, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, at 1:00 p.m.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18575 Filed 6-13-79; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[24 CFR Part 1917]

[Docket No. FI-5538]

Proposed Flood Elevation Determinations for the Town of Redcliff, Eagle County, Colo., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Redcliff, Eagle County, Colorado.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, Redcliff, Colorado.

Send comments to: Mr. Carlos Miranda, City Manager, Town of Redcliff, Box 100, Vail, Colorado 81657.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Redcliff, Colorado, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Eagle River	Denver and Rio Grande Western Railroad (40 feet*).	8573
	Colorado State Highway 293 (20 feet*).	8580
	Railroad Access Road (20 feet*).	8597
	Pine Street (40 feet*)	8629
	Eagle Street (70 feet*)	8655
Turkey Creek	Colorado State Highway 293.	
	(80 feet**)	8633
	(30 feet*)	8638
	Eagle Street (20 feet*)	8644
	Private Bridge.	
	(70 feet**)	8647
	(30 feet*)	8651
	Shrine Pass Road.	
	(80 feet**)	8659
	(20 feet*)	8665

* Upstream from centerline.
** Downstream from centerline.

Source of flooding	Location	Depth in feet above ground
Turkey Creek	Area east of Eagle Street between Shrine Pass Road and the intersection of Eagle Street and Monument Street.	2
	Area west of Eagle Street along State Highway 293.	1
	Area along State Highway 293 west of intersection of State Highway 293 and Pine Street.	1

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18223 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5539]

Proposed Flood Elevation Determinations for the Groton Long Point Association, New London County, Conn.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Groton Long Point Association, New London County, Connecticut.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Fire House, Groton Long Point, Connecticut.

Send comments to: Mr. Joseph Devine, President of the Groton Long Point Association, 89 Atlantic Avenue, Groton Long Point, Connecticut 06340.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Groton Long Point Association, New London County, Connecticut in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fishers Island Sound	Atlantic Avenue and Bridge Street.	11
	Shore avenue South and Sound Breeze Avenue.	11
	Shore Avenue and Sound Breeze Avenue.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18224 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5540]

Proposed Flood Elevation Determinations for the Town of Southbury, New Haven County, Conn.; Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management

Footnotes continued on next page

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Southbury, New Haven County, Connecticut.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Hall, 360 Main Street, Southbury, Connecticut.

Send comments to: Mr. Michael Kenney, First Selectman, Town of Southbury, Town Hall, 360 Main Street, Southbury, Connecticut 06488.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Town of Southbury, New Haven County, Connecticut, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by section 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinaces that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Housatonic River	Downstream corporate limits	109
	Just downstream Shepaug Dam.	109
Pomperaug River	Just downstream River Road.	109
	Just upstream Old Railroad Embankment.	111
	About .8 mile upstream Old Railroad Embankment.	112
	About 1.2 miles downstream Dam.	136
	Just downstream Dam	143
	Just upstream Dam	153
	Just downstream Flood Bridge Road.	170
	About 0.23 mile upstream Flood Bridge Road.	175
	Just upstream Poverty Road	185
	Just Upstream Route 67	195
	Upstream corporate limits	206

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 Fr 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18225 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

[24 CFR Part 1917]

[Docket No. FI–5541]

Proposed Flood Elevation Determinations for the City of Altamonte Springs, Seminole County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Altamonte Springs, Seminole County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 225 Newburyport Avenue, Altamonte Springs, Florida.

Send comments to: Mayor Norman C. Floyd, Sr., 225 Newburyport Avenue, Altamonte Springs, Florida 32701.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Altamonte Springs, Seminole County, Florida in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Footnotes continued from last page

Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Adelaide	Entire Shoreline	61
Crances Roost	Entire Shoreline	61
Lake Destiny	Entire Shoreline	91
Lake Florida	Entire Shoreline	61
Lake Lotus	Entire Shoreline	64
North Lake	Entire Shoreline	62
Lake Orienta	Entire Shoreline	67
Pearl Lake	Entire Shoreline	61
Pot Lake	Entire Shoreline	88
Prairie Lake	Entire Shoreline	88
Spring Wood Lake	Entire Shoreline	91
Lake Tillie	Entire Shoreline	53
Trout Lake	Entire Shoreline	63
Little Wekiva River	Downstream from Seaboard Coast Line Railroad.	50
	Downstream from Montgomery Road.	35
Tributary A	Downstream from extended Richbee Drive.	42
Tributary B	Downstream from S.R. 434	47

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 79-18226 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5542]

Proposed Flood Elevation Determinations for the City of Frostproof, Polk County, Fla., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Frostproof, Polk County, Florida.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at City Hall, 47 West Wall Street, Frostproof, Florida.

Send comments to: Mr. Dan H. Ruhl, Jr., City Manager, City of Frostproof, City Hall, 47 West Wall Street, Frostproof, Florida 33843.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Frostproof, Florida, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Reedy Lake-Lake IDA	1000 Feet East of the Intersection of Old State Highway 630 and State Highway 630.	81
	250 feet east of the Intersection of Chesney Boulevard and Lake Reedy Boulevard.	81
Lake Clinch	Charles Street Between Grace Street and Lelia Street.	110
	200 feet west of the intersection of Palm Avenue and 1st Street.	110

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18227 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5543]

Proposed Flood Elevation Determinations for the Village of Fairmont City, St. Clair County, Ill. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA. [1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Fairmont City, St. Clair County, Illinois.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, 2601 North 41st Street, Fairmont City, Illinois.

Send comments to: Mr. John Wyrostek, Sr., Village President, Village of Fairmont City, Fairmont City Village Hall, 2601 North 41st Street, Fairmont City, Illinois 62201.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Village of Fairmont City, St. Clair County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Local runoff and ponding.	Area beginning 900 feet North of the Intersection of Kings Highway (Route 111) and Maryland Avenue; East of said Intersection approximately 1,400 feet; South of said Intersection along Kings Highway (Route 111) 3, 270 feet; West of Intersection 1,500.	421
	Area located in the extreme Southeastern section of the Village of Fairmont City, South of the Tailing Pond.	421
	Area located North of the Township of East St. Louis; South of Fairmont Avenue (Route 40) and Railroad Avenue; West of 31st Street.	417

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18228 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5544]

Proposed Flood Elevation Determinations for the Village of Mettawa, Lake County, Ill.; Under the National Flood Insurance Program

AGENCY: Offfice of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Mettawa, Lake County, Illinois.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, 850 River Woods Road, P.O. Box 847, Lake Forest, Illinois. Send comments to: Mr. James Getz, 850 River Woods Road, P.O. Box 847, Lake Forest, Illinois 60045.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Village of Mettawa, Lake County, Illinois, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968) (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Des Plaines River.....	Downstream corporate limits.	650
	Just upstream of State Highway 60.	651
	Upstream corporate limits near Libertyville.	653

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M.. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18229 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5150]

Revision of proposed Flood Elevation Determinations for the Town of Georgetown, Floyd County, Ind. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Harard Mitigation, FEMA.[1]

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Georgetown, Floyd County, Indiana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 10082 on February 16, 1979, and in the *New Albany Tribune* published on or about March 4, 1979 and March 11, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood base (100-year) elevations are available for review at the Town Hall, Georgetown, Indiana. Send comments to: Mr. Kennith Lone, President, Town of Georgetown, Town Hall, Georgetown, Indiana 47122. Attention: Mr. Larry Wetzel, Vice President.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Georgetown, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4 (a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quality or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevations in feet, national geodetic vertical datum
Georgetown Creek	Downstream corporate limits.	684
	Just upstream of Main Street.	688
	Just downstream of Georgetown-Lanesville Road.	694
	Just upstream of Walts Road	708
	Just upstream of Baylor-Wissman Road.	728
	About 1,500 feet upstream from Baylor-Wissman Road.	736

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insaurance Administrator, 44 FR 20963)

Dated: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18230 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

[24 CFR Part 1917]

[Docket No. FI–5545]

Proposed Flood Elevation Determinations for the Unincorporated Areas of Johnson County, Kans., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Unincorporated Areas of Johnson County, Kansas.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the County Court House, Olathe, Kansas. Send comments to: Mr. John J. Frankie, Chairman of the County Commissioners, Johnson County, County Court House, Olathe, Kansas 66061.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Unincorporated Areas of Johnson County, Kansas, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
Kansas River	Downstream county boundary.	766
	About 0.5 mile downstream of the Atchison, Topeka & Santa Fe Railway.	772
	About 0.9 mile upstream of the Atchison, Topeka & Santa Fe Railway.	778
	Just downstream of Wyandotte Street bridge.	790
	About 3.0 miles upstream of Wyandotte Street bridge.	795
	Upstream county boundary	798
Kill Creek	Just upstream of Old State Highway 10.	790
	At City of DeSota southern corporate limits.	792

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
Blue River	About 1.3 miles downstream of Kenneth Road.	867
	Just upstream of Kenneth Road.	874
	About 1.9 miles upstream of Kenneth Road.	881
	Just upstream of Missouri Pacific Railroad.	886
	Just downstream of Metcalf Avenue.	897
	Just downstream of U.S. Highway 69.	901

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18231 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5546]

Proposed Flood Elevation Determinations for the Unincorporated Areas of McCracken County, Ky. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of McCracken County, Kentucky.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Mr. Buddy J. Smith, County Engineer's Office, McCracken County courthouse, Paducah, Kentucky. Send comments to: Mr. Buddy J. Smith, County Engineer or Mr. Raymond Schultz, County Judge Executive, County Courthouse, Paducah, Kentucky, 42001.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of McCracken County, Kentucky, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Black Branch	Just downstream of Mayfield Metropolis Road (KY. 780).	354
	Just downstream of New Hinkleville Road (US HWY 60).	362
	Approximately 250 feet upstream of Lighfoot Road.	376
Camp Creek	Just downstream of Harmoney Road.	349
	Approximately 100 feet upstream of Old Mayfield Road.	361
	Just downstream of Illinois Central Gulf Railroad.	369
	Approximately 180 feet downstream of Old Houser Road (Davis Road).	393
Champion Creek	Approximately 40 feet upstream of Illinois Central Gulf Railroad.	334
	Just downstream of Old Mayfield Road.	343
	Approximately 120 feet upstream of Clark Line Road.	362
Crooked Creek	Approximately 30 feet upstream of Buckner Lane.	372
	Just upstream of Pecan Drive	384
	Approximately 200 feet upstream of Interstate 24.	398
Island Creek	Lane Road	330
	Just downstream of Husbands Road.	330
Massac Creek	Approximately 500 feet upstream of Illinois Central Gulf Railroad.	336
	Approximately 300 feet downstream of Hinkleville Road (US 60).	344
	Confluence of Middle Fork Massac Creek.	351
	Approximately 150 feet upstream of Blandville Road (US 62).	361
	Just downstream of Lovelaceville Road.	379
	Approximately 50 feet upstream of Clinton Road.	390
Middle Fork, Massac Creek.	Approximately 150 feet upstream of Blandville Road.	369
	Approximately 120 feet upstream of Hines Road.	381
	Approximately 130 feet upstream of Lovelaceville Road.	389
	Approximately 50 feet downstream of New Hope Church Road.	415
West Fork, Massac Creek.	Approximately 100 feet upstream of Steel Road.	349
	Approximately 180 feet upstream of Woodville Road.	358
	Just upstream of Hinkleville Road (US 60).	377
	Just upstream of Old Hinkleville Road.	387
	Approximately 70 feet downstream of the upstream crossing of Biggs Road.	412
Ohio River	At the Westen County Limits (River Mile 956.2).	331
	Approximately 500 feet upstream of Illinois Central Gulf Railroad at Interstate 24.	336
	At Jacobs Lane (Extended)	337
Perkins Creek	Approximately 200 feet upstream of Paducah and Illinois Railroad.	349
	Just upstream of Hinkleville Road.	355
	Approximately 270 feet upstream of Interstate 24.	360
	Approximately 120 feet upstream of Hensen Road.	369
	Approximately 100 feet upstream of Friendship Church Road.	377

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18232 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5547]

Proposed Flood Elevation Determinations for the City of Augusta, Kennebec County, Maine, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Augusta, Kennebec County, Maine.

These base (100-year) flood elevations are the basis for the flood plain mangement measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the City Engineer. Send comments to: Mr. Paul G. Poulin, City Manager of Augusta, City Hall, Augusta, Maine 04330.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National flood Insurance Program (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Augusta, Kennebec County, Maine in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain mangement requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kennebec River	Downstream Corporate Limits.	32
	Memorial Bridge	34
	Upstream Maine Central Railroad Bridge.	38
	Confluence of Riggs Brook	39
	Upstream Corporate Limits	44
Bond Brook	Confluence with Kennebec River.	38
	Mount Vernon Avenue	38
	Dunn's Pit Road	81
	U.S. Route 95	108
	Leighton Road	114

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28,1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18233 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5548]

Proposed Flood Elevation Determinations for the Town of Cornish, York County, Maine Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Cornish, York County, Maine.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Town Selectmen, Cornish, Main. Send comments to Mr. William Hoxie, Chairman of the Board of Selectmen of Cornish, Town Office, Cornish, Maine 04020.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Town of Cornish, York County, Maine in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19,1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in in feet, national geodetic vertical datum
Saco River	1,000 feet upstream of downstream Corporate Limits.	279
	4,000 feet upstream of downstream Corporate Limits.	280
	Upstream of Route 5	281
	Confluence of the Ossipee River.	283
Ossipee River	Confluence with Saco River	283
	Upstream of Bridge Street	286
	1.11 miles upstream of Bridge Street.	291
	Downstream of South Hiram Road.	297
	1.08 miles upstream of South Hiram Road.	303
Little River	Downstream of confluence of Ossipee River.	286
	Downstream of Old Mill Dam.	308
	Downstream of School Street	351

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18234 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5549]

Proposed Flood Elevation Determinations for the Town of West Gardiner, Kennebec County, Maine, Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of West Gardiner, Kennebec County, Maine.

[1] The functions of the Federal Insurance Administration Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, West Gardiner, Maine.

Send comments to: Mr. Vern Libby, Chairman, Board of Selectmen, Town of West Gardiner, Town Office, West Gardiner, Maine 04345.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of West Gardiner, Kennebec County, Maine, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cobbosseecontee Stream.	Eastern corporate limit	139
	Just upstream of Interstate 95.	139
	Just upstream of Pond Road.	140
	Upstream side of Dennis Hill Road.	141
	Upstream side of State Routes 9 and 126.	142
	Upstream side of Collins Mill Road.	143
	Upstream side of Collins Mill Dam.	151
	5,000 feet upstream of Collins Mill Dam.	155
	5,450 feet upstream of Collins Mill Dam.	160
	At confluence with Hutchinson Pond Outlet Brook.	163
Cobbosseecontee Lake.	West Gardiner shoreline	170

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18235 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5550]

Proposed Flood Elevation Determinations for the Town of Buckland, Franklin County, Mass. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Buckland, Franklin County, Massachusetts.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, 17 State Street, Buckland, Massachusetts. Send comments to: Mr. Norman Sessions, Chairman, Board of Selectmen, Town of Buckland, Town Office, 17 State Street, Buckland, Massachusetts 01370.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the Town of Buckland, Franklin County, Massachusetts, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.4 (a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
Clesson Brook	Confluence with Deerfield River.	485
	Just downstream of Ashfield Road (near Depot Road).	486
	Just downstream of Ashfield Road (north of confluence of Maynard Brook).	543
	Just upstream of Upper Road	636
Deerfield River	Just above New England Power Company Dam No. 3.	411
	Just upstream of Bridge of Flowers.	415
	Just upstream of U.S. Route 2.	423
	Just above New England Power Company Dam No. 4.	480
	Approximately 3,500 feet upstream of Clesson Brook.	490
	Upstream corporate limit	518

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18236 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

[24 CFR Part 1917]

[Docket No. FI–5053]

Proposed Flood Elevation Determinations for the Town of Georgetown, Essex County, Mass. Under the National Flood Insurance Program; Correction

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 6455 of the **Federal Register** of February 1, 1979.

EFFECTIVE DATE: February 1, 1979

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

The following corrections are made:

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Jackman Brook	Jewett Street	57
Porter Brook	Bailey Lane*	85

*At centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18237 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

[24 CFR Part 1917]

[Docket No. FI–5551]

Proposed Flood Elevation Determinations for the Town of Millis, Norfolk County, Mass. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Millis, Norfolk County, Massachusetts.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Office of the Town Clerk, Millis, Massachusetts. Send comments to: Mr. Charles Levine, Chairman of the Board of Selectmen of

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Millis, Town Office, 64 Exchange Street, Millis, Massachusetts 02154.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Town of Millis, Norfolk County, Massachusetts in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Charles River	Downstream Corporate Limits.	123
	Norfold Road (Upstream)	127
	Myrtle Road (Upstream)	135
	Upstream Corporate Limits	138

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18238 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5552]

Proposed Flood Elevation Determinations for the City of Flint, Genesee County, Mich. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Flint, Genesee County, Michigan.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Department of Community Development, 1101 South Saganaw Street, Flint, Michigan. Send comments to: The Honorable James W. Rutorford, Mayor, City of Flint, City Hall, 1101 South Saganaw Street, Flint, Michigan 48502.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard W. Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for the City of Flint, Genesee County, Michigan, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet national Geodetic Vertical datum
Flint River	Downstream corporate limit	702
	About 1,000 feet upstream from Stephenson Street.	706
	Just downstream of Hamilton Dam.	708
	About 300 feet upstream of Stevens Street.	710
	Just above Utah Dam	716
	Upstream corporate limit	719
Swartz Creek	Mouth of Flint River	706
	Just upstream of Second Street.	708
	Just upstream of Court Street	710
	Just upstream of Lower Circle Road.	718
	Just upstream of Circle Road	725
	Just downstream of Ballenger Road.	737
	Just upstream of Bristol Road.	753
	Just upstream of private road located 1,100 feet upstream of Bristol Road.	756
	At upstream corporate limits	769
Gilkey Creek	Mouth of Flint River	713
	Just upstream of Lewis Street.	718
	Just downstream of Kearsley Park Boulevard.	718
	Just upstream of Longway Boulevard.	727
	About 1,150 feet upstream of Longway Boulevard.	729
	About 1,800 feet upstream of Longway Boulevard.	735
	Just upstream of Vernon Drive.	744
	Just upstream of Kelso Street.	750
	Just upstream of Chessie System.	752
	Upstream corporate limits	754
Kearsley Creek	Mouth at Flint River	717
	Just downstream of Kearsley Reservoir Dam.	718
	Above Kearsley Reservoir Dam.	736
	Upstream corporate limits	737
Thread Creek	Mouth at Swartz Creek	711
	Just upstream of Fenton Street.	715
	About 600 feet upstream of Grand Trunk Western Railroad.	723
	Just downstream of Twelfth Street.	726
	Just upstream of Grand Traverse Street.	732

Source of flooding	Location	Elevation in feet national Geodetic Vertical datum
	Just upstream of Barton Street.	743
	Just downstream of Thread Lake Dam.	747
	Above Thread Lake Dam	751
	Just upstream of Dort Highway.	756
	Just upstream of Chambers Road.	760
	Upstream corporate limit	762
Crampton Drain	Confluence with Kearsley Reservoir.	736
	Upstream corporate limits	739
Robinson Drain	Mouth at Gilkey Creek	740
	Just upstream of Golf Course Bridge.	745
	About 1,300 feet upstream of State Highway 21.	750
West Branch Swartz Creek.	Downstream corporate limits	752
	Upstream corporate limits	753
Carman Creek	Confluence with Swarta Creek.	726
	Just downstream of State Highway 21.	730
	Just upstream of Grand Trunk Western Railroad.	736
	Just downstream of Crestbrook Lane.	742
	Just upstream of Crestbrook Lane.	747
	Just upstream of Hammerberg Road.	751
	Upstream corporate limits	753

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963).

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18239 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

[24 CFR Part 1917]

[Docket No. FI–5105]

Revision of Proposed Flood Elevation Determinations for the City of Cambridge, Furnas County, Nebr., Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Cambridge, Furnas County, Nebraska.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 7163 on February 6, 1979, and in the *Cambridge Clarion* published on or about February 15, 1979 and February 22, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood (100-year) elevations are available for review at the City Hall, Cambridge, Nebraska. Send comments to: The Honorable Charles B. Mousel, Mayor, City of Cambridge, City Hall, Cambridge, Nebraska 69022.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are list below for selected location in the City of Cambridge, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevations in feet, national geodetic vertical datum
Republican River	About 0.91 mile downstream of State Highway 47.	2,255
	Just downstream of State Highway 47.	2,262
	Just upstream of State Highway 47.	2,264
	About 0.98 mile upstream of State Highway 47.	2,270

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Dated: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79–18240 Filed 6–13–79; 8:45 am]

BILLING CODE 4210–23–M

[24 CFR Part 1917]

[Docket No. FI–5553]

Proposed Flood Elevation Determinations for the City of Concord, Merrimack County, N.H. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Concord, Merrimack County, New Hampshire.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Office of Planning and Engineering, City Hall, 41 Green Street, Concord, New Hampshire 03301. Send comments to: Mayor Gross or Mr. James Smith, City Manager, City Hall, 41 Green Street, Concord, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW, Washington, D.C. 20410.

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the City of Concord, Merrimack County, New Hampshire, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River	Northeastern Corporate Limits (confluence with Soucook River).	204
	Just upstream of Manchester Street.	233
	Just upstream of Bridge Street.	235
	Just upstream of Seawall Falls Road.	252
Contoocook River	Just upstream of South Main Street.	310
	Just downstream of Contoocook Park Dam.	340
	Just upstream of Contoocook Park Dam.	353
	Just upstream of Horse Hill Road.	356
Soucook River	Just upstream of Pembroke Street.	230
	Approximately 250 feet upstream of Sheep Davis Road.	260
	Just downstream of Pittsfield Road.	304
The Outlet	Approximately 100 feet upstream Old Washington Street Bridge.	320
	Just downstream of New Washington Street Bridge.	338
	Just downstream of Island Road.	348
	Approximately 25 feet upstream of Island Road.	350

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18241 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

[24 CFR Part 1917]

[Docket No. FI-5554]

Proposed Flood Elevation Determinations for the Unincorporated Areas of Watauga County, N.C. Under the National Flood Insurance Program

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.[1]

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the unincorporated areas of Watauga County, North Carolina.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Planning and Inspection Department, Basement Level, Watauga County Courthouse, Boone, North Carolina. Send comments to: Mr. Gary McGee, County Manager, or Mr. H. Neal Blair, Subdivision Coordinator, Watauga County Courthouse, Boone, North Carolina 28607.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line (800) 424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the unincorporated areas of Watauga County, North Carolina.

In accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
East Fork	Just downstream of Secondary Road 1522.	3102
	Just upstream of Secondary Road 1524.	3121
Middle Fork	Just upstream of Secondary road 1522.	3104
	Just upstream of US 221–421.	3127
	Just upstream of Secondary Road 1542.	3145
Brushy Fork	Just upstream of Secondary Road 1117.	2683
	Just upstream of US 421	2729
	Just upstream of Secondary Road 1311.	2764
	Just downstream of Secondary Road 1375.	2870
	Just upstream of Secondary Road 1375.	2875
Cove Creek	Just downstream of Secondary Road 1149.	2641
	Just upstream of US Highway 321.	2669
	Just upstream of Secondary Road 1215.	2696
	100 feet downstream of Secondary Road 1217.	2723
Gap Creek	Just upstream of US Highway 421–221.	2990
	Just downstream of Secondary Road 1507.	3024
	160 feet upstream of Secondary Road 1507.	3027
Howard Creek	Just downstream of Secondary Road 1306.	3154
Watauga River	Just upstream of Secondary road 1557.	2919
	Just upstream of Secondary Road 1559.	3003
	Just upstream of Mill Ridge Road.	3050
South Fork New River	Just upstream of US 221–421.	3083

[1] The functions of the Federal Insurance Administration, Department of Housing and Urban Development, were transferred to the newly established Federal Emergency Management Agency by Reorganization Plan No. 3 of 1978 (43 FR 41943, September 19, 1978) and Executive Order 12127 (44 FR 19367, April 3, 1979).

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
	Just upstream of paved road near confluence of Winkler Creek.	3102
Mutton Creek	Approximately 40 feet downstream of Secondary route 1614.	3087
Winkler Creek	Approximately 15 feet downstream of State Farm Road.	3103
	Just upstream of confluence with South Fork New River.	3102

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963)

Issued: June 1, 1979.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 79-18336 Filed 6-13-79; 8:45 am]

BILLING CODE 4210-23-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 161]

Tank Vessel Operations—Puget Sound

Correction

Note.—This document originally appeared in the Federal Register for June 12, 1979. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

In FR Doc. 79–17355 appearing on page 32004 in the issue of Monday, June 4, 1979, make the following correction:

The formula appearing at the top of the first column of page 32005 now given as "V–F/KD" should have been given as "V–$\sqrt{}$KD."

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 762]

[FRL 1233–4; OTS–066005]

Toxic Substances Control Act; Fully Halogenated Chlorofluorocarbons

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: On March 17, 1978 the Environmental Protection Agency promulgated a rule (40 CFR Part 762; 43 FR 11318) which prohibited almost all of the manufacture and processing of fully halogenated chlorofluoralkanes (hereinafter referred to as chlorofluorocarbons) for those aerosol propellant uses which are subject to the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et. seq.).* This action proposes an amendment to the essential use exemption for mold release agents (40 CFR 762.21 (b)) in order to specifically exclude spinnerette release agents.

DATES: Comments on the proposed amendments must be received by the Record and Hearing Clerk by September 12, 1979. An informal public hearing will not be held unless an interested party requests one. Request for a public hearing must be received by the Record and Hearing Clerk by September 12, 1979. Please include the referrence number OTS–066005 on all comments.

ADDRESS: Joni T. Repasch is the Record and Hearing Clerk for this rulemaking. For sending comments the official record of rulemaking is located in room 447 WSME, 401 M Street, S.W., Washington, D.C. 20460. Telephone: 202–755–6633. The record is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: James D. Silverman, Control Action Division, Office of Toxic Substances (TS–794), U.S. Environmental Protection Agency, 401, M Street, S.W., Washington, D.C. 20460. Telephone: 202–755–8024.

SUPPLEMENTARY INFORMATION: The chlorofluorocarbon rule contains an essential use exemption (§ 762.21 (b)) for: Release agent for molds used in the production of plastic and elastomeric materials. Because questions have arisen about whether this exemption was intended to include spinnerette release agents, EPA has recently determined that such agents are exempted by the rule. However EPA is today proposing to revoke that exemption.

Since promulgation of the rule two companies have notified EPA that they produce spinnerette release agents which do not use chlorofluorocarbon aerosol propellants. According to one company, preliminary test results indicate that nonchlorofluorocarbon spinnerette release agents generally function as effectively as those containing chlorofluorocarbon propellants. If there is an alternative product available, there is no basis for maintaining the essential use exemption.

Accordingly, EPA is now proposing to amend the current rule to eliminate the exemption for spinnerette release agents. EPA specifically invites comments concerning the effectiveness, cost, and suitability of nonchlorofluorocarbon products as spinnerette release agents. Unless there is evidence that such alternatives are unsuitable EPA will eliminate the essential use exemption for spinnerette release agents propelled by chlorofluorocarbons.

The comment period for this rulemaking is 90 days instead of the usual 30 days for specialized amendments. This 90 day period will allow industry time to conduct additional tests of substitute products.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: June 7, 1979.

Douglas M. Costle,

Administrator.

EPA proposes to amend 40 CFR by amending Part 762 as follows:

PART 762—FULLY HALOGENATED CHLOROFLUOROALKANES

By amending § 762.21 (b) to read as follows:

§ 762.21 Essential use exemptions.

* * * * *

(b) Release agent for molds used in the production of plastic and elastomeric materials except for spinnerette release agents.

(Toxic Substancces Control Act, Section 6, Pub. L. 94–469, 90 Stat. 2020 (15 U.S.C. 2605))

[FR Doc. 79-18584 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 116a]

Title I, Elementary and Secondary Education Act; Awarding of Special Grants to Local Educational Agencies

AGENCY: Office of Education, HEW.

ACTION: Proposed regulations.

SUMMARY: The Commissioner proposes regulations to govern the awarding of special grants to local educational agencies (LEAs) with especially high

concentrations of children from low-income families. These special grants are authorized under the Education Amendments of 1978.

The primary purpose of these proposed regulations is to provide methods for the allocation of remaining special grant funds after all eligible counties in a State have received funds according to the statutory formula.

These proposed sections will be incorporated into the new proposed regulations that will be published in the near future for Title I of the Elementary and Secondary Education Act of 1965.

DATES: All comments on these proposed regulations must be received on or before August 13, 1979.

ADDRESSES: Written comments should be addressed to Ms. Carolyn Horner, Division of Education for the Disadvantaged, U.S. Office of Education, 400 Maryland Avenue, SW (Room 3642D, ROB-3), Washington, D.C. 20202.

All comments that are submitted will be available for public inspection at this address during and after the comment period between 8:30 a.m. and 4:00 p.m., Mondays through Fridays, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Horner, (202) 245-2638.

SUPPLEMENTARY INFORMATION:

A. Background

As amended by the Education Amendments of 1978 (Pub. L. 95-561), Section 117 of Title I of the Elementary and Secondary Education Act of 1965 ("the Act") authorizes special title I grants for local educational agencies (LEAs) in counties with especially high concentrations of children from low-income families (sec. 117; 20 U.S.C. 2722).

Section 117(b)(1) of the Act provides that each county—in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under title I of the Act for any fiscal year is entitled to an additional grant under section 117 for that fiscal year if—

(a) The number of children counted under section 111(c) of the Act for LEAs in the county exceeds five thousand; or

(b) The number of children counted under section 111(c) exceeds 20 percent of the total number of children aged five through seventeen in school districts of LEAs in the county.

In addition to the above criteria for determining whether a county is entitled to a special grant, section 117(b) provides that no State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—shall receive less than one-quarter of 1 percent of the funds appropriated for special grants under section 117. However, the statute does not specify how those grant funds are to be allocated to counties in States in which there are no counties that meet the eligibility criteria in section 117(b)(1).

Similarly, the statute does not specify a method for allocating any remaining special grant funds after all eligible counties in a State have received the amount of special grant funds to which they are entitled under the formula in section 117(b)(3).

B. Overview of the Proposed Regulations

The proposed regulations specify—

(a) Which States are entitled to special grant funds under section 117 of the Act;

(b) The method for determining the amount of special grant funds that each State receives;

(c) The methods for allocating special grant funds to counties within each State that receives these funds;

(d) The method of making the special grants to LEAs; and

(e) The conditions that govern the use of special grant funds.

Sections 116a.34 and 116a.35 of the proposed regulations specify methods for allocating remaining special grant funds in a State after all eligible counties in that State have received the special grant funds to which they are entitled under the statutory formula.

In essence, these sections provide that, after each eligible county is allocated the amount of special grant funds to which it is entitled, the Commissioner allocates any remaining special grant funds on the basis of a plan that is—

(a) Proposed by the State educational agency (SEA); and

(b) Approved by the Commissioner.

Under the SEA plan these funds may be allocated to some otherwise ineligible counties, as well as to some or all of that State's eligible counties already funded under the statutory formula.

If the SEA and the Commissioner cannot agree on an allocation plan, the Commissioner allocates the remaining special grant funds to the counties in the State that are receiving a basic grant under part A of the title I statute. The Commissioner makes this allocation on the basis of the basic grant allocation method in the Act.

We would like to point out that the new proposed title I regulations describing evaluation requirements for title I programs, that were published in the Federal Register on February 7, 1979, used some of the same section numbers that are used in these proposed regulations. This problem will be solved by changing the section numbers for the title I evaluation requirements when they are published in final form.

C. Public Comments and Participation

While the Commissioner invites and encourages all interested persons to submit comments, suggestions, and recommendations concerning these proposed regulations, the Commissioner is particularly interested in receiving comments from people in the States that would be most affected by the allocation methods that are proposed in §§ 116a.34 and 116a.35. Those States are likely to include New Hampshire (which has no counties that meet the eligibility criteria in section 117(b)(1) of the Act) and Alaska, Delaware, Idaho, Iowa, Kansas, Maine, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Vermont and Wyoming (which will have special grant funds left over after all counties in the State that meet the statutory eligibility criteria have received the amount of special grant funds to which they are entitled under the formula in section 117(b)(3)).

Comments may be sent to the address in this notice.

D. Citations of Authority

As required by section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), a citation of statutory authority for each section of the proposed regulations has been placed in parentheses on the line following the text of each section. References to "Sec." in these citations of authority relate to sections of the Elementary and Secondary Education Act of 1965, as amended by several public laws including the Education Amendments of 1978 (Pub. L. 95-561).

Dated: March 16, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Approved: May 10, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.428 Educationally Deprived Children Local Educational Agencies)

It is proposed that Title 45 of the Code of Federal Regulations be amended by

adding new §§ 116a.32 through 116a.39 to Part 116a to read as follows:

Sec.
116a.32 States entitled to special grant funds under section 117 of the Act.
116a.33 Amount of special grant funds that each State receives.
116a.34 Allocation of special grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.
116a.35 Allocation of special grant founds to counties within a State in which no country meets the statutory eligibility criteria.
116a.36 Submission of allocation plans.
116a.37 Commissioner's standard for approval of allocation plans.
116a.38 Method of making special grants.
116a.39 Use of special grant funds.

Authority: Section 117 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561).

§ 116a.32 States entitled to special grant funds under section 117 of the Act.

Section 117(b) of the Act provides the each State—other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands—that is eligible for a grant under title I of the Act for any fiscal year is entitled to special grant funds from the amount appropriated under section 117(d) of the Act for the fiscal year.

(Sec. 117(b)(1); 20 U.S.C. 2722(b)(1))

§ 116a.33 Amount of special grant funds that each State receives.

The Commissioner determines the amount of special grant funds that a State receives under section 117 of the Act on the basis of the formula in section 117(b)(3) of the Act. However, each State that is entitled to special grant funds receives at least one-quarter of 1 percent of the funds appropriated under section 117(d) of the Act for that fiscal year.

(Sec. 117(b)(1), (2) amd (3); 20 U.S.C. 2722(b)(1), (2) and (3))

§ 116a.34 Allocation of special grant funds to counties within a State in which at least one county meets the statutory eligibility criteria.

(a) *General Rule.* Expect as provided in paragraph (b) of this section, special grant funds that are awarded to a State in which at least one county meets the eligibility criteria in section 117(b)(1) of the Act are allocated to the eligible counties within the State by the Commissioner in accordance with the formula in section 117(b)(3) of the Act.

(b) *Exceptions.* (1) Except as provided in subparagraph (2) of this paragraph, any special grant funds that remain unallocated—after all the counties in the State have been allocated the amount of special grant funds to which they are entitled under the statutory formula—are allocated to counties within the State by the Commissioner according to an allocation plan. This allocation plan must—

(1) Be submitted to the Commissioner by the SEA, according to the procedures described in § 116a.36; and

(2) Have the approval of the Commissioner, using the standards described in § 116a.37.

(2) If the SEA does not submit an allocation plan, or the Commissioner does not approve the plan that has been submitted, the Commissioner allocates the remaning special grant funds within the State to those counties that are receiving a basic grant under part A of title I of the Act. The Commissioner makes this allocation on the basis of the basic grant allocation method in section 111(a)(2) of the Act.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.35 Allocation of special grant funds to counties within a State in which no county meets the statutory eligibility criteria.

(a) *General Rule.* Except as provided in paragraph (b) of this section, special grant funds that are awarded to a State in which no county meets the eligibility criteria in section 117(b)(1) of the Act are allocated to counties within the State by the Commissioner according to an allocation plan. This allocation plan must—

(1) Be submitted to the Commissioner by the SEA, according to the procedures described in § 116a.36; and

(2) Have the approval of the Commissioner, using the standards described in § 116a.37.

(b) *Exception.* If the SEA does not submit an allocation plan or the Commissioner does not approve the plan that has been submitted, the Commissioner allocates the special grant funds within the State to those counties that are receiving a basic grant under part A of title I of the Act. The Commissioner makes this allocation on the basis of the basic grant allocation method in section 111(a)(2) of the Act.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.36 Submission of allocation plans.

(a) *States that may submit an allocation plan.* Each State for which special grant funds remain unallocated—after all the eligible counties in the State have been allocated the amount of special grant funds to which they are entitled under the statutory formula—may submit, for the Commissioner's consideration, a plan for allocation of these unallocated funds to counties within the State.

(b) *Submission through State educational agency.* Each State that chooses to submit an allocation plan shall do so through its SEA.

(c) *Elements of an allocation plan.* In order to be assured of consideration by the Commissioner, an allocation plan must include—

(1) A list of all counties in the State that meet the eligibility criteria in section 117(b)(1) of the Act, and the amount of special grant funds that each of those counties receives under the formula in section 117(b)(3) of the Act;

(2) A list of all counties in the State, and the amount of special grant funds—if any—that each county would receive under the proposed allocation plan; and

(3) A description of the proposed method for allocating the special grant funds to the counties in the State. This description must include—

(i) The reasons why this method is being proposed; and

(ii) How this method meets the statutory purpose of providing special grant funds to those counties with espically high concentrations of children from low-income families.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.37 Commissioner's standards for approval of allocation plans.

In deciding whether to approve a proposed allocation plan the Commissioner considers the extent to which the proposed plan—

(a) Meets the requirements in § 116a.36;

(b) Would result in an allocation of special grant funds that meets the statutory purpose of providing special grant funds to those counties with especially high concentrations of children from low-income families; and

(c) Is reasonable in terms of local circumstances, including the distribution of children from low-income families within counties.

(Sec. 117(a) and (b); 20 U.S.C. 2722(a) and (b))

§ 116a.38 Method of making special grants.

(a) The Commissioner includes the amount of special grant funds that a State is entitled to for a particular fiscal year, as determined under § 116a.33, in the amount paid to that State under section 191 of the Act for that fiscal year.

(b) Under § 116a.34 or § 116a.35 the Commissioner allocated that special grant funds to counties within each State that receives special grant funds.

(c) Under the formula in section 117(b)(5) of the Act, the SEA shall distribute the special grant funds to LEAs in each county to which the Commissioner allocates special grant funds.

(Sec. 117(b)(5) and (c)(1); 20 U.S.C. 2722(b)(5) and (c)(1))

§ 116a.39 Use of special grant funds.

Each LEA that receives special grant funds under section 117 of the Act shall use those funds—

(a) To carry out activities that are described in the approved project application for title I basic grant funds that the LEA submitted under section 121 of the Act; and

(b) In accordance with the program requirements for title I basic grants in subpart 3 of title I of the Act.

(Sec. 117(c)(2); 20 U.S.C. 2722(c)(2)

[FR Doc. 79-17676 Filed 6-13-79; 8:45 am]

BILLING CODE 4110-02-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-136; RM-3170]

Television Broadcast Station in Oklahoma City, Okla.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Comments invited on a proposal to assign television Channel 52 to Oklahoma City, Oklahoma. This would also make the channel available for use at Edmond, Oklahoma, as proposed by Satellite Outreach Ministries, Inc.

DATE: Comments must be filed on or before July 30, 1979, and reply comments must be filed on or before August 20, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: May 31, 1979.

Released: June 6, 1979.

By the Chief, Broadcast Bureau:

In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Stations, (Oklahoma City, Oklahoma); BC Docket No. 79-136, RM-3170.

1. Satellite Outreach Ministries, Inc. has requested the assignment of Channel 52 to Edmond, Oklahoma, and states its intention to apply for a construction permit to build a television station there if this assignment is granted.

2. No television channels are now assigned to the small community of Edmond (1970 population of 16,633) which is located in Oklahoma County (pop. 527,717), near Oklahoma City. Petitioner has offered no real showing of the need for a television channel for Edmond, but there does appear to be a possible need for another channel at Oklahoma City. Moreover, if Channel 52 were assigned to Oklahoma City, petitioner could apply for it at Edmond under the "15-mile" rule (Section 73.607(b)).

3. The proposed assignment would meet all mileage separation requirements, and a station on Channel 52 at Oklahoma City would be subject to no site restrictions for separation purposes.

4. The eight television channels now assigned to Oklahoma City (pop. 366,481) include the five on which stations now operate (4, 5, 9, *13, and 25), one for which applications are pending but are "cut-off" (Channel 14) and two for which construction permits have been granted (Channels 34 and 43). If Channel 52 were assigned, there would remain two possible additional channel assignments for Oklahoma City or elsewhere in the area.

5. Consideration of the proposed assignment of Channel 52 to Oklahoma City appearing warranted in these circumstances, comments are invited on the following proposed amendment to Section 73.606(b), Table of Television Assignments:

City	Channel No.	
	Present	Proposed
Oklahoma City, Okla.	4-, 5, 9-, *13+, 14-, 25-, 34-, 43+.	4-, 5, 9-, *13+, 14-, 25-, 34-, 43+, 52

6. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. For further information concerning this proceeding, contact Louis C. Stephens, Broadcast Bureau, (202) 632-6302. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Philip L. Verveer,

Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections, 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 79-18061 Filed 6-13-79; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Part 172]

[Docket No. HM-126A; Notice No. 79-9]

Display of Hazardous Materials Identification Numbers; Improved Emergency Response Capability

Correction

In FR Doc. 79-16984 appearing at page 32972 in the issue for Thursday, June 7, 1979, a portion of the comments of the Association of American Railroads (AAR) was reproduced on pages 32973-32975. These comments were printed in the same type size and style as the rest of the document preamble. Consequently, the comments of the AAR might be mistaken as representing the official views of the Materials Transportation Bureau. Users should be advised that the text beginning in the middle column on page 32973, from the heading **"The Basic Requirements of a Hazard Information System"** through the text in the middle column on page 32975, ending with the line "emergency units on the scene." is a partial quotation taken from the comments of the AAR.

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 652]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public hearings on amendment to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries.

SUMMARY: The Mid-Atlantic Fishery Management Council prepared an amendment to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries that proposes major changes to the plan. Public hearings are announced for consideration of the changes.

DATES: The hearings will be held on the following dates: July 10, 11, 12, 17, 18, and 19, 1979.

ADDRESSES: The hearings will be at the following locations:

July 10—Holiday Inn, 500 Hathaway Road, New Bedford, MA 02710, (617) 997-1231.

July 11—Dutch Inn, Great Island Road, (Galilee) Narragansett, RI 02882, (401) 789-9341.

July 12—Stockton State College, Pomona, NJ 08240, (609) 652-1776.

July 17—Golden Eagle, Philadelphia Avenue on the Beach, Cape May, NJ 08204, (609) 884-5611.

July 18—Sheraton Fountainbleau Inn, 10100 Ocean Highway, Ocean City, MD 21842, (301) 524-3535.

July 19—Quality Inn Lake Wright, 6280 Northampton Blvd., Box 2048, Norfolk, VA 23502, (804) 461-6251.

All of the above public hearings will begin promptly at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, North and New Streets, Dover, Delaware 19901, Telephone: 302-674-2331.

SUPPLEMENTAL INFORMATION: The Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries was approved by the Secretary of Commerce in November, 1977, for the period through September, 1979. The Council adopted an amendment to the plan that would extend it through December 1979. This amendment is being reviewed by the Secretary of Commerce. The Council adopted another amendment that would extend the plan through calendar year 1980 with the following changes:

1. The annual surf clam quota of 1.8 million bushels (approximately 30 million pounds of meats) would be continued as would be the provisions to allocate the quota by quarters and regulate fishing effort by restricting days fished. However, the amendment would revise the quarterly quotas for surf clams to be 400,000 bushels for October through December and January through March, and 500,000 bushels for April through June and July through September. A fishing week of no more than four days, Monday through Thursday, will be continued. To help spread the quarterly catch evenly throughout the entire quarter, each vessel will be restricted to 24 hours of fishing per week at the beginning of each quarter. If the Regional Director of the National Marine Fisheries Service determines that the quarterly quota will not be harvested, the weekly hours of fishing may be increased. The Regional Director may prohibit fishing if it is likely that the quarterly quota will be exceeded. Vessels would be required to start and stop fishing at uniform hours. A make-up day for bad weather would be permitted on the fishing day following the fishing day which the bad weather condition existed. The make-up day provision would be in effect only during the months of December, February, and March.

2. The amendment would continue the provisions of the plan regarding ocean quahogs except that the annual quota for ocean quahogs would be increased to 4.0 million bushels (approximately 40 million pounds of meats).

3. The prohibition on the entry of additional vessels into the surf clam fishery would be continued. The moratorium would not preclude replacement of vessels involuntarily leaving the fishery during the time when the moratorium is in effect.

4. The provision to close surf clam beds to fishing wherein over 60 percent of the clams are under 4½ inches in length and less than 15 percent are over 5½ inches in length would be continued. It is recommended that special measures be instituted to manage such closed areas when they are reopened to insure that such openings do not lead to premature closures in the fishery and to prevent overfishing of the newly opened beds.

5. Dredge size and number would be limited by the amendment to such

equipment on board and in use on the effective date of implementation. A minimum surf clam size limit of 4½ inches would be imposed, at least during 1980. The primary reason for these measures is to take into account the possible impacts of using 1980 as a base year for measuring harvesting sector performance upon which to base, at least in part, a possible future direct allocation system for the surf clam fishery. The dredge freeze was recommended by the Council's Surf Clam and Ocean Quahog Advisory Subpanel primarily to minimize changes from historical relative harvesting capacity during the base period. The surf clam size was recommended by the Subpanel in order to minimize the harvest of pre-recruit surf clams during the base period when there would be a great incentive to harvest the maximum volume of clams in order to improve harvesting performance. Council may amend the plan by removing the moratorium on the entry of new vessels into the surf clam fishery and replacing it with some type of vessel allocation system beginning with calendar year 1981. In the event that such a system is instituted, and, to the extent that an allocation formula could be based on performance, 1980 would be the base period for at least a portion of such calculations.

6. The licensing provisions of the plan would be continued. The reporting requirements would be continued with minor revisions.

In addition to the management measures summarized above that are related to extending the plan through 1980, the Council has been considering the recommendation of the New England Fishery Management Council that a special regime be established for the surf clam fishery in New England. There has been much discussion since the plan was developed relative to the New England surf clam fishery, whether it differed enough from the Mid-Atlantic fishery to warrant a separate regime, and if so, what form that separate regime should take. After much consideration, the Mid-Atlantic Council has developed an alternative for the management of the surf clam fishery in New England. The alternative provides for the establishment of a separate management regime in New England, that is, the area north of the dividing line between the Mid-Atlantic and New England Fishery Management Councils. In the northern area the moratorium on entry of vessels into the surf clam fishery and the effort and gear restrictions would not be in effect. A quota of 200,000 pounds of surf clams would be set for that area. The New England quota would be in addition to the quota for approximately 30 million pounds of surf clams set in the amended plan in the Mid-Atlantic. When half of that quota would be caught, the effort restrictions operating in the Mid-Atlantic area would be imposed. Any harvest of surf clams from the northern area would not be charged against the Mid-Atlantic surf clam quota. Vessels entering the New England fishery under this special provision would not be entitled to fish in the Mid-Atlantic area and would not accrue any rights to a future direct allocation system that might be established. Vessels with permits issued pursuant to the moratorium established by the original plan would be permitted to fish in the northern area, but their landings would be reported separate from their Mid-Atlantic landings and would not count toward any possible future direct allocation system base calculation. The Mid-Atlantic Council is interested in receiving comments on this alternative during the review process on this amendment so that this issue may be resolved when this amendment has been finalized.

Another combination of management measures has been proposed for consideration during public review process for this amendment by the Council's Surf Clam and Ocean Quahog Advisory Subpanel. That alternative would extend the plan to the end of 1981 with annual and quarterly quotas for surf clams and an annual quota for ocean quahogs identical to those in the Council's recommended alternative. Dredge size and number would be limited to that on board and in use as of January 1, 1980. The bad weather make-up day provisions are the same in the Subpanel's alternative as those in the Council's recommended alternative, except that the make-up day would be limited to one twelve hour period per week. The moratorium on entry of vessels into the surf clam fishery would also be extended.

The objectives of the plan and the management unit, all surf clams (*Spisula solidissima)* and all ocean quahogs *(Arctica islandica)* in the Atlantic fishery conservation zone, would remain unchanged. Hearings will be tape recorded and the tapes filed as an official formal transcript of proceedings. Summary minutes will be prepared on each hearing. Written comments should be submitted to the contact person listed above by July 27, 1979, to receive full consideration in the plan amendment process.

Dated: June 11, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-18601 Filed 6-13-79; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 44, No. 116
Thursday, June 14, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

Peanuts; 1979 Crop; Incoming and Outgoing Quality Regulations and Indemnification

Pursuant to the provisions of sections 5, 31, 32, 34 and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts [30 FR 9402] and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information it is hereby found that the appended "Incoming Quality Regulation—1979 Crop Peanuts", "Outgoing Quality Regulation—1979 Crop Peanuts", and the "Terms and Conditions of Indemnification—1979 Crop Peanuts", which modify or are in addition to the provisions of sections 5, 31, 32 and 36 of said agreement will tend to effectuate the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement and should be issued.

The Peanut Administrative Committee has recommended that the appended "Incoming Quality Regulation—1979 Crop Peanuts" "Outgoing Quality Regulation—1979 Crop Peanuts" and the "Terms and conditions of Indeminafication—1979 Crop Peanuts", be issued to implement and effectuate the provisions of the aforementioned sections of the marketing agreement. The 1979 peanut crop year begins July 1 and procedures and regulations for operations under the agreement should be established thereby affording handlers maximum time to plan their operations accordingly. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing the issuance hereof, they are represented on the Committee which has prepared and recommended these quality regulations and terms and conditions of indemnification for approval.

Upon consideration of the Committee recommendation and other available information the appended "Incoming Quality Regulation—1979 Crop Peanuts", "Outgoing Quality Regulation—1979 Crop Peanuts", and the "Terms and Conditions of Indemnification—1979 Crop Peanuts" are hereby approved.

This regulation has not been determined signficant under the Department's criteria implementing Executive Order 12044.

Dated: June 8, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division.

Incoming Quality Regulation—1979 Crop Peanuts

The following modify section 5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of 1979 crop peanuts:

(a) *Modification of section 5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of section 5 of the peanut marketing agreement are modified as to 1979 crop farmers stocks peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers stocks peanuts with visible *Aspergillus flavus.*

(b) *Moisture.* Except as provided under paragraph (e) *Seed peanuts,* no handler shall receive or acquire peanuts containing more than 10 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* Handlers may separate from the loose shelled kernels received with farmers stock peanuts, those sizes of kernels which ride screens with the following slot openings: Runner—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x 1 inch. If so separated, those loose shelled kernels which do not ride such screens, shall be removed from the farmers stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation. If the kernels which ride the prescribed screen are not separated, the entire amount of loose shelled kernels shall be removed from farmers stock peanuts and shall be so held and so delivered or disposed of. The loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers stock peanuts.

(e) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus,* and, in addition, the following moisture content, as applicable:

(1) for seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 11 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 12 percent moisture; and (2) for seed peanuts produced in the

Southwestern area, they may contain up to 10 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations may include custom seed shelling, may receive, custom shell, and deliver for seed purposes farmers stock peanuts and such peanuts shall be exempt from the Incoming Quality Regulation requirements and therefore shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements and the handler shall report to the Committee as requested the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts, or from another sheller or producer who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation.

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export, to countries other than Canada and Mexico, farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of section 31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers stock, or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers stock, or lots of shelled peanuts, originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation: *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation. Further disposition or commingling of such peanuts shall be only as provided in paragraph (1) of the Outgoing Quality Regulation. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(g) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer; commission buyer or like person through whom he receives peanuts, of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(h) *Farmers Stock Storage and Handling Facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of 1979 crop Segregation 1 farmers stock peanuts and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee, the locations at which they will receive or acquire 1979 crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, and other farmers stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(i) *Shelled peanuts.* Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation. Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation.

Outgoing Quality Regulation—1979 Crop Peanuts

The following modify or are in addition to the peanut marketing agreement restrictions of section 32 on handler disposition of 1979 crop peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than (1) a total of 1.50

percent unshelled peanuts and damaged kernels; (2) a total of 3.00 percent unshelled peanuts and damaged kernels and minor defects; (3) 9.00 percent moisture in the Southeastern and Southwestern areas; or 10.00 percent moisture in the Virginia-Carolina area; or (4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits". The term through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follow:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	17/64 inch round	18/64 x 3/4 inch slot
Spanish and Valencia	15/64 inch round	13/64 x 3/4 inch slot
Virginia except "No. 2 Virginia"	17/64 inch round	18/64 x 1 inch slot
"No. 2 Virginia"	17/64 inch round only for split, broken and whole kernels.	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: (1) damage or unshelled peanuts and minor defects; and (2) sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish or Virginia "with splits" means shelled peanuts which do not contain more than (a) 15 percent splits, (b) for Spanish 2.00 percent whole kernels which will pass through 15/64 x 3/4 slot screen; for Runners 3.00 percent whole kernels which will pass through 16/64 x 3/4 inch slot screen; and for Virginias 3.00 percent whole kernels which will pass through 15/64 x 1 inch slot screen, and (c) otherwise meet specification of U.S. No. 1 grade).

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) with more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample No. 1", "Sample No. 2" and "Sample No. 3" and each sample shall be place in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample No. 1 may be prepared for immediate testing or Sample No. 1, Sample No. 2, and Sample No. 3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample No. 1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee.

The resultant ground subsample from Sample No. 1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample No. 1. It shall be designated as "Subsample 1–CD". Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laborator listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. But Subsamples 1—AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver) if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

The samples designated as Sample No. 2 and Sample No. 3 shall be held as aflation check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample No. 1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample No. 2 to be ground by the Inspection Service in a "subsampling mill". The resultant ground Subsample from Sample No. 2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB". Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample No. 3 to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample No. 3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB". Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

All cost involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample No. 1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, he shall charge the buyer the amount

specified by the Committee when he invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample No. 1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplace, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification, shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.* (1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—$^{13}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) hereinafter. For the purpose of this regulation: the term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers stock peanuts or those which fail to ride the screens (U.S. No. 1 screens) in removing whole kernels; the term "fall through" has the same meaning as in paragraph (a) of this regulation; and the term "pickouts" means those peanuts removed at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new or clean, used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3) In addition to disposition outlets specified in paragraph (g)(1), fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) and identified as prescribed in paragraph (g)(2) may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this regulation or they may be moved to another handler for such disposition. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this regulation to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2). Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) are exported or crushed in commingle whith peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

Meal produced from peanuts which were disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. However, loose shelled kernels, fall through and pickouts and meal from such peanuts, in specifically identified lots not exceeding 200,000 pounds may be sampled by Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin by laboratories approved by the Committee

or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meals may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation applicable to 1979 crop peanuts, a handler may transfer non-edible quality peanuts described in paragraph (g)(1) to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.*

(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a). Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this regulation because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Handlers who move such peanuts to a blancher shall report, to the Committee on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this regulation and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation: (a) to domestic crushing, (b) to export to countries other than Canada and Mexico, provided they meet fragmented requirements, (c) to crushers who are not handlers but are approved by the Committee, or (d) to other handlers for crushing or fragmenting and exportation. Each lot of such peanuts shall have been positive lot lot identified as prescribed in paragraph (d). Handlers may dispose of such peanuts as "unrestricted": *Provided*, That each lot has been sampled and assayed for aflatoxin as specified in paragraph (c) and determined to be negative as to aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this regulation. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted". Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted". However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2). Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with PAC approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers stock. Likewise, any such residuals received or acquired from a

handler or non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identifed lots not meeting such requirements: (1) may be handled and disposed of pursuant to the provisions of paragraph (h) of this regulation, Or; (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g).

(j) *Segregation 2 and 3 farmers stock disposition.*

(1) Handlers who have acquired Segregation 2 and 3 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers stock peanuts or commingled Segregation 2 and 3 farmers stock peanuts may be moved or disposed of in bags or bulk: (a) to other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags: (a) to other handlers for fragmenting or crushing, or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter in paragraph (1)(2) for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by a Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (1)(1) and shall be assayed for aflatoxin by a USDA laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the area Associations and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and dispostion of Segragation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers stock with Segregation 1 farmers stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers stock peanuts or commingled Segregation 1 and 2 farmers stock peanuts may be moved or disposed of in bulk or bags: (a) to other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: (a) to another handler for fragmenting or crushing; or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in paragraph (1)(1) of this regulation. Prior to exportation the shelled peanuts shall be certified by a Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (1)(1). If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregration 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 farmers stock disposition.* (1) In addition to milling (shelling, cleaning etc.) Segregation 1 farmers stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers stock peanuts to export or to other handlers for such disposition. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), handlers may dispose of Segregation 1 farmers stock peanuts in bags or bulk to other handlers for shelling, fragmenting, or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers stock peanuts with Segregation 2 farmers stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to other handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting and disposition of such Segregation 1 farmers stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing, shall be milled and disposed or pursuant to paragraph (j)(2) in lieu of the provisions specified in paragraphs (a), (b), (c), (d), (g), (h), and (i) of this regulation. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as prescribed by the Committee.

(l) *Handling, commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock; pursuant to paragraph (k)(2).

(b) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) Positive Lot Identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to parargraph (h)(3).

(d) Positive Lot Identified Lots of loose shelled Kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraph (g) (1), (2), and (3).

(e) Positive Lot Identified lots of loose shelled kernels, fall through and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g) (2) and (3).

(f) Positive Lot Identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i).

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: (1) with any other category of peanuts described in this paragraph, and (2) with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 20 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish 15/64 x 3/4 inch slot; Runner 15/64 x 3/4 inch slot; and Virginia 15/64 x 1 inch slot. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: (1) with any other category of peanuts described in this paragraph, and (2) with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted dispositions (crushing or export), such peanuts, before commingling and after commingling, shall be kept separate and apart from all "restricted" peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation.

(b) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) The entire mill production of shelled peanuts from Segregation 3 or commingled Segregation 2 and 3 farmers stock pursuant to paragraph (j)(1).

(d) Postitive Lot Identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3).

(e) Postitive Lot Identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3).

(f) Positive Lot Identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2) and (3).

(g) Positive Lot Identified lots of seed peanut residuals pursuant to paragraph (i).

Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph (1) (2) may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted". Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin". Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (1) (2) and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3). Shelling, fragementing, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k), shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

Terms and Conditions of Indemnification—1979 Crop Peanuts

For the purpose of paying indemnities on a uniform basis pursuant to section 36 of the peanut marketing agreement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of chemical assay. To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in (a) and (c) of the "Outgoing Quality Regulation—1979 Crop Peanuts", and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both.

"Custom blanching" means the process which involves blanching

peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions and rates of payment as the Committee may find to be acceptable.

If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blanching, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for peanuts in such a lot shall be the indemnification value of the peanuts, as hereinafter provided. Transportation expenses (excluding demurrage) from the handler's plant or storage to the point within the Continental United States or Canade where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the "Outgoing Quality Regulation—1979 Crop Peanuts". Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expenses.

If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent on such inspection shall be remilled without reimbursement from the Committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the next to last indemnification shall be as listed in the next to last paragraph of these terms and conditions.

The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall be the indemnification value referable to the weights of peanuts lost in the remilling process and not cleared for human consumption, plus an allowance for remilling of two and one-half cents per pound on the original weight. Transportation expenses (excluding demurrage) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirement of the "Outgoing Quality Regulation-1979 Crop Peanuts". On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and the indemnification value of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner. However, no indemnification payments shall be paid on any lot of peanuts where the Committee determines that the custom blanched peanuts from such a lot have been sold at a price lower than the indemnification value on the original red skin lot at the time the indemnification claim was filed with the Committee.

Claims for indemnification of 1979 crop peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched or both, the Committee shall declare the entire lot for indemnification. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on 1979 crop peanuts to be withheld unless the Committee finds that such action was inadvertent.

Remilling may occur on the premises of any handler signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee orders remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of original milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

Notice of claims for indemnification on peanuts of the 1979 crop shall be filed with the Committee no later than November 1, 1980.

Each handler shall include, directly or by reference, in his sales contract the following provisions:

Should buyer find peanuts subject to indemnification under this contract to be so high in aflatoxin as to provide possible cause for rejection, he shall promptly notify the seller and Manager, Peanut Administrative Committee, Atlanta, Georgia. Upon a determination of the Peanut Administrative Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Or, if the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the outgoing quality regulation, exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or

blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee of 1979 crop peanuts covered by the sales contract.

In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on 1979 crop peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

Any handler who fails to conform to the requirements of paragraph (h) of the "Incoming Quality Regulation—1979 Crop Peanuts" shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee. Also any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the Outgoing Quality Regulation, shall be ineligible for any indemnification payments until such violation is corrected to the satisifaction of the Committee.

Categories eligible for indemnification are as follows:

Cleaned Inshell Peanuts—

(1) U.S. Jumbos
(2) U.S. Fancy Handpicks
(3) Valencia—Roasting Stock [1]

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

U.S. Grade Shelled Peanuts—

(1) U.S. No. 1
(2) U.S. Splits
(3) U.S. Virginia Extra-Large
(4) U.S. Virginia Medium

Shelled Peanuts With Splits—

(1) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a 15/64 x 3/4 slot screen.

(2) Spanish with splits which do not contain more than 15 percent splits or 2 percent whole kernels which will pass through a 15/64 x 3/4 slot screen.

(3) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a 15/64 x 1 slot screen.

However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation and paragraph (i) of the Outgoing Quality Regulation for 1979 Crop Peanuts; (2) failed the Outgoing Quality Regulation for 1979 Crop Peanuts due to excessive damage and minor defects and such peanuts were subsequently blanched or remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

For the purpose of paying indemnification, beginning August 1, 1979, the domestic market price for each category of peanuts shall be determined by averaging the price listed in the Peanut Market News, per category, each week on an accumulative season-to-date basis. Such weekly price calculations shall extend to March 31, 1980. After March 31, the season average price per category shall be applied during the remainder of the crop year.

The indemnification value for each category of peanuts eligible for indemnification shall be the domestic market price, less two cents per pound (on the pounds indemnified) except that the minimum indemnification value on all indemnifiable categories shall be 30 cents per pound.

The grade categories to which the indemnification values shall be applied are as follows:

Runners*	Virginias	Spanish
Jumbo	U.S. Extra Large	U.S. No. 1 [or larger]
Medium	U.S. Medium	Spanish with Splits
Select	U.S. No. 1	U.S. Splits
No. 1 [−18+16 screens]	Virginias with Splits	
Mill run with or without Splits	U.S. Splits	
U.S. Splits		

*Southeastern Peanut Association grades.

[FR Doc. 79-18528 Filed 6-13-79; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

Forest Land and Resource Management Plan; Mt. Baker-Snoqualmie National Forest Whatcom, Skagit, Snohomish, King, and Pierce Counties, Washington; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969 and the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for a Forest Land and Resource Management Plan for the Mt. Baker-Snoqualmie National Forest.

The Forest Plan will be prepared according to regulations being promulgated by the Secretary of Agriculture. The regulations will implement Section 6 of the National Forest Management Act of 1976.

A completed Land Use Plan for the Alpine Lakes Management Unit and subsequent legislation established the Alpine Lakes Wilderness and Intended Wilderness in July 1976. A planning

team is now in the process of developing a Wilderness Management Plan for the Alpine Lakes Wilderness and Intended Wildernesss and specific management direction for the nonwilderness lands. A Final Environmental Statement is planned to be filed with the EPA in June 1980 with implementation by September 1980. A Draft Environmental Statement on the Naches-Tieton-White River Land Management Plan was filed with the EPA in August 1977. This Plan will be carried through to completion as part of the Forest Plan.

The Forest Plan will replace all previous Plans and provide direction for all lands on the Mt. Baker-Snoqualmie National Forest.

The Forest Plan will be coordinated with local, county, State and other Federal agencies. Public involvement will be encouraged and sought throughout the planning process. Currently, the following public workshops are scheduled to help the Forest identify issues, concerns, and opportunities:

June 25, 1979, 7:00 p.m., Holiday Inn, 714 Lakeway Drive, Bellingham, Washington.
June 26, 1979, 7:00 p.m., Sherwood Inn, 400 N.E. 45th, Seattle, Washington.
June 27, 1979, 7:00 p.m., Town & Country Inn, 2009 Riverside Drive, Mt. Vernon, Washington.
June 28, 1979, 7:00 p.m., Holiday Inn, 3518, Pacific Hwy E., Tacoma, Washington.

Alternatives will be displayed in an Environmental Impact Statement and will include, at the minimum: (1) A no-action alternatives; (2) one or more alternatives which will result in eliminating all backlogs of needed treatment for the restoration of renewable resources; (3) an alternative which approximates the level of goods and services assigned by the Regional Plan; and (4) one or more alternatives formulated to resolve the major public issues or concerns.

R. E. Worthington, Regional Forester, Pacific Northwest Region, is the responsible official. Questions about the proposed action and Environmental Impact Statement should be directed to Don Culver, Land Management Specialist, Mt. Baker-Snoqualmie National Forest, (Phone 206–442–4888).

A Draft Environmental Impact Statement on the Forest Plan is scheduled to be filed by December 1981. The Final Environmental Impact Statement will be filed by December 1982.

Comments on this Notice of Intent for the Forest Plan should be sent to Don R. Campbell, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, 1601 Second Avenue Building, Seattle, Washington 98101.

Frank J. Kopecky,

Acting Regional Forester.

June 6, 1979.

[FR Doc. 79-18545 Filed 6-13-79; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 33712]

Tiger International-Seaboard World Airlines, Inc. Acquisition Case; Postponement of Hearing and Date for Submission of Rebuttal Exhibits

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled matter originally scheduled to begin on June 19, 1979 (44 FR 26959, May 8, 1979), will now be held beginning on July 9, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room D, 1875 Connecticut Avenue, N.W., Washington, D.C. 20428.

The date for submission of rebuttal exhibits is accordingly extended until June 25, 1979.

Dated at Washington, D.C., June 8, 1979.

John J. Mathias,

Administrative Law Judge.

[FR Doc. 79-18544 Filed 6-13-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 6-79]

Port of Portland, Oreg.; Application for a Foreign-Trade Subzone at the Beall Pipe and Tank Corporation Facility in Portland

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Portland (the Port), an Oregon public corporation and grantee of Foreign-Trade Zone No. 45, requesting a grant of authority to establish a special-purpose subzone at the Beall Pipe and Tank Corporation (Beall) facility, within the Columbia River Customs port of entry, some 4 miles south of the Port's recently approved general-purpose zone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81) and the regulations of the Board (15 CFR Part 400). It was formally filed on May 30, 1979. The Port is authorized to make the application under § 307.850 of the Oregon Revised Statutes.

The proposal calls for the establishment of a special-purpose foreign-trade subzone, under the sponsorship of the Port, at Beall's steel pipe manufacturing facility at 12005 North Burgard Road, in Portland. The subzone would encompass the firm's entire plant facility, including two straight-seam and four spiral weld mills, on a 27-acre site near Terminal 4 on the Willamette River in northwest Portland.

The applicant indicates that the reason for requesting subzone status is to make the company, a subsidiary of the L. B. Foster Co., more competitive with foreign pipe manufacturers, allowing them to enter the export market and create additional employment at their Portland plant. Beall currently imports foreign coiled steel it states is of a thickness or quality unavailable in the western United States. Under subzone status, the firm intends to import foreign coiled steel of a thickness of .125 to .156 inches for the manufacture of pipe with a ten or more inch diameter, a product it states is currently unavailable from major West Coast pipe mills and presently being imported from foreign suppliers. Subzone procedures would provide the company with Customs cost savings that would help them in bidding on overseas projects. It expects a resulting increase in production initially calling for an additional 30 jobs at its plant.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The committee consists of Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; David J. Radcliffe, Assistant District Director for Inspection and Control, U.S. Customs Service, Federal Bldg., Room 193, 511 Northwest Broadway, Portland, Oregon 97209; and Colonel Terence J. Connell, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, Oregon 97204.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. Comments may address § 400.807 of the Board's regulations, which gives the Board authority to exclude from zones operations detrimental to the public interest. This section would apply to cases in which zone activity is claimed to have an adverse impact on domestic industry. Comments should be addressed to the Board's Executive Secretary at the address below and be postmarked on or before July 6, 1979.

A copy of the Port's application is available for public inspection at each of the following locations:

Office of the Director, U.S. Dept. of Commerce District Office, 1220 S. W. 3rd Avenue, Room 618, Portland, Oregon 97204.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Dept. of Commerce, Room 6886–B, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 30, 1979.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 79–18463 Filed 6–13–79; 8:45 am]

BILLING CODE 3510–25–M

Maritime Administration

[Docket No. S–642]

Aeron Marine Shipping Co., et al.; Application

In the matter of Aeron Marine Shipping Company, Aries Marine Shipping Company, Aquarius Marine Company, Atlas Marine Company, American Shipping, Inc., Pacific Shipping, Inc., and Worth Oil Transport Company.

The foregoing companies (herein referred to as the Berger Group) are holders of long-term operating-differential subsidy contracts. By letter of June 1, 1979, attorneys for the Berger Group advised that Leo V. Berger and Peter Constas, principals in each company of the Berger Group, and Aeron Marine Shipping Company, will form with other companies and individuals an affiliated limited partnership to be named Ariadne Company. Ariadne Company will operate a products tanker of 39,700 DWT in the U.S. coastwise and intercoastal trade, among other trades. A construction contract for the tanker has been entered into and delivery of the vessel is anticipated in 1981.

In view of the foregoing, the companies of the Berger Group request written permission of the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended, for Ariadne Company to operate the above-described tanker in the domestic trade.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on June 21, 1979 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS))

By Order of the Assistant Secretary for Maritime Affairs.

Dated: June 8, 1979.

James S. Dawson, Jr.,

Secretary.

[FR Doc. 79–18599 Filed 6–13–79; 8:45 am]

BILLING CODE 3510–15–M

Availability of Standard Specifications for Merchant Ship Construction

The Maritime Administration announces the publication of the latest edition of its Standard Specifications under the title, "Standard Specifications for Merchant Ship Construction", dated January 1979.

This document supersedes the previous issue dated December 1972. It has been updated to reflect changes in regulations, materials and technology that have affected the shipbuilding industry. It now shows all units of measurement in both the SI-Metric and English systems as a first step in the eventual transition to the SI-Metric system by the U.S. maritime industry.

The purpose of the Maritime Administration Standard Specifications is to provide guidance to the maritime industry in the preparation of detail ship specifications, especially where Construction-Differential Subsidy is involved. They are complete in all aspects of required contract work and embody the following pertinent features:

—Establish levels of quality as a bench mark for Construction-Differential Subsidy.

—Include standard text to reflect legal aspects of contract work.

—Indicate measures of standardization to encourage mass production techniques.

—Introduce the SI-Metric system of measurement to the U.S. shipbuilding industry.

It is intended to further update the Maritime Administration Standard Specifications periodically to reflect continuing technological developments and pertinent results of research and development efforts.

Copies of these latest Specifications are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161, (Refer to Publication No. PB 290400). Purchase price is $19.00 per copy ($38.00 to a foreign address).

Dated: June 8, 1979.

By Order of the Maritime Subsidy Board/ Maritime Administration.

James S. Dawson, Jr.,

Secretary.

[FR Doc. 79–18598 Filed 6–13–79; 8:45 am]

BILLING CODE 3510–15–M

National Bureau of Standards

National Conference on Weights and Measures; Meeting

Notice is hereby given that the 64th annual meeting of the National Conference on Weights and Measures will be held on July 22–27, 1979, at the Red Lion Motor Inn in Portland, Oregon.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States. The annual meeting of the Conference brings together the enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations for the purpose of hearing and discussing subjects that relate to the fields of weights and measures technology and administration.

Pursuant to authority in its Organic Act (15 U.S.C. 272(5)), the National Bureau of Standards acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

The public is invited to attend. A registration fee of $50 per person has been established by the Conference Executive Committee to pay for

expenses of the meeting. Additional information concerning the Conference program and arrangements may be obtained from Mr. Harold F. Wollin, Executive Secretary, National Conference on Weights and Measures, National Bureau of Standards, Washington, DC 20234; telephone (301) 921–3677.

Dated: June 8, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-18464 Filed 6-13-79; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), will conduct meetings on June 28 and 29, 1979. Two additional agenda items to be discussed are: (1) Partial disapproval of Council's FMP for the High Seas Salmon Fishery off the Coast of Alaska East of 175° Longitude. Action needed to replace the ban on hand trolling in the Fisheries Conservation Zone, and (2) First consideration of amendment to FMP's for Gulf of Alaska Groundfish Fishery and Tanner Crab off Alaska to extend provisions through 1980.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907) 274–4563.

Dated: June 8, 1979.

Jack W. Gehringer,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 79-18605 Filed 6-13-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Installation Environmental Impact Statement; Hawaii; Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on June 11, 1979 provided the Environmental Protection Agency a draft Environmental Impact Statement (EIS) concerning the ongoing missions at 35 separate Army installations located in the State of Hawaii. The alternatives of relocating the 25th Infantry Division from the Island of Oahu to the Island of Hawaii, eliminating live ordinance firing on Oahu, transferring all training to the Pohakuloa Training Area on the Island of Hawaii, and closing Army installations and relocating their missions are also analyzed.

Copies of the statement have been forwarded to concerned Federal, State, local and private agencies. Interested organizations or individuals may obtain copies from the Commander, U.S. Army Support Command, Hawaii, ATTN: Director of Engineering and Housing, Fort Shafter, Hawaii 96858.

In the Washington area, inspection copies may be seen, during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: (202) 694–3434.

Bruce A. Hildebrand,

Deputy for Environment, Safety and Occupational Health OASA (IL&FM).

[FR Doc. 79-18460 Filed 6-13-79; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Channel Maintenance Project at Ogdensburg Harbor, N.Y., St. Lawrence County, N.Y.

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

PROPOSED ACTION: Ogdensburg Harbor is a Federally maintained project with channel depths of 19 feet and a lower basin depth of 21 feet, which was authorized and completed in 1935 except for a hard shoal area. Since then, the size of cargo vessels has increased in size requiring deeper channels to accommodate these larger ships. Currently, the accepted depth in the St. Lawrence Seaway is 27 feet. Therefore, the purpose of this study is to determine the feasibility of deepening the existing Federal channels, hard shoal area, and other non-Federal channels.

Alternatives Considered: a. The following alternatives have been considered to date.

(1) No action.—A no action alternative indicates no Corps participation in any improvements to the harbor.

(2) Removal of the Hard Shoal Area.—The authorized project depth in the lower basin is 21 feet, except for a hard shoal area in the southwest corner of the lower basin which has depths of from 18 to 21 feet. Plan 2 would dredge this area to the authorized depth of 21 feet. Removing the hard shoal area would benefit the Ogdensburg Bridge and Port Authority (OB&PA) by allowing existing bulk salt vessels to enter the lower basin with 18½-foot drafts for unloading and storage.

(3) Dredge Lower Basin to Seaway Depth.—This plan would involve dredging the lower basin area to 27 feet. This plan would give the OB&PA additional berthing space at their dock and provide unlimited access for seaway depth vessels along the lower basin shoreline.

(4) Dredge Lower Basin and Dike Hard Shoal Area.—The hard shoal area would be diked and the rest of the lower basin would be dredged to 27 feet. The dredged material would be dumped into a diked area.

(5) Dredge City Front Channel to 25 feet.—This plan would involve dredging the city front from 19 feet to 25 feet from the west end of the Augsbury Dock to the Port Authority 27-foot depth and widen the OB&PA channel from 250 feet to 350 feet.

(6) Dredge City Front Channel to 27 Feet.—This plan would involve dredging the city front channel from 19 feet to 27 feet actual depth. This plan would allow most of the petroleum tankers to dock plus deeper draft vessels carrying salt.

(7) Federal Maintenance of Seaway Depth at OB&PA.—The authorized project depth at the OB&PA channel area is 19 feet. In 1970, with the aid of New York State and the Economic Development Administration, the Port Authority improved their port facilities and dredged the 19-foot Federal channel to 27 feet from their dock to the main navigation channel in the St. Lawrence River. This plan would involve incorporation of this 27-foot depth into the Federal maintenance program.

(8) Extend OB&PS Seaway Depth Around Dock.—This plan would also involve dredging a 27-foot deep berthing channel, about 200 feet wide, along the north and east sides of the OB&PA dock. The hard shoal area would be diked as necessary to contain the dredged material.

(9) Extend OB&PA Channel 1,000 Feet Southerly.—This plan would involve extending OB&PA's 27-foot deep channel 1,000 feet southerly along the city front channel. A diked disposal area would be constructed in the hard shoal

area of the lower basin to contain the dredged material.

Public Involvement: A Public Meeting was held by the Corps in May 1976 to initiate the study and find who the study participants would be and what their interests are. Twenty-two persons were in attendance representing the following interests:

The Ogdensburg Bridge and Port Authority (OB&PA).
Local Longshoremen's Union.
Augsbury Corporation.
Black River-St. Lawrence Economic Development Commission.
St. Lawrence Chamber of Commerce.
Sea Grant Institute.
City of Ogdensburg.
Corps of Engineers.

The OB&PA is the primary proponent for the harbor improvements, as is the Augsbury Corporation. The longshoremen are interested in any improvements to the harbor that will attract more trade, hence, more job security. Because St. Lawrence County, of which Ogdensburg is a part, is an economically depressed area, the Black River-St. Lawrence Economic Development Commission, the St. Lawrence Chamber of Commerce, and the city of Ogdensburg have a keen interest in any improvements in the area that may give an uplift to the economy.

a. Meetings and Representatives—Since the inception of this study, numerous small meetings have been held to obtain information. The organizations and interested parties that participated in the meetings were selected on the basis of their interest, involvement and relation to the study.

b. Issues—Significant issues to be analyzed in the DEIS will include a determination of the extent, in degree and kind, to which the selected plan and any reasonable alternatives might positively or negatively impact upon the human and natural environments, to include fish and wildlife habitat areas, plants, water quality, aesthetic quality of the area, cultural resources, and the equitable distribution and stability of income.

c. Scoping Meeting—Due to extensive coordination and planning with other governmental agencies and concerned public already conducted, a scoping meeting will not be held.

d. Availability—This Draft Environmental Impact Statement will be made available to the public on or about 30 June 1979.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: Philip E. Berkeley, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207 716–876–5454.

Dated: June 6, 1979.

Thomas R. Braun,

LTC, Corps of Engineers, Deputy District Engineer.

[FR Doc. 79–18465 Filed 6–13–79; 8:45 am]

BILLING CODE 3710–GP–M

Intent To Prepare a Revised Draft Environmental Statement (RDES) for a Recreation Complex on the Snyder and Winnebago Oxbow Lakes, Woodbury, County, Iowa

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice of Intent to Prepare a RDES.

SUMMARY: 1. The proposed recreation complex is located along and adjacent to the Missouri River between river miles 709.0 and 716.5 (1960 mileage). Two oxbow lakes, Snyder and Winnebago Lakes, which are abandoned Missouri River channels resulting from navigation channel construction, will be developed into a public recreation complex. The proposed recreation complex will feature typical water oriented types of recreation including fishing, power boating, water skiing, and swimming. Other nonwater types of recreation will include picnicking, camping, outdoor games; hunting, bird watching, nature study and sightseeing. The local sponsor for the project is the State of Iowa.

2. Reasonable alternatives include varying levels of recreational development and no action.

3. Any agency, organization, or individual desiring to participate in the RDES process is encouraged to do so by contacting the individual identified later in this notice. Public involvement to date has been limited to discussions with affected public bodies. No public meetings will be held prior to the filing of the RDES. A public meeting may, however, be scheduled subsequent to publication of the RDES if public interest indicates such a need. There are no significant issues which have been identified. The project is also subject to the Historic Preservation Act; the Endangered Species Act; the Fish and Wildlife Coordination Act; Executive Order 11988 on Flood Plains; and Executive Order 11990 on Wetlands.

4. There will be no scoping meeting.

5. The RDES should be available for public review in July 1979.

ADDRESS: Questions about the proposed action and RDES can be answered by: Richard Gorton; Chief, Environmental Analysis Branch; Omaha District, CE; 6014 United States Post Office and Courthouse; Omaha, Nebraska 68102.

Dated: June 8, 1979.

John E. Velehradsky,

Chief, Planning Division, Omaha, District, CE.

[FR Doc. 79–18546 Filed 6–13–79; 8:45 am]

BILLING CODE 3710–CW–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Sims Bayou, Texas Civil Works Flood Protection Project

AGENCY: Galveston District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS is flood protection for Sims Bayou in southeast Texas. The proposed project would provide improved flood protection to the watershed area including a portion of the City of Houston.

2. Alternatives to be considered in the DEIS include structural and nonstructural measures with two or more structural flood damage reduction plans, and no action.

3.a. Coordination of the project has included a public meeting, local public workshop sessions, and a preliminary evaluation by the U.S. Fish and Wildlife Service. The initial public meeting was held in Houston, Texas on 1 March 1975, to obtain public views and preferences. Alternative plans will be developed in accordance with Corps of Engineers' regulations, considering the views expressed by the public and agencies of the local, State, and Federal governments. Alternative solutions will be presented at another public meeting. The selected plan of improvement will be coordinated with all concerned prior to completion of a Feasibility Report.

b. Some important environmental considerations to be analyzed as a result of past coordination and participation include: (1) Archeological survey, (2) erosion control.

c. Coordination and consultation will continue with appropriate local, State, and Federal agencies and the interested public.

d. Other environmental consultation and review will be conducted in accordance with various laws and regulations.

4. A public meeting specifically to determine the scope of the DEIS is not planned at this time. However, the scoping process will be accomplished in conjunction with future public meetings and workshops and through all previous

and future input to studies for the project.

5. The DEIS is scheduled to be available to the public in October 1980.

ADDRESS: Questions about the proposed action and DEIS can be answered by Mr. C. R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553, (713) 763–1211, extension 492.

Dated: June 7, 1979.

Hinton Y. Crockett, Jr.,

Major, Corps of Engineers Acting District Engineer.

[FR Doc. 79–18615 Filed 6–13–79; 8:45 am]

BILLING CODE 3710–6K–M

Intent To Prepare Draft Environmental Impact Statement for a Proposed Flood Control Project, Haikey Creek, Tulsa County, Okla.

AGENCY: U.S. Army Corps of Engineers, DOD Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Environment Impact Statement (DEIS).

SUMMARY: The primary purpose for this project is to provide standard project flood protection to 39 single family residents in the Haikey Creek Watershed, Tulsa County, Oklahoma.

2. Reasonable Alternatives. The alternatives evaluated include: no action, flood plain evacuation, flood-proofing existing structures, upstream flood retarding dams, levees plus flowage easements, levee plus evacuation, levee plus channel, channel modifications, diversion and combination levees, channel and flowage assesments.

3. Scoping Process. a. Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public involvement. A variety of techniques including formal public meetings, public hearings, public workshops, advisory committees and periodic statements to the local news media were employed to involve organizations, Federal, State, and local agencies, citizen committees, and the interested public in the planning studies.

b. Significant Issues Requiring Indepth Analysis. None.

c. Assisgnments. U.S. Fish and Wildlife Service is preparing a Coordination Act Report.

d. Environmental Review and Consultation Requirements. The draft statement will be circulated for review, and all comments will be incorporated into the final environmental statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, U.S Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa OK 74121, (918) 581–7857.

Dated: June 6, 1979.

Richard W. Mattes,

Acting District Engineer.

[FR Doc. 79–18547 Filed 6–13–79; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF ENERGY

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that a task group of the Committee on Unconventional Gas Sources will meet in June 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Devonian Shale Task Group. The time, location and agenda of the meeting follows:

The third meeting of the Devonian Shale Task Group will be held on Thursday, June 21, 1979, starting at 9:00 a.m., Conference Room, Continental Inn, 801 New Circle Road, N.W., Lexington, Kentucky.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the report outline of the Devonian Shale Task Group.
3. Review of preliminary results of the Devonian Shale Task Group.
4. Review of the Devonian Shale Task Group's assignments.
5. Discussion of any other metters pertinent to the overall assignment of the Devonian Shale Task Group.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633–9482, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on June 7, 1979.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Oil, Natural Gas and Shale Resources, Resource Applications.

June 7, 1979.

[FR Doc. 79–18477 Filed 6–13–79; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Refiners Crude Oil Allocation Program; Supplemental Notice of Allocation Period of April 1, 1979, Through Sept. 30, 1979

The notice specified in 10 CFR 211.65(g) of the refiners' crude oil allocation (buy/sell) program for the allocation period of April 1, 1979, through September 30, 1979, was issued March 30, 1979 (44 FR 21062, April 9, 1979). Subsequent to the publication of this Notice, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) assigned emergency allocations for the months of April, May, and June 1979, pursuant to 10 CFR 211.65(c)(2) to a number of refiner-buyers and issued supplemental buy/sell lists on April 11, 1979, (44 FR 24336, April 25, 1979) and May 16, 1979, (44 FR 29955, May 23, 1979). The ERA hereby issues a third supplemental buy/sell list for the allocation period of April 1, 1979, through September 30, 1979, which sets forth an emergency allocation for the months of June and July 1979, assigned pursuant to 10 CFR 211.65(c)(2), as amended on April 27, 1979, (44 FR 26060, May 4, 1979).

The supplemental buy/sell list for the allocation period April 1, 1979, through September 30, 1979, is set forth as an appendix to this notice. The list includes the name of the small refiner granted an emergency allocation for the months of June and July 1979 and its eligible refinery; the quantity of crude oil the refiner is eligible to purchase; the fixed percentage share for each refiner-seller; the quantity of crude oil that each

refiner-seller is obligated to offer for sale to refiner-buyers pursuant to the supplemental buy/sell notice for the April 1, 1979, through September 30, 1979, allocation period issued May 16, 1979; the new total sales obligation of each refiner-seller, which reflects each refiner-seller's obligation to sell to the refiner-buyer for the emergency allocation listed herein; and the total sales obligation for all refiner-sellers.

The allocation for the small refiner on the supplemental buy/sell list was determined in accordance with 10 CFR 211.65(c)(2). Sales obligations for refiner-sellers were determined in accordance with 10 CFR 211.65 (e) and (f).

The buy/sell list covers PAD Districts I through V, and amounts shown are in barrels of 42 gallons each, for the specified period. Pursuant to 10 CFR 211.65(f), each refiner-sellers shall offer for sale during an allocation period, directly or through exchanges to refiner-buyers, a quantity of crude oil equal to that refiner-seller's sales obligation plus any volume that the ERA directs the refiner-seller to sell pursuant to 10 CFR Section 21.65(j).

Pursuant to 10 CFR 211.65(h), each refiner-buyer and refiner-seller is required to report to ERA in writing or by telegram the details of each transaction under the buy/sell list within forty-eight hours of the completion of arrangements therefor. Each report must identify the refiner-seller, the refiner-buyer, the refineries to which the crude oil is to be delivered, the volumes of crude oil sold or purchased, and the period over which the delivery is expected to take place.

The procedures of 10 CFR 211.65(j) provide that if a sale is not agreed upon subsequent to the date of publication of this notice, a refiner-buyer that has not been able to negotiate a contract to purchase crude oil may request that the ERA direct one or more refiner-sellers to sell a suitable type of crude oil to such refiner-buyer. Such request must be received by the ERA no later than 20 days after the publication date of this supplemental buy/sell notice. Upon such request, the ERA may direct one or more refiner-sellers that have not completed their required sales to sell crude oil to the refiner-buyer.

In directing refiner-sellers to make such sales, ERA will consider the percentage of each refiner-seller's sales obligation for the allocation period that has been sold as reported pursuant to Section 211.65(h), as well as the refiner-seller or sellers that can best be expected to consummate a particular directed sale. If, in ERA's opinion, a valid directed sale request cannot reasonably be expected to be consummated by a refiner-seller that has not completed all or substantially all of its sales obligation for the allocation period, the ERA may issue one or more directed sales orders that would result in one or more refiner-sellers selling more than their published sales obligations for that allocation period. In such cases, the refiner-seller or sellers will receive a barrel-for-barrel reduction in their sales obligations for the next allocation period pursuant to 10 CFR 211.65(f)(3)(ii).

If the refiner-buyer declines to purchase the crude oil specified by ERA, the rights of that refiner-buyer to purchase that volume of crude oil are forfeited during this allocation period, provided that the refiner-seller or refiner-sellers have fully complied with the provision of 10 CFR 211.65.

Refiner-buyers making requests for directed sales must document their inability to purchase crude oil from refiner-sellers by supplying the following information to EPA:

(i) Name of the refiner-buyer and of the person authorized to act for the refiner-buyer in buy/sell program transactions.

(ii) Name and location of the refineries for which crude oil has been sought, the amount of crude oil sought for each refinery, and the technical specifications of crude oils that have historically been processed in each refinery.

(iii) Statement of any restrictions, limitations, or constraints on the refiner-buyer's purchases of crude oil, particularly concerning the manner or time of deliveries.

(iv) Names and locations of all refiner-sellers from which crude oil has been sought under the buy/sell notice, the refineries for which crude oil has been sought, and the volume and specifications of the crude oil sought from each refiner-seller.

(v) The response of each refiner-seller to which a request to purchase crude oil has been made, and the name and telephone number of the individual contacted at each such refiner-seller.

(vi) Such other pertinent information as ERA may request.

All reports and applications made under this notice should be addressed to: Chief, Crude Oil Allocation Branch, 20th Street Postal Station, P.O. Box 19028, Washington, D.C. 20036.

Copies of the decisions and orders assigning the emergency allocations listed herein, as well as the applications, may be obtained from: Economic Regulatory Administration, Public Information Office, 2000 M Street, N.W., Rm. B110, Washington, D.C. 20461 (202) 6344–2170.

The ERA Public Information Office also has available copies of pending applications for emergency allocations under the buy/sell program.

ERA requires each applicant for an emergency allocation to serve all refiner-sellers with a copy of its application. Comments on such application will be accepted by ERA if filed within eight days of service of the application.

This notice is issued pursuant to Subpart G of DOE's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with DOE's Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before July 16, 1979.

Issued in Washington, D.C. June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

Appendix

The Buy/Sell list for the period April 1, 1979, through September 30, 1979, is hereby amended to reflect an emergency allocation for the months of June and July 1979, reductions in allocations previously issued and the resulting changes in sales obligations of refiner-sellers. The amended list sets forth the name of each refiner-seller, the volumes of crude oil that each such refiner-seller is required to offer for sale to refiner-buyers, emergency allocations for the months of June and July 1979, and reductions in allocations previously issued. The amended list does not reflect volumes sold by refiner-sellers for the April 1, 1979, through September 30, 1979, allocation period.

Crude Oil Allocation Program Sales Obligations for the Period Apr. 1, 1979–Sept. 30, 1979

Refiners-sellers	Share*	Sales obligation as of May 16, 1979 (barrels)	New total (barrels)
Amoco Oil Co	.105	2,210,962	2,284,688
Atlantic Richfield Co	.077	1,604,983	1,659,123
Chevron U.S.A., Inc	.101	2,387,185	2,456,675
Cities Service Co	.025	1,180,650	1,197,964
Continental Oil Co	.004	81,748	84,564
Exxon Co., U.S.A	.089	1,818,890	1,881,535
Getty Refining & Marketing Co	.021	549,016	563,949
Gulf Refining & Marketing Co	.091	2,155,201	2,219,333
Marathon Oil Co	.022	458,088	474,173
Mobil Oil Corp	.094	1,974,371	2,040,595
Phillips Petroleum Co	.041	870,730	899,853
Shell Oil Co	.113	2,501,528	2,581,502
Sun Co	.055	1,254,134	1,293,197
Texaco Inc	.114	2,295,425	2,375,464
Union Oil Co. of California	.046	1,088,450	1,120,624
Total sales		22,431,359	23,135,239

*All Refiner-Sellers' percentage shares have been changed to reflect the Continental Oil Company and Exxon Company, U.S.A. Decision and Order dated March 20, 1979. Case numbers are FEX–0184 and FEX–0185.

Emergency Allocation for June and July 1979

Refiner	Refinery location	June 1979 allocation (barrels)	July 1979 allocation (barrels)
CRA, Inc	Coffeyville, Kans	542,880	488,932

REDUCTIONS IN ALLOCATIONS

ERA has been notified by three small refiners with June 1979 allocations (issued with the supplemental notice of May 16, 1979) that they have been able to purchase additional crude oil outside the Buy/Sell Program. This oil was not considered in determining these refiners' emergency allocations. Therefore, the June allocations for the three refiners will be reduced as follows:

Refiner	Original June allocation	Amended June allocation
National Cooperative Refinery Association	352,350	234,568
Southern Union Refining Company	114,330	0
Gulf States Oil and Refining Company	95,820	0

		(Barrels)
Total previously published allocations		22,431,359
Emergency allocation (June)		542,880
Emergency allocation (July)		488,932
Less:		
NCRA	117,782	
Southern Union	114,330	
Gulf States	95,820	
		(327,932)
Total allocations		23,135,239

[FR Doc. 79-18476, Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Settlements.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the ERA and the firms listed below during the month of May 1979.

The Consent Orders represents a settlement between the DOE and the firms involving a sum of less than $500,000 in the aggregate, excluding any penalties and interest. For Consent Orders involving sums of $500,000 or more, Notice will be separately published in the **Federal Register.** These Consent Orders are concerned exclusively with payment of the settlement amounts to injured parties for overcharges made by the specified companies during the time periods indicated below, through direct refunds or rollbacks of prices.

For further information regarding this Consent Order, please contact James C. Easterday, District Manager of Enforcement, Southeast District, Economic Regulatory Administration, 1655 Peachtree Street, NE, Atlanta, Georgia 30309, telephone number (404) 881-2661.

Firm name and address	Settlement amount	Product	Period Covered	Recipients of settlement
Wholesale LP Gas, Inc., Columbus, MS 39701.	65,000.02	Propane	11/1/73-3/31/74	Lampton Love, Loden Butane, Northeast Butane, Amory Butane, United Propane, Borden Butane, Mann Propane, Gulf States Ceramic, Baker Gas & Oil, Putnam Gas, True Temper, Bell Liquified Petroleum, Beneke Corp., Southern Gas, Allgas Service, Hatley Butane, Coombs Gas, Noxubee Gas, Hinton Oil, Sartain Gas, Kerr-McGee Chemical, Alcoa, Covington Propane, Ackerman Butane
Herrington LP Gas Co., Olive Branch, MS 38654.	22,017.20	Propane	11/1/73-4/30/76	Mid-South Galvanizing, B. F. Goodrich, Holiday Inn University, Modern Plastics, Holiday Inn Airport, Keene Corporation, Unitigers Corp., Residential Customers, Farm Customers
Super Oil Co., Johnson City, TN 37601.	152,911.43	Gasoline, Middle Distillates	11/1/73-10/31/74	Large Volume Jobbers, Tennessee Transport Resellers, Va. Transport Resellers, Tankwagon Resellers, North Carolina Transport Resellers, Super Outlets—Full Service, Mack Hopson, Tankwagon Consumers, Transport Consumers, Tankwagon Reseller/Retailer
Meason Operating Co., Natchez, MS 39120.	82,109.27	Crude Oil	9/1/73-3/31/77	Escrowed to ERA direct and through Ashland Oil, Inc. for distribution in a just and equitable manner in accordance with applicable laws and regulations.

Issued in Atlanta, Georgia on the 4th day of June 1979.

James C. Easterday,
District Manager.

Approved as to Legal Form:

L. F. Bittner,
Chief Enforcement Counsel.

[FR Doc. 79-18449 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Agreements.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the ERA and the firms listed below during the months of April and May 1979. The Consent Orders represent agreements between the DOE and the firms which involve a reduction of the selling prices for gasoline to be in compliance with the Federal Energy pricing regulations. These Consent Orders are concerned exclusively with the consenting firm's current compliance with the Mandatory Petroleum Allocation and Price Regulations and do not address the possible non-compliance with these regulations prior to the date of the audit. These Consent Orders require consenting firms to come into compliance with legal requirements by reducing selling prices to established lawful level for each grade of gasoline sold, to properly post maximum lawful selling prices and to properly maintain required records. All consenting firms are retailers of gasoline as defined in 10 CFR Section 212.31 of the Federal Energy guidelines.

For further information regarding these Consent Orders, please contact James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, NE, Atlanta, Georgia 30309, telephone number 404–881–2661.

Firm name and address	Reduction in ASP to achieve MLSP	Product	Period covered	Benefactors of price reductions
Martinez & Mona Exxon, Miami, FL	.0274	Motor Gas	Current	Consumers/ End Users.
Emicil Ana, Miami, FL	.0337	do	do	Do.
Hallandale Amoco, Hallandale, FL	.0060	do	do	Do.
Pete's Exxon, Tampa, FL	.0492	do	do	Do.
Ray's Texaco Service, Tampa, FL	.0347	do	do	Do.
Westshore 66, Tampa, FL	.0287	do	do	Do.
Sandlake Texaco, Orlando, FL	.0310	do	do	Do.
Miller's Sandlake Mobil, Orlando, FL	.0295	do	do	Do.
South Trail Amoco, Orlando, FL	.0390	do	do	Do.
Chuck's Super Service, Orlando, FL	.0250	do	do	Do.
C&M Texaco, Orlando, FL	.006	do	do	Do.
Atlantic Beach Amoco, Atlantic Beach, FL	.006	do	do	Do.
University Gulf Service, Jacksonville, FL	.0300	do	do	Do.
Highland Shell, Jacksonville, FL	.0365	do	do	Do.
Grove Park Chevron, Jacksonville, FL	.0669	do	do	Do.
Odie Watts Mobil, Jacksonville, FL	.0120	do	do	Do.
Mibab Union 76, Jacksonville, FL	.0160	do	do	Do.
Hendricks Exxon, Jacksonville, FL	.0460	do	do	Do.
Wyatt Chevron, Gainesville, FL	.0440	do	do	Do.
O'Hara's Standard, Gainesville, FL	.0240	do	do	Do.
Royal Park Shell Ser., Gainesville, FL	.0440	do	do	Do.
Bell's Chevron Service, Jacksonville, FL	.0132	do	do	Do.
Airport Exxon, Jacksonville, FL	.0480	do	do	Do.
Central Gardens Exxon, Richmond, VA	.019	do	do	Do.
Walton's Texaco Service, Richmond, VA	.003	do	do	Do.
Circle B Texaco, Richmond, VA	.010	do	do	Do.
One Stop Auto Shop, Richmond, VA	.012	do	do	Do.
Glassco Amoco, Richmond, VA	.028	do	do	Do.
Battlefield Route Exxon, Richmond, VA	.019	do	do	Do.
Springdale Shell, Richmond, VA	.018	do	do	Do.
River Road Service Center, Richmond, VA	.005	do	do	Do.
Huguenot Exxon Servicenter, Midlothian, VA	.023	do	do	Do.
Richardson's Texaco Service, Richmond, VA	.015	do	do	Do.
Embry Hills Texaco, Chamblee, GA	.0269	do	do	Do.
A. C. Couch Auto Service, Atlanta, GA	.0039	do	do	Do.
Johnson's American Service, Atlanta, GA	.0804	do	oo	Do.
Piedmont Ponce de Leon Std., Atlanta, GA	.0359	do	do	Do.
Roswell Windsor Shell Service, Atlanta, GA	.0351	do	do	Do.
Jim's Shell, Virginia Beach, VA	.018	do	do	Do.
Vaughan's Servicenter, Virginia Beach, VA	.006	do	do	Do.
Hammer's Texaco, Virginia Beach, VA	.007	do	do	Do.
Ward's Corner Exxon, Norfolk, VA	.018	do	do	Do.
Airport Exxon, Roanoke, VA	.025	do	do	Do.
Hershberger Shell, Roanoke, VA	.0155	do	do	Do.
Plantation Exxon, Hollins, VA	.0070	do	do	Do.
Salem Shell, Salem, VA	.0165	do	do	Do.
Hoover Chevron, Birmingham, AL	.069	do	do	Do.
Glass Gulf Service, Atlanta, GA	.0104	do	do	Do.
Joe Johnson's Gulf, Versailles, KY	.0140	do	do	Do.
Sycamore's Texaco, Versailles, KY	.0066	do	do	Do.
Parkway Exxon, Lexington, KY	.0020	do	do	Do.
Malibu Shell, Lexington, KY	.0120	do	do	Do.
West Frankfort Exxon, Frankfort, KY	.0306	do	do	Do.
Hurstbourne Standard, Louisville, KY	.0409	do	do	Do.
Hornung's Gulf, Louisville, KY	.0134	do	do	Do.
Versailles Rd. Marathon, Lexington, KY	.0194	do	do	Do.
Parkway Gulf, Lawrenceburg, KY	.0455	do	do	Do.
Grade Lane Exxon, Louisville, KY	.0159	do	do	Do.
Beckham & Sons Phillips 66, Louisville, KY	.008	do	do	Do.
Jeffersonville Exxon, Jeffersonville, IN	.0195	do	do	Do.
Neumeister Standard, Jeffersonville, IN	.0219	do	do	Do.
Bob Doyle Standard Service, Shelbyville, KY	.0357	do	do	Do.
Georgetown & I–64 Shell, Georgetown, IN	.0157	do	do	Do.
Jim Davis Standard, Valley Station, KY	.0301	do	do	Do.
Eddie's Woodles Texaco, Greensboro, NC	.0049	do	do	Do.
Red Road Exxon Service, Greensboro, NC	.0112	do	do	Do.
Pettit's Texaco, Greensboro, NC	.0287	do	do	Do.
Mt. Hope Texaco, Greensboro, NC	.0070	do	do	Do.
Shell Service Center, Charlotte, NC	.0110	do	do	Do.
John T. Huss Exxon, Charlotte, NC	.0327	do	do	Do.
Melton's Texaco, Charlotte, NC	.0139	do	do	Do.
John O'Brien, Inc., Charlotte, NC	.0139	do	do	Do.
Eastway Texaco, Charlotte, NC	.002	do	do	Do.
Wahoma Exxon, Birmingham, AL	.0265	do	do	Do.
Sanders Green Springs Amoco, Homewood, AL	.012	do	do	Do.
Pool Vestavia Texaco, Birmingham, AL	.013	do	do	Do.
Paul A. Contorno Gulf, Birmingham, AL	.014	do	do	Do.
Green Valley Shell, Hoover, AL	.032	do	do	Do.
Carr's Gulf Station, Birmingham, AL	.019	do	do	Do.
Schiller's Amoco, Frankfort, KY	.0186	do	do	Do.

Issued in Atlanta, Georgia, on the 4th day of June, 1979.

James C. Easterday,

District Manager of Enforcement.

Approved as to legal form:

L. F. Bittner,

Chief Enforcement Counsel.

[FR Doc. 79–18448 Filed 6–13–79; 8:45 am]

BILLING CODE 6450–01–M

Century Oil Management, Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

EFFECTIVE DATE: May 29, 1979.

COMMENTS BY: July 16, 1979.

ADDRESS: Send comments to: Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, CA 94111, phone: (415) 556-7200.

SUPPLEMENTARY INFORMATION: On May 29, 1979, the Office of Enforcement of the ERA executed a Consent Order with Century Oil Management, Inc., (COM) of Santa Ana, California. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

The Consent Order

COM, with its home office located in Santa Ana, California, is a firm engaged in the production and sale of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of COM, the Office of Enforcement, ERA, and COM entered into a Consent Order, the significant terms of which are as follows:

1. COM is the operator of the Judkins lease and Sentinal A Lease in Kern County, California.

2. COM produced 212,768 barrels of crude oil from the Judkins Lease during the period September 1, 1976 through April 30, 1978, which amount was sold to Coastal Independent Refining and Sebring Associates at exempt oil prices based upon certification of the lease as a stripper well property.

3. The DOE contends that the lease was not eligible for the stripper well exemption for any period prior to November 1, 1978 and that COM should not have received payments in excess of the lower and upper tier ceiling prices as prescribed by 10 CFR 212.73 and 212.74 during the period in question.

4. Payments received by COM from Coastal Independent Refining and Sebring Associates in excess of the applicable lower and upper tier ceiling price during the period September 1, 1976 through April 30, 1978 totaled $229,667.66 and $2,767.01, respectively.

5. COM produced approximately 26,105 barrels of crude oil from Sentinal A during the period January 1, 1976 through April 30, 1978 at upper tier prices based upon their BPCL certification of the lease.

6. The DOE contends that COM used an incorrect BPCL for the Sentinal A lease until May 1978 when the lease qualified for the stripper well exemption. Therefore, COM should not have received payments in excess of the lower tier ceiling price as prescribed by 10 CFR 212.73 during the period in question for the number of barrels stated in paragraph 5.

7. Payments received by COM in excess of the applicable lower tier ceiling price during January 1, 1976 through April 30, 1978 were from the following companies in the amounts shown: Witco Chemical—$2,196.55; San Joaquin Refining—$470.90; Coastal Independent Refining—$12,707.29; Century Resources Development—$2,579.90; and Hydrocarbons, Ltd.—$3,926.58.

8. COM, without admitting that it has violated any regulation or overcharged any customer, is willing to enter into the Consent Order and refund $324,315.89 plus interest at the rate set by DOE as a means of settling this dispute.

9. The provisions of 10 CFR 205.199J, including the publication of this Notice are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, COM agreed to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified above, the sum of $324,315.89 plus interest in certified checks made payable to the United States Department of Energy. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refunded amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers of offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments.

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of indentifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

5. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notificaion of a claim to Jack L. Wood, District Manager of Enforcement, 111 Pine Street, San Francisco, California 94111. You may obtain a free copy of this Consent Order by writing to the same address or by calling 415-556-7200.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Century Oil Management, Inc. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 16, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Los Angeles on the 5th day of June 1979.

Jack L. Wood,

District Manager of Enforcement.

[FR Doc. 79-18571 Filed 6-13-79; 8:45 am]

BILLING CODE 64500-01-M

J. R. Cone; Proposed Remedial Order

Pursuant to 10 C.F.R. § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to J. R. Cone, P.O. Box 871, Lubbock, Texas 79408. This Proposed Remedial Order charges J. R. Cone with pricing violations in the amount of $1,670,403.11, connected with the sale of crude oil at prices in excess of those permitted by 10 C.F.R. 212, Subpart D during calendar years 1973, 1974, 1975, 1976 and 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 C.F.R. § 205.193.

Issued in Dallas, Texas, on the 5th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18564 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Henry Petroleum Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Henry Petroleum Corporation, 801 Petroleum Building, Midland, Texas 79701. This Proposed Remedial Order charges Henry Petroleum Corporation with the sale of crude oil at prices in excess of those permitted by 10 CFR 212 Subpart D in an amount of $138,056.41 during the period December 1, 1973 through May 31, 1979 in the states of Texas and New Mexico.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regultory administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 5th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18567 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Russell G. Estes; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Russell G. Estes, 306 Petroleum Building, Midland, Texas 79701. This Proposed Remedial Order charges Russell G. Estes with pricing violations in the amount of $342,737.26 caused by their having made sale of crude oil at prices in excess of those allowed by 10 CFR 212, Subpart D during the calendar years 1973 through June 1977.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 C.F.R. § 205.193.

Issued in Dallas, Texas, on the 5th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18565 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

RPL Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to RPL Oil Company, P.O. Box 5456, Midland, Texas 79701. This Proposed Remedial Order charges RPL Oil Company with the sale of crude oil at prices in excess of those permitted by 10 CFR 212, Subpart D in an amount of $82,363.80 during calendar years 1973 and 1974.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before June 29, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 5th day of June 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18566 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Shell Oil Co.; Issuance of Final Decision and Order

On April 10, 1979 we issued a Proposed Decision and Order to Shell Oil Company that would permit, pursuant to the provisions of 10 CFR 212.78, market prices for the incremental crude oil from the Olinda Fee Four Enhanced Recovery Project in the Yorba Linda Field of Orange County, California (44 FR 22505, April 16, 1979). No comments or objections have been received with respect to this Proposed Decision and Order. Accordingly, on June 7, 1979, we issued a Decision and Order that permits market prices for incremental crude oil from the Olinda Fee Four Project.

A copy of the Decision and Order is available in the Public Docket Room, Room B–120, 2000 M Street, N.W., Washington, D.C., between 1:00 p.m. and 5:00 p.m., Monday through Friday, and in the Department of Energy Reading Room, Room GA–152, James 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.

Issued in Washington, D.C., June 8, 1979.

Doris J. Dewton,

Acting Assistant Administrator, Office of Fuels Regulation, Economic Regulatory Adminstration.

[FR Doc. 79-18570 Filed 6-13-79; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

University Coal Research Laboratories Program; Availability of Program Announcement for University Coal Research Laboritories Program

AGENCY: Department of Energy.

ACTION: Notice of availability of program announcement, reference No. ER 1006.

BACKGROUND: On May 1, 1979 the final rule covering the University Coal Research Laboratory Program of the Department of Energy was published in the **Federal Register**. This rule established the policies and procedures to be followed in the selection and designation of thirteen university coal research laboratories as authorized by Title VIII of Pub. L. 95–87, the Surface Mining Control and Reclamation Act of 1977, as amended by Section 604 of Pub. L. 95–617, the Public Utilities Regulatory Policies Act of 1978. The university coal research laboritories are established for the purpose of carrying out advanced research and training related to one or more problems of coal energy resources and conversion. At least one of the coal laboratories so designated must be located within each of the major coal provinces of the United States, including Alaska, but no more than one per State. Ten of the thirteen laboratories authorized must be located in states with abundant coal reserves and all the laboratories must be administered by institutions of higher education with experience and expertise in coal research and currently or potentially outstanding coal research programs with the capacity to establish and operate the coal laboratory.

The program announcement details the program objectives, eligibility requirements, the required content of the proposals, and the evaluation and selection criteria and procedures.

EFFECTIVE DATE: June 13, 1979.

POINT OF CONTACT: Copies of the program announcement are available by writing or telephoning: Mr. A. H. Frost, Jr., Contracting Officer, Contracts Division, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37830, 615–576–0642.

Dated at Washington, D.C., this 8th of June, 1979.

For the Department of Energy.

John M. Deutch,

Director of Energy Research.

[FR Doc. 79–18526 Filed 6–13–79; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Parker-Davis Project; Proposed Power Rate Adjustment

AGENCY: Western Area Power Administration (WAPA), Department of Energy.

ACTION: Notice of Proposed Power Rate Adjustment for Parker-Davis Project.

SUMMARY: The Western Area Power Administration is proposing an increase in Parker-Davis Project wholesale firm power rates and transmission service charges in order that project costs will be repaid within the time periods established by law. Proposed increases are as follows:

1. *Wholesale Firm Power Rate.* Increase the monthly capacity charge from $1.39 to $1.82 per kilowatt and the energy charge from 3.5 to 4.15 mills per kilowatthour. At 60 percent monthly load factor, the proposed rate will increase the average annual composite yield from 6.67 to 8.3 mills per kilowatthour, a 24 percent increase. For contract violations involving unauthorized overruns, the rate will be 10 times the aforementioned basic rate which is the same multiplier now in effect.

2. *Transmission Service.*—a. *Parker-Davis Project Electric Service Contract Commitments.* For firm transmission service, increase the annual transmission service charge 28 percent, from $5.30 to $6.80 per kilowatt of contract obligation, to the extent and at the times permitted under the terms of individual contracts. For nonfirm transmission service increase rates from 1.0 to 1.3 mills per kilowatthour.

b. *Colorado River Storage Project Southern Division Transmission System Commitments.* Implement a seasonal transmission service charge of $3.67 per kilowatt of contract rate of delivery. No charge has been made previously for such service.

A brochure explaining in detail the need for the proposed rate will be distributed to Parker-Davis contractors and other interested parties. Public Information and Comment Forums will then be held in accordance with the current WAPA procedures for public participation in general rate adjustments.

During the Public Information and Comment Forums, the standards as set forth in Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 2601 *et seq.*), will be discussed. Subsequent to the discussion of the standards set forth in Title I of PURPA, the WAPA will consider and made a determination concerning whether or not it is appropriate to implement each such standard to carry out the purposes of Title I. The determination shall be in writing, based on the findings included in such determination and upon the evidence presented at the forums, and available to the public.

DATES: The proposed rate is needed commencing October 1, 1979. However, in view of the time needed to properly accomplish procedural aspects, the effective date of the proposed rate is now estimated to be March 1, 1980. A Public Information Forum, at which the WAPA will outline the reasons for the rate increase, will be held in Las Vegas, Nevada on July 9, 1979. A Public Comment Forum, at which the public may comment on the proposed rate increase, will be held in Phoenix, Arizona on August 31, 1979. Written comments concerning this proposed rate adjustment, if they are to be considered, shall be received by the addresses below by no later than September 18, 1979.

ADDRESSES: Interested persons wishing to submit written comments pertaining to the proposed rate adjustment on the Parker-Davis Project shall mail three (3) copies of such comments to each of the following:

Mr. Robert A. Olson, Area Manager, Western Area Power Administration, Boulder City Area Office, 1660 Nevada Highway, P.O. Box 200, Boulder City, NV 89005.

Mr. Robert L. McPhail, Administrator, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401.

Mr. George S. McIsaac, Assistant Secretary for Resource Applications, Office of Resource Applications, Department of Energy, 12th and Pennsylvania Ave., NW., Washington, DC 20461.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Olson, Area Manager, Western Area Power Administration, Boulder City Area Office, 1660 Nevada Highway, P.O. Box 200, Boulder City, NV 89005, Telephone: (702) 293–8475.

SUPPLEMENTARY INFORMATION: Power rates for the Parker-Davis Project are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Consolidated Parker Dam Power Project and Davis Dam Project Act (P.L. 373, May 28, 1954).

The Secretary of Energy delegated to the Assistant Secretary for Resource

Applications, by Delegation Order No. 0204–33, effective January 1, 1979 (43 F.R. 60636 (December 28, 1978)), the authority to develop, acting by and through the Administrator, and to confirm, approve, and place in effect on an interim basis, power and transmission rates; and to the Federal Energy Regulatory Commission, the authority to confirm and approve, on a final basis, or to disapprove such rates. This Order replaced Delegation Order No. 0204–4 (October 1, 1977), which had given certain authority to the Economic Regulatory Administration to confirm and approve or to establish rates.

Procedures for public participation in rate adjustments for power marketed by the WAPA were published in the **Federal Register** on March 23, 1978 (43 FR 12080 (March 23, 1978)). Subsequently, however, these procedures were amended on February 7, 1979, to accord with the Delegation Order No. 0204–33. These amendatory procedures titled, "Amendments to Procedures for Public Participation in General Adjustments in Rates for Power Marketed by the Western Area Power Administration," were published at 44 F.R. 7797 (February 7, 1979).

Issued at Golden, Colorado, June 7, 1979.

Robert L. McPhail,

Administrator.

[FR Doc. 79–18589 Filed 6–13–79; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1247–1]

Approval of Alternate Water Pollutant Testing Procedure; Total Manganese

In accordance with § 136.5, 40 CFR Part 136, "Guidelines for Test Procedures for the Analysis of Pollutants" (**Federal Register**, Vol. 41, No. 232, Wednesday, December 1, 1976, pp. 52780–52786), the Hach Chemical Company applied for approval of a new test procedure for the measurement of manganese. The new Hach procedure is a colorimetric procedure using prepackaged reagents based upon the same chemical reactions involved in the approved colorimetric procedure referenced in 40 CFR Part 136.

After a thorough review and evaluation by the Environmental Protection Agency (EPA) of the results of a comparability testing study, and other information submitted by the applicant in accordance with § 136.5, the EPA has designated the Hach procedure as an approved alternate procedure for nationwide use. All information submitted by the applicant is on file and available for public inspection to the extent consistent with 40 CFR Part 2 (EPA's regulation implementing the Freedom of Information Act), at the Environmental Monitoring and Support Laboratory, 26 West St. Clair Street, Cincinnati, Ohio 45268.

As an approved alternate test procedure, the Hach procedure is acceptable for use by any person required to use approved procedures under § 304(h) of the Clean Water Act Amendments of 1977. For such use, the procedure must be used in strict accordance with the method descriptions for manganese, periodate oxidation method, "Wastewater Analysis Handbook," Hach Chemical Company, p. 275 and p. 281.

For the analysis of total manganese, addition of acid and digestion as indicated in Footnote 15 of **Federal Register**, Vol. 41, No. 232, Wednesday, December 1, 1976, p. 52785, and § 4.1.4, p. 83 of "Methods for Chemical Analysis of Water and Waste," USEPA, 1974, is the required sample pretreatment. This approved alternate test procedure for total manganese is approved also for the determination of dissolved manganese after sample filtration through a 0.45 micron filter.

The approved method description and prepackaged reagents are available from the Director of Technical Information, Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537.

Dated: June 4, 1979.

Tom Murphy,

Acting Assistant Administrator for Research and Development.

[FR Doc. 79–18592 Filed 6–13–79; 8:45 am]

BILLING CODE 6560–01–M

[FRL 1203–6]

Air Pollution Prevention and Control; Addition to the List of Categories of Stationary Sources

Section 111 of the Clean Air Act (42 U.S.C. 1857c–6) directs the Administrator of the Environmental Protection Agency to publish, and from time to time revise, a list of categories of stationary sources which he determines may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare. Within 120 days after the inclusion of a category of stationary sources in such list, the Administrator is required to propose regulations establishing standards of performance for new and modified sources within such category. At present, standards of performance for 27 categories of sources have been promulgated.

The Administrator, after evaluating available information, has determined that glass manufacturing plants are an additional category of stationary sources which meets the above requirements. The basis for this determination is discussed in the preamble to the proposed regulation that is published elsewhere in this issue of the **Federal Register.** Evaluation of other stationary source categories is in progress, and the list will be revised from time to time as the Administrator deems appropriate. Glass manufacturing plants are included on the proposed NSPS priority list published August 31, 1978, in the **Federal Register**, required by section 111(f)(1). But since the priority list is not final, glass manufacturing plants are also being listed as indicated below at this time. Once the priority list is promulgated, all source categories on the promulgated list are considered listed under section 111(b)(1)(A), and separate listings such as this will not be made for those source categories. Accordingly, notice is given that the Administrator, pursuant to section 111(b)(1)(A) of the Act, and after consultation with appropriate advisory committees, experts, and Federal departments and agencies in accordance with section 117(f) of the Act, effective June 14, 1979, amends the list of categories of stationary sources to read as follows:

List of Categories of Stationary Sources and Corresponding Affected Facilities

* * * * *

Source Category

26. Glass manufacturing plants

* * * * *

Affected Facilities—Glass melting furnaces.

Proposed standards of performance applicable to the above source category appear elsewhere in this issue of the **Federal Register.**

Dated: May 22, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79–18594 Filed 6–13–79; 8:45 am]

BILLING CODE 6560–01–M

[PP 8G2052/T210; FRL 1247–5]

Pesticide Programs; Establishment of a Temporary Tolerance

American Cyanamid Co., PO Box 400, Princeton, NJ 08540, submitted a pesticide petition (PP 8G2052) to the

Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for combined residues of the herbicide 2-chloro-*N*-(2,3-dimethylphenyl)-*N*-(1-methylethyl) acetamide and its metabolite *N*-isopropyl-2,3-dimethyloxanilic acid in or on the raw agricultural commodity corn grain at 0.15 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (241-EUP-90) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other material showed that the requested tolerance was adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerance would protect the public health. The temporary tolerance has been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires May 22, 1980. Residues not in excess of 0.15 ppm remaining in or on corn grain after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Ms. Willa Garner, Product Manager 23, Registration Division (TS–767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755–1397).

(Sec. 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)))

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79–18596 Filed 6–13–79; 8:45 am]

BILLING CODE 6560–01–M

[PF–134; FRL 1247–3]

Pesticide Programs; Filing of Food/Feed Additive Petitions

Pursuant to section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

FAP 9H5217. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. Proposes that 21 CFR 561 be amended by permitting residues of the insecticide pirimiphos-methyl (*O*-[2-(diethyl-amino)-6-methyl-4-pyrimidinyl] *O,O*-dimethyl phosphorothioate) in or on the feed commodity wheat screenings at 50 parts per million (ppm). PM12–Mr. Frank Sanders, Rm. E–335, 202/426–2635.

FAP 9H5221. Environmental Chemicals, Inc., 703 N. Lake Shore Drive, Barrington, IL 60010. Proposes that 21 CFR 193 be amended by permitting the combined residues of the insecticide *O,O,O',O'*-tetramethyl *O,O'*-thiodi-p-phenylene phosphorothioate and its metabolite *O,O,O',O'*-tetramethyl *O,O'*-sulfinyldi-p-phenylene phosphorothioate on the commodity potable water at 0.1 ppm. PM16–Mr. William Miller, Rm. E–343, 202/426–9458.

Interested persons are invited to submit written comments on these petitions. Comments may be submitted, and inquiries directed, to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79–18593 Filed 6–13–79; 8:45 am]

BILLING CODE 6560–01–M

[OTS–530002; FRL 1247–2]

Premanufacture Notices; Status Report for May 1979

AGENCY: Environmental Protection Agency (EPA).

ACTION: Monthly Summary of Premanufacture Notices.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires that EPA publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and PMN's for which the review period has expired since publication of the last monthly summary. This is the report for May, 1979.

DATE: Interested parties wishing to file written comments on a specific chemical substance should submit those comments no later than 30 days before the expiration of the applicable review period.

ADDRESS: Written comments should bear the PMN number of the particular substance and should be addressed to the Document Control Officer (TS793), Office of Toxic Substances, EPA, 401 M St., SW., Washington, DC 20460.

Nonconfidential portions of the PMN's and other documents in the public record are available for public inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday (excluding holidays), in Room E–447 at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Smith, Premanufacture Review Division (TS–794), Office of Toxic Substances, EPA, Washington, DC 20460, 202/426–8816.

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA at least 90 days before he begins manufacture or import. A new chemical substance is any chemical substance that is not on the inventory of existing chemical substances compiled by EPA under Section 8(b) of TSCA. On May 15, 1979, the Agency announced the availability of this inventory in the **Federal Register** (44 FR 28558), and set June 1, 1979 as the publication date of this inventory. Therefore, the section 5 requirements are effective for all new chemical substances manufactured or imported for a commercial purpose after July 1, 1979. Once EPA receives a PMN, the Agency normally has 90 days to review it. However, under section 5(c) of TSCA, EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that such an extension is necessary, the Agecy will publish the reasons for the extension in the **Federal Register.**

The monthly status report required under section 5(d)(3) will identify (a) each chemical substance for which a PMN has been received and for which the review period has not expired; (b) each chemical substance for which the premanufacture review has expired since publication of the last monthly summary; and (c) each "new" chemical substance which has been in the review process for less than 30 days. Eventually the report will also identify each chemical which has been added to the inventory since the last monthly report.

(Sec. 5 of the Toxic Substances Control Act (90 Stat. 2012; 15 U.S.C. 2604).)

Dated: June 7, 1979.

Steven D. Jellinek,

Assistant Administrator for Toxic Substances.

Premanufacture Notices; Status Report for May 1979

I. Premanufacture Notices Received During Month: None.

II. Premanufacture Notices Still Under Review at the Beginning of the Month for Which Period Has Not Expired:

PMN Number	Identity/Generic Name	FR Citation	Expiration Date
5AHQ0479-0002-1	Isobutyric acid carbomonocyclic ester	44 FR 23310 (4/19/79)	July 4, 1979
5AHQ0479-0002-2	Propiophenone, ring substitute-2-methyl	do	Do.
5AHQ0479-0002-3	Butyronitrile, 2-(substituted phenyl)-3-methyl	do	Do.
5AHQ0479-0002-4	Benzyl alcohol, ring substituted-alpha-isopropyl	do	Do.

III. Premanufacture Notices Completing Review During the Month: None.

[FR Doc. 79-18595 Filed 6-13-79; 8:45 am]

BILLING CODE 6560-01-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Advisory Committee on Information Network Structure and Functions for the Executive Office of the President; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (1976)) and Office of Management and Budget Circular A-63 of March 1974, and after consultation with the General Services Administration, it has been determined that the establishment of the Advisory Committee on Information Network and Functions for the Executive Office of the President is in the public interest in connection with the performance of duties imposed on the Executive Office of the President by law.

The Committee will advise the Director, through the Director for Information Systems Facilities, on matters pertinent to the Office of Administration's plans for the establishment of a Communications Network for the Executive Office of the President.

The Committee will consist of not more than eleven members, with representation from both the public and private sector.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the act with the appropriate congressional committees and the Library of Congress.

Interested persons are invited to submit comments regarding the establishment of the Advisory Committee on Information Network and Functions for the Executive Office of the President. Comments should be addressed to Director for Information Systems Facilities, Office of Administration, Executive Office of the President, Washington, D.C. 20500, telephone (202-395-3996).

Dated: May 7, 1979

Richard M. Hardin,

Director, Office of Administration.

[FR Doc. 79-18506 Filed 6-13-79; 8:45 am]

BILLING CODE 3195-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before June 25, 1979. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No.: 10372.

Filing party: Russell T. Weil, Kirlin, Campbell & Keating, 1150 Connecticut Avenue, N.W., Suite 800, Washington, D.C. 20036.

Summary: Agreement No. 10372, between United States Lines, Inc. (USL) and Matson Navigation Company (Matson), is a Transportation and Transshipment Agreement whereby the parties, in response to Matson's intention to withdraw from direct service between California ports and the Territory of Guam, contemplate carriage under joint through rates and through bills of lading from California ports to Guam and from Honolulu, Hawaii to the Atlantic Coast of the U.S. and to Europe. Carriage between California ports and the Port of Honolulu will be performed by Matson and all other carriage will be performed by USL. Shipments destined to Guam will be transshipped at Honolulu and shipments destined to the Atlantic Coast of the U.S. and to Europe will be transshipped at California ports. The Agreement covers and is restricted to the transportation of (a) cargo moving in 40-foot non-refrigerated containers on chassis under through bills of lading issued by USL in the trade from (1) U.S. Pacific Coast ports to Guam, with transshipment at Honolulu, Hawaii; (2)

Honolulu, Hawaii, to U.S. Atlantic Coast ports, with transshipment at Oakland or Los Angeles, California, and (3) Honolulu, Hawaii, to ports in Europe with transshipment at Oakland or Los Angeles, California, and (b) empty 40-foot non-refrigerated containers on chassis from Honolulu to Oakland or Los Angeles, California. Matson shall concur in and shall comply with all the terms, conditions, rates, rules, regulations and transshipment routes of USL's Freight Tariff No. 64, FMC–F No. 64, Freight Tariff FMC–F No. 65, and Freight Tariff No. 1, FMC No. 37, except that when cargo is in Matson's possession pursuant to this agreement, it shall be subject to the provisions of Matson's Freight Tariff No. 16–D, FMC–F No. 171, and USL shall concur in the said Tariff No. 16–D. The through rates shall be apportioned as set forth in the agreement. The interchange of containers and chassis from USL to Matson and liability connected therewith shall be governed by the terms of FMC approved Agreement No. DC–66, as amended, except that no per diem shall be charged or paid on any equipment moved under this Agreement.

By Order of the Federal Maritime Commission.

Dated: June 11, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 79–18573 Filed 6–13–79; 8:45 am]

BILLING CODE 6730–01–M

[Amendment No. 12 to Commission Order No. 1 (Revised)]

Organization and Functions of the Federal Maritime Commission

The following amendment to Commission Order 1 (Revised) was made effective April 26, 1979:

"In order to facilitate the administrative flow of paperwork in the absence or preoccupation of the Managing Director and the Deputy Managing Director, section 8 of Commission Order No. 1 is hereby amended to delegate authority to the Secretary to sign routine documents for the Managing Director during such absence(s) by adding a new subsection 8.04 to read as follows:

'8.04 Authority, in the absence or preoccupation of the Managing Director and Deputy Managing Director, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Managing Director, consistent with the programs, policies, and precedents established by the Commission or the Managing Director.' "

Richard J. Daschbach,

Chairman.

[FR Doc. 18572 Filed 6–13–79; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each appliction, interested persons may experss their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration or resources, decreased on unfair competition, conflicts of interest, or unsound banking practices." Any comment on an appliction that requests a hearing must include a statement of the reasons a written presentation would not sufficie in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 9, 1979.

A. *Federal Reserve Bank of Chicago,* 230 South LaSalle Street, Chicago, Illinois 60690:

1. American Fletcher Corporation, Indianapolis, Indiana (consumer finance and insurance activities; Indiana): to engage, through a subsidiary, Local Finance Corporation, in making or acquiring loans or other extensions of credit for personal, family, or household purposes; purchasing consumer installment sales finance contracts; and acting as agent with respect to life and disability insurance directly related to its extensions of credit and insurance which protects property taken as collateral in connection with such extensions of credit. These activities would be conducted from an office in Indianapolis, Indiana, serving an area within a three-mile radius of that office.

2. First Chicago Corporation, Chicago, Illinois (finance and leasing activities; Illinois): to engage, through a subsidiary, First Chicago Credit Corporation, in making full payout leases of personal property in accordance with the Board's Regulation Y; making or acquiring loans and other extensions of credit such as would be made by a finance company; and servicing such loans and other extensions of credit. These activities would be conducted from offices in Chicago, Skokie, Schaumburg, and Oak Brook, Illinois, serving the Chicago SMSA.

3. Northern Trust Corporation, Chicago, Illinois (trust company and investment advisory activities; Florida): to engage, through a subsidiary, Security Trust Company of Palm Beach, in performing or carrying on any one or more functions or activities that may be performed or carried on by a trust company (including activities of a fidiciary, agency, or custodial nature, and acting as investment or financial advisor) as authorized by Florida law, but without the power to accept deposits or make commercial loans. These activities would be conducted from an office in Palm Beach Florida, serving Palm Beach County, Florida, and the southern half of the Martin County, Florida, coastal area.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79–18536 Filed 6–13–79; 8:45 am]

BILLING CODE 6210–01–M

Central Wisconsin Bankshares, Inc.; Acquisition of Bank

Central Wisconsin Bankshares, Inc., Wausau, Wisconsin, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98.6 percent or more of the voting shares of Northern Security National Bank of Rhinelander, Pelican, Wisconsin. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 22, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 11, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18537 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

First Security Corp.; Acquisition of Bank

First Security Corporation, Salt Lake City, Utah, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 99 per cent of the voting shares of First Security Bank of Richfield, N.A., Richfield, Utah. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18538 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Grand Ridge Bancorp.; Formation of Bank Holding Company

Grand Ridge Bancorporation, Grand Ridge, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Grand Ridge, Grand Ridge, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 8, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18535 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Goodenow Bancorp.; Formation of Bank Holding Company

Goodenow Bancorporation, Wall Lake, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Wall Lake Savings Bank, Wall Lake, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18539. Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Koss-Winn Bancshares, Inc.; Formation of Bank Holding Company

Koss-Winn Bancshares, Inc., Buffalo, Iowa, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 95 percent or more of the voting shares (less directors' qualifying shares) of Farmers Trust & Savings Bank, Buffalo Center, Iowa. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18541 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

Talen, Inc., Formation of Bank Holding Company

Talen, Inc., Edgerton, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares (less director's qualifying shares) of First State Bank of Edgerton, Edgerton, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of

Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than July 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18542 Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

The Jefferson Co.; Formation of Bank Holding Company

The Jefferson Company, Jefferson, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Jefferson, Jefferson, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 2, 1979. Any comments on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 8, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-18540, Filed 6-13-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on June 8, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed OSM requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before July 2, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Department of the Interior

Office of Surface Mining

The Office of Surface Mining (OSM), Department of the Interior, requests clearance of additional recordkeeping and reporting requirements contained in 30 CFR Parts 776, 779, 784, 785, 786, 807, 816, 817 and 843. These additional recordkeeping and reporting requirements were identified by respondents and the General Accounting Office (GAO) staff during GAO's review for clearance of OSM's Permanent Regulatory Program. The Office of Surface Mining has determined that such information is necessary to perform its responsibilities under the Surface Mining Control and Reclamation Act of 1977, 33 U.S.C. 1201 et seq. and must be collected, submitted or retained. On March 13, 1979, the OSM published these requirements, subject only to review by GAO to assure that a minimum burden is imposed in the manner in which such information is proposed to be obtained. The requirements contained in each part are as follows:

30 CFR Part 776

Section 776.13(b) sets forth criteria by which 27 regulatory authorities shall review for approval or disapproval 2,000 applications for exploration of more than 250 tons of coal. OSM estimates 6 person hours per application for a total of 12,000 person hours. Section 776.17(b) requires persons submitting information to the regulatory authority that should be held in confidence, to request in writing, at the time of submission that such information not be disclosed. Such information is not to be made available to the public until after notice and a hearing has been afforded persons seeking or opposing disclosure of the information. OSM estimates 2,250 coal exploration operations will submit such a request and preparation of each request will take one person hour for a total of 2,250 person hours.

30 CFR Part 779

Section 779.21 requires 3,800 surface coal mine operations to submit to the regulatory authority, with the permit application, descriptions of the soil resources of the mine plan area and results of analysis, trials and tests where selected overburden materials will be used instead of or as a supplement to topsoil in the reclamation process. OSM estimates approximately 16 person hours per operation for a total of 60,800 person hours. Section 779.22 requires 3,800 surface coal mine operations to file maps and supporting narrative describing the conditions, capability, and productivity of the land within the proposed permit area. OSM estimates approximately 49 person hours per operation for a total of 186,200 person hours. These requirements will have to be met approximately once every five years.

30 CFR Part 784

Section 784.26 establishes permit application requirements so that the regulatory authority is provided with comprehensive and reliable information on the air quality impact. Plans for fugitive dust control are required on approximately 2,300 underground operations. OSM estimates 16 hours per plan, for a total of 36,800 hours. The provisions of this section must be satisfied by underground operations approximately once every five years.

30 CFR Part 785

Section 785.17(b)(3)(5) and (7) sets forth the information that permit applications must include if the area proposed to be mined contains prime farmlands. Approximately 1,000 permit applications will be on prime farmlands. OSM estimates approximately 40 hours per permit for a total of 40,000 person hours. This requirement must be met by affected applicants at least once every five years in most cases.

30 CFR Part 786

Section 786.15 implements the requirements that all information contained in a permit application, filed with the regulatory authority, be made

available to the public. OSM estimates one hour per 27 regulatory authorities and four hours per 6,100 coal mine operators, for a total of 24,427 hours. This requirement must be met only once. Section 786.25(b)(2) sets forth provisions by which the regulatory authority may grant reasonable extensions of time for commencement of surface coal mining and reclamation operation. Approximately 305 surface coal mining and reclamation operations will be affected. OSM estimates 8 hours per extension request for a total of 2,440 hours. An extension request is only required once a year. Section 786.25(b)(4) requires the operator to set forth in the permit extension time granted under § 786.25(b)(2) and give notice of such extension to the public. Approximately 305 surface coal mining and reclamation operations will be affected. OSM estimates 2 hours per notice, for a total of 610 hours. A notice for each operation is required only once after receiving extension from regulatory authority.

30 CFR Part 807

Section 807.11(d) requires 27 regulatory authorities to give approximately 1,830 notices of inspection of reclamation work for evaluation and to inspect such work annually. OSM estimates approximately 40 person hours per notice and inspection for a total of 73,200 person hours. Section 807.11(h)(ii) sets forth the procedures that approximately 27 State regulatory authorities must follow in conducting public hearings on performance bonds. OSM estimates approximately 4 person hours per hearing for a total of 108 person hours per year.

30 CFR Part 816

Section 816.49(i) requires the surface coal mine operation to submit to the regulatory authority, annually, modification plans of dams and impoundments. OSM estimates approximately 1,000 surface mine operations must submit such plans and that it will take each operation from 2 to 40 person hours per plan for a total of 2,000 to 40,000 person hours. Sections 816.52(a)(1) and (2) set forth the requirements that 3,040 surface coal mine operations must follow in ground water monitoring programs. OSM estimates 16 person hours per operation for a total of 48,640 person hours per year. Section 816.52(b)(1)(ii) requires approximately 3,040 surface coal mine operations to notify the regulatory authority and forward analytical results of sample collections where there are cases of noncompliance with the permit conditions or applicable standards and where NPDES permit effluent limitations have exceeded. OSM estimates 4 person hours per operation for a total of 12,160 person hours a year. Section 816.95 requires approximately 3,800 surface coal mine operations to submit an annual plan for fugitive dust control as an integral part of site preparation, coal mining and reclamation operations and specifies what measures should be included in the plan. OSM estimates 8 person hours per operation for a total of 30,400 person hours. Section 816.116 requires approximately 27 State regulatory authorities to develop measurement techniques for successful revegetatiion after consulting with appropriate State and Federal agencies and requires approximately 3,040 surface coal mie operations to conduct managment paractices and periodic revegetation measurements along the guidelines or techniques developed by the regulatory authority. OSM estimates 8 person hours per regulatory authority and 24 person hours per operation for a total of 73,176 person hours a year.

30 CFR Part 817

Section 817.49(i) requires the underground mine operation to submit to the regulatory authority, annually, modification plans of dams and impoundments. OSM estimates approximately 600 underground mine operations must submit such plans and that it will take each operation from 2 to 40 person hours per plan for a total of 1,200 to 24,000 person hours. Section 817.52(a)(1) and (2) set forth the requirements that 1,840 underground mine operations must follow in ground water monitoring programs. OSM estimates 16 person hours per operation for a total of 29,440 person hours per year. Section 817.52(b)(1)(ii) requires approximately 1,840 underground mine operations to notify the regulatory authority and forward analytical results of sample collection where there are cases of noncompliance with the permit conditions or applicable standards and where NPDES permit effluent limitations have been exceeded. OSM estimates 4 person hours per operation for a total of 7,360 person hours a year. Section 817.95 requires approximately 2,300 underground mine operations to submit an annual plan for fugitive dust control as an intergral part of site preparation operations, coal mining and reclamation operations and specifies what measures should be included in that plan. OSM estimates 8 person hours per operation for a total of 18,400 person hours a year. Section 817.116 requires approximately 27 State regulatory authorities to develop measurement techniques for successful revegetation, after consultation with appropriate State and Federal agencies, and requires approximately 1,840 underground mine operations to conduct managment practices and periodic revegetation measurements along the guidelines or techniques developed by the regulatory authority. OSM estimates 8 person hours per regulatory authority and 24 person hours per underground mine operation for a total of 44,376 person hours a year.

30 CFR Part 843

Section 843.14(c) allows the coal mine operator to designate an agent for service of notices or orders and to notify OSM's regional district or field office of such designation, in writing. OSM estimates approximately 2,000 coal mine operations must comply with this requirement and will take about one person hour to prepare such notice for a total of 2,000 person hours annually.

John M. Lovelady,

Assistant Director, Regulatory Reports Review.

[FR Doc. 79-18562 Filed 6-13-79; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Advisory Committees to the National Cancer Institute; Meetings for the Review of Contract Proposals and Grant Applications

Pursuant to Public Law 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, unless otherwise stated.

Name of Committee: Clinical Trials Committee.
Dates: July 10, 1979.
Place: Building 31C, Conference Room 4, National Institutes of Health.
Times: Open: July 10, 8:30 a.m.–9:00 a.m. Closed: July 10, 9:00 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Gerald U. Liddel. Address: Westwood Building, Room 826, National Institutes of Health. Phone: 301/496–7575.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health)

Name of Committee: Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Subcommittee).
Date: July 19, 1979.
Place: Tidewater Place, 1440 Canal Street, Suite 1521, New Orleans, Louisiana 70112.
Times: Open: July 19, 8:30 a.m.–10:00 a.m. Closed: July 19, 10:00 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. William E. Straile. Address: Westwood Building, Room 853, National Institutes of Health. Phone: 301/496–7194.
(Catalog of Federal Domestic Assistance Number 13.393, 13.394, 13.395 National Institutes of Health)

Name of Committee: Clinical Cancer Program Project and Cancer Center Support Review Committee (Cancer Center Support Review Subcommittee).
Dates: July 19–20, 1979.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open: July 19, 8:30 a.m.–10:00 a.m. Closed: July 19, 10:00 a.m.–6:00 p.m. Closed: July 20, 8:30 a.m.–adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. Robert Manning. Address: Westwood Building, Room 803, National Institutes of Health. Phone: 301/496–7721.
(Catalog of Federal Domestic Assistance Number 13.397 National Institutes of Health)

Name of Committee: Biometry and Epidemiology Contract Review Committee.
Date: July 24, 1979.
Place: Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland 20014.
Times: Open: July 24, 8:30 a.m.–9:00 a.m. Closed: July 24, 9:00 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Wilna A. Woods. Address: Westwood Building, Room 821, National Institutes of Health. Phone: 301/496–7153.
(Catalog of Federal Domestic Assistance Number 13.393 National Institutes of Health)

Dated: June 7, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–18479 Filed 6–13–79; 8:45 am]

BILLING CODE 4110–08–M

Cause and Prevention Scientific Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cause and Prevention Scientific Review Committee, National Cancer Institute, June 29, 1979, Landow Building, Conference Room A, 7910 Woodmont Avenue, Bethesda, Maryland 20205. The meeting will be open to the public on June 29, from 9 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 29, from 9:30 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Eugene Zimmerman, Executive Secretary, National Cancer Institute, Westwood Building, Room 826, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7575) will furnish substantive program information.

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

(Catalog of Federal Domestic Assistance Program No. 13.393, National Institutes of Health.)

[FR Doc. 79–18478 Filed 6–13–79; 8:45 am]

BILLING CODE 4110–08–M

Guidelines for the Laboratory Use of Chemical Substances Posing a Potential Occupational Carcinogenic Risk; Open Meeting

A public meeting was held on September 25 and 26, 1978, to discuss a working draft of a document being developed for the HEW Committee to Coordinate Environmental and Related Programs. As a result of this meeting and written comments received, this document has been revised. The revised draft document contains proposals to provide an approach for protecting laboratory workers and their work environment from chemical substances that may pose a carcinogenic risk. This approach is based on the implementation of specific work practices and engineering controls that are applicable to the laboratory workplace. To this end, the meeting objective is to answer questions or receive comments regarding the revised draft document. Written comments will also be considered if received by August 14, 1979.

The open meeting will be held on Tuesday, July 24, from 9:00 a.m. to 5:00 p.m. in Masur Auditorium, Building 10, National Institutes of Health, Bethesda, Maryland. Attendance by the public will be limited to space available. It is requested that individuals wishing to attend give advance notice to:

Ms. Ronda Rice, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3506/FTS 629–3506.

A copy of the draft document and any additional information regarding the meeting may be requested from Ms. Rice.

Dated: May 29, 1979.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 79–18480 Filed 6–13–79; 8:45 am]

BILLING CODE 4110–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Butte District Grazing Advisory Board; Meeting

Notice is hereby given, in accordance with Pub. L. 92–463, that a meeting of the Butte District Grazing Advisory Board will be held on Monday, July 16, 1979.

The meeting will begin at 9 a.m. in the meeting room of the Capri Motel, 220 North Wyoming Street, Butte, Montana.

The agenda for the meeting will include: (1) A review of proposed District range improvement projects for fiscal year 1980; (2) a discussion of the current status of allotment management planning in the Mountain Foothills Range Environmental Statement area; (3) a discussion of range betterment fund utilization for range improvements; (4) a discussion of range improvement funding under Sec. 5(a) of the Public Rangelands Improvement Act of 1978; (5) an update on the District's wilderness review program and its impact on AMP development; (6) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 1 and 2 p.m. on July 16, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 308, Butte, Montana 59701 by July 12, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection and reproduction, during regular business hours, within 30 days following the meeting.

Dated: June 7, 1979.

Jack A. McIntosh,

District Manager.

[FR Doc. 79–18548 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

[Colorado 28022 –a Through –i]

Northwest Pipeline Corp.; Pipeline Application

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for rights-of-way crossing approximately 11.2 miles of public land in Mesa County, Colorado. The rights-of-way are for the Coors Gathering Ststem and are comprised of 4½" and 6 ⅝" o.d. natural gas lateral pipelines and well ties. The lands affected are described as:

T. 9 S., R. 96 W., 6th P. M.
Sec. 27: S½SW¼
Sec. 28: E½, NW¼
Sec. 29: NW¼, SW¼SW¼
Sec. 30: Lots 9, 12, S½NE¼, NW¼SE¼
Sec. 31: Lot 7
Sec. 32: W½NW¼, N½SW¼
Sec. 33: Lot 2
T. 10 S., R. 96 W., 6th P. M.
Sec. 5: SW¼
Sec. 29: SE¼SE¼
T. 8 S., R. 97 W., 6th P. M.
Sec. 26: SE¼
Sec. 35: SE¼NW¼, NW¼SW¼
T. 9 S., R. 97 W., 6th P. M.
Sec. 2: SW¼SW¼
Sec. 3: Lot 1, SE¼NE¼
Sec. 11: W½NW¼
Sec. 15: S½NE¼, N½SE¼, SE¼SE¼
Sec. 25: SW¼SW¼
Sec. 26: SE¼, SE¼NW¼
Sec. 28: W½SW¼
Sec. 29: E½
Sec. 33: N½NW¼
SEc. 35: NW¼NE¼, SE¼NW¼
Sec. 36: NW¼, E½SE¼
T. 10 S., R. 97 W., 6th P. M.
Sec. 1: Lots 1, 3, SE¼NW¼

The proposed pipelines will enable the applicant to convey natural gas from wellheads in the Roberts Canyon-Shire Gulch Field.

The purposes of this notice are: To inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the application, and allow any persons asserting a claim to the lands or having bona fide objections to the proposed natural gas pipeline right-of-way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim, or objection must be filed with the Team Leader, Canon City-Grand Juction Team, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver Colorado 80202, as promptly as possible after publication of this notice.

Rodney A. Roberts,

Leader Canon City-Grand Junction Team, Branch of Adjudication.

[FR Doc. 79–18549 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

[NM 36841]

New Mexico; Application

June 5, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Gas Company of New Mexico has applied for one 4-inch natural gas pipeline right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 20 S., R. 33 E.,
Sec. 27, SW¼NE¼ and E½NW¼.

This pipeline will convey natural gas across .337 of a mile of public land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79–18550 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

[NM 36803, 36805, 36873, 36875, 36876, 36878, and 36879]

New Mexico; Applications

June 6, 1979.

Notice is hereby given that, pursuant to Section 28 of the Minereal Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for seven 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Prinicpal Meridian, New Mexico

T. 28 N., R. 8 W.,
Sec. 20, SW¼SW¼;
Sec. 29, NW¼NW¼.
T. 30 N., R. 8 W.,
Sec. 19, SE¼SE¼;
Sec. 29, lot 4;
Sec. 30, lot 5.

T. 31 N., R. 9 W.,
Sec. 17, lots 3, 4, 5 and 6.
T. 30 N., R. 10 W.,
Sec. 22, lot 1;
Sec. 23, lots 3 and 4.
T. 31 N., R. 10 W.,
Sec. 27, lots 9 and 10.
T. 28 N., 11 W.,
Sec. 26, NE¼SW¼;
Sec. 29, W½NE¼, SE¼NE¼ and N½NW¼.

These pipelines will convey natural gas across 2.540 miles of public lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18551 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 36877]

New Mexico; Application

June 5, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½-inch natural gas pipeline right-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 25 S., R. 31 E.,
Sec. 1, lot 4;
Sec. 2, lot 1 and S½NE¼
T. 24 S., R. 32 E.,
Sec. 30, lot 4, SW¼NE¼, E½SW¼ and NW¼SE¼;
Sec. 31, lot 1.

This pipeline will convey natural gas across 1.585 miles of public lands in Eddy and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico.

Fred E. Padilla,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18552 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[NM 9688]

New Mexico; Notice of Termination of Classification of Public Lands for Multiple-Use Management

June 4, 1979.

1. Pursuant to the regulations contained in 43 CFR 2461.5(c)(2), the classification and segregation of the following-described lands which appeared in the **Federal Register** of August 8, 1970 (FR Doc. 70-10340; 35 FR 12672-12673), is hereby terminated:

New Mexico Principal Meridian

GROUP I

Unit 02-12

T. 4 N., R. 17 W.,
Sec. 6, lots 4 and 12;
Sec. 7, E¼SW¼;
Sec. 8, SW¼NE¼, SE¼NW¼, W½NW¼ and S½;
Sec. 10, SE¼SW¼;
Secs. 11, 14, 15 and 17;
Sec. 18, lots 1, 2, NE¼, E½NW¼, SE¼SW¼ and S½SE¼;
Sec. 19, lot 2, NE¼NE¼ and SE¼NW¼;
Sec. 20, N½N½;
Sec. 21, N½, N½S½ and SW¼SE¼;
Sec. 22, N½, SW¼ and N½SE¼;
Sec. 23, N½NW¼, SW¼NW¼ and SE¼SW¼.
T. 4 N., R. 18 W.,
Sec. 1, lots 1, 2, 3, 4, 7, 8, 9, 10 and SE¼;
Sec. 5, lots 1 to 12 inclusive, N½S½ and SW¼SW¼;
Secs. 6 and 7;
Sec. 8, NW¼NW¼, S½NW¼ and SW¼;
Sec. 11, E½;
Sec. 12, NE¼ and E½SE¼;
Sec. 13 and 14;
Sec. 15, S½NE¼ and S½;
Sec. 17, W½ and S½SE¼;
Secs. 18, 19 and 20;
Sec. 21, N½ and N½S½;
Sec. 22, E½, NW¼, N½SW¼ and SE¼SW¼;
Secs. 23, 24 and 26;
Sec. 27, E½, E½NW¼ and SW¼;
Sec. 28, SE¼SE¼;
Sec. 29, E½NE¼, E½SW¼ and SE¼;
Sec. 30, lots 1, 2, NE¼ and E½NW¼;
Sec. 31, lots 1, 2, 3, 4, and E½W½;
Sec. 33, E½E½, SW¼NE¼, SE¼SW¼ and W½SE¼;
Sec. 34, W½NE¼, SE¼NE¼, W½ and SE¼;
Sec. 35.
T. 5 N., R. 18 W.,
Sec. 30.
T. 4 N., R. 19 W.,
Sec. 1, lots 1 to 12 inclusive, E½SW¼ and SE¼;
Sec. 3;
Sec. 4, lots 1 to 12 inclusive, N½S½, SW¼SW¼ and SE¼SE¼;
Secs. 5 and 6;
Sec. 7, lots 3, 4, E½ and E½SW¼;
Sec. 8, N½ and SW¼;
Sec. 9, N½NE¼;
Sec. 10, N½ and SE¼;
Sec. 11, W½SW¼;
Sec. 12, lots 1, 2, 3, 4, 5, NE¼ and E½NW¼;
Sec. 14, NW¼NW¼, S½SW¼, NE¼SE¼ and SW¼SE¼;
Sec. 15, NE¼NE¼ and W½SE¼;
Sec. 19, S½NE¼ and SE¼;
Sec. 20, SW¼NE¼, S½NW¼, SW¼ and W½SE¼;
Sec. 21, NE¼, SW¼NW¼, NW¼SW¼, SE¼SW¼, W½SE¼ and NE¼SE¼;
Sec. 22, SE¼NE¼, N½NW¼, SW¼NW¼ and SE¼;
Sec. 23, lots 1, 2 and W½NW¼;
Sec. 26, lots 1 to 10 inclusive and W½SE¼;
Sec. 27, lots 1 to 8 inclusive, E½NW¼, SW¼NW¼ and SE¼;
Sec. 28, NW¼NE¼, E½NW¼, NW¼SW¼, SE¼SW¼, S½SE¼ and NE¼SE¼;
Sec. 29, W½E½, NW¼, N½SW¼ and SE¼SW¼;
Sec. 30, NE¼ and N½SE¼;
Sec. 31, lots 2, 3, 4, NE¼NE¼ and SE¼SE¼;
Sec. 33, NE¼, E½NW¼, SW¼NW¼ and S½;
Sec. 34, W½NE¼, NW¼ and S½;
Sec. 35, SW¼ and W½SE¼.
T. 5 N., R. 19 W.,
Sec. 10, S½;
Sec. 12, N½;
Sec. 14;
Sec. 22, E½, N½NW¼ and W½SW¼;
Sec. 24;
Sec. 26, W½NW¼ and SW¼;
Sec. 34, S½;
Sec. 36, S½NW¼ and S½.
T. 4 N., R. 20 W.,
Sec. 14;
Sec. 19, E½E½, SW¼NE¼ and SW¼SE¼;
Sec. 20, lots 1, 2, 3, 4, E½NW¼, SW¼NW¼ and S½;
Secs. 21, 22, 23 and 24;
Sec. 25, lots 1, 2, 3, 4, N½ and E½SW¼;
Sec. 26, NE¼NE¼, W½E½, W½ and SE¼SE¼;
Secs. 27, 28, 29, 31, 33, 34 and 35.

Unit 02-13

T. 3 N., R. 14 W.,
Sec. 30, lots 1, 2, 3, 4, and E½W½.
T. 2 N., R. 15 W.,
Sec. 3, lots 1, 2, 3, NW¼NE¼ and S½N½.
T. 3 N., R. 15 W.,
Sec. 13, S½SW¼;
Sec. 14, W½NE¼, NW¼ and S½;
Sec. 15;
Sec. 21, E½SE¼;
Sec. 22, E½, E½NW¼ and SW¼;
Sec. 23;
Sec. 24, NW¼;
Sec. 25, NW¼ and S½;
Sec. 26;
Sec. 27, N½N½ and S½SE¼;
Sec. 28, N½NE¼;
Sec. 33, E½NE¼;
Sec. 34, N½, E½SW¼ and SE¼;
Sec. 35.

Unit 02-14

T. 1 N., R. 13 W.,
Sec. 7, lots 3, 4, E½SW¼ and SE¼;
Sec. 18, lots 1, 2, 3, E½NW¼ and NE¼SW¼.
T. 1 N., R. 14 W.,
Sec. 3;

Sec. 7, lot 4, E½E½, SE¼SW¼ and SW¼SE¼;
Secs. 8, 9, 10 and 11;
Sec. 13, N½ and N½S½;
Secs. 14 and 15;
Sec. 17, NE¼NE¼, S½N½ and S½;
Sec. 18, lots 1, 2, 3, 4, NW¼NE¼, S½NE¼, E½W½ and SE¼;
Sec. 19;
Sec. 23, N½ and N½S½;
Secs. 26 and 27;
Sec. 28, SE¼NE¼, W½ and E½SE¼;
Sec. 29;
Sec. 30, lots 1, 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 33, E½E½ and W½;
Secs. 34 and 35.

T. 1 N., R. 15 W.,
Sec. 9, SE¼;
Sec. 10, NE¼SW¼, S½SW¼ and SE¼;
Sec. 11, SW¼;
Sec. 12, S½SE¼;
Sec. 13;
Sec. 14, SE¼NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 15, N½ and NW¼SE¼;
Sec. 19, lots 2, 3, 4, SE¼NE¼, E½SW¼ and SE¼;
Sec. 20, W½NW¼, S½SW¼ and SE¼;
Sec. 21, SE¼NE¼, S½S½ and NE¼SE¼;
Sec. 22, S½NW¼ and S½;
Sec. 23, SW¼;
Sec. 24;
Sec. 26, N½NW¼;
Sec. 27, N½;
Sec. 28, N½ and SW¼;
Secs. 29, 30 and 31;
Sec. 33, W½NE¼, W½ and SE¼;
Sec. 34, E½NE¼ and S½;
Sec. 35, E½, S½NW¼ and SW¼.

T. 1 N., R. 16 W.,
Sec. 13, W½NE¼;
Sec. 25;
Sec. 26, E½E½.

T. 1 S., R. 14 W.,
Sec. 3, lots 1 to 12 inclusive and N½S½;
Sec. 4, lots 3, 8, 9 and E½SE¼;
Sec. 5, lots 1, 2, 3, 4, 5, 12 and NW¼SW¼;
Sec. 6, lot 1;
Sec. 7, lots 2, 3, 4, SE¼NW¼ and E½SW¼;
Sec. 17, E½, N½NW¼, SE¼NW¼ and NE¼SW¼;
Sec. 20, N½NE¼ and SW¼NE¼.

T. 1 S., R. 15 W.,
Secs. 1, 3, 4, 5, 9 and 10;
Sec. 11, N½, SW¼, N½SE¼ and SW¼SE¼;
Sec. 12, E½ and E½W½.

Unit 02-16

T. 6 N., R. 1 W.,
Sec. 18, lots 1, 2, 3, 4 and E½W½.

T. 6 N., R. 2 W.,
Sec. 6, lots 1, 2, SE¼NE¼ and SW¼SE¼;
Secs. 10, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.

T. 6 N., R. 3 W.,
Sec. 2, lots 2, 3, SW¼NE¼ and SE¼NW¼;
Secs. 4, 6 and 8;
Sec. 10, E½ and SW¼;
Secs. 12, 14, 18, 20 and 22;
Sec. 24, E½ and E½W½;
Sec. 30;
Sec. 34, N½, SW¼, W½SE¼ and SE¼SE¼.

T. 7 N., R. 3 W.,
Secs. 4, 6, 8, 10, 18, 20, 22, 28, 30 and 34.

T. 6 N., R. 4 W.,
Secs. 4, 6, 8, 10, 12, 14 and 20;
Sec. 22, E½ and SW¼;
Secs. 24, 26, 28, 30 and 34.

T. 7 N., R. 4 W.,
Sec. 4, lots 1, 2, 3, 4, S½N½ and SE¼;
Sec. 8;
Sec. 10, S½;
Sec. 12;
Sec. 14, S½NE¼, W½ and SE¼;
Sec. 18, E½ and SE¼SW¼;
Sec. 20;
Sec. 22, E½ and NW¼;
Secs. 24, 26, 28, 30 and 34.

T. 5 N., R. 5 W.,
Secs. 4, 6, 8, 12, 14, 18, 20, 22, 24, 26, 28, 30 and 34.

T. 6 N., R. 5 W.,
Secs. 4, 8 and 10;
Sec. 12, E½, E½W½ and W½SW¼;
Secs. 14, 18, 20, 22 and 24;
Sec. 26, E½, E½W½ and W½SW¼;
Sec. 28, E½, N½NW¼ and SW¼;
Secs. 30 and 34.

T. 7 N., R. 5 W.,
Sec. 4, lots 1, 2, S½NE¼, NW¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 10, W½ and SE¼;
Sec. 12;
Sec. 14, N½, N½S½, SW¼SW¼ and SE¼SE¼;
Sec. 20, E½E½, NW¼NE¼, NE¼NW¼, W½W½ and SE¼SW¼;
Sec. 22, W½ and SE¼;
Secs. 24, 26 and 28;
Sec. 30, lots 1, 2, E½ and E½NW¼;
Sec. 34.

T. 5 N., R. 6 W.,
Sec. 4, SE¼;
Sec. 8;
Sec. 10, E½;
Sec. 12, N½, SW¼, NE¼SE¼ and S½SE¼;
Sec. 14;
Sec. 20, E½NE¼, SW¼NE¼, W½ and SE¼;
Secs. 22, 24, 26, 28, 30 and 34.

T. 6 N., R. 6 W.,
Secs. 1, 3, 4 and 5;
Sec. 6, lots 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Secs. 7, 8 and 9;
Sec. 10, S½NE¼;
Secs. 11 and 13;
Sec. 14, W½ and SE¼;
Secs. 15, 17, 18, 19, 20, 21, 23, 25 and 27;
Sec. 28, NE¼, S½S½ and NE¼SE¼;
Sec. 29;
Sec. 30 lots 3, 5, 9, 10, E½ and NE¼SW¼;
Secs. 31, 33, 34 and 35.

T. 7 N., R. 6 W.,
Secs. 1 and 3;
Sec. 4, S½N½ and S½;
Sec. 5;
Sec. 6, lots 1, 2, 3, 6, 7, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 7;
Sec. 8, NE¼, N½NW¼ and S½SW¼;
Secs. 9 and 11;
Sec. 12, N½ and SW¼;
Sec. 13;
Sec. 14, N½ and N½S½;
Secs. 15, 17 and 19;
Sec. 20, E½NE¼;
Sec. 21;
Sec. 22, E½ and NW¼;
Secs. 23 and 25;
Sec. 26, S½NE¼, W½ and SE¼;
Secs. 27, 29, 31 and 33;
Sec. 34, N½NW¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 35.

T. 5 N., R. 7 W.,
Sec. 12;
Sec. 24, NE¼, E½NW¼, NW¼NW¼, N½SE¼ and SE¼SE¼.

T. 6 N., R. 7 W.,
Sec.1;
Sec. 2, lots 1, 2, 5, 9, 10, 14 and SE¼NE¼;
Sec. 11, lots 1, 6 and 7;
Sec. 12, lots 1 to 12 inclusive, 14, 15, 16 and 17;
Sec. 13, lots 1, 2, 3, 4, 7, 9, 10, 11, 12, and 15;
Sec. 24, lot 1;
Sec. 25, lots 5, 6, 8, 12, 13, 14 and 15;
Sec. 34, lots 2 and 4;
Sec. 35, lots 1, 9, 10, 11, 13, 15 and 18;
Sec. 36, lots 1, 3, 4, 5, 8, 9, 12, 16, 17, E½E½ and NW¼NE¼.

The areas described above aggregate approximately 181,736.70 acres in Catron, Socorro and Valencia Counties.

2. The lands described above are relieved of the segregative effect at 10:00 a.m. on the 30th day following publication of this notice.

Billy M. Brady,

Acting State Director.

[FR Doc. 79-18466 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

Roswell District Grazing Advisory Board; Meeting

In accordance with Section 403 of Pub. L. 94-579, the Federal Land Policy and Management Act, notice is given of the following Board meeting.

Name: Roswell District Grazing Advisory Board.

Date: July 19, 1979.

Place: Roswell District Office, 1717 West Second Stret, Roswell, New Mexico.

Time: 9 a.m. to 2 p.m.

Proposed Agenda:

9:00 to 9:30 a.m.—Election of Officers.
9:30 to 10:30 a.m.—Use of Range Betterment Funds.
10:30 to 12:00 noon—AMP development in the East Roswell Environmental Statement area.
1:00 to 1:30 p.m.—Public comment period.
1:30 to 2:00 p.m.—Agenda and time of next meeting.

This is the second meeting of the Board which shall serve to offer advice and make recommendations regarding commercial livestock grazing in the development of allotment management plans (AMP's) and the utilizaiton of range-betterment funds with respect to commercial livestock grazing within the Roswell District.

June 6, 1979.

James H. O'Connor,

District Manager.

[FR Doc. 79-18467 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[U-42733]

Utah; Application

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), TCP

Gathering Co. has applied for an 8⅝ inch natural gas pipeline right-of-way across the following lands:

Salt Lake Meridian, Utah

T. 30 S., R. 25 E.,
Secs. 15, 16, 22, 23, 25, 26, and 36.
T. 30 S., R. 26 E.,
Sec. 31.
T. 31 S., R. 26 E.,
Secs. 5, 6, 8, 9, 10, and 11.

The right-of-way is needed for the applicant's gas gathering system located in San Juan County, Utah.

The purpose of this notice is to inform the public that the Bureau will be proceeding with the preparation of environmental and other analyses necessary for determining whether the application should be approved, and if so, under what terms and conditions.

Interested persons should express their interest and views to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah, 84532.

Dell T. Waddoups,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18555 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

Utah, Allen Warner Valley Environmental Statement; Intent to Prepare an Environmental Statement and Conduct Scoping Meetings

Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) Department of the Interior, plans to prepare a draft environmental statement (ES) on Nevada Power Company's proposed 2,500 megawatt (MW) Allen Warner Valley Energy System. The proposed energy system would involve: Development of the Alton Coal field (addressed in the Final Southern Utah Regional Coal ES); a coal processing facility; two coal slurry pipelines; a 55,000 acres-feet reservoir near St. George, Utah; a 500 MW power plant in Warner Valley, Utah; a 2,000 MW power plant east of Las Vegas, Nevada; and an electrical transmission system to California. Public lands within the states of Utah, Arizona, Nevada and California would be involved.

In accordance with the Council on Environmental Quality's regulations, a series of scoping meetings are scheduled. The purpose of these meetings it to identify the significant issues and alternatives to be analyzed in the ES. Meetings will be held as follows: July 25, 1979 in room A-3, Meeting Room Annex, Las Vegas Convention Center, 350 South Paradise Road, Las Vegas, Nevada; July 26, 1979 in room 220, Salt Palace, 100 South West Temple, Salt Lake City, Utah; and July 27, 1979 in the Auditorium of the Washington County Courthouse, 197 East Tabernacle, St. George, Utah. All meetings will begin at 7:00 p.m.

All interested agencies, organizations or persons desiring to assist in the scoping process should familiarize themselves with the proposed project and attend at least one of the scheduled meetings. Information on the proposed project may be obtained from the Cedar City District Office as noted below or from the applicant, Nevada Power Company, P.O. Box 230, Las Vegas, Nevada 89151. Those desiring to participate in the ES scoping process but unable to attend one of the above meetings should contact Mr. Jerry Meredith for further information at the following address:

Bureau of Land Management, Post Office Box 724, Cedar City, Utah 84720, Area Code 801-586-2401.

Dated: June 7, 1979.

William G. Leavell,

Associate State Director, Utah State Office.

[FR Doc. 79-18556 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68238]

Wyoming; Application

June 7, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½" O.D. pipeline, a 4' by 6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 92 W.,
Sec. 32, N½SW¼ and SW¼SW¼.

The proposed pipeline will transport natural gas from the Federal #1-32 Well located in the SW¼ of section 32, to a point of connection with an existing pipeline located in the N½ of section 31, all located within T. 20 N., R. 92 W., Sweetwater County, Wyoming. The proposed 4' by 6' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50' right-of-way in the SW¼ of section 32, T. 20 N., R. 92 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18557 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[W-68239]

Wyoming; Application

June 8, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6⅝ O.D. natural gas pipeline for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 98 W.,
Sec. 28, N½SW¼ and SE¼SW¼.

The proposed pipeline will transport natural gas from the Higgins Unit #12A Well located in the N½ of section 33, to a point of connection with an existing pipeline in the SW¼ of section 28, all within T. 18 N., R. 98 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18558 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[Wyoming 67876]

Wyoming; Application

June 5, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Northwest Pipeline Corporation of Salt Lake City, Utah filed an application for a right-of-way to construct nineteen 4½ inch O.D. pipelines for the purpose of transporting natural gas across the following described public lands:

Sixth Prinicipal Meridan, Wyoming

T. 18 N., R. 111 W.,
Sec. 18.
T. 21 N., R. 111 W.,
Secs. 8 and 18.
T. 18 N., R. 112 W.,
Secs. 12, 14 and 30.
T. 19 N., R. 112 W.,
Secs. 2, 20 and 28.
T. 20 N., R. 112 W.,
Secs. 16, 24 and 36.
T. 21 N., R. 112 W.,
Secs. 20, 24 and 28.
T. 19 N., R. 113 W.,
Secs. 12 and 24.

The proposed pipelines will transport natural gas from the Wilson Ranch Well Numbers 5, 12, 17; Whiskey Butte Well Numbers 23, 25, 32, 33, 34; champlin 285 F–1, 206 C#1, 358 C#1, 358 G–1, 206 D–1; 7 Mile Gulch Well Numbers 9 and 11; Fabian Ditch 2–2 Well; Federal #1–24; Lansdale Fed. #28–1 Well; and the Bruff #1–14 Well to points of connection with Northwest Pipelines Moxa Arch gathering system all within Tps. 18 and 21 N., R. 111 W., and Tps. 18 and 19 N., R. 112 W., Sweetwater County, T. 18 N., R. 112 W., Uinta County, and Tps. 19 and 21 N., R. 112 W., and T. 19 N., R. 113 W., Lincoln County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79–18559 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

[W–65822 Amendment]

Wyoming; Application

June 6, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application to amend their pending right-of-way to construct addition 4½" O.D. pipelines and related facilities consisting of three 4'x6' meter houses and dehydrators for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 18 N., R. 93 W.,
Sec. 10, SW¼NE¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 16, NE¼NE¼, S½NE¼, NE¼SW¼, S½SW¼ and NW¼SE¼;
Sec. 20, NE¼NE¼, S½NE¼, E½SW¼ and NE¼SE¼.

The proposed additional pipeline will transport natural gas from the Federal #20–18–93 well located in the SW¼SW¼ of section 20, the Marathon #3–16 well located in the SW¼SW¼ of section 16, and the Federal #2–10 well located in the SW¼SW¼ of section 10 to points of connection with Colorado Interstate Gas Company's extension of their proposed F–56 line extending from a point located in the SW¼ of section 2, all within T. 18 N., R. 93 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Steet, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79–18560 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

[Wyoming 67937]

Wyoming; Application

June 5, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Company of Brighton, Colorado filed an application for a right-of-way to construct a 4", 6" and 8" natural gas pipelines, and dehydration, launching and receiving facilities, and associated valve settings for pipeline junctions for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 26 N., R. 96 W.,
Sec. 18, lot 8;
Sec. 19, lots 2 and 5.
T. 22 N., R. 97 W.,
Sec. 26, NE¼SW¼ and N½SE¼.
T. 23 N., R. 97 W.,
Sec. 11, W½SW¼;
Sec. 14, NE¼, W½NW¼ and SE¼NW¼.
T. 25 N., R. 97 W.,
Sec. 14, W½NE¼.
T. 26 N., R. 97 W.,
Sec. 23, NW¼SE¼;
Sec. 24, SE¼NE¼ and N½SE¼.

The proposed pipelines will connect Davis J. T. Federal #1, Davis West Sheep Camp #1, Davis Forbes Federal #1, Davis Pickett Lake #2, Davis Pickett Lake #3, Davis Pickett Lake #4 Wells to expand a gathering system to transport natural gas to Colorado Interstate Gas Company's main transmission line. The dehydration, launching and receiving facilities and associated valve settings for pipeline junctions are all located within the proposed rights-of-way in T. 26 N., R. 96 W., Tps. 22, 23, 25, 26 N., R. 97 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third

Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-18561 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-84-M

[New Mexico 1239; Amdt. 1]

New Mexico; Termination of Classification of Public Lands for Multiple-Use Management

June 6, 1979.

1. Pursuant to the regulations contained in 43 CFR 2461.5(c)(2), the classification and segregation of the following-described lands which appeared in the **Federal Register** of August 7, 1970 (F.R. Doc. 70-10280; 35 F.R. 12619-12620), is hereby terminated:

New Mexico Principal Meridian

Unit 2-01

T. 1 N., R. 20 W.,
Sec. 36.
T. 2 N., R. 20 W.,
Sec. 36, E½.
T. 1 S., R. 20 W.,
Sec. 2, lots 1 to 16, inclusive and S½;
Sec. 16.

Unit 2-02

T. 1 S., R. 9 W.,
Sec. 2, lots 1 to 12, inclusive and NW¼SW¼.
T. 1 N., R. 18 W.,
Sec. 2;
Sec. 16, N½, SE¼SW¼ and SE¼;
Sec. 32.
T. 2 N., R. 18 W.,
Sec. 1, lot 2, SW¼NE¼, SE¼NW¼, NE¼SW¼ and NW¼SE¼;
Sec. 2;
Sec. 4, lots 2, 3, and 4;
Sec. 5, lot 1 and SE¼NE¼;
Sec. 6, lots 1 to 7, inclusive, S½NE¼ and SE¼NW¼;
Sec. 7, lots 1, 2, 3, E½ and E½SW¼;
Sec. 8, S½N½;
Sec. 9, N½N½;
Sec. 12, NW¼NE¼, S½NW¼, N½SW¼ and SW¼SW¼;
Sec. 13, N½NW¼ and SW¼NW¼;
Sec. 15, W½;
Sec. 16, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 20, S½NW¼;
Sec. 21;
Sec. 22, W½;
Sec. 23, SE¼;
Sec. 27, W½;
Sec. 28, N½, NE¼SW¼ and SE¼;
Sec. 32;
Sec. 33, E½, SE¼NW¼ and SW¼;
Sec. 34, NW¼, W½SW¼ and SE¼SW¼;
Sec. 36.
T. 3 N., R. 18 W.,
Sec. 29, S½SW¼;
Sec. 31, lot 4, SE¼SW¼ and W½SE¼;
Sec. 32.
T. 1 N., R. 19 W.,
Sec. 2;
Sec. 16, N½, N½SW¼ and NW¼SE¼;
Sec. 36.
T. 2 N., R. 19 W.,
Sec. 1, lots 1, 2, 3, 4, SE¼NE¼, S½NW¼ and S½;
Sec. 11, E½, E½W½, NW¼NW¼ and SW¼SW¼;
Sec. 12, N½, N½SW¼ and SE¼;
Sec. 13, NE¼;
Sec. 14, W½E½ and W½;
Sec. 15, 16, 17, 32 and 36.
T. 3 N., R. 19 W.,
Sec. 24, E½, NE¼NW¼, W½W½ and SE¼SW¼;
Sec. 36, W½NE¼, NW¼ and S½.

Unit 2-03

T. 4 N., R. 8 W.,
Sec. 6, lots 3, 4, 6 and SE¼NW¼;
Sec. 7, lots 1 to 4 inclusive, NE¼, E½W½, N½SE¼ and SE¼SE¼.
T. 4 N., R. 9 W.,
Sec. 1, lots 1 to 4 inclusive, S½N½, NW¼SW¼, NE¼SE¼ and S½S½;
Secs. 2 and 5;
Sec. 6, lots 1, 2, 4, and 5;
Sec. 7, lots 1, 2, 3, 4, NE¼, E½W½, N½SE¼ and SW¼SE¼;
Sec. 9, E½, E½NW¼, SW¼NW¼ and SW¼;
Sec. 11, N½, SW¼, NE¼SE¼ and W½SE¼;
Sec. 12, E½NE¼ and E½NW¼;
Sec. 13, N½, SW¼, NE¼SE¼ and W½SE¼;
Sec. 14, N½NE¼;
Secs. 15, 16, and 17.
T. 5 N., R. 9 W.,
Secs. 1 and 2;
Sec. 3, lots 1, 2, 4, S½N½, N½SW¼, SE¼SW¼ and SE¼
Sec. 4, SE¼NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 5;
Sec. 6, lot 7, SE¼SW¼ and S½SE¼;
Secs. 7 and 9;
Sec. 10, N½NW¼ and NW¼SW¼;
Sec. 11;
Sec. 12, SW¼SW¼, NE¼SE¼ and SW ¼SE¼;
Sec. 13;
Sec. 14, NW¼NE¼, S½NE¼ and SE¼;
Sec. 15;
Sec. 16, N½, W½SW¼, SE¼SW¼ and SE¼;
Sec. 17;
Sec. 19, lots 1, 2, 3, 4, NE¼, E½NW¼, NE¼SW¼, N½SE¼ and SE¼SE¼;
Sec. 21 NE¼NE¼, W½NE¼, NW¼ and S½;
Sec. 23;
Sec. 24, E½W½;
Sec. 25, E½, NE¼NW¼, W½NW¼ and SW¼;
Sec. 26, E½NE¼, NW¼NE¼, W½ and SE¼;
Sec. 27, N½, E½SW¼, SW¼SW¼ and SE¼;
Sec. 28;
Sec. 29, NE¼NE¼, N½NW¼, S½N½ and S½;
Sec. 30, N½NE¼, SE¼NE¼, SE¼SW¼ and SW¼SE¼;
Secs. 31, 32, 33, 35, and 36.
T. 4 N., R. 10 W.,
Secs. 1, 3, and 5.
T. 5 N., R. 10 W.,
Sec. 33;
Sec. 34, SW¼;
Sec. 35, NW¼NE¼, S½NE¼, NW¼ and S½.
T. 7 N., R. 10 W.,
Sec. 22, NW¼;
Sec. 28, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 32, W½NW¼.
T. 4 N., R. 11 W.,
Secs. 3, 10 and 13;
Sec. 14, NE¼ and S½;
Secs. 15 and 16;
Sec. 22, SW¼NW¼, SW¼ NW¼SE¼ and S½SE¼;
Secs. 23 and 25;
Sec. 26, NE¼, N½NW¼, SW¼NW¼ and S½;
Secs. 27, 32 and 33;
Sec. 34, S½N½ and S½;
Secs. 35 and 36.
T. 5 N., R. 12 W.,
Secs. 5 and 6;
Sec. 7, lots 1, 2, 3, 4, NE¼ and E½W½.
T. 6 N., R. 11 W.,
Sec. 32.
T. 6 N., R. 12 W.,
Sec. 35.
T. 7 N., R. 12 W.,
Sec. 19, lot 1;
Sec. 29.

Unit 2-06

T. 2 N., R. 1 E.,
Sec. 5, lots 1, 2, 3, and 4;
Sec. 6, lots 1, 2, 3, 4 and N½.
T. 3 N., R. 1 E.,
Sec. 6, lots 1, 4, 5, 6 and 7;
Sec. 7, lots 1, 2 and 3;
Sec. 18, lots 1, 2 and 3;
Sec. 19, lots 1, 2, 3, 4 and W½W½;
Sec. 30, lots 1, 2, 3, 4, NW¼NW¼, S½NW¼ and SW¼;
Sec. 31, lots 1, 2, 3, 4, 5, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼ and W½SE¼.
T. 3 N., R. 1 W.,
Sec. 6, lots 1 to 7 inclusive, S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 8, N½N½;
Sec. 12, N½SE¼ and SW¼SE¼;
Sec. 13, lots 3, 4, 6, 7 and SW¼;
Sec. 14, N½NE¼, SW¼NE¼, NE¼NW¼ and S½NW¼;
Sec. 16;
Sec. 24, lots 1 to 6 inclusive, W½E½ and E½W½;
Sec. 25, lots 1, 2, 3, W½NE¼, W½, N½SE¼ and SW¼SE¼;
Sec. 36;
T. 1 N., R. 3 W.,
Sec. 4, lots 1, 2, 3 and 4;
Sec. 5, lots 2, 3, 4, 6, SW¼NW¼ and W½SW¼.
T. 2 N., R. 3 W.,
Sec. 32 lots 1 to 7 inclusive, SW¼NE¼, NW¼, N½SW¼ and NW¼SE¼;
Sec. 36, N½, N½SW¼, SW¼SW¼, NE¼SE¼ and S½SE¼.
T. 3 N., R. 3 W.,
Sec. 2.
T. 2 N., R. 4 W.,
Sec. 2;
Sec. 16, N½SW¼, NW¼SE¼ and S½SE¼.

Unit 2-08

T. 1 S., R. 1 W.,
Sec. 7, lots 1, 2 and 4;
Sec. 16, lots 1, 2, 3, 4, S½NW¼ and S½.
T. 1 S., R. 2 W.,
Sec. 12, lots 1, 2, 3 and SE¼NE¼.

Unit 2–09

T. 2 S., R. 1 E.,
Sec. 16.
T. 4 S., R. 1 E.,
Sec. 36.

Unit 2–10

T. 5 S., R. 1 E.,
Sec. 2.

Unit 2–11

T. 1 S., R. 4 E.,
Sec. 20, NE¼ and S½;
Sec. 21, N½SW¼ and NW¼SE¼;
Sec. 25, E½ and NE¼NW¼;
Sec. 26, SE¼NW¼, NE¼SW¼, SW¼SW¼ and NE¼SE¼;
Sec. 27, S½;
Sec. 28, S½;
Secs. 29 and 33;
Sec. 34, N½ and N½S½;
Sec. 35, SE¼NE¼ and SW¼NW¼.
T. 2 S., R. 4 E.,
Sec. 1, lots 1, 2, S½NE¼ and S½;
Sec. 3, S½;
Sec. 4;
Sec. 5, lot 1, SE¼NE¼ and SE¼;
Sec. 10, N½;
Sec. 11, E½E½;
Sec. 12;
Sec. 13, E½ and SW¼;
Sec. 24, E½.
T. 1 S., R. 5 E.,
Sec. 28, W½;
Secs. 30 and 31.
T. 2 S., R. 5 E.,
Sec. 4, N½;
Sec. 5, N½;
Secs. 6 and 19;
Sec. 30, lot 1, NE¼ and NE¼NW¼.
T. 3 S., R. 5 E.,
Sec. 3;
Sec. 4, E½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, W½NE¼ and NW¼;
Sec. 13, E½SE¼.
T. 4 S., R. 5 E.,
Sec. 10, NE¼;
Sec. 11, E½, NW¼ and N½SW¼;
Sec. 12, E½ and N½NW¼;
Sec. 13, E½;
Sec. 14, E½.
T. 3 S., R. 6 E.,
Secs. 4, 5 and 6;
Sec. 7, lots 1, 2, 3, 4 and E½W½;
Sec. 9;
Sec. 18, lots 1, 2, 3, 4 and E½W½;
Sec. 19, lots 1, 2, 3, 4, NE¼, E½W½ and N½SE¼;
Sec. 20, N½ and N½SW¼;
Sec. 21, SE¼;
Sec. 22, S½;
Sec. 24;
Sec. 26, W½;
Sec. 27;
Sec. 28, E½ and NW¼;
Sec. 29, E½, S½NW¼ and N½SW¼;
Sec. 30, lots 1, 2, 3, 4 and E½W½;
Sec. 31, lots 1, 2, 3, 4 and E½W½;
Sec. 33, NE¼;
Sec. 34;
Sec. 35, W½.
T. 4 S., R. 6 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, N½SW¼, SE¼SW¼ and SE¼;
Sec. 3, S½N½ and N½S½;
Sec. 4, S½N½ and N½S½;
Secs. 5 and 6;
Sec. 7, lots 1, 2, 3, 4 and E½W½;
Sec. 9, SW¼;
Sec. 10, SE¼;
Sec. 11, NW¼ and S½;
Sec. 12, NE¼
Sec. 14;
Sec. 18, lots 1, 2, 3, 4 and E½W½;
Secs. 19 and 20;
Sec. 24, N½ and SW¼;
Sec. 27, S½;
Sec. 28, S½;
Sec. 29, S½;
Sec. 30, lots 1, 2, 3, 4, E½W½ and SE¼;
Sec. 33, E½.

The areas described aggregate 101,960.29 acres in Catron, Socorro and Valencia Counties.

2. The lands in this notice are relieved of the segregative effect at 10:00 a.m. on the 30th day following publication of this notice.

Larry L. Woodard,

Acting State Director.

[FR Doc. 79–18553 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

[2370; U–42637; (U–942)]

Utah; Order Providing for Opening of Public Lands

1. The purpose of this order is to restore to the operation of the applicable public land laws those public lands eliminated from the Dinosaur National Monument.

2. By Public Law 86–729, 74 Stat. 857, dated September 8, 1960, the Congress of the United States revised the boundary of the Dinosaur National Monument and eliminated the following described public lands from the Monument:

Salt Lake Meridian, Utah

T. 4 S., R. 23 E.,
Sec. 9, W½;
Sec. 16, W½;
Sec. 21, W½;
Sec. 28, S½NW¼, SW¼.
T. 3 S., R. 24 E.,
Sec. 25, W½;
Sec. 26, all;
Sec. 35, N½.

The area described aggregates 2,480.00 acres in Uintah County.

3. A portion of the above lands, as described in this paragraph, is subject to an existing Reclamation withdrawal as listed and is not open to entry or location but is open to mineral leasing.

Reclamation Withdrawal

T. 4 S., R. 23 E.,
Sec. 28, S½NW¼, SW ¼.
T. 3 S., R. 24 E.,
Sec. 25, W½;
Sec. 35, N½.
Total 880.00 acres.

4. Under the authority delegated by the Bureau of Land Management Order No. 701 dated July 23, 1964 (29 F. R. 10526), as amended, it is ordered that the lands described in paragraph 2 are restored at 10:00 a.m. July 20, 1979 to the operation of the public land laws, subject to valid existing rights, the provision of existing withdrawals, Bureau of Land Management Classification for Multiple Use Management, and the requirements of applicable law. All valid applications received at, or prior to, 10:00 a.m. on July 20, 1979, shall be considered as filed simultaneous at that time. Those received thereafter shall be considered in the order of filing.

Inquires concerning the lands shall be addressed to the State Director, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake city, Utah 84111.

Dated: June 6, 1979.

William G. Leavell,

Associate State Director.

[FR Doc. 79–18554 Filed 6–13–79; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Reclamation

Meeker Dome Unit, Colorado—Colorado River Water Quality Improvement Program; Intent to Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an enviormental assessment or statement on the Meeker Dome Unit. The purposes of the studies to be conducted for the Meeker Dome Unit, which is located in Rio Blanco County, Colorado, are to gain a better understanding of the quantity, sources, and mechanisms by which saline waters enter the White River and then to identify and analyze alternative methods that would eliminate the salt contribution to the river.

Environmental studies and preparation and processing of an environmental impact statement for this proposed project will be in accordance with provisions of the National Environmental Policy Act of 1969, and will be accomplished under the New Council on Environmental Quality (CEQ) regulations published in the **Federal Register** on November 29, 1978. Pursuant to these new CEQ regulations and in accordance with Office of Management and Budget Circular No. A–95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs," we are soliciting the active participation of Federal, State, and local agencies, affected private groups, and individuals in a scoping process for the determination of

significant environmental items to be analyzed.

A scoping session will be conducted to solicit information from all interested individuals and organizations to assist planners in determining the scope of issues to be addressed in environmental analyses and to identify the significant issues related to the Meeker Dome study. The scoping session will be held at 7:00 p.m., on June 19, 1979, in the Fairfield Center at 200 Main Street, Meeker, Colorado.

Inquiries should be addressed to J. F. Rinckel, Project Manager, Bureau of Reclamation, 761 Horizon Drive, Grand Junction, Colorado 81501.

Dated: June 8, 1979.

R. Keith Higginson,

Commissioner.

[FR Doc. 79-18524 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-09-M

Negotiation of a Water Service Contract With the Shasta Dam Area Public Utility District; Intent To Initiate Negotiations on a Water Service Contract

The Department of the Interior, through the Bureau of Reclamation, intends to negotiate a water service contract with the Shasta Dam Area Public Utility District, Central Valley, California, which is located in the Toyon Pipeline Service Area of the Central Valley Project, California. The district has undergone substantial reorganization through the recent annexation of the entire area formerly served by the Summit City Public Utility District. Both districts have previously executed water service contracts with the United States, and a single water service contract will be negotiated superseding both previous contracts.

Provisions to be negotiated in the new contract will include the water quantity, rates, points of delivery, and transfer to the district of the operation and maintenance of the Toyon Pipeline. Contract terms and conditions will generally be written pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), as amended.

All meetings scheduled by the Bureau of Reclamation with the Shasta Dam Area Public Utility District for the purpose of discussing terms and conditions of the proposed contract shall be open to the general public as observers. Advance notice of such meetings shall be furnished only to those parties having previously furnished a written request for such notice to the office identified below at least 1 week prior to any meeting. The public is invited to submit written comments on the form of the proposed agreement not later than 30 days after the completed draft is declared to be available to the public. All written correspondence concerning the proposed operating agreement shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

For further information, please contact Ms. Cindy Cowden, Repayment Specialist, Division of Water and Power Resources Management, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, telephone No. (916) 474-4540.

Dated: June 5, 1979.

Orrin Ferris,

Acting Commissioner of Reclamation.

[FR Doc. 79-18131 Filed 6-13-79; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Monocacy National Battlefield; Availability of Assessment of Alternatives and Notice of Public Hearing

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared an assessment of alternatives for the General Management Plan for Monocacy National Battlefield. This assessment of alternatives and General Management Plan have been undertaken to direct future acquisition and development in a manner that will be in full compliance with applicable environmental and historical legislation.

The document includes a description of the environment, description of alternatives developed to answer the needs of an operating park, an assessment of the General Management Plan's impacts on the environment, and a discussion of land acquisition options and formulation of a land acquisition plan.

A public hearing on this issue shall be conducted July 9 at 7:30 p.m. in the Frederick County Council Hearing Room, Winchester Hall, 21 East Church Street, Frederick, Maryland 21701.

Written comments on this assessment of alternatives are invited and will be accepted for a period of 45 days following the publication of this notice. Written comments should be addressed to the Superintendent, Antietam National Battlefield Park, P.O. Box 158, Sharpsburg, Maryland 21782.

Copies of the assessment of alternatives are available from:

Antietam National Battlefield Park, P.O. Box 158, Sharpsburg, Maryland 21782.

National Park Service, National Capital Parks, 1100 Ohio Drive, SW., Washington, D.C. 20242.

Dated: June 11, 1979.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 79-18522 Filed 6-13-79; 8:45 am]

Billing Code 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment in United States v. Leviton Manufacturing Co., Inc., et al. and competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a Proposed Final Judgment and Competitive Impact Statement, as set forth below, have been filed with the United States District Court for the District of Connecticut in Civil No. H-77-555, *United States of America v. Leviton Manufacturing Co., Inc., et al.*, (October 27, 1977). The proposed Final Judgment would terminate the Department of the Justice's civil antitrust suit involving the manufacture and sale of residential grade wiring devices throughout the United States.

The complaint alleged that beginning prior to 1962 and continuing thereafter until at least April, 1976 eight corporate and one individual defendant and certain co-conspirators engaged in a combination and conspiracy to restrain interstate commerce in the manufacture and sale of residential grade wiring devices throughout the United States.

The complaint sought a judgment by the court that the defendants had engaged in a combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act together with an order by the court to enjoin and restrain the defendants from such conduct in the future.

Proceedings in this case were stayed pending disposition of a companion criminal prosecution, *United States v. Leviton Manufacturing Co., Inc., et al.*, Criminal No. H-77-77 (D. Conn.). Each of the defendants in the criminal case pleaded *nolo contendere* and was sentenced by United States District Judge M. Joseph Blumenfeld. The sentences included fines totalling $920,000 and periods of incarceration ranging from 30 to 90 days for 9 of the individual defendants.

Entry by the court of the proposed Final Judgment will terminate the civil

case, except insofar as the court will retain jurisdiction for such further proceedings as may be necessary or appropriate to interpret, modify or enforce the Judgment, or to punish violations thereof.

The proposed Final Judgment enjoins the defendants for a period of ten years from (1) directly or indirectly entering into any contract, or conspiracy with any other person engaged in the production or sale of wiring devices to raise, fix, maintain or stabilize prices, discounts or terms or conditions of sale of wiring devices to any third person; (2) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices; and (3) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

The only exception to the broad prohibitions of the Judgment concern necessary communications in connection with (1) bona fide contemplated or actual purchase or sales transactions between the parties to such communications; and (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices.

The proposed Final Judgment also enjoins and restrains defendants George P. Byrne, Jr. and George P. Byrne, Inc., for a period of ten years, from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufacturers.

In addition to the prohibitions described above, the proposed Final Judgment requires certain affirmative actions designed to insure compliance with the Judgment and competitive prices in the future.

The proposed Final Judgment shall terminate ten years from the date of its entry.

In accordance with the Antitrust Procedures and Penalties Act of 1974, the Competitive Impact Statement describes the violations involved, explains the provisions of the proposed Final Judgement, discusses the remedies available to private litigants, outlines the procedures available for the modification of the Judgment and evaluates alternative relief proposals considered by the Goverment.

The proposed Final Judgment, a Stipulation and the Competitive Impact Statement are available for inspection and copying on request in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Washington, D.C., 20530. They are also available for inspection in the Office of the Clerk of the United States District Court for the District of Connecticut, 450 Main Street, Hartford, Connecticut 06103.

Comments concerning the proposed Final Judgment are invited from members of the public within the 60 day statutory time period. Such comments should be directed to Joseph H. Widmar, Chief, Trial Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530.

Dated: June 1, 1979.

Charles F. B. McAleer,

Special Assistant for Judgment Negotiations.

U.S. District Court for the District of Connecticut

United States of America, Plaintiff, v. *Leviton Manufacturing Co., Inc.; Eagle Electric Manufacturing Co., Inc.; Slater Electric, Inc.; Circle F Industries, Inc.; Bell Electric Company, Inc.; John I. Paulding, Inc.; Triboro Electric Corp.; George P. Byrne, Inc.; and George P. Byrne, Jr.*, Defendants.

Civil Action No.: H–77–555.

Filed: June 1, 1979.

Stipulation

It is hereby stipulated by and between the plaintiff, United States of America, and each of the above-named defendants, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and filing that notice with the Court.

2. In the event plaintiff withdraws its consent hereto, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall have no effect whatever and the making of this Stipulation shall be without prejudice to any consenting party in this or any other proceedings.

Dated: June 1, 1979.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Joseph H. Widmar, and Peter A. Mullin, *Attorneys, United States Department of Justice.*

For the Defendants: Malcolm A. Hoffmann, *Attorney for Leviton Manufacturing Co., Inc.*, Gilbert S. Edelson, *Attorney for Eagle Electric Manufacturing Co., Inc.*, Lawrence Greenwald, *Attorney for Slater Electric, Inc.*, Sidney S. Rosdeitcher, *Attorney for Circle F Industries, Inc.*, Howard W. Fogt, Jr., *Attorney for Bell Electric Company, Inc.*, Laurence T. Sorkin, *Attorney for John I. Paulding, Inc.*, Bernard M. Eiber, *Attorney for Triboro Electric Corp.*, John A. Sullivan, *Attorney for George P. Byrne, Inc. and George P. Byrne, Jr.*

U.S. District Court for the District of Connecticut

United States of America, Plaintiff, v. *Leviton Manufacturing Co., Inc.; Eagle Electric Manufacturing Co., Inc.; Slater Electric, Inc.; Circle F Industries, Inc.; Bell Electric Company, Inc.; John I. Paulding, Inc.; Triboro Electric Corp.; George P. Byrne, Inc.; and George P. Byrne, Jr.*, Defendants.

Civil Action No.: H–77–555.

Filed: June 1, 1979.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on October 27, 1977, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby

Ordered, adjudged and decreed:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

As used in this Final Judgment:

(A) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "Manufacturing defendants" means all the corporate defendants named in the complaint except George P. Byrne, Inc.; and

(C) "Wiring devices" means current carrying electrical products that serve primarily as a connection or control point for an electrical circuit and certain products commonly used therewith which do not themselves carry an electrical current, including but not limited to, switches, receptacles, power outlets, caps, connectors, incandescent lampholders, wallplates, weatherproof boxes an covers, and combination devices (but not including fluorescent lampholders and dimmers), said products being sometimes known in the trade as residential grade wiring devices, as distinguished form a heavy-duty grade of wiring device sometimes known as specification grade wiring devices.

III

The provisions of this Final Judgment are applicable to all defendants herein and shall also apply to each of the corporate

defendants' officers, directors, agents, employees, domestic subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any activities between a defendant corporation and a parent or subsidiary thereof.

IV

Each defendant is enjoined and restrained from:

(A) directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production or sale of wiring devices to raise, fix, stabilize or maintain prices, discounts or terms or conditions of sale of wiring devices to any third person;

(B) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices, except necessary communications in connection with: (1) a bona fide contemplated or actual purchase or sales transaction between the parties to such communications; or (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices; and

(C) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

V

Defendants George P. Byrne, Jr., and George P. Byrne, Inc., are enjoined and restrained from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufactures.

VI

(A) Within sixty (60) days from the date of entry of this Final Judgment, each manufacturing defendant shall file with the Court and serve on the plaintiff an affidavit setting forth the announcement date, effective date, and percentage of change, if included in the announcement letter, of each published price list for wiring devices issued by such defendant during the period from April 1, 1976, to the date of this Final Judgment.

(B) Within sixty (60) days from the date of this Final Judgment, each manufacturing defendant shall: (1) conduct such review of its prices and terms and conditions of sale for wiring devices as is necessary to determine if each such price and term or condition of sale has been independently arrived at; (2) independently review, redetermine and reissue each such price or term or condition of sale not independently arrived at; and (3) file with the Court and serve on the plaintiff an affidavit certifying that each of its prices and terms or conditions of sale for wiring devices has been independently determined.

(C) For the period of five (5) years from the date of the entry of this Final Judgment, each manufacturing defendant shall prepare and maintain an affidavit of one of its officers or directors, within thirty (30) days of each change in its published prices, discounts, or terms or conditions of sale for wiring devices, stating that said officer or director has made reasonable inquiry and that to the best of his knowledge, information and belief said change was individually and independently arrived at and was not the result of any agreement, understanding or communication with any other manufacture of wiring devices.

VII

(A) Within ninety (90) days after the date of entry of this Final Judgment, each corporate defendant shall furnish a copy thereof to each of its officers and directors and to each of its employees having supervisory sales or pricing responsibility for wiring devices, and obtain and retain a written receipt therefor from each such person.

(B) Within one hundred twenty (120) days the date of entry of this Final Judgment each corporate defendant shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with subsection (A) of this Section VII.

(C) Each corporate defendant shall furnish a copy of this Final Judgment to each new officer or director and to each new employee having supervisory sales or pricing responsibility for wiring devices and shall maintain, for a period of ten (10) years, a written record, bearing the signature of such officer, director or employee, acknowledging receipt of a copy thereof.

(D) Each corporate defendant shall, on an annual basis, take affirmative steps to advise each of its officers and directors and each of its employees with supervisory sales or pricing responsibility for wiring devices of the company's and their personal obligations under this Final Judgment and of the criminal penalities for violation thereof. Such affirmative steps shall include, as a minimum, the distribution of a written directive explaining the antitrust laws and the obligations imposed by this Final Judgment and the holding of a meeting or meetings to review and explain the antitrust laws and this Final Judgment and the obligations imposed thereby.

(E) Each corporate defendant shall maintain a copy of each written directive distributed pursuant to Section VII (D) of this Final Judgment, including the date distributed and to whom sent and a written record of each meeting held pursuant to such section showing the date and place of the meeting, who was present and the agenda for the meeting.

VIII

Each manufacturing defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of its total assets of its wiring devices business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment, each corporate defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant at its principal office, subject to any legally recognized privilege:

(1) to inspect and copy during the regular business hours of such defendant, who may have counsel present, all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant which relate to any matters contained in this Final Judgment; and

(2) to interview any officer, director or employee of such defendant regarding any matter contained in this Final Judgment, subject to the reasonable convenience of such defendant, and without restraint or interference therefrom, provided that such defendant and such officer, director or employee may have counsel present at any such interview.

(B) For the purpose of determining or securing compliance with this Final Judgment, defendant shall submit such reports in writing, under oath if so requested, with respect to any matter contained in this Final Judgment as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at any time information or documents are furnished by any defendant to plaintiff pursuant to this Section IX, and such defendant represents and identifies in writing the material in any such information or documents as being the type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiff shall give ten (10) days notice to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modification of any of the provisions thereof, for the enforcement of

compliance therewith, and for the punishment of violations thereof.

XI

This Final Judgment shall terminate ten (10) years from the date of its entry.

XII

Entry of this Final Judgment is in the public interest.

Dated at Hartford, Connecticut, this ——— day of ———, 1979.

M. Joseph Blumenfeld,
United States District Judge.

U.S. District Court for the District of Connecticut

United States of America, Plaintiff, v. *Leviton Manufacturing Co., Inc.; Eagle Electric Manufacturing Co., Inc.; Slater Electric, Inc.; Circle F Industries, Inc.; Bell Electric Co., Inc.; John I. Paulding, Inc.; Triboro Electric Corp.; George P. Byrne, Inc.; and George P. Byrne, Jr.*; Defendants.

Civil Action No.: H–77–555.

Filed: June 1, 1979.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I—*Nature and Purpose of the Proceeding.*

This is a civil antitrust action brought by the United States against the above-named defendants pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, to enjoin them from continuing violations of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint, which was filed on October 27, 1977, alleges that the above-named defendants and certain co-conspirators engaged in a combination and conspiracy beginning sometime prior to 1962 and continuing thereafter until at least April, 1976, to restrain interstate trade and commerce in the manufacture and sale of residential grade wiring devices throughout the United States. The Complaint seeks a judgment by the Court that the defendants have engaged in a combination and conspiracy in restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, together with an order by the Court to enjoin and restrain the defendants from such conduct in the future.

Proceedings in the case were stayed pending disposition of a companion criminal prosecution, *United States* v. *Leviton Manufacturing Co., Inc., et al.*, Criminal No. H–77–77 (D. Conn.). The criminal prosecution was initiated by a grand jury indictment returned on October 27, 1977 charging eight corporations and eleven individuals, including each of the defendants named in the civil case, with criminal violations of the Sherman Act arising out of the same conspiracy alleged in the civil complaint. Each of the defendants in the criminal case pleaded *nolo contendere* and was sentenced by United States District Judge M. Joseph Blumenfeld. The sentences included fines totalling $920,000 and periods of incarceration ranging from 30 to 90 days for 9 of the individual defendants. The last defendant was sentenced on March 10, 1978. The sentences have been served and the criminal case is now concluded.

II—*The Terms of the Alleged Conspiracy.*

Wiring devices are current carrying electrical products that serve primarily as a connection or control point for an electrical circuit, and certain products commonly used therewith which do not themselves carry an electrical current, including, switches, receptacles, power outlets, caps, connectors, incandescent lampholders, wallplates, weatherproof boxes and covers and combination devices. Wiring devices are sold in three channels of distribution—the distributor/contractor, the consumer, and the original equipment manufacturer (OEM) channels. In the distributor/contractor channel wiring devices are usually sold to electrical wholesale distributors who in turn resell to electrical contractors who install the wiring devices in buildings. In the consumer channel wiring devices are sold to electrical wholesale distributors, hardware wholesalers, buying cooperatives, mass merchandisers, chain stores, and others for eventual resale at the retail level to consumers for repair, replacement, and home improvement purposes. In the OEM channel wiring devices are sold to manufacturers of other products who use the wiring devices as component parts in their manufacturing process. Wiring devices are manufactured in two grades—specification grade and residential grade. In general, specification grade is a heavy-duty, more expensive grade commonly specified by architects for use in high rise residential, commercial and industrial buildings. Residential grade, on the other hand, is a general-use, less expensive grade commonly used in single family homes and light duty uses.

The above named defendants, except George P. Byrne, Jr. and George P. Byrne, Inc., are the principal manufacturers and sellers of residential grade wiring devices in the United States. These defendants sell wiring devices in each of the three channels of distribution described above. During the period charged in the Complaint, these defendants had total sales of wiring devices in excess of $1 billion. During 1975 alone, these defendants had sale of wiring devices totalling approximately $100 million.

George P. Byrne, Jr. is a lawyer who organizes and provides administrative services to trade associations. George P. Byrne, Inc. is a corporation organized by George P. Byrne, Jr. which provided administrative services to the Wiring Device Association (WDA), a now defunct trade association of residential grade wiring device manufacturers.

The Complaint alleges the defendants combined and conspired to unreasonably restrain interstate trade and commerce in the manufacture and sale of residential grade wiring devices in the United States from sometime prior to 1962 until at least April, 1976, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The alleged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators the substantial terms of which were to (1) raise, fix, maintain and stabilize the prices of residential grade wiring devices in the United States and (2) fix, maintain and stabilize the terms and conditions of sale thereof. In forming and effectuating the combination and conspiracy alleged in the Complaint, the defendants and co-conspirators: (1) agreed upon prices, discounts and terms and conditions of sale for wiring devices; (2) published price lists and adopted policies in accordance with such agreements; (3) organized and maintained the Wiring Device Association (WDA) to further and conceal the combination and conspiracy; (4) scheduled and held rump sessions of the WDA to discuss and agree upon prices, discounts and terms and conditions of sale for wiring devices and to police and enforce agreements regarding the same; (5) met at the offices of certain defendants and elsewhere and telephoned or otherwise contacted one another to discuss, agree upon, and convey agreements regarding, prices, discounts and terms and conditions of sale for wiring devices and to police and enforce such agreements; (6) mailed and otherwise transmitted to one another marked-up and published price lists and other price change information to implement agreements reached; and (7) met with, telephoned, and otherwise communicated with, certain non-conspirator wiring device manufacturers to convey agreements reached, induce subscription thereto and threaten economic reprisals for failure to follow such agreements. As alleged in the Complaint, the combination anc conspiracy had the following effects: (1) prices for wiring devices were raised, fixed, maintained and stabilized at non-competitive levels; (2) terms and conditions of sale for wiring devices were fixed, maintained and stabilized at non-competitive levels; (3) price competition in the sale of wiring devices througout the United States was restrained, supressed and eliminated; and (4) purchasers of wiring devices were denied the benefits of full and open competition.

III—*Explanation of the Proposed Judgment.*

The United States and the defendants have stipulated that a Final Judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that entry of the Final Judgment shall be without admission by any party with respect to any issue of law or fact. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act entry of the proposed Final Judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed Final Judgment enjoins the defendants for a period of ten years from (1) directly or indirectly entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other person engaged in the production or sale of wiring devices to raise, fix, maintain or stabilize prices, discounts or terms or conditions of sale of wiring devices to any

third person; (2) communicating to or requesting from any manufacturer of wiring devices any information concerning past, present or future prices, price differentials, terms or conditions of sale, discounts, and actual or proposed pricing policies for the sale of wiring devices; and (3) continuing, maintaining, reviving or belonging to the Wiring Device Association or any other trade association consisting primarily of residential grade wiring device manufacturers.

The only exception to the broad prohibitions of the Judgment concern necessary commmunications in connection with (1) bona fide contemplated or actual purchase or sales transactions between the parties to such communications; and (2) a bona fide transaction involving the actual or proposed acquisition of any manufacturer of wiring devices.

The proposed Final Judgment also enjoins and restrains defendants George P. Byrne, Jr. and George P. Byrne, Inc., for a period of ten years, from directly or indirectly organizing, holding office in, or being employed by a trade association of wiring device manufacturers.

In addition to the prohibitions described above, the proposed Final Judgment orders each manufacturing defendant (1) to file with the Court and serve on the plaintiff, within sixty days of the entry of the Final Judgment, an affidavit setting forth the announcement date, effective date and percentage of change, if included in the announcement letter, of each published price list for wiring devices issued by it during the period April 1, 1976 to the date of the Final Judment; (2) to conduct such review of its prices and terms and conditions of sale for wiring device as is necessary to determine if each such price and term or condition of sale has been independently arrived at, to independently review, redetermine and reissue each price or term or conditions of sale not independently arrived at, and file with the Court and serve on the Plaintiff within sixty days from the date of the Final Judgment an affidavit certifying that each of its prices and terms or conditions of sale for wiring devices has been independently arrived at; and (3) for a period of five years, prepare and maintain, within thirty days of each change in its published prices, discounts or terms or conditions of sale, an affidavit of one of its officers or directors that such officer or director has made reasonable inquiry and that to the best of his knowledge, information and belief said change was independently arrived at and was not the result of any agreement, understanding or communication with any other wiring device manufacturer.

The proposed Final Judgment also orders each corporate defendant to take certain affirmative steps to insure compliance with its provisions. Each corporate defendant is required to (1) furnish a copy of the Judgment to each of its officers and directors and each of its employees having supervisory sales or pricing responsibility for wiring devices within ninety days of the date of entry thereof; (2) obtain and retain a written receipt therefor from each such person; and (3) file with the Court and serve on the plaintiff an affidavit as to the fact and manner of its compliance with this provision. Thereafter, for a period of ten years, each corporate defendant is required to furnish a copy of the Final Judgment to each new officer and director and each new employee with supervisory sales or pricing responsibility for wiring devices and maintain a written record, bearing the signature of such officer, director or employee, acknowledging receipt thereof. Each corporate defendant is also required, on an annual basis, to take affirmative steps to advise each of its officers and directors and each employee with supervisory sales or pricing responsibility for wiring devices of the company's and their personal obligations under the Final Judgment and the criminal penalties for violation thereof. At a minimum, such affirmative steps shall include the distribution of a written directive explaining the antiturst laws and the obligations imposed by the Final Judgment and the holding of a meeting or meetings to review and explain the antitrust laws and the Final Judgment and the obligations imposed thereby. Each corporate defendant is required to maintain a copy of each such directive and a written record of each such meeting.

The proposed Final Judgment also orders each manufacturing defendant to require as a condition of the sale or other diposition of all or substantially all of its total assets of its wiring devices business that the acquiring party file with the Court and serve on the plaintiff its consent to be bound by the Final Judgment.

The proposed Final Judgment provides that for the purpose of determining or securing compliance therewith, each corporate defendant shall permit duly authorized representatives of the Department of Justice to (1) inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession or under its control which relate to any matter contained in the Final Judgment; and (2) interview any officer, director or employee of such defendant regarding any matter contained in the Final Judgment. The defendants are also required to submit such reports in writing, under oath if so requested, with respect to any matter contained in the Final Judgment as may from time to time be requested by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

The proposed Final Judgment shall terminate ten years from the date of its entry.

IV—*Remedies Available To Private Litigants.*

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, plus costs and reasonabole attorney's fees, as well as for equitable relief. The United States is informed that certain persons, including certain state Attorneys General have filed suits pursuant to Section 4 of the Clayton Act for money damages and equitable relief based on claims arriving out of the combination and conspiracy alleged in the complaint in this case and that these various suits have been consolidated before the Honorable Jack B. Weinstein, Judge of the United States District Court for the Eastern District of New York, under the caption, *In Re Wiring Device Antitrust Litigation,* M.D.L. No. 341 (E.D.N.Y.) by the Judicial Panel on Multi-District Litigation.

The entry of the proposed Final Judgement will neither impair nor assist any person in bringing or prosecuting any private antitrust claim arising out of the combination and conspiracy alleged in the Complaint. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgement, if entered, may not be used by any private plaintiff as *prima facie* evidence of any matter since it will have been entered before any testimony has been taken.

V—*Procedures Available for Modification of the Proposed Final Judgment.*

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Joseph H. Widmar, Department of Justice, Antitrust Division, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, within the 60-day period provided by the Act. The comments and the government's responses thereto will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is appropriate and necessary to the public interest.

The proposed Final Judgment provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for its modification or enforcement.

VI—*Alternatives to the Proposed Final Judgment.*

The proposed Final Judgment will completely dispose of the United States' claim for injunctive relief. The only alternative available to the Department of Justice is a full trial of this case on the merits. Such a trial on the merits would require a substantial expenditure of public funds and judicial time. Since the relief obtained in the proposed Final Judgment is substantially similar to the relief the Department of Justice would expect to request and obtain after winning a trial on the merits, the United States believes no substantial purpose would be served by insisting on a trial on the merits and that entry of the proposed Final Judgment is in the public interest.

VII—Determinative Materials

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this competitive Impact Statement.

Dated: June 1, 1979.

Peter A. Mullin,

Attorney, Department of Justice.

[FR Doc. 79-18471 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

Proposed Consent Decree in Action Involving Discharge of Water Pollutants by Borden Incorporated

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States of America* v. *Borden, Inc.*, Civil Action No. 79-CV-121, has been lodged with the United States District Court for the Northern District of New York. The proposed consent decree requires Borden to pay a civil penalty of $22,000 for discharges from its Baninbridge, New York facility.

The proposed consent decree may be examined at the office of the United States Attorney, Room 369, U.S. Courthouse and Post Office Building, 100 South Clinton Street, Syracuse, New York 13201; at the Region II office of the Environmental Protection Agency, Enforcement Division, 26 Federal Plaza, New York, New York 10007; and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2645, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive written comments relating to the proposed consent decree for a period ending July 16, 1979. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Borden, Inc.*, Civil Action No. 79-CV-121, D. J. Ref. 90-5-1-1-1064.

James W. Moorman,

Assistant Attorney General, Land and Natural Resorces Division.

[FR Doc. 79-18468 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action to Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Copperweld Steel Corporation* has been lodged with the United States District Court for the Northern District of Ohio. The proposed decree would require Copperweld Steel Corporation to construct, by June 1, 1980, and to operate treatment facilities in order to achieve compliance with its NPDES permit and to pay a civil penalty of $50,000 upon entry of the judgment.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Copperweld Steel Corporation*, D.J. Ref. 90-5-1-1-962.

The proposed consent decree may be examined at the office of the United States Attorney, Room 400, United States Courthouse, Cleveland, Ohio 44114, at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice, (Room 2625), Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

James W. Moorman,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-18469 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action to Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR 1902, a notice is hereby given that on May 30, 1979, a proposed consent decree in *United States* v. *City of Philadelphia*, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed decree requires the City to complete its three sewage treatment plants on an expeditious schedule, to expand $2.165 million on water pollution control projects not currently required by law, and to cease ocean dumping of sludge by December 31, 1980.

The Department of Justice will receive for 30 days from the date of publication of this notice written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *City of Philadelphia*, D.J. Ref. 90-5-1-1-929.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, U.S. Courthouse, Philadelphia, Pennsylvania; the Clerk of the District Court, Eastern District of Pennsylvania, U.S. Courthouse, Philadelphia, Pennsylvania; and the Pollution Control Section, Land and Natural Resources Division, Department of Justice, Room 2623, Department of Justice Building, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. A copy of the proposed consent judgment may be obtained in person or by mail from the Pollution Control Section.

James W. Moorman,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-18470 Filed 6-13-79; 8:45 am]

BILLING CODE 4410-01-M

Law Enforcement Assistance Administration

Proposed Change to Guide for Discretionary Grant Programs, M4500.1G, for Fiscal Year 1979

AGENCY: Law Enforcement Assistance Administration, Department of Justice.

ACTION: Publication of draft proposed guideline for the Arson Control Assistance Program.

SUMMARY: This proposed change is a draft addition to M4500.1G, *Guide for Discretionary Grant Programs*, and as such will be subject to the same regulations which govern that manual. It will not in any way impact upon the programs or regulations presently set out in M4500.1G, nor will it effect the eligibility of those individuals applying for previously announced programs.

FOR FURTHER INFORMATION CONTACT: Judith O'Connor, Program Manager, Arson Unit, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

SUPPLEMENTARY INFORMATION: The Law Enforcement Assistance Administration (LEAA) is proposing a new program as an addition to the Fiscal Year 1979 *Guide for Discretionary Grant Programs*, M4500.1G, as previously announced in the Federal Register on April 16, 1979. The Office of Criminal Justice Programs, LEAA, under the legislative authority of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701,

et seq., has developed a draft program announcement for a discretionary grant program for arson control assistance. In order to ensure that interested organizations, agencies, and individuals have an opportunity to review and comment on the draft announcement, this notice and invitation to submit written views, comments, and specific recommendations are being provided. The final program announcement will also be published in the **Federal Register**. All comments, due 30 days from the publication date of this notice, will be considered in the publication of the final program announcement. Comments should be addressed to Judith O'Connor (see address above). The text of the proposed program announcement follows:

Arson Control Assistance Program

a. *Program Objective.* The objective of this program is to assist state, regional, county, and local efforts to reduce the number of deaths, the personal injury, and the economic loss related to arson, and to upgrade current knowledge regarding arson incidence and arson control approaches.

b. *Program Description.* (1) *Problem Addressed.* In terms of lives and property lost and the rate of incidence, arson has become America's fastest growing crime. A definite correlation has been drawn between the present limited capabilities of police, fire, and prosecutorial agencies in dealing with arson and the low deterrence level of the crime. Most police and fire departments lack the resources, expertise and manpower to adequately respond to the growing arson problem in their jurisdiction and prosecutors, for various reasons, are often reluctant to bring arson cases to trial. All too often there is little or no cooperation or coordination between the various agencies dealing with arson and valuable resources such as community groups and the insurance industry are not maximally involved. Extensive needs for training, data collection systems, equipment, manpower, and a framework for a coordinated arson control effort have been identified by and for each of the involved agencies. However, due to lack of funds, many of these needs go unanswered.

(2) *Results Sought.* (a) Improved capabilities of agencies involved with arson control at the state, regional, county, and local levels;

(b) Increased cooperation among those agencies involved with arson detection, investigation, and prosecution;

(c) Increased coordination of anti-arson efforts within the given jurisdiction;

(d) Increased sensitivity on the part of all involved agencies to the problem of arson and to the roles of all those engaged in combatting the crime;

(e) Improved data base and analytical capability regarding arson;

(f) Increased identification of arson fires;

(g) Increased arrest rates for arson cases;

(h) Increased prosecution rates for arson cases;

(i) Increased conviction rates for arson cases;

(j) Increased level of public awareness and participation in arson control efforts;

(k) Increased involvement on the part of the judiciary, the insurance industry, community groups, and others with interest in arson control; and

(l) Increased exchange of information.

c. *Program Strategy.* As part of the overall Department of Justice strategy to combat arson at the state and local levels, the investigative and prosecutorial expertise of federal criminal justice agencies will be integrated with the financial and technical assistance capabilities of LEAA. Grants to improve arson control capabilities will be made to state, regional, county, and local jurisdictions. Arson control in this contest includes but is not limited to such activities as detection, investigation, prosecution, prevention, and public education. Based on the recommendations of numerous studies and reports, it has been determined that a coordinated effort among police, fire, and prosecutorial agencies as well as all others in a given jurisdiction with interest in arson control is required to successfully combat the crime. Funds will be available to support programs constituting such an integrated approach.

Cooperation and coordination are the key words in this effort. Applicants must provide such documentation as letters of commitment and memoranda of agreement indicating involvement and participation on the part of all agencies (including but not limited to police, fire, and prosecution) connected with the overall arson control effort within that jurisdiction.

Particular attention will be paid to those applications demonstrating an innovative approach to dealing with arson.

d. *Application Requirements.* The following elements must be included in each project and described in Part IV of the application form. Selection of grantees will be based in large part on how well each of these elements is addressed.

(1) A detailed description of the arson problem in the area to be served, including such relevant data as incidence figures, dollar value of property loss, and personal injury;

(2) A description of the service area, including but not limited to geographical aspects, population figures, and types and numbers of building structures;

(3) A description of applicable laws, pending legislation, court or executive orders, etc., within or affecting the jurisdiction. In particular, this section should address the specific authorities, responsibilities, and constraints which these laws or orders place on the various agencies involved;

(4) A description of existing anti-arson efforts by police, fire, and prosecutorial agencies and others, including arrest and conviction rates, existing cooperative agreements, arson control-related activities of community groups, available services, gaps in such services, and any other relevant information;

(5) A description of how the planned approach will meet the needs identified in the assessment;

(6) A specific workplan, including timetable, describing the activities of the project and the results expected;

(7) An organization chart and job descriptions for all project personnel. Details concerning specific responsibilities and relevant authority must be provided;

(8) A network chart indicating the relationship between and among all involved agencies;

(9) Documented proof of cooperation and coordination among all involved agencies (including but not limited to police, fire, and prosecution). This should include any and all letters of commitment (to the roles and activities described in the application) and memoranda of agreement;

(10) Listing of past and present arson-related funding received from state or federal sources (in dollars and project type) and their relation to this project;

(11) Evidence that the state and local A–95 clearinghouses, regional planning unit, and state planning agency have received copies of the application. (Note: actual grant award is dependent upon receipt of comments from all of these agencies);

(12) An evaluation component, including a description of the system available to collect relevant data (see Evaluation Requirements section for further detail); and

(13) A detailed assumption-of-cost plan.

e. *Data Collection Effort.* In addition to the pre-award data requested above, grantees will be required to develop and maintain a collection system to gather relevant data from which accurate conclusions regarding overall program program performance can be drawn. Technical assistance will be available to aid in establishing or modifying this system. Use of the system should be directly tied in with the project's evaluation plan. Applicants are also asked to describe existing state and local reporting requirements.

f. *Dollar Range and Number of Grants.* Funds will be made available to arson control programs at the state, regional, county, and local levels. Up to four (4) grants, not to exceed $600,000 each, will be made to support state-level efforts; up to six (6) grants, not to exceed $200,000 each, will go to jurusdictions with populations at or over 100,000; and up to five (5) grants, not to exceed $125,000 each, will be made available to jurisdictions with populations below 100,000.

g. *Eligibility.* All state, regional, county, or local units of government, or sub-units thereof, or a combination of units at the same or different level may apply for funds. Sub-units must apply through their larger unit (i.e., a police department through its city government). In each case, unless the state waives the right, the state planning agency will serve as the grantee and the applicant will be the subgrantee.

h. *Application Deadline and Submission Procedures.* (1) All applications for fiscal year 1979 funds must be received no later than August 29, 1979. No applications will be considered if received after that date; and

(2) In addition to the copies of the application sent to the state and local A–95 clearinghouses, the regional planning unit, and the state planning agency, the original plus two (2) copies of the entire application package should be sent to: The Control Desk, GCMD/FMGAB, Office of the Comptroller, LEAA, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

i. *Criteria for Selection.* (1) Applicants will be rated on the extent to which they respond to the requirements of this program description and, in particular, the Application Requirements section. Applicants must provide evidence of an administrative structure that has the capability and authority to effectively achieve the project's stated objectives;

(2) Applicants demonstrating existing independent efforts in coordinated arson control will receive preference over those which do not; and

(3) Only one grant will be awarded in any urban area (SMSA).

j. *Evaluation Requirements.* The projects funded under the Arson Control Assistance Program have been selected for intensive impact and cost-benefit evaluation. Therefore, each application must contain a separate Evaluation Plan which states the project's objectives in measurable terms, contains a specific evaluation methodology, and nominates for LEAA approval an evaluation subcontractor whose services are obtained in conformity with the requirements of LEAA Guideline Manual M7100.1 (effective edition). The costs of the evaluation shall be included in the project budget, identified as a separate grant activity on the application form, and shall not exceed fifteen (15) percent of the total project cost. Technical assistance will be available from LEAA in the development and conduct of the project evaluations.

In addition, an evaluation of the overall Arson Control Assistance Program is planned for fiscal year 1980. Grantees must attest to their willingness to share their data with the national evaluator as well as providing any other cooperation required to perform such an evaluation.

k. *Contact:* Arson Unit, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, Room 1158, Washington, D.C. 20531 (202) 724–7661 or 724–7662.

Henry S. Dogin,

Administrator, Law Enforcement Assistance Administration.

[FR Doc. 79–18597 Filed 6–13–79; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL LABOR RELATIONS BOARD

Revision of Statement of Organization and Functions

AGENCY: National Labor Relations Board.

ACTION: Revision of statement of organization and functions.

SUMMARY: The National Labor Relations Board is revising its descriptions of the central and field organizations of the Board, listing all Board officials and their official job functions. An appendix to this document lists the locations of all regional and subregional offices, as well as the areas served by these offices.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: George A. Leet, Esquire, Associate Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

National Labor Relations Board

*Organization and Functions**

The National Labor Relations Board is an independent agency created by the National Labor Relations Act, enacted July 5, 1935 (49 Stat. 449; 29 U.S.C. 151–166); as amended by the Labor Management Relations Act, 1947, enacted June 23, 1947 (61 Stat. 136; 29 U.S.C. 151–167); amended by an Act of October 21, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168); as amended by the Labor-Management Reporting and Disclosure Act of 1959, enacted September 14, 1959 (73 Stat. 519; 29 U.S.C. 141, et seq.); and as amended by an Act of July 26, 1974 (88 Stat. 395–397; 29 U.S.C. 152, et seq.). The responsibilities and functions of the Agency under the statutes are carried out through an organization directed and controlled by the National Labor Relations Board and its General Counsel, who, in addition to independent authority under the statute, exercises other authority by delegation from the Board.

Description of Organization

Description of Central Organization

Sec. 201 *The Board.* The Board, composed of five Members, has its central and principal office in Washington, D.C. Each of the Members is appointed by the President, with the approval of the Sentate, for a term of 5 years. One Member is designated by the President to serve as Chairman of the Board. The Board is created by viture of the provisions of the National Labor Relations Act, 49 Stat. 449, as amended by the Labor Management Relations Act, 1947, 61 Stat. 136, and the Labor-Management Reporting and Disclosure Act, 1959, 73 Stat. 519.

The Board has two principal functions under the National Labor Relations Act, as amended: (1) The prevention of statutory defined unfair labor practices on the part of employers and labor organizations or the agents of either, and (2) the conduct of secret ballot elections among employees in appropriate collective-bargaining units to determine whether or not they desire to be represented by a labor organization.

The Board is further empowered by the Act:

*32 FR 9588, as amended by 37 FR 15956, as further amended by this document.

To conduct secret ballot elections among employees who have been covered by a union-shop agreement, when requested by 30 percent of the employees, to determine whether or not they wish to revoke their union's authority to make such agreements.

To determine in cases involving jurisdictional disputes which of the competing groups of workers is to be assigned the work task involved.

To conduct secret ballot elections among employees in national emergency situations.

The Board exercises full and final authority over the Office of the Executive Secretary, the Office of the Solicitor, and the Division of Information. The Board appoints administrative law judges and, subject to the provisions of the Administrative Procedure Act and section 4(a) of the National Labor Relations Act, as amended, exercises authority over the Division of Judges. Each Board Member exercises full and final authority over a staff of legal counsel, each staff being under the immediate supervision of the chief counsel of the respective Board Member.

The Board, with the General Counsel, approves the budget, opens new offices as deemed necessary, and appoints Regional Directors and Officers-in-Charge.

The Board establishes and publishes the Agency's Rules and Regulations and Statements of Procedure.

Sec. 201.1 *The Board's staff.* The Board's staff consists (in addition to its chief counsel and legal counsel referred to in sec. 201, above) of the Office of the Executive Secretary, the Office of the Solicitor, the Division of Judges, and the Division of Information.

Sec. 201.1.1 *Office of the Executive Secretary.* The Executive Secretary is the chief administrative and judicial management officer of the Board, represents the Board in dealing with parties to cases and communicates on behalf of the Board with labor organizations, employers, employees, Members of Congress, othe agencies, and the public. The Office of the Executive Secretary receives, dockets, and acknowledges all formal documents filed with the Board; issued and serves on the parties to cases all Board Decisions and Orders; and certifies copies of all documents which are a part of the Board's files or records.

Sec. 201.1.2 *Office of the Solicitor.* The Solicitor is the Board's chief legal officer and advises the Board on questions of law and policy; adoption, revision, or rescission of Rules and Regulations and Statements of Procedure; pending legislation amending or affecting the Act; litigation affecting the Board, etc. The Office of the Solicitor drafts advisory opinions and declaratory orders for the Board concerning whether the Board would assert jurisdiction in a particular case.

Sec. 201.1.3 *Division of Judges.* The Chief Administrative Law Judge supervises the operations of this division. Administrative law judges are responsible for the conduct of all hearings and for the preparation of all administrative law judges' decisions in unfair labor practice cases. The Chief Administrative Law Judge has final authority to designate administrative law judges who conduct hearings and make rulings; to assign dates for hearings presided over by administrative law judges; and to rule upon requests for extensions of time within which to file briefs, proposed findings, and conclusions.

Sec. 201.1.4 *Division of Information.* The Director of Information maintains liaison with the press and other communications media and prepares press and other types of public releases. The Director furnishes information to members of the general public who wish to be informed concerning the actions of the Board and the General Counsel and arranges for the distribution of decisions and weekly summaries of decisions.

Sec. 202 *The General Counsel.* The General Counsel is appointed by the President, with the approval of the Senate, for a term of 4 years. The General Counsel derives specific authority for some functions of the office from the provisions of section 3(d) of the National Labor Relations Act, as amended, and derives certain other authority by delegation from the Board (20 FR 2175, as amended at 23 FR 6966, 24 FR 666, and 26 FR 3911). By virtue of these combined authorities, the General Counsel exercises general supervision over attorneys employed by the Board (other than administrative law judges, legal counsel to Board Members, the Executive Secretary, and the Solicitor), and over the officers and employees in the regional offices. The General Counsel has final authority, on behalf of the Board, in respect to the investigation of charges and issuance of complaints under section 10 and in respect to the prosecution of such complaints before the Board; prosecutes, on behalf of the Board, injunction proceedings pursuant to section 10(e) and 10(j) of the Act; handles court of appeals proceedings to enforce or review Board orders, other miscellaneous court litigation, and efforts to obtain compliance with Board orders; and is responsible for the processing by field personnel of representation petitions under section 9 of the Act and jurisdictional dispute cases under section 10(k), and in the conduct of employee referenda under sections 209(b) and 203(c) of the Labor Management Relations Act, 1947.

The Deputy General Counsel is vested with the authority to speak and act for the General Counsel in all phases of the responsibilities of the office to the full extent permitted by law and is responsible for overall coordination of the General Counsel's organization. References to the General Counsel hereinafter may refer to either the General Counsel or Deputy General Counsel collectively.

Sec. 202.1 *The General Counsel's Washington Staff.* The General Counsel's Washington staff, reporting to the General Counsel and the Deputy General Counsel, consists of four main divisions: Division of Operations Management, Division of Advice, Division of Enforcement Litigation, and Division of Administration.

Sec. 202.1.1 *Division of Operations Management.* The Associate General Counsel for Operations Management assists in the coordination and integration of all operations in Washington and of Washington operations with the field offices; develops systematic methods for the integration of case processing activities in all field and Washington operational units and for the implementation of General Counsel and Board policies, including time and quality standards for case processing at all stages; and is responsible for continuing liaison with field offices and for supervising and coordinating both substantive and administrative phases of their operations.

Sec. 202.1.2 *Division of Advice.* The Associate General Counsel for Advice is responsible for legal research on and analysis of broad areas of labor law administration, for legal advice to Regional Directors on all unfair labor practice cases involving novel or difficult legal issues, including questions involving mandatory or discretionary injunction proceedings, for litigating injunction cases on appeal from a district court adjudication, for legal information retrieval systems, and for analyses and digests to be used by both the agency staff and the public.

Sec. 202.1.3 *Division of Enforcement Litigation.* The Associate General Counsel for Enforcement Litigation is responsible for all agency litigation in the United States Courts of Appeals and the Supreme Court of the United States, whether within the General Counsel's

statutory authorization or delegated by the Board, including contempt litigation and enforcement and review of Decisions and Orders of the Board, and is also responsible for miscellaneous litigation in Federal and state courts to protect the Agency's processes and functions.

The Office of Appeals is another principle part of the Division of Litigation. This Office reviews appeals from Regional Directors' refusals to issue complaints in unfair labor practice cases and recommends the action to be taken thereon by the General Counsel. Pursuant to request, the Director of the office may also hear informal oral presentations in Washington of argument by counsel or other representatives of the parties in support of, or in opposition to, the appeals.

Sec. 202.1.4 *Division of Administration.* The Director of Administration is responsible generally for the administrative management, support services, and fiscal functions of the General Counsel. These activities are carried out with the assistance of branches dealing with financial management, personnel, facilities and services, data systems, management and audit, security and safety, and library services. These functions, as applicable, are also performed on behalf of the Board and its Members.

Description of Field Organization

Sec. 203 *Regional offices.* There are 33 regional offices through which the Board conducts its business. Certain of the regions have subregional offices or resident offices in addition to the central regional office. The areas constituting the regions and the location of the regional, subregional, and resident offices are set forth in an appendix hereto. Each regional office staff is headed by a Regional Director appointed by the Board on the recommendation of the General Counsel and includes a Regional Attorney, Assistant to the Regional Director, field attorneys, field examiners, and clerical staff. Each subregional office is headed by an Officer-in-Charge appointed in the same manner as the Regional Directors. Each resident office is headed by a Resident Officer.

Sec. 203.1 *Regional Directors.* Under the general supervision of the Office of the General Counsel, the Regional Directors supervise a staff of attorneys and field examiners in the processing of representation, unfair labor practice, and jurisdictional dispute cases. The Regional Directors are empowered to issue notices of hearing in representation cases; issue complaints in unfair labor practice cases; conduct elections pursuant to agreement of the parties or direct elections pursuant to the decision making authority delegated by the Board to them under section 3(b) of the Act, and issue certification of representatives or certify the results of elections where appropriate; conduct employee referenda under section 209(b) and 203(c) of the Labor Management Relations Act; obtain settlement of unfair labor practice charges; obtain compliance with administrative law judge, Board, and court decisions; investigate and report on, or decide, objections to elections and challenges to determinative ballots; and otherwise act in behalf of the General Counsel in the discharge of the statutory and delegated functions of that office.

In addition, Regional Directors may initiate and prosecute in the district courts injunctions under section 10(1) of the Act. They also have authority to process petitions for unit clarification, for amendment of certification, and for rescission of a labor organization's authority to make an agreement pursuant to the proviso of section 8(a)(3).

Regional Directors are also responsible for the administrative management of their offices and of any subregional and resident offices in their regions and make initial determinations of FOIA requests for materials in their custody.

Sec. 203.2 *Regional Attorneys.* The Regional Attorneys are the principal legal advisers to the Regional Directors and, as the chief legal officers in the regions, exercise supervisory authority over office attorneys and field examiners in various aspects of their work. They may exercise any authority given attorneys and field examiners in the region.

Sec. 203.3 *Assistants to the Regional Directors.* The Assistants to the Regional Directors are responsible for overall supervision and coordination of investigations and compliance, exercise supervisory authority over office attorneys and field examiners in various aspects of their work, and provide assistance to the Regional Director with respect to various administrative functions.

Sec. 203.4 *Field attorneys.* The field attorneys are charged in general with the duty of performing all necessary legal services for the Regional Directors in the regions. They are directly responsible to the Regional Attorneys, and through them to the Regional Directors, for performance of these services. Under the direction of the Regional Attorneys, they:

(a) Investigate petitions concerning the representation of employees (including the taking of secret ballots of employees), in accordance with section 9(c) of the National Labor Relations Act;

(b) Conduct hearings in proceedings under section 9 of the National Labor Relations Act and section 7(b) of the Fair Labor Standards Act;

(c) Investigate charges of unfair labor practices under section 8 of the Act;

(d) Appear and participate as counsel in Board hearings and, when designated, in other Board litigation and proceedings;

(e) Prosecute any inquiry necessary to the functions of the General Counsel, have access to and the right to copy evidence, administer oaths and affirmations, examine witnesses, and receive evidence;

(f) Perform all necessary acts required of them in connection with the foregoing and the published rules and regulations of the Board.

Sec. 203.5 *Field examiners.* The field examiners in the regional offices are directly responsible to the Regional directors and work under their direction. Essentially, they:

(a) Investigate petitions concerning the representation of employees, in accordance with section 9 of the national Labor Relations Act, and conduct secret ballot elections where such procedure is required under the Act;

(b) Investigate charges of unfair labor practices under section 8 of the Act, have access to and the right to copy evidence, administer oaths and affirmations, examine witnesses, and receive evidence;

(c) Conduct hearings in proceedings under section 9 of the national Labor Relations Act and section 7(b) of the Fair Labor Standards Act;

(d) Perform all necessary acts required of them, in connection with the foregoing and the published rules and regulations of the Board.

Sec. 203.6 *Officers-in-Charge and Resident Officers.* The Officer-in-charge of a subregional office or the Resident Office of a resident office is directly responsible to the Regional director and, under their direction, supervised the processing of cases arising within the geographical area of the office. Under special delegation from the General Counsel, an Officer-in-Charge may be authorized to exercise the functions of the Regional director, subject to statutory limitations.

Effective date. This amended Description of organization shall be effective as of June 14, 1979.

Appendix—Regional and Subregional Offices

Alphabetical list of States showing location in relation to regions and subregions. (Note that respective region number follows subregion number to facilitate locating areas services.)

	Region and Subregion Nos.
Alabama	10,15
Alaska	19
Arizona	28
Arkansas	26
California	20, 21, 31, 32
Colorado	27
Connecticut	1, 2
Delaware	4, 5
District of Columbia	5
Florida	12, 15
Georgia	10
Hawaii	S-37 (20)
Idaho	19
Illinois	13, 14, 33
Indiana	9, 13, 25
Iowa	18, 33
Kansas	17
Kentucky	9, 25
Louisiana	15
Maine	1
Maryland	5
Massachusetts	1
Michigan	7, 30
Minnesota	18
Mississippi	15, 26
Missouri	14, 17
Montana	19
Nebraska	17
Nevada	31,32
New Hampshire	1
New Jersey	4, 22
New Mexico	28
New York	2, 3, 29
North Carolina	11
North Dakota	18
Ohio	8, 9
Oklahoma	16
Oregon	S-36 (19)
Pennsylvania	4, 6
Rhode Island	1
South Carolina	11
South Dakota	18
Tennessee	5, 10, 26
Texas	16, 23, 28
Utah	27
Vermont	1
Virginia	5
Washington	19, S-36 (19)
West Virginia	5, 6, 9
Wisconsin	18, 30
Wyoming	27
Puerto Rico	24
U.S. Virgin Islands	24

Areas Served by Regional and Subregional Offices*

(Listed in numerical order except that subregions appear directly under respective regions.)

Region 1. Boston, Massachusetts. Services Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island, and all Connecticut counties except Fairfield.

Region 2. New York, New York. Services Fairfield County in Connecticut and Bronx, New York, Orange, Putnam, Rockland, and Westchester Counties in New York.

Region 3. Buffalo, New York. Services all New York State Counties except the metropolitan area counties serviced by Regions 2 and 29.

Persons may also obtain service at the resident office located in Albany, New York.

Region 4. Philadelphia, Pennsylvania. In Pennsylvania, services Adams, Berks, Bradford, Bucks, Carbon, Chester, Columbia, Cumberland, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzernc, Lycoming, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Schuylskill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York Counties; in New Jersey, services Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties; and in Delaware, services New Castle County.

Region 5. Baltimore, Maryland. Services Maryland and Virginia; the District of Columbia; Kent and Sussex Counties in Delaware; the city of Bristol in Sullivan County, Tenn.; and, in West Virginia, Berkley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, and Pendleton Counties.

Persons may also obtain service at the resident office located in Washington, D.C.

Region 6. Pittsburgh, Pennsylvania. In Pennsylvania, services Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, and Westmoreland Counties; in West Virginia, Barbour, Brooke, Doddridge, Hancock, Harrison, Lewis, Marion, Marshall, Monongalia, Ohio, Pocahontas, Preston, Randolph, Taylor, Tucker, Upshur, Webster, and Wetzel Counties.

Region 7. Detroit, Michigan. In Michigan, services Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Mainistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Countries.

Region 8. Cleveland, Ohio. In Ohio, services Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Miami, Morrow, Muskingum, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Wayne, Williams, Wood, and Wyandot Counties.

Region 9. Cincinnati, Ohio. In Ohio, services Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Monroe, Montgomery, Morgan, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Vinton, Warren, and Washington Counties; services all counties in Kentucky except Daviess and Henderson; in Indiana, services Clark, Dearborn, and Floyd Counties; and in West Virginia, services Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pleasants, Putnam, Raleigh, Ritchie, Roane, Summers, Tyler, Wayne, Wirt, Wood, and Wyoming Counties.

Region 10. Atlanta, Georgia. Services Georgia; in Tennessee, services Anderson, Bledsow, Blount, Bradley, Campbell, Carter, Clairborne, Clay, Cocke, Cumberland, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, McMinn, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties; in Alabama, services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties.

Persons may also obtain service at the resident office in Birmingham, Alabama.

Region 11. Winston-Salem, North Carolina. Services North Carolina and South Carolina.

Region 12. Tampa, Florida. In Florida, services Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, DeSoto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinella, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwanee, Taylor, Union, Volusia, and Wakulla Counties.

Persons may also obtain service at the resident offices in Coral Gables and Jacksonville, Florida.

Region 13. Chicago, Illinois. Services Cook, DuPage, Kane, Lake and Will Counties in Illinois, and Lake County in Indiana.

Region 14. St. Louis, Missouri. In Illinois, services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson counties; and in Missouri, services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Independent City of St. Louis, Iron, Jefferson, Knox, Lewis, Lincoln, Madison, Maries, Marion, Mississippi,

*Addresses and telephone numbers of the field offices can be found on pp. 329–332.

Monroe, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne Counties.

Region 15. New Orleans, Louisiana. Services Louisiana; in Mississippi, services Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties; in Alabama, services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; in the State of Florida, the counties of Bay, Calhoun, Excambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington.

Region 16. Forth Worth, Texas. Services Oklahoma and the following counties in Texas: Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Baylor, Bell, Bordon, Bosque, Bowie, Brewster, Briscoe, Brown, Burnet, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin. Freestone, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kaufman, Kent, Kimple, King, Knox, Lamara Lamb, Lampasas, Leon, Limestone, Lipscomb, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, McCulloch, McLennan, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Red River, Reeves, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Saba, Schleicher, Scurry, Schackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmortion, Titus, Tom Green, Trinity, Upshur, Upton, Van Zandt, Ward, Wheeler, Witchita, Wilbarger, Williamson, Winkler, Wise, Wood, Yoakum, and Young.

Persons may also obtain service at the resident office located in Tulsa, Oklahoma.

Region 17. Kansas City, Kansas. Services Nebraska and Kansas and the following counties in Missouri: Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, De Kalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Linn, Livingstone, McDonald, Macon, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Randolph, Ray, St. Clair, Slaine, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright.

Region 18. Minneapolis, Minnesota. Services North Dakota, South Dakota, and Minnesota and the following counties in Iowa: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmett, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Linn, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alton, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright; and the following counties in the State of Wisconsin: Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn.

Region 19. Seattle, Washington. Services Alaska, Montana, Idaho, and all counties in Washington except Clark.

Subregion 36. Portland, Oregon. Services Oregon and Clark County in Washington.

Persons may also obtain service at the resident office located in Anchorage, Alaska.

Region 20. San Francisco, California. Services the following counties in California: Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lasson, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

Subregion 37. Honolulu, Hawaii. Services Hawaii.

Region 21. Los Angeles, California. Services the following counties in California: Imperial, Orange, Riverside, and San Diego, and that portion of Los Angeles County lying east of Harbor Freeway and south of Pasadena Freeway (Arroyo Boulevard, U.S. Highway 66).

Persons may also obtain service at the resident office located in San Diego, California.

Region 22. Newark, New Jersey. In New Jersey, services Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties.

Region 23. Houston, Texas. In Texas, services Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bexar, Blanco, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, De Witt, Dimmit, Duval, Edwards, Fayette, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleberg, La Salle, Lavaca, Lee, Liberty, Live Oak, McMullen, Matagorda, Maverick, Medina, Montgomery, Newton, Nueces, Orange, Polk, Real, Refugio, San Jacinto, San Patricio, Starr, Travis, Tyler, Uvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala Counties.

Persons may also obtain service at the resident office located in San Antonio, Texas.

Region 24. Hato Rey, Puerto Rico. Services Puerto Rico and the U.S. Virgin Islands.

Region 25. Indianapolis, Indiana. Services Indiana, with the exception of Lake, Clark, Dearborn, and Floyd Counties, and Daviess and Henderson Counties in Kentucky.

Region 26. Memphis, Tennessee. Services Arkansas and the following counties in Tennessee: Bedford, Benton, Cannon, Carroll, Cheathamm, Chester, Coffee, Crockett, Davidson, Decatur, De Kalab, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Lincoln, McNairy, Macon, Madison, Marshall, Maury, Montgomery, Moore, Obion, Perry, Robertson, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Wayne, Weakley, Williamson, and Wilson; also services the following counties in Mississippi: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha.

Persons may also obtain service at the resident offices in Little Rock, Arkansas, and in Nashville, Tennessee.

Region 27. Denver, Colorado. Services Wyoming, Colorado, and Utah.

Region 28. Phoenix, Arizona. Services Arizona and New Mexico, and Culberson, El Paso, and Hudspeth Counties in Texas.

Persons may also obtain service at the resident offices in Albuquerque, New Mexico, and El Paso, Texas.

Region 29. Brooklyn, New York. In New York, services Kings, Nassau, Queens, Richmond, and Suffolk Counties.

Region 30. Milwaukee, Wisconsin. In Wisconsin, services the following counties: Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth,

Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood; in Michigan, services the following counties: Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.

Region 31. Los Angeles, California. Services the following counties in California: Inyo, Kern, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura; that portion of Los Angeles County lying west of Harbor Freeway and north of Pasadena Freeway (Arroyo Boulevard, U.S. Highway 66); in Nevada, services Nye, Lincoln and Clark Counties.

Persons may also obtain service at the resident office located in Las Vegas, Nevada.

Region 32. Oakland, California. Services the following counties in California: Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne; and the following counties in Nevada: Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Ormsby, Pershing, Storey, Washoe, and White Pine.

Region 33. Peoria, Illinois. In Illinois, services Boone, Bureau, Carroll, Cass, Champaign, De Kalb, De Witt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermillion, Warren, Whiteside, Winnebago, and Woodford Counties; in Iowa, services Clinton, Des Moines, Dubuque, Jackson, Lee, Muscatine, Scott, and Louisa Counties.

Dated, Washington, D.C., June 7, 1979.

By direction of the Board.

George A. Leet,

Associate Executive Secretary, National Labor Relations Board.

[FR Doc. 79-18277 Filed 6-13-79; 8:45 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-335]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Facility Operating License No. DPR-67 issued to Florida Power & Light Company (the licensee), which revised the license and its appended Technical Specifications for operation of St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to incorporate changes resulting from Cycle 3 reload fuel, and deletes a license requirement for neutron shielding which has been satisfactorily completed.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated November 9, 1978 and February 22, 1979, as supplemented April 30 and May 1, 10, 18, 22 and 23, 1979, (2) Amendment No. 32 to License No. DPR-67, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 27th day of May 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-18472 Filed 6-13-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Company (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

The amendment allows operation with one recirculation loop out of service using the more restrictive Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits (originally authorized by Amendment No. 30, dated March 14, 1978) with values extended to encompass higher exposure fuel. In separate actions relating to this facility, the Commission is: (1) Amending License No. DPR-16 to extend the applicability of the minimum water level safety limit to all modes of operation, and add a new safety limit in Section 2.1.F to require that two recirculation loops remain open during all modes of operation except with the reactor vessel head removed; and (2) Authorizing resumption of operation after a May 2, 1979, transient event involving license safety limits.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 24, 1979, and the licensee's submittals dated April 30, May 15 and 17, 1979, (2) Amendment No. 35 to License No. DPR-16, and (3) the Commission's related Safety Evaluation. All of these items and the Commission's separate actions described above are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Brick Town, New Jersey 08723. A copy of items (2) and (3) in addition to the separate actions, may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 30th day May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18473 Filed 6-13-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 36 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Company (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility) located in Ocean County, New Jersey. The amendment is effective as of its date of issuance.

The amendment modifies Section 2.1.D to extend the applicability of the minimum water level safety limit to all modes of operation, and add a new safety limit in Section 2.1.F to require that two recirculation loops remain open during all modes of operation except with the reactor vessel head removed. In separate actions relating to this facility, the Commission is: (1) Amending License No. DPR-16 to allow operation with the more restrictive Maximum Average Planar Linear Heat Generation Rate limits authorized by Amendment No. 30, dated March 14, 1978, extended to encompass higher exposure fuel in the reactor; and (2) Authorizing resumption of operation after a May 2, 1979, transient event involving license safety limits.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated May 19, 1979, (2) Amendment No. 36 to License No. DPR-16, and (3) the Commission's related Safety Evaluation. All of these items and the Commission's separate actions described above are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Brick Town, New Jersey 08723. A copy of items (2) and (3) in addition to the separate actions may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 30th day of May 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-18474, Filed 6-13-79; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-24]

Accident Report, Safety Recommendations and Responses; Availability

Highway Accident Report

Overturn of Ross Ambulance Service Ambulance, State Route 116, Littleton, N.H., August 22, 1978 (NTSB-HAR-79-4).—The National Tranportation Safety Board on June 8 released its formal report on the investigation of this accident. The accident occurred about 3:30 p.m. when an ambulance, transporting a cardiac patient to a hospital and traveling at a calculated speed of 90 to 95 mph, failed to negotiate a curve on Route 116 east of Littleton and rolled over. Two persons in the ambulance were killed and the driver was injured. The patient had died before the accident.

The Safety Board determined that the probable cause of this accident was loss of control of the ambulance, which had oversteer characteristics, by an unskilled driver at a high rate of speed. Contributing to the cause of the accident was the driver's lack of training in the operation of the ambulance at high speeds. The Board attributed the oversteer characteristic of the ambulance to a modification which had changed it from an all-purpose vehicle by a process which distributed a majority of an additional 1,530 pounds to the vehicle's rear axle.

During the investigation of this accident, the Safety Board last February 1 recommended that the National Highway Traffic Safety Administration require behind-the-wheel training in high-speed driving (H-79-1). NHTSA responded on April 2, stating that its emergency vehicle operator's course expressely omits training in high-speed driving techniques and that the agency must continue to emphasize "the importance of adhering to speed limits instead of tacitly approving disrespect for these laws by training the student to exceed them." (See 44 FR 24568, April 26, 1979.)

At the conclusion of the investigation, the Safety Board recommended that the National Committee on Uniform Traffic Laws and Ordinances, together with the American Bar Association, consider writing more specific criteria into the Uniform Vehicle Code provision for emergency vehicles exceeding posted speed limits. Included would be a medical determination of patient condition; operation of the vehicle by a certified ambulance driver; conditions of vehicle, traffic, roadway, and weather; and possible emergency speeds no more than 10 mph above posted limits. The Board also urged NHTSA and General Services Administration actions to improve emergency vehicle crashworthiness and retain original vehicle handling characteristics when modifications are made. (See 44 FR 30179, May 24, 1979, for recommendations H-79-27 through 30.)

Safety Recommendation Letters

Aviation

A-79-40.—During the last 5 years, the Safety Board issued seven safety recommendations (A-74-62 through 64 and A-77-5 through 8) to the Federal Aviation Administration regarding procedures involving the medical certification of airmen. These recommendations resulted from Board review of FAA medical records of airmen involved in aircraft accidents and the discovery of irregularities in those records. The Board has been concerned with the frequency of these irregularities; not only were they errors in the medical examination as performed by the Aviation Medical Examiner (AME) but also they were not detected by the reviewing authority, the Civil Aeromedical Institute.

During recent Safety Board investigations of both general aviation and air carrier accidents, the Board's review of the Airmen Medical Records revealed that discrepancies—demonstrating nonadherence to 14 CFR Part 67 and lack of quality control by AME's and by the Civil Aero-medical Institute—contine to persist despite revised computerized procedures. Because of the Board's concern regarding the continuing irregularities associated with airman medical certification, and because the Civil Aeromedical Institute's review of the medical certification process has not detected such irregularities, the Safety Board on June 5 recommended that the FAA:

Develop improved procedures to enhance the quality control function of the Civil Aeromedical Institute with respect to its capabilities for detecting physical disabilities in airmen and performance deficiencies of Aviation Medical Examiners. (Class II, Priority Action) (A–79–40)

A–79–42 and 43.—As the basis for issuing another recommendation letter to the FAA on June 8, the Safety Board cited three accidents, surrounded by different circumstances but all having one element in common with respect to air traffic control (ATC) operational control. The accidents cited were these:

On June 21, 1978, North Central Airlines Flight 57, a DC–9–39, and N51MW, a Cessna Citation, almost collided on runway 13 at LaGuardia Airport, Flushing, N.Y. North Central 57 was cleared by the tower ground controller to taxi on the runway and N51MW was cleared by the tower local controller for takeoff on the same runway.

On February 15, 1979, Delta Air Lines Flight 349, a Boeing 727–200, and Flying Tiger Lines Flight 74, a Boeing 747–100, almost collided on runway 9 right at O'Hare International Airport, Chicago, Ill. Delta 349 was cleared by the ground controller to cross the runway at the runway 14 right parallel taxiway intersection while Flying Tiger 74 was landing on runway 9 right after receiving a landing clearance from the local controller. Flying Tiger 74 was substantially damaged when the pilot veered off the runway.

On February 24, 1979, a Federal Express, Falcon Fan Jet and a Great Western Beechcraft Model 18 collided on runway 9 at Memphis International Airport, Memphis, Tenn. The Beechcraft had landed on runway 35R and the flight was cleared by the ground controller to taxi across runway 9. The Falcon Jet had been cleared to land on runway 9. The planes collided as the Beechcraft taxied across the runway. Both aircraft were damaged, but on one was injured.

In each case one airplane was controlled by the ground controller and the other airplane was controlled by the local controller. In two the these cases, the ground controller and local controller failed to effect the required coordination. In the third case no oral coordination was required; a local facility directive allowed the ground controller to clear aircraft across and active runway when the airport surface detection equipment and Brite radar displays were operating, and radar observations by the ground controller revealed that no traffic conflict existed. In all three of these mishaps, ATC had authorized the pilot to taxi on or across an active runway. In two of them, the reported visibility at the airport was more than adequate to enable the ground controller to maintain visual surveillance of his traffic, although hours of darkeness prevailed. In the other occurrence, reported visibility was ½ to 1 mile in daylight conditions.

Under the circumstances, each ground controller had the ability to maintain surveillance of those aircraft involved. However, inadequate visual serveillance of ground traffic movement appears to be a factor in two of the three mishaps.

Other findings of these investigations revealed that the pilots' visual surveillance while taxiing on the airport surfaces may have been lax. Like the controller, the pilot has responsibility to maintain visual surveillance outside the cockpit.

Although the Board is not able to identify specific changes in ATC procedures or equipment to resolve the problems evident in the Chicago and Memphis accidents, the seriousness and complexity of the problem warrant a safety study to examine all aspects of the runway incursion problem and to identify the corrective action needed. Accordingly, the Safety Board recommends that FAA:

Conduct a directed safety study, on a priority basis, to examine the runway incursion problem and to formulate recommended remedial action to reduce the likelihood of such hazardous conflicts. (A–79–42)

Alert all controller/pilot personnel that runway incursion mishaps represent a serious safety problem which requires their immediate attention. Special emphasis should be placed on the need for both groups to maintain greater visual surveillance in those taxi operations involving any runway crossing. (A–79–43)

Both recommendations are designated "Class II," priority action requested.

A–79–44.—The Safety Board has studied statistically its data files of 17,312 accidents which occurred from 1972 to 1976 and involved light, single-engine, fixed-wing aircraft (single-engine aircraft). As shown in the Board's soon-to-be released special study "Single-Engine, Fixed-Wing General Aviation Accidents, 1972–1976," single-engine aircraft accounted for approximately 72 percent of all general aviation flying hours from 1972 to 1976, about 81 percent of the accidents, 76 percent of the fatal accidents, and 69 percent of the fatalities. Clearly, single-engine aircraft accidents are the most significant segment of general aviation in terms of activity and loss.

Contingency table analyses were used to ascertain the role of the aircraft, the pilot, and the environment in single-engine aircraft accidents. All single-engine aircraft makes and models with more than 500 active aircraft in 1976 were included in the study, excluding those aircraft specifically designed and produced for aerial application flying. This resulted in the inclusion of 33 aircraft makes and models in the study.

Based on the results of this study, the Safety Board on June 5 recommended that FAA:

Generate, through a stratified sampling of general aviation pilots, the date, duration, aircraft make and model, the geographical location of the flight, and the flight time in IFR, high density altitude, and wind conditions, all on a per flight basis; the data collected should include the pilot's total time, time in each type aircraft flown, age, occupation, certificate, and medical waivers. (Class II, Priority Action) (A–79–44)

A–79–45 and 46.—On June 4 the Safety Board by recommendation letter confirmed and amplified the data given during a telephone recommendation on June 2 when the Board's Director, Bureau of Technology, contacted FAA's Associate Administrator for Aviation Standards. The Board recommended urgent actions regarding further inspection of DC–10 aircraft as a result of the then most recent findings of the Board's investigation of the American Airlines DC–10, N110AA, accident on May 25 at Chicago's O'Hare International Airport.

While complying with FAA's initial Airworthiness Directive requiring inspection of the engine pylon mounting structure of DC–10's, American found two of their aircraft, N106AA and N119AA, with damage to the pylon aft bulkhead (the structural element containing the spherical bearing which carries the aft attachment of the pylon to a mating clevis on the wing structure). This fitting provides the major reaction to vertical and side loads imposed on the pylon. The aft bulkhead fitting has a continuous flange on the forward side to which the main pylon structure is attached. The damage observed on both N106AA and N119AA was a crack in the center of the horizontal upper flange

directly beneath the attachment bearing. The crack on N106AA was reportedly 2 inches long and the crack on N119AA was reportedly 5 inches long. Investigation disclosed that apparently the crack in N106AA was caused by physical impact which likely occurred when the pylon was installed during previous maintenance. American had begun a program last fall to comply with Douglas Aircraft Co. Service Bulletins 54–48 and 54–59 when the aircraft were undergoing periodic checks at their maintenance facility in Tulsa, Okla. This maintenance was performed on N106AA on December 7, 1978, and on N119AA on March 19, 1979.

Compliance with these Service Bulletins requires that the pylon be lowered from the wing structure for installation of new bearings in the forward and aft bulkhead fittings. American Airline's procedures for removing and reinstalling the pylon consisted of lowering and raising the pylon with the engine still attached, by supporting the entire assembly by a forklift placed under the engine. Board personnel who observed this procedure noted that the forklift operator had limited control in the precise placement of the aft bulkhead fitting into the wing-mounted clevis during reinstallation of the pylon. Vertical misalignment of a fraction of an inch can result in the pylon aft bulkhead upper horizontal flange assembly striking the forward ear of the wing-mounted clevis, causing the flange to crack. The Board believes that this occurred on both N106AA and N119AA. The installation geometry of the pylon aft bulkhead and the lower wing structure is such that an inspector cannot observe the cracked area easily. Thus, any damage which has occurred as a result of the installation procedure is likely to be undetected.

While investigation of the accident involving N110AA is continuing, preliminary evidence indicates that the forward flange on the No. 1 pylon aft bulkhead fitting had failed completely. Metallurgical examination disclosed that there was a preexisting crack about 10 inches long in the same area where cracks were evident on the other two aircraft. N110AA had been subjected to the engine removal and reinstallation procedure on March 30 and had accrued 430 flight hours since that time.

Although the Douglas Service Bulletin specifies removal of the engine before removal and reinstallation of the pylon to wing attachment fittings, the Safety Board is aware that several operators are using the same procedure as American Airlines. The Safety Board is particularly concerned that other aircraft in the DC–10 fleet may have been damaged and that additional aircraft will be damaged as a result of actions which are presently being undertaken to correct deficiencies uncovered during the latest required inspections. The Safety Board, therefore, believes that urgent actions are required to prevent such damage from resulting in an accident and recommends that FAA:

Issue a telegraphic Airworthiness Directive to require an immediate inspection of all DC–10 aircraft in which an engine pylon assembly has been removed and reinstalled for damage to the wing-mounted pylon aft bulkhead, including its forward flange and the attaching spar web and fasteners. Require removal of any sealant which may hide a crack in the flange area and employ eddy-current or other approved techniques to ensure detection of such damage. (A–79–45)

Issue a Maintenance Alert Bulletin directing FAA Maintenance Inspectors to contact their assigned carriers and advise them to immediately discontinue the practice of lowering and raising the pylon with the engine still attached. Carriers should adhere to the procedure recommended by the Douglas Aircraft Company Service Bulletin which include removing the engine from the pylon before removing the pylon from the wing. (A–79–46)

Highway

H–79–33 through 35.—Three more "Class I, Urgent Action" recommendations were issued by the Safety Board last week—these, on June 7 after investigating a series of multiple-vehicle collisions which occurred on Interstate 75 near Charleston, Tenn., early last November. The collisions occurred under reduced visibility conditions primarily due to fog.

On November 5 at 8:45 a.m., the first of the series of collisions occurred. State police reported 61 vehicles were involved; three were tractor-semitrailer units. An estimated 15 other vehicles were involved but left the scene before being recorded by investigating personnel. That morning, the ambient temperature was 45° F, the air was calm, and it was clear and sunny. A local resident reported that the fog began to form at about 8 a.m. By 8:45 a.m. the fog had intensified and visibility was effectively reduced to zero. The fog covered a 2-mile section of I–75 immediately south of the Hiwassee River. Other sections of I–75 were clear and visibility was good.

Just before the first accident, a Tennessee Highway Patrol trooper was patrolling northbound on I–75 in the vicinity of milemarker 28. As the trooper entered the fog area, he heard the sounds of the first accident in the southbound lane. Crossing to the site of the collision, he heard sounds of other collisions occurring in both the northbound and southbound lanes. He immediately radioed for assistance and recommended closing I–75. He set flares and administered first aid. There were 16 accidents in all, 12 in the southbound lanes and 4 in the northbound lane. The first accident occurred at about 8:45 a.m. and the last at 9:30 a.m. I–75 was closed to southbound traffic at 9:15 and closed to northbound traffic sometime later. All traffic was detoured to State Route 11 which had clear visibility. When the fog cleared at 2:30 p.m., I–75 was reopened. No one was killed in this series of accidents, but 46 persons were injured.

On Sunday, April 15, 1979, at 7:45 a.m., another fog-related accident occurred at the same location. Eighteen vehicles were involved, four in the northbound lanes and 14 in the southbound lanes. Three persons were killed and 14 persons were injured. This accident is still being investigated.

I–75 in the area is a four-lane, divided, limited-access, asphalt-surfaced highway. Pavement markings were in good condition and roadway delineators were spaced at intervals of 200 feet on the right side of the road. The speed limit was posted at 55 mph with a minimum speed limit of 40 mph. Permanent fog warning signs were posted at milemarker 28 northbound and at milemarker 42 southbound. Both signs read "Extreme Dense Fog Area Next 5 Miles." At milemarker 29 northbound and 41 southbound additional warning signs were posted which read "Fog Area Next 4 Miles."

Four previous multiple-vehicle accidents in reduced visibility conditions have occurred at this location, two in 1974, one in 1976, and one in 1977. All four accidents happened between 7:20 a.m. and 11 a.m. on a Friday or Saturday.

In view of these findings, the Safety Board recommends that the Tennessee State Department of Safety:

Develop and implement a standing adverse weather and road condition plan that will include (1) a procedure for alerting public safety officials and the driving public of fog conditions through hazardous driving advisories on radio and television, (2) a procedure for the strategic and timely deployment of patrol units to affected areas, (3) criteria for the rapid closing of affected sections of highway and the rerouting of traffic, (4) mutual assistance compacts with local government entities for emergency aid, and (5) methods for the safe evacuation of vehicles trapped on affected sections of the highway. (H–79–33)

Determine the feasibility of installing an available fog detection and warning system at the Interstate 75 crossing of the Hiwassee River near Charleston, Tenn. (H–79–34)

Until such time as an automatic fog detection and warning device is installed, provide more frequent patrols on the affected section of Interstate 75 when fog is forecast so that the earliest practical warning may be available. (H–79–35)

Marine

M–69–56 through 58.—Last December 29 the outbound Liberian bulk carrier M/V WORLD NOBILITY and the inbound Liberian ore/bulk/oil carrier S/S PENNSYLVANIA GETTY collided at the mouth of the Chesapeake Bay about 15 nmi east of Norfolk, Va. The bow of the PENNSYLVANIA GETTY penetrated the No. 1 cargo hold on the forward port side of the WORLD NOBILITY. No deaths or injuries resulted from the accident; however, the vessels sustained an estimated $3 million damage.

Maneuvering a vessel in coastal waters requires the continuous collection, coordination, and evaluation of information. Vessel speed, course, position, and proximity to other vessels or obstructions are the critical information elements that a master must obtain to safely navigate his vessel. The Safety Board's analysis of this accident determined that although both vessels were adequately equipped to obtain the necessary information, neither vessel's navigation watch was sufficiently manned to fully use such data. This accident illustrates the need for mandatory regulations or standards that require specific manning levels for vessel navigation watches for various conditions regarding vessel location, traffic density, personnel qualifications, equipment limitations, and visibility. Accordingly, the Safety Board on June 8 recommended that the U.S. Coast Guard:

Develop navigation watchkeeping standards which quantify the minimum manning level needed for large oceangoing vessels to safely navigate within U.S. ports and their approaches, and amend the Navigation Safety Regulations (33 CFR Part 164) to incorporate these standards. (M–79–56)

Study the feasibility of relocating the Chesapeake Bay pilotage area so that vessels are not forced to transit areas of converging traffic without pilots on board. (M–79–57)

Reevaluate the proposed level of vessel traffic service in the Chesapeake Bay, and determine if an active, manned system is more appropriate because of the increased traffic density and the transit of vessels transporting liquefied natural gas and other hazardous cargoes. (M–79–58)

Each of the above recommendations is designated "Class II, Priority Action." The Safety Board's formal report on the investigation of this accident is now being processed for distribution and copies will be available in the near future.

Responses to Safety Recommendations

Aviation

A–72–171, 173, 174, 175, 176, 180, 181, and 186.—The Federal Aviation Administration on May 29 advised the Safety Board of actions taken with respect to these recommendations, issued in conjunction with the Board's 1972 special study, "Air Taxi Safety."

Recommendation A–72–171 asked FAA to expedite redrafting of 14 CFR Part 135 in its entirety, recognizing that commuter air carrier operators are separate entities from the smaller air taxi charter operators. FAA reports that Regulatory Review Program, "Air Taxi Operators and Commercial Operators," Amendments 121–147, 127–35 and Review of Part 135, effective December 1, 1978, issued last September 26 (copy attached to FAA's letter). FAA notes that the introductory material contained in pages 46742 through 46744 of this document explains rationale for regulatory actions affecting commuter air carrier operators and on-demand air taxi operators.

With reference to A–72–173, which recommended expediting proposed programs to assure the financial ability of each commuter air carrier and air taxi operator holding interline agreements to conduct safe operation, FAA says that proposed § 135.37, "Periodic Financial Status Review," was withdrawn since the more than 80 commenters on this proposal were almost unanimously opposed. FAA has general surveillance and investigative authority under the Federal Aviation Act and may secure access to any records (including financial records) of an operator when necessary to carry out its safety responsibilities. FAA determines that this specific rule is not required to insure safe air taxi and commuter operations.

Recommendation A–72–174 called for amendment to Part 135 to include qualification requirements applicable to the Director of Operations, Chief Pilot, Director of Maintenance, and Chief Inspector in all commuter air carrier operations. FAA notes that § 135.37 specifies the requirements for Director of Operations, Chief Pilot, and Director of Maintenance, and § 135.39 lists qualification requirements for management personnel. FAA does not believe that a requirement for Chief Inspector in all operations is necessary or would be productive because of the extreme variation in size and complexity of operations conducted under Part 135. As a basic requirement, Director of Maintenance assures a supervisory level of responsibility for maintenance. The FAA district office approves the maintenance system since they are familiar with the scope of the certificate holders' operations. Before approval, an evaluation is made to determine if safe operations can be conducted. FAA says that this system provides for necessary flexibility within each certificate holder's maintenance organization while assuring an equivalent level of safety.

Concerning A–72–175, calling for amendment of Part 135 to provide that a qualified individual be delegated by each commuter air carrier to act in the capacity of safety officer and to monitor all safety aspects of the overall flight and maintenance operations, FAA says that a separate position of safety officer was not proposed. FAA believes that the requirements for management personnel (§ 137.37), their qualifications, (§ 135.39), and their duties and responsibilities as specified in the manual required by § 135.23 preclude a specific requirement for a safety officer.

Recommendation A–72–176 asked FAA to amend Part 135 to require that the pilot-in-command in air taxi commuter air carrier operations hold a current airline transport pilot rating. FAA notes that § 135.243 specifies that no certificate holder may use a person, nor may any person serve, as pilot-in-command in passenger-carrying operations of a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane being operated by a commuter air carrier, unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

Amendment of §§ 135.75 and 135.99 to clarify operating conditions and limitations for instrument flight rules (IFR) and visual flight rules (VFR) over-the-top carrying passengers was recommended by A–72–180. FAA says that § 135.181 contains performance requirements for aircraft operated over-the-top or in IFR conditions. FAA deleted § 135.75, Exception to second in command requirements: Limited IFR conditions; § 135.103, Exception to second in command requirements: IFR operations, is now applicable. FAA renumbered § 135.99, VFR over-the-top carrying passengers: operating limitations, as § 135.211. No change in content was made.

In answer to A–72–181, recommending amendment of § 135.143 to include a minimum equipment list to include procedures for continuing flight with inoperative equipment beyond terminal point, FAA states that § 135.179, Inoperable instruments and equipment for multiengine aircraft, contains the requirements for the use of an approved minimum equipment list.

Recommendation A–72–186 called for establishment of a standard program of utilizing manufacturers' recommended overhaul and inspection times on aircraft components, and powerplants and propellers. FAA states that Subpart J, Maintenance, Preventive Maintenance, and Alterations, provides for levels of inspection and maintenance requirements which consider aircraft complexity and seating capacity. Manufactuers' recommendations, as specifically applicable, are an integral part of this system.

Marine

M–78–63 through 68.—The U.S. Coast Guard on May 22 responded to recommendations issued last September 22 following investigation of the sinking of the M/V CHESTER A. POLING near Cape Ann, Mass., on January 10, 1977. (See 43 FR 47017, October 12, 1978.)

In response to M–78–63, which asked Coast Guard to require that a loading manual indicating proper cargo and ballast loading arrangements and procedures be prepared for each coastal tankship, Coast Guard agrees that loading information should be required on many coastal tankships, but not necessarily all vessels. The 1968 load line regulations required new ships engaged in both coastwise and international voyages to have loading information as a prerequisite to certification. The 1979 tankship regulations required all vessels 300 feet in length or longer, construction of which began after September 5, 1977, to have loading information. According to Coast Guard, some vessels under 300 feet and some existing vessels over 300 feet may require loading information. Tankships (excluding T–2 tankers) longer than 300 feet built before 1977 and holding domestic load line certificates have not been required to obtain loading manuals. Coast Guard will examine these vessels individually to determine the need for loading information.

Recommendation M–78–64 asked Coast Guard to study the feasibility of providing estimated hull stress information based on loading condition, sea state, and ship speed and relative heading in graphical form in coastal tankship loading manuals. Coast Guard notes that the feasibility of calculating hull stress with the mentioned parameters has been established, and indicates that the information cannot be reduced to a form suitable for inclusion in a loading manual. The problem is that loading methods deal with well defined measurable values while hull stress analysis deals with value ranges that are not readily measurable. Adding complexity to loading manuals will reduce their use and reliability. Also according to Coast Guard, due to the number and complexity of variables involved, meaningful hull stress information cannot be presented in a simplified loading manual. Coast Guard states, "Any addition to the current loading manual would not have prevented or mitigated the POLING casualty or one similar to it."

Concerning M–78–65, which recommended requiring that exposure suits be provided for each crewmember on vessels that routinely operate in areas of cold air or sea temperatures, Coast Guard reports publication of a notice of proposed rulemaking on June 8, 1978, dealing with exposure suits on Great Lakes vessels. Similar requirements are being contemplated for vessels in all services which routinely operate in areas of cold air and sea temperatures. The fractionalized approach is due to attempts by the Intergovenrmental Maritime Consultative Organization (IMCO) to adopt an international standard. Coast Guard is advancing many hypothermia protection concepts at IMCO. Totally enclosed lifeboats for all new ocean-going merchant vessels is one example. Coast Guard says it will develop unilateral requirements for U.S. vessels should IMCO fail to adopt the Coast Guard proposal.

Coast Guard concurs with recommendation M–78–66 which called for at least one inflatable liferaft to be stowed near each accomodation and working space on coastal tankships. Coast Guard reports that a regulatory project has been instituted to include coastal tankships under the existing regulations dealing with liferaft placement for widely separated accommodation and/or working spaces found in 46 CFR 33.05.

With reference to recommendation M–78–67, which asked Coast Guard to develop an effective method to insure that each merchant seaman is instructed and trained in the proper use of helicopter-borne rescue baskets, Coast Guard states that it has neither the funds, personnel, or authority to effectively train each merchant seaman. Coast Guard is accomplishing the following:

1. The new edition of "Manual for Lifeboatmen, Able Seamen, and Qualified Members of the Engine Department" will discuss helicopter evacuation and instructions on the use of rescue baskets. After publication in 1979, examination questions will be developed.
2. A standard hoist briefing message will be included in the Coast Guard addendum to the National SAR Manual.
3. Publish information on rescue equipment use in the Merchant Ship Search and Rescue Manual.
4. Publish information on use of rescue equipment in the AMVER Bulletin.
5. Review and suggest changes in the helicopter evacuation posters provided to the fishing fleet by the National Marine Fishers Service.
6. Initiate action to place a helicopter hoisting placard on the bridge of all inspected vessels 100 gross tons or over.

In answer to M–78–68, which recommended installation of a placard of simple user instructions suitable for emergency situations on each Coast Guard helicopter-borne rescue basket, Coast Guard reports development of a pictorial display for attachment to helicopter rescue baskets. Instruction will also be included in the Aviation Life Support Systems Manual.

M–79–51.—Letter dated May 9 from the International Association of Drilling Contractors informs the Safety Board that this recommendation has been forwarded to the Association's Offshore Committee for discussion at the Committee's next meeting, scheduled for mid-June. The recommendation asked the Association to recommend that its members use private meteorological services which provide the special information needed when engaged in weather-sensitive operations and was developed as a result of the sinking of the self-elevating mobile offshore drilling unit OCEAN EXPRESS in the Gulf of Mexico, April 14, 1976. (See 44 FR 24657, April 26, 1979.)

M–79–54.—Letter of May 24 from the Office of the Chief of Naval Operations, Department of the Navy, responds to a recommendation issued following investigation of the February 22, 1978, collision of U.S. Navy submarine tender L. Y. SPEAR and Liberian tanker ZEPHYROS in the lower Mississippi River. The recommendation asked the U.S. Navy to review and revise as necessary appropriate U.S. Navy directives and doctrine applicable to navigation on restricted waterways to ensure that Commanding Officers of vessels are provide adequate information and guidance regarding safe speeds and command relationships with

commerical pilots. (See 44 FR 27511, May 10, 1979.)

Navy notes that the Internation Regulations for Preventing Collisions at Sea, 1972, and, in the case, the Pilot Rules for Western Rivers, set forth explicit maneuvering rules for ships transiting the Mississippi River and that the situations described in this recommendation are adequately covered by these publications. Also, each Commanding Officer receives an extensive review of shiphandling techniques and Rules of the Road prior to assuming command. Navy notes that the accident was the result of a combination of factors including speed, large rudder angle orders, and effect of river current and states that the relationship of the Commanding Officer and the pilot is addressed in Navy Regulations, 1973, paragraph 0754, and is quite clear:

> A pilot is merely an advisor to the Commanding Officer. His presence onboard shall not relieve the Commanding Officer or any of his subordinates from their responsibility for the proper performance of the duties with which they may be charged concerning the navigation and handling of the ship.

Navy states, "The rules of safe navigation cannot overcome errors in shiphandling judgment. In this case, the relationship between the Commanding Officer and the pilot appeared to be less than optimal. It is doubtful that additional directives would have prevented this accident. Since there is longstanding guidance available which covers the safety recommendation in detail, additional action, other than that taken in the course of the U.S. Navy investigations, is not deemed necessary."

Railroad

R–78–54 through 56.—The Federal Railroad Administration on May 22 responded to the Safety Board's March 29 letter which provided comments on FRA's initial response of February 16 (44 FR 15818, March 15, 1979.) The recommendations resulted from investigation of the February 24, 1978, autotrain derailment on the Seaboard Coast Line Railroad track at Florence, S.C.

Recommendation R–78–56 asked FRA to revise 49 CFR 230.213, Axles, to establish specifications for manufacturing and testing locomotive axles to insure discovery of internal defects before being placed in service. Noting FRA's comments that the low failure rate of locomotive axles in 1977 suggests that present requirements of § 230.213 are adequate, the Safety Board pointed out that in 1976 FRA received seven reports of locomotive axle failure and in 1975 ten accidents were attributed to broken or bent axles; no differential is shown regarding car axles or locomotive axles. The Board said that these data aside, the laboratory analysis of the subject failed axle disclosed two types of voids and substandard conditions in yield strength and tempered steel. The Board believes that this analysis indicates that § 230.213 should be revised to establish minimum requirements of tensile strength and chemical elements, as well as stringent inspection and testing procedures to detect internal flaws.

In response to the Board's request for reconsideration of recommendation R–78–54, FRA notes that in 1977 there were approximately 160,000 axles in service and these account for only 1.2 percent (2 out of 163) of the accidents attributed to defective mechanical and electrical locomotive equipment. FRA says that because of the low failure frequency of the locomotive axles, no revision of § 230.213 is necessary to include a requirement for the manufacturing and testing procedures of axles. Further, FRA notes current industry requirements for locomotive axles are outlined in 23 pages of the industry manual covering the physical and chemical requirements and specific inspection procedures, including the use of both magna-glow and ultrasonic detection equipment when the axles are accepted.

With respect to R–78–55, which concerned testing of in-service locomotive axles, the Board feels that possibly the intent of this recommendation, as it applies to "in service," has been misunderstood. By "in-service" the Board refers to those occasions when axle assemblies are removed from the locomotive for such purposes as wheel turning and wheel or traction motor changeouts. It does not denote a condition of axle inspection wherein the assemblies are in place under the locomotive. The Board concurs with FRA's belief that ultrasonic testing is more reliable than magnetic particle testing. Thus, the Board perceives an irregularity in inspection requirements which mandate ultrasonic inspection of a newly manufactured axle, yet only require magnetic particle inspection of a reconditioned axle that has been exposed to stresses associated with heat, impact, and torque for thousands of miles.

In answer to the Board's comments, FRA notes that there are approximately 32,000 locomotives including MU equipment with 160,000 axles in service; an estimated one out of every four axles (40,000) is removed from service each year. FRA says that inspection of these axles, using specialized ultrasonic equipment requiring highly skilled professionals to interpret the results at the various repair facilities where work is perfomed, would be very burdensome; it takes a specialist in nondestructive testing to determine the presence of critical flaws in axles. Many axles have inclusions, most of which are not detrimental to the safe use of the axle, according to FRA. The costs per inspection would be about $50 per inspection for the 40,000 axles removed annually or $2 million. FRA believes that the expense for conducting such extensive tests in view of the extremely low failure rate appears to be unwarranted.

To clarify the intent of recommendation R–78–56, which concerned automatic detection of locomotive truck failure, the Board said it wanted to develop a method to reveal conditions such as a derailed wheel, excessive heat, or fractured components such as wheels, axles, hangers, or truck side frames while the train is en route. This recommendation stems from the fact that in the subject accident, the second locomotive unit was derailed for 17.5 miles without this condition being detected by train and engine crewmembers. FRA's response states that in view of the extremely low accident rate directly attributed to defective mechanical and electrical locomotive equipment, research and development of automatic devices for the detection of locomotive unit truck or component defects are not considered necessary.

R–78–58 and 59.—Letter of May 18 from the Secretary, U.S. Department of Transportation, responds to recommendations issued following investigation of the derailment of an Atlanta & Saint Andrews Bay Railway Company freight train at Youngstown, Fla., February 28, 1978. (See 43 FR 59557, December 21, 1978.)

In answer to recommendation R–78–58, which asked that DOT require that top and bottom shelf couplers be installed on all DOT 105 tank cars as soon as possible, the Secretary reports that FRA agrees that a retrofit program should be required so as to have appropriate Type-E top and bottom shelf couplers and Type-F top shelf couplers installed on all DOT Specification 105 tank cars at an early date. However, FRA feels that this requirement should be only part of a total effort that would result in DOT Specification 105 tank cars being equipped with steel jacket heads, and all new pressure tank cars having better structural strength,

increased puncture resistance and better thermal protection. A notice of proposed rulemaking is being developed covering these safety measures.

Recommendation R–78–59 asked DOT to expedite research to determine the safest position of hazardous materials tank cars and others in freight trains as contained in recommendation R–78–33 and promptly issue regulations for adequate braking and placement of such cars in freight trains. The Secretary reports that FRA is currently utilizing the Train Operations Simulator (TOS) model to analyze train makeup and train handling procedures. This mathematical computer model was initially developed by the Association of American Railroads under FRA sponsorship, and a copy was sent to the DOT Transportation Systems Center in Cambridge, Mass., to aid in the analysis of the placement and braking of cars and locomotive units in a train consist.

The Secretary further reports that in February 1979, FRA's Office of Safety compiled data on two train derailments involving hazardous materials tank cars. One incident involved the derailment of a Louisville and Nashville freight train at High Cliff, Tenn., December 13, 1978, when a tank car containing sulfuric acid derailed and leaked its contents. The other incident occurred at Pensacola, Fla., November 9, 1977, and involved the release of anydrous ammonia gas. Data on these two accidents was coded for input into the TOS, and the results are now being analyzed.

Additionally, the Secretary notes that the safe operation of a train is a conglomerate of different factors, e.g., the makeup of the train, track conditions, the curvature of the track, the ruling grade, train brake characteristics and other variables. "Scientific research is not sufficiently precise to translate railroad operational variables into quantitative methodology," the Secretary stated.

The Secretary also commented:

> It is conceivable that, through a process of shifting locomotive units and various car types in a train consist, repeated model, laboratory, and field testing could determine the optimal placement of hazardous materials cars for braking and overall train handling. However, such research would require extensive testing and commitment of funds and would take several years to complete. After completing this research and testing period, the FRA would have to develop a detailed cost-benefit analysis before it could promulgate new regulations for adequate braking and placement of hazardous materials cars in freight trains.

Consequently, FRA believes that it is not practicable or cost-effective to launch an expedited research program in this area. In these circumstances, FRA cannot promptly promulgate new regulations for adequate braking and placement of hazardous materials cars in freight trains.

Note.—Single copies of the Safety Board's accident reports are available without charge, as long as limited supplies last. Copies of the recommendations lettes issued by the Board, response letters and related correspondence are also available free of charge. All reqests for copies must be in writing, identified by report or recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

(Secs. 304(a)(2) and 307 of the Independence Safety Board Act of 1974 (Pub. L. 93–633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)))

Margaret L. Fisher,

Federal Register Liasison Officer.

June 11, 1979.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Final Uniform Rules of Procedure for Boards of Contract Appeals Under the Contract Disputes Act of 1978

May 31, 1979.

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Notice of Final Uniform Rules of Procedure issued as guidelines for adoption by Boards of Contract Appeals.

SUMMARY: On November 1, 1978, the President signed into law Pub. L. 95–563, the Contracts Disputes Act of 1978. That Act, among other things, required the Office of Federal Procurement Policy to issue guidelines for the procedures of the agency Boards of Contract Appeals by March 1, 1979.

To achieve maximum uniformity for Government contract appeal practice, agency Boards of Contract Appeals are expected to adopt the Uniform Rules of Procedure except where minor variances are justified due to the individual Board's size or nature of its docket.

Proposed Uniform Rules of Procedure were published for comment in the January 25, 1979, **Federal Register.** Interim final Uniform Rules of Procedure, effective March 1, 1979, were published in the **Federal Register** of March 7, 1979, for additional comment. The additional comment period was considered necessary because of the significance of some of the changes made to then existing Rules. The interim final Rules were to become effective on June 1, 1979, unless changed.

This is to provide notice that the Uniform Rules of Procedure published March 7, 1979, together with the changes provided below, are now final guidelines for adoption by agency Boards of Contract Appeals.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Williamson, Associate Administrator for Acquisition Law (202) 395–3455.

James D. Currie,

Acting Administrator.

Changes to Final Uniform Rules of Procedure

Rule 4 is changed to read as follows:

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File.* (a) Duties of Contracting Officer—Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board (through the) an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the ( ) shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) Duties of the Appellant—Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of

such documents to the government trial attorney.

(c) Organization of Appeal File—Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) Lengthy Documents—Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) Status of Documents in Appeal File—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

In Rule 12.1(c) change "20 days" to "60 days."

Change Rule 12.2(a) to read as follows:

"12.2(a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal."

Change Rule 12.3(a) to read as follows:

"12.3(a) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision."

Change the first phrase of the first sentence of Rule 15 to read as follows:

"After an appeal has been docketed and complaint filed with the Board . . ."

Change the last sentence of Rule 15 to read as follows:

"Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 33 with respect to sanctions."

Change Rule 21(f)(2) to read as follows:

A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

Insert the following in the second sentence of Rule 28 after the word "decision":

"(except those required for good cause to be held confidential and not cited as precedents)"

Change Rule 31 to read as follows:

"Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action."

[FR Doc. 79-18517 Filed 6-13-79; 8:45 am]

BILLING CODE 3110-01-M

Contract Disputes; Final Uniform Rules of Procedure and Related Procurement Regulations; Final Approval of Text To Be Adopted: Proposed Text of Contract Disputes Clause

May 29, 1979.

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Final text of uniform rules of procedure and related procurement regulations to be adopted; comments requested on text of contract disputes clause.

SUMMARY: On November 1, 1978, the President signed into law Public Law 95-563, the Contract Disputes Act of 1978. That Act, among other things, required certain changes to clauses and procurement regulations of the procuring agencies by March 1, 1979. To assure uniformity of language in the resulting changes, a suggested text of provisions to implement that Act was published at 44 FR 5219, January 25, 1979 for comment. After consideration of comments received and resulting changes to the suggested text, a set of interim final rules was published March 7, 1979. This set of interim final rules contains language to be used by the affected agencies when amending their regulations. This language was to become final June 1, 1979, unless changed before that time. This document gives notice that the interim final rule language is effective June 1, 1979, with the exception of the contract disputes clause which remains an interim clause. Comment is now invited on the new disputes clause set forth below.

DATES: Effective date of text which agencies are directed to adopt is June 1, 1979. Comments on the proposed

disputes clause should be received on or before August 1, 1979.

ADDRESS: Comments are to be submitted to the Office of Federal Procurement Policy, OMB, 726 Jackson Place, N.W., Room 9025, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas F. Williamson, Associate Administrator for Acquisition Law, (202) 395–3455.

James D. Currie,
Acting Administrator.

SUPPLEMENTARY INFORMATION: On November 1, 1978, the President signed into law Public Law 95–563, the Contract Disputes Act of 1978. That Act, among other things, required changes to clauses and procurement regulations of the procuring agencies by March 1, 1979. To assure uniformity of language in the resulting changes, a suggested text of proposed regulations and clause to be adopted by the affected agencies was published for comment January 25, 1979 (44 FR 5219). Suggested language of interim final regulations and clause, effective March 1, 1979, was published (for additional comments) March 7, 1979 (44 FR 12519). The language of the interim final regulations which the agencies are directed to adopt was to become final June 1, 1979, unless changed before that time. The language incorporated the changes required by Public Law 95–563 and reflect many of the comments received on the proposed text published January 25, 1979 (44 FR 5219).

This document provides notice that approval of the language which the agencies are directed to use in amending their regulations is effective as of June 1, 1979 except for the disputes clause which remains an interim clause.

Comment is now invited on a new Disputes Clause set forth below. The purposes of the changes reflected in the new Disputes Clause are to: (1) more clearly reflect the intent of the Contract Disputes Act with regard to the Payment of Interest, (2) change the time for certification of a claim exceeding $50,000, and (3) change the extent of a contractor's obligation to continue work pending resolution of a dispute arising in connection with a contract. The intent of the Disputes clause proposed here is to give the contractor the right to stop work under some circumstances pending resolution of a contract dispute.

It is proposed that the following text be used by the affected agencies in amending the Defense Acquisition Regulation and the Federal Procurement Regulations (32 CFR 7–103–12 and 41 CFR 1–7.102–12):

Proposed Disputes Clause

1. Section 7–103–12 of the Defense Acquisition Regulation and Section 1–7.102–12 of the Federal Procurement Regulations are amended to provide as follows:

The contracting officer shall insert the following clause in all contracts unless exempted by the head of the agency under 41 U.S.C. 603(c):

Disputes

(a) Failure of the parties after a reasonable time to reach an agreement on a request for the payment of money or adjustment of contract terms shall constitute a dispute that is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601, *et. seq.*). If a dispute arises relating to the contract, the contractor shall submit a claim in writing to the contracting Officer who shall issue a written decision on the dispute in the manner specified in DAR 1–314 (FPR 1–1318).

(b) In the case of claims for payment exceeding $50,000, or with any amendment causing the total request in dispute to exceed $50,000, the contractor shall certify, before settlement or decision of the contracting officer on the claim, as follows:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(Contractor's Name)

_____

(Title)_____

(c) The Government shall pay the contractor interect

(1) On the amount found due and unpaid on claims submitted under this clause;

(2) At the rates fixed by the Secretary of the Treasury, under the Renegotiation Act, Public Law 92–41;

(3) From the date the contracting officer receives the claim, until the Government makes payment.

(d) The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or action is timely commenced within the times specified by the Contract Disputes Act of 1978.

(e) The contractor shall comply with any decision of the contracting officer and proceed diligently with performace of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract, except where there has been a material breach of the contract by the Government; *provided,* however, that in any event the contractor shall proceed diligently with the performance of the contract where the head of the agency has made a written determination that continuation of work under the contract is essential to the National Defense or the Public Health and Safety.

[End of Clause]

[FR Doc. 79–18532 Filed 6–13–79; 8:45 am]

BILLING CODE 3110–01–M

PRESIDENT'S COMMISSION ON PENSION POLICY

Report of Staff Contacts

The President's Commission on Pension Policy has directed its staff to maintain and publish for the public a listing of contacts of a substantive nature made with individuals, organizations and groups interested in the activities of the Commission.

The following is the staff report of such contacts for the month of May.

Government Research Center-Municipal Finance Officers Association.
New York State University, Institute on Aging.
New York Bar Association.
City University of New York.
National Tax Association.
Andrus Gerontology Center, University of Southern California.
Stanford Research Institute.
Southwest Pension Conference.
Connecticut General.
Mathematica Policy Research, Inc.
Employee Benefit Research Institute.
Milwaukee County Board of Supervisors.
National Council of Senior Citizens.
Pennsylvania State Retirement System.
National Association of Counties.
Delwood Food, Inc.
National Governors' Association.
National Conference of State Legislatures.
Protect our Pensions Committee.
Edward H. Friend & Company Library.
Arthur Andersen Library.
Educational Conference of Health, Welfare & Pension Plans, Inc.
Institutional Investors.
ERISA Industry Committee.
Assocation of Private Pension & Welfare Plans.
Southern Pension Conference.
Interdepartmental Task Force on Women.
Randy Barber.
Harry Lamon.
Winklevoss Associates.
Staff of the United States Senate and the U.S. House of Representatives.
OMB and White House Staff.
Staff of the Social Security Administration.
Staff of the U.S. Department of Labor.

Signed at Washington, D.C. this 8th day of June 1979.

Thomas C. Woodruff,
Executive Director.

[FR Doc. 79–18525 Filed 6–13–79; 8:45 am]

BILLING CODE 6820–99–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1613, Amdt. No. 2]

Arkansas; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 23397) and Amendment #1 (See 44 FR 24967) are amended in accordance with the President's Declaration of April 11, 1979; to include Nevada and Jackson Counties in the State of Arkansas, and to make disaster relief loan assistance available as a result of severe storms and tornadoes beginning about April 8, 1979.

The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above named counties and adjacent counties within the State of Arkansas. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on June 11, 1979, and for economic injury until close of business January 11, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 30, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-18616 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1631, Amdt. No. 1]

Louisiana; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 27782) is a amended in accordance with the President's declaration of May 2, 1979, to include LaSalle, Pointe Coupee and St. Martin Parishes in the State of Louisiana. The Small Business Administration will accept applications for disaster relief loans from disaster victims in the above-named parishes and adjacent parishes within the State of Louisiana. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on July 2, 1979, and for economic injury until the close of business on February 4, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 1979.

A. Vernon Weaver,

Administrator.

[FR Doc. 18614 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

Privacy Act of 1974; Proposed Revision to System of Records

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Proposed Addition to System of Records.

SUMMARY: It is intended that the system of records entitled Automated Personnel History—SBA 030 (OMB System #32-45-0008) will be amended to include five additional items of information. These data apply only to temporary disaster employees. The intended result is increased efficiency of the Agency's ability to staff disaster offices.

DATES: Comments must be received on or before July 16, 1979.

FOR FURTHER INFORMATION, CONTACT: Charlene Alexander, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416 (202) 653-6608.

SUPPLEMENTARY INFORMATION: The new information to be collected includes: Disaster type and identification, disaster experience, performance rating and home telephone number.

This information will facilitate the hiring of the best possible people for working within the disaster program. The home phone number is needed to contact the individual when his/her services are desired.

This system of records was last published in its entirety on October 4, 1978 (43 FR 45968).

Accordingly, SBA proposes to amend SBA System of Records SBA 030, Automated Personnel History, September 23, 1977, 42 FR 48790, so that the paragraph describing the categories of records continued in the system will read as follows:

SBA 030

SYSTEM NAME:

Automated Personnel History

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Current status of all SBA employees including all data pertinent to that status. This system includes name, Social Security number, grade and salary title, organization, education, veterans preference, competitive level, date of birth, handicap code, health benefits, etc. For disaster employees, this system additionally includes disaster type and identification, disaster experience, performance rating, and home telephone number. This system includes all personnel actions affecting active SBA employees since May 1972, and also those of separated employees since that date.

* * * * *

Dated: June 6, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-18617 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 07/07-0081]

Siouxland Small Business Investment Co.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1979)), under the name of Siouxland Small Business Investment Company, 220 Badgerow Building, Sioux City, Iowa 51101, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the Rules and Regulations promulgated thereunder.

The proposed officers and directors are as follows:

Harold W. McArthur, 206 Helen Street, Sioux City, Iowa 51106, Chairman of the Board, Director.

Francis J. Palmersheim, 227 Wedgewood Drive, So. Sioux City, Nebraska, 68776, President, Director.

Ken Jones, 301 Park, Yankton, South Dakota 57078, First Vice President, Director.

Morey J. Wheeler, 3716 Nebraska, Sioux City, Iowa 51105, Second Vice President, Director.

George T. Qualley, 220 Badgerow Bldg., Sioux City, Iowa 51105, Secretary, Director.

Don Wohlenberg, 1309 Oakwood Drive, Yankton, South Dakota 57078, Treasurer, Director.

Edward Bird, 413 E. 33rd Street, So. Sioux City, Nebraska 68776, Director.

Horst G. Blume, 809 Badgerow Bldg., Sioux City, Iowa 51101, Director.

Allen W. Bronson, 215 Lindewood, Sioux City, Iowa 51101, Director.

Charles D. Busskohl, 6965 Morningside, Sioux City, Iowa 51106, Director.

Densil M. Christiansen, 206 So. 5th Street, Pender, Nebraska 68047, Director.

James E. Dryden, 216 Broadmoor Drive, So. Sioux City, Nebraska, 68776, Director.

Leo R. Eriksen, 1203 First Avenue, So. Sioux City, Nebraska 68776, Director.

Edroy C. Flom, 2700 S. Martha, Sioux City, Iowa 51106, Director.

Derald Gellhaus, 502 James Place, Yankton, South Dakota 57078, Director.

Henry G. Heusinkveld, Boyden, Iowa 51234, Director.

Kelton Houts, 1729 S. Patterson, Sioux City, Iowa 51106, Director.

Jerod M. Knowles, 2510 "G" Street, So. Sioux City, Nebraska, 68776, Director.
Ronald D. Rapp, 2720 "G" Street, So. Sioux City, Nebraska 68776, Director.
Raymond F. Lynch, 312 Argonne, Sioux City, Iowa 51104, Director.
Ray V. Mitchell, 33 Ridgeview Road, Sioux City, Iowa 51104, Director.
Robert G. Prenger, 508 Covered Wagon Circle, So. Sioux City, Nebraska 68776, Director.
Leonard Stoller, Spirit Lake, Iowa 51360, Director.
Conrad D. VanZee, Rock Valley, Iowa 51247, Director.
Ione C. Vogel, 401 Catalina, Vermillion, South Dakota 57069, Director.

Each of the above individuals will own 4 percent of the Applicant's stock. There will be only one class of stock authorized; one million shares of common. Initially only $75,000 will be raised through the above shareholders. In addition it is anticipated that up to 20 organizer investors may purchase shares up to $5,000 per organizer, with a maximum of $100,000. The third stage of the capital acquisition program of the Applicant will be to offer 200,000 shares to the public, at $10 per share, with a maximum offering of $2.0 million. In addition, the offering would provide that in the event fewer than 40,000 shares were sold, for an aggregate investment by the public of $400,000, that the offering would be declared unsuccessful and that all funds would be returned to such investors, with interest. This offering will be registered with the Securities and Exchange Commission as a joint registration under the Securities Act of 1933 and the Investment Company Act of 1940.

Applicant proposes to conduct its operations principally in the states of Iowa, Nebraska and South Dakota in the area known as "Siouxland".

Applicant intends to follow a diversified investment policy.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than June 29, 1979, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Sioux City, Iowa.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-18613 Filed 6-13-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Temporary Control of New York Harbor Vessel Traffic

Notice is hereby given concerning a change to the Captain of the Port, New York Order 1–79 issued effective 0001, 1 April 1979. That Order was published pursuant to the authority contained in Section 2 of the Port and Tanker Safety Act of 1978, (33 USC 1221, et seq.) and will remain in effect until the current strike which has curtailed New York Harbor tug boat operations is settled. Paragraph 2 of the section entitled "Directions Ordered" lists restrictions on controlled vessel movements on vessels operating within the Port of New York. The purpose of this change is to reduce the restrictions on vessels operating in the vicinity of Hell Gate.

In consideration of the foregoing, notice is given that paragraph 2 of the section of Captain of the Port, New York Order 1–79 entitled Directions Ordered is amended as follows:

Captain of the Port, New York, Order No. 1–79

1. By revising paragraph (2)(f)(iii), Directions Ordered, to read as follows:

Directions Ordered

2. The following restrictions on controlled vessel movements will apply to all vessels operating within the Port of New York upon implementation of this plan:

f. The Captain of the Port will permit vessel traffic within confined channels and basins only under favorable conditions of wind, visibility, vessel size and controllability, obstructions and other vessels, both moored and underway. In this regard:

(iii) No controlled vessel 400′ or greater, and/or with a draft of 27′ or greater may transit Hell Gate.

No controlled vessel less than 400′ and with draft less than 27′ may transit Hell Gate unless it transits within 30 minutes of slack water.

No barge greater than 300′ LOA may transit Hell Gate unless that barge has two tugs made up to it. In addition the barge must have a draft less than 27′. This transit must be conducted within 30 minutes of slack water. Empty tank barges may transit Hell Gate in any condition of tide and current provided the barge has the tug assistance required by this order.

Tank vessels that have discharged cargo at Bronx, NY terminals may be permitted to proceed in ballast through Hell Gate.

(Pub. L. 95–474 (33 USC 1223); 49 CFR 1.46(n)(4) (49 CFR 10063, 2/16/79); 33 CFR 160.35(b))

Dated: May 24, 1979.

James L. Fleishell,

Captain, U.S. Coast Guard, Captain of the Port, New York, N.Y.

[FR Doc. 18579 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE–79–7B]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued: Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Correction.

SUMMARY: On May 31, 1979, the FAA published a notice summarizing petitions for exemption filed with the FAA (44 FR 31340). That notice incorrectly stated that Frontier Airlines, Inc. had petitioned for an exemption to operate B–737 aircraft with 115 passenger seats with 6 seats blocked. This notice corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 20, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–24), Petition Docket No. 18867, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426–3644.

SUPPLEMENTARY INFORMATION: Summary Notice No. PE–79–7 (44 FR 31340; May 31, 1979) inadvertently and incorrectly stated that Frontier Airlines, Inc. had petitioned for an exemption from 14 CFR 121.391 to permit operation of B–737 aircraft with 115 passenger seats using two flight attendants and blocking 6 seats in certain situations. The Frontier Airlines, Inc. petition was for operation of B–737 aircraft with 106 seats rather than 115.

The Correction

Accordingly, the Description of the Relief Sought in the Frontier Airlines, Inc. petition is hereby corrected to read: "To permit operation of B–737 aircraft with 106 passenger seats using two flight attendants and blocking 6 seats in certain situations."

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 8, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 79–18461 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–79–9]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final dispositions.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: July 5, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–24), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–24), Room 916, FAA Headquarters Building (FOB 10A), 800 Indepdendence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 8, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
19239	Henson Aviation	14 CFR 121.503(d) and (e)	To allow their pilots to exceed the flight time limitations of 100 hours monthly and 1,000 hours annually.
19240	Rufus T. Rundlett	14 CFR 121.383(c)	To allow him to serve as pilot in command in air carrier operations after he has reached his 60th birthday.
19245	Newton L. Edwards	14 CFR 121.383(c)	To permit him to continue to serve as pilot in air carrier operations after reaching his 60th birthday on May 19, 1979.
19247	Air Indiana, Inc	14 CFR 12.437(a)	To permit the use of pilot Michael A. Chase as pilot in command of Air Indiana all-cargo aircraft without his holding an Airline Transport Pilot Certificate. Mr. Chase is presently 8 months from reaching the required age limit of 23.
19246	Trans World Airlines	14 CFR §§ 121.409(b)(2) and 121.441(a)(2)(i).	To permit pilot training in those maneuvers which best complement the TWA needs and satisfy the second-in-command pilot proficiency check each 24 calendar months.
19179	Air Line Pilots Assn	14 CFR §§ 61.39(a)(1) and (b)	To permit Messrs. O. W. Porter, E. E. Harned, Jr., and H. S. Hart to take their flight test for an airline transport pilot certificate although there has been a time lapse of over 24 months since they have completed their written examinations. *Granted 6/1/79*
11144	American Airlines	14 CFR 121.99 and 121.351(a)	To extend the June 30, 1979, termination date of Exemption No. 1332, as amended, to permit continued operations over specified routes without maintaining two-way radio communications between each aircraft and the dispatch office along the routes. *Granted 6/4/79.*

[FR Doc. 79–18462 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–13–M

Materials Transportation Bureau

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted April 1979. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo-vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS		
1862-X	DOT-E 1862	Greer Hydraulics, Inc., Los Angeles, Calif.	49 CFR 173.302(a)(1), 175.3	To ship a nonflammable gas in a hydraulic accumulator. (Modes 1, 2, 3, 4.)
2708-X	DOT-E 2708	Union Carbide Corp., Tarrytown, N.Y.; Gardner Cryogenics, Bethlehem, Pa.	49 CFR 173.315(a), 173.316	To ship a flammable liquefied compressed gas in a non-DOT specification cargo tank. (Mode 1.)
2787-X	DOT-E 2787	Raytheon Co., Andover, Mass	49 CFR 173.302(a)(1), 175.3	To ship certain nonflammable compressed gas in a non-DOT specification pressure vessel. (Modes 1, 2, 3, 4.)
2787-P	DOT-E 2787	Mitsubisbi International Corp., New York, N.Y.	49 CFR 173.302(a)(1), 175.3	To become a party to Exemption 2787. (See Application No. 2787-P). (Modes 1, 2, 3, 4.)
3549-X	DOT-E 3549	U.S. Department of Energy, Washington, D.C.	49 CFR 173.77, 173.65(a)	To ship certain Class A explosives in special composite bag/drum/wooden box packaging. (Modes 1, 2.)
4242-X	DOT-E 4242	U.S. Department of Defense, Washington, D.C.	49 CFR 173.87, 173.134	To ship certain pyroforic mixture in a non-DOT specification aluminum pressure vessel. (Mode 1.)
4338-X	DOT-E 4338	Stauffer Chemical Co., Westport, Conn.	49 CFR 173.245a, 173.247	To ship corrosive liquids in DOT Specification 3AA2015 cylinders and DOT Specification 51 portable tanks. (Modes 1, 2, 3.)
4497-P	DOT-E 4497	Red Ball Supply Inc., Oklahoma City, Okla.	49 CFR 172.101, 173.315(a)	To become a party to Exemption 4497. (See Application No. 4497-P). (Mode 1.)
4845-X	DOT-E 4845	Graviner Limited, Slough, England	49 CFR 173.304	To ship a nonflammable, nonliquefied compressed gas in foreign-made non-DOT specification steel cylinders. (Modes 1, 2.)
5117-X	DOT-E 5117	U.S. Environmental Protection Agency, Washington, D.C.	49 CFR 173.346, 173.358, 173.365, 175.3, 175.30.	To ship certain Class B poisons in small glass vials overpacked in fiberboard boxes. (Modes 1, 2, 4, 5.)
5767-X	DOT-E 5767	Amchem Products, Inc., Ambler, Pa.	49 CFR 173.264, 173.245, 173.263, 173.272, 173.256.	To ship certain corrosive materials in a non-DOT specification steel portable tank, polyethylene lined. (Modes 1, 2.)
6466-X	DOT-E 6466	Monsanto Co., St. Louis, Mo	49 CFR 173.68(a)(1), 173.87	To ship a Class A explosive in DOT Specification 12H fiberboard boxes. (Mode 1.)
6497-X	DOT-E 6497	FMC Corp., Philadlephia, Pa	49 CFR 173.365, 174.63(c)	To ship Class B poison solids in DOT Specification 56 metal portable tanks with certain exceptions. (Modes 1, 2.)
6531-X	DOT-E 6531	Tavoc, Inc., Chatsworth, Calif	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell non-DOT specification pressure vessels for shipment of nonflammable compressed gases. (Modes 1, 2, 4, 5.)
6557-X	DOT-E 6557	General Fire Extinguisher Corp., Northbrook, Ill.	49 CFR 173.3, 178.36-4(c), 178.37-4(c), 178.50-4(c).	To ship certain nonflammable compressed gases in cylinders complying with DOT Specification 3A, 3AA or 4B except for deviation from inspector's report. (Modes 1, 2, 3, 4, 5.)
6766-X	DOT-E 6766	DuBois Chemicals, Cincinnati, Ohio.	49 CFR 173.256	To ship a corrosive liquid in DOT Specification MC-311 and MC-312 cargo tanks. (Mode 1.)
6834-X	DOT-E 6834	FMC Corp., Philadelphia, Pa	49 CFR 173.245(a)(4)	To ship phosphoric acid in DOT Specification 5 drums. (Mode 1.)
6932-X	DOT-E 6932	Ugine Kuhlmann, Paris, France	49 CFR 173.264(b)(4)	To ship anhydrous hydrofluoric acid in a non-DOT specification portable tank. (Modes 1, 3.)
7005-X	DOT-E 7005	Bignier Schmidt Laurent, Paris, France; Eurotainer Co., Paris, France; LOWACO, S.A., Geneva, Switzerland; Compagnie des Containers Reservoirs, Neuilly-sur-Seine, France; Transcontainer Leasing S.A., Geneva, Switzerland; Societe Anonyme Pour L'Industries Chimique, Mulhouse, Cedex, France.	46 CFR 90.05-35; 49 CFR Part 173.	To ship certain flammable, corrosive, Class B poisons and combustible liquids and ORM-A materials in non-DOT specification portable tanks. (Modes 1, 2, 3.)
7024-P	DOT-E 7024	Cone Mills Corp., Greensboro, N.C.	49 CFR 173.249(a)(7)	To become a party to Exemption 7024. (See Application No. 7024-P). (Mode 1.)
7042-X	DOT-E 7042	Walter Kidde and Co., Belleville, N.J.	49 CFR 173.302(a)(1), 173.304(a)(1), (d)(3), 173.336(a)(2), 173.337(a)(1), 175.3.	To manufacture, mark and sell non-DOT specification aluminum cylinders for shipment of compressed gases and other hazardous materials. (Modes 1, 2, 3, 4.)
7239-X	DOT-E 7239	Atlas Powder Co., Dallas, Tex	49 CFR 173.182(c)	To ship certain ozidizing materials in a collapsible rubber container. (Mode 1.)
7268-X	DOT-E 7268	Union Carbide Corp., Tarrytown, N.Y.	49 CFR 173.304(a)(1)	To ship a nonflammable compressed gas mixture containing ethylene oxide in a nonrefillable DOT Specification 39 cylinder. (Modes 1, 2, 3.)
7423-X	DOT-E 7423	Dow Chemical Co., Freeport, Tex.; Reade Manufacturing Co., Inc., Lakehurst, N.J.	49 CFR 173.154, 173.220(b)(2), 176.76(g)(5).	To ship certain flammable solids in a DOT Specification 56 aluminum portable tank. (Modes 1, 2, 3.)
7423-P	DOT-E 7423	The Metal Selling Corp., Putnam, Conn.	49 CFR 173.154, 173.220(b)(2)	To become a party to Exemption 7423. (See Application No. 7423-P).
7451-X	DOT-E 7451	Union Carbide Corp., Tarrytown, N.Y.	49 CFR 173.304, 173.315	To ship liquid argon in a non-DOT specification portable tank. (Modes 1, 3.)
7590-X	DOT-E 7590	Commercial Lovelace Motor Freight, Inc., Columbus, Ohio; Pacific Intermountain Express Co., Walnut Creek, Calif.; Gordons Transports, Inc., Memphis, Tenn.	49 CFR 173.841(e)	To transport Class B poisons, contained in a specially designed reusable overpack, in the same vehicle with foodstuff, feed or any other edible material. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		RENEWALS—Continued		
7605-X	DOT-E 7605	General Dynamics, Fort Worth, Tex.	49 CFR 173.87, 173.92, 173.101, 173.102, 173.113, 173.3, 176.83, 177.848.	To ship partially dis-assembled aircraft with explosive components installed.
7720-X	DOT-E 7720	Mitsui O.S.K. Lines, Limited, and Sumitomo Shoji America, Inc., San Francisco, Calif.	49 CFR 173.119	To ship certain flammable liquid in non-DOT specification stainless steel portable tanks. (Modes 1, 2, 3.)
7824-X	DOT-E 7824	Petrolite Corp., St. Louis, Mo.	49 CFR 173.119	To ship certain flammable liquids in a marine portable tank where a DOT Specification 57 tank is permitted. (Modes 1, 3.)
7824-P	DOT-E 7824	Champion Chemicals, Inc., Houston, Tex.	49 CFR 173.119	To become a party to Exemption 7824. (See Application No. 7824-P). (Modes 1, 3.)
7849-X	DOT-E 7849	Southern Oxygen Supply Co., Atlanta, Ga.	49 CFR 173.315(a)	To ship liquefied, nonflammable gases in a non-DOT specification cargo tank designed and constructed in accordance with section VIII of the ASME Code. (Mode 1.)
7872-X	DOT-E 7872	Magna Corp., Houston, Tex.	49 CFR 173.122(a)(6)	To ship acrolein, inhibited in an insulated DOT Specification 51 portable tank. (Modes 1, 2, 3.)
8074-X	DOT-E 8074	Hugonnet, S.A., Paris, France	49 CFR Part 173	To ship certain flammable liquids, corrosive liquids, Poison B liquids, combustible liquids, and ORM-A materials in non-DOT specification ISO portable tanks. (Modes 1, 2, 3.)
8047-P	DOT-E 8047	Compagnie des Containers Reservoirs, Neuilly-sur-Seine Cedex, France; Eurotainer, Paris, France; Transcontainer Leasing, S.A., Geneva, Switzerland.	49 CFR Part 173	To become a party to Exemption 8047. (See Application No. 8047-P). (Modes 1, 2, 3.)
		NEW EXEMPTIONS		
8015-N	DOT-E 8015	Degussa Central Transport Dept., Frankfurt, Germany.	49 CFR 173.266, 173.263, 173.352.	To ship certain oxidizers, corrosives, and Class B poisonous materials in a non-DOT specification portable tanks. (Modes 1, 2, 3.)
8048-N	DOT-E 8048	Amoco Production Co., Tulsa, Okla.	49 CFR 172.101, 173.302(a)	To ship untreated natural gas in stainless steel, non-DOT specification cylinders. (Mode 1.)
8059-N	DOT-E 8059	Acurex Aerotherm, Mountain View, Calif.	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell non-DOT specification filament-wound reinforced plastic aluminum lined cylinders for shipment of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
8086-N	DOT-E 8086	Boeing Aerospace Co., Seattle, Wash.	49 CFR 173.119	To ship certain flammable liquid in a non-DOT specification welded aluminum tank inside a wooden container. (Mode 1.)
8087-N	DOT-E 8087	Union Carbide Corp., Bound Brook, N.J.	49 CFR 173.154	To ship a water reactive solid in DOT Specification 56 portable tanks. (Mode 1.)
8109-N	DOT-E 8109	Fauvet-Girel, Paris, France	49 CFR 90.05-35; 49 CFR Part 173.	To ship certain hazardous materials in non-DOT specification intermodal portable tanks. (Modes 1, 2, 3.)
8109-P	DOT-E 8109	Lowaco, S.A., Geneva, Switzerland.	49 CFR 90.05-35; 49 CFR Part 173.	To become a party to Exemption 8109. (See Application No. 8109-P). (Modes 1, 2, 3.)
8132-N	DOT-E 8132	Rockwell International, Richland, Wash.	49 CFR 173.363, 173.365	To make a one-time shipment of a Class B poison solid in a non-DOT specification wooden box. (Mode 1.)
8163-N	DOT-E 8163	Fauvet-Girel, Paris, France	49 CFR Part 173	To ship certain flammable, corrosive, Class B poison and combustible liquids in non-DOT specification portable tanks. (Modes 1, 2, 3.)
8163-P	DOT-E 8163	Transports Internationaux Containers S.A., Paris, France.	49 CFR Part 173	To become a party to Exemption 8163. (See Application No. 8163-P). (Modes 1, 2, 3.)
8174-N	DOT-E 8174	Baltimore Airways, Inc., Glen Burnie, Md.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(7), 173.320(b).	To transport certain Class A, B, and C explosives in cargo-only aircraft. (Mode 4.)
8180-N	DOT-E 8180	Saracco Tank and Manufacturing Corp., San Francisco, Calif.	49 CFR 173.136(a)(3), 173.247(a)(7).	To manufacture, mark and sell non-DOT specification steel drums for shipment of corrosive materials and flammable liquids. (Modes 1, 2.)
		EMERGENCY EXEMPTIONS APPLICATIONS RECEIVED AND GRANTED		
EE8189-N	DOT-E 8189	Shell Oil Co., Houston, Tex.	49 CFR 173.358(a)(12), (14).	To transport an organic phosphate compound, liquid in DOT Specification tank motor vehicles and drums. (Mode 1.)

DENIALS

7755-X—Request by Varian Associates, Inc., Palo Alto, Calif.—To use heat sealed glass ampules in a polyvinylchloride plastic outside container for analytical standards, denied April 16, 1979.

8100-N—Request by Ball Brothers, Inc., Anchorage, Alaska—To transport propane in DOT Specification 51 portable tanks aboard cargo-only aircraft C-82, denied April 5, 1979.

8122-N—Request by IBM Corporation, Princeton, N.J.—To ship hydrochloric acid mixture in non-DOT specification fiberglass reinforced plastic-portable tanks by motor vehicle, denied April 16, 1979.

8131-N—Request by National Aeronautics and Space Administration, Washington, D.C.—To transport oxygen in a non-DOT specification welded pressure vessel described as a portable secondary oxygen life-support system, denied April 16, 1979.

WITHDRAWAL

6626-P—Request by Zimmer Welding Supplies & Service Inc., Brooklyn, N.Y.—To become a party to Exemption 6626 for shipment of certain compressed gases in DOT Specification 3A or 3AA cylinders, withdrawn April 25, 1979.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportion Bureau.

[FR Doc. 79-18135 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

Calendar of Meetings Open to the Public

Below is a list of NHTSA-sponsored meetings which are planned over the next 2 years and in which public interest or participation is expected. The list, which will be revised and republished periodically, is for planning. Meeting dates and places, particularly those scheduled for the second year, are subject to change.

June to July 1979

Public Meeting on National Driver Register Study (City location and dates below)

Purpose: The National Driver Register (NRD) functions as a central point for the exchange of information between States concerning the driving records of persons who apply for drivers' licenses. A State participates by sending the NRD a record of each license revocation or suspension, and by querying the NRD before it issues a license to an applicant. In this way, the States can avoid issuing licenses to persons whose recent driving records contains violations that should keep them off the road.

As the States have moved toward faster licensing procedures, the NRD's reliance on the mails has often made its use inconvenient. To examine this problem, and the overall question of the effectiveness of the NRD, Congress has directed the Department of Transportation to study the NRD and to report the results of this study by December 31, 1979.

The study will cover: (1) Information to be placed in the register; (2) the accessibility of such information (including privacy safeguards); (3) the necessary computer electronic equipment; (4) means of keeping information current; and (5) whether an NRD system can effectively operate on a State voluntary participation basis.

In order to solicit the views of States and local officials and other interested individuals, NHTSA will hold public meetings at the following times and places:

Monday, June 18, 1979, Sheraton Sand-Key Hotel, 1160 Gulf Blvd., Clearwater Beach, Florida, 1:00–4:00 p.m.

Tuesday, June 26, 1979, Brandywine Hilton Inn, Delaware Room, I–95 & Naamans Road, Claymont, Delaware (Wilmington), 1:00–4:00 p.m.

Friday, July 20, 1979, Del Webb's Towne House, 100 East Clarendan Avenue, Phoenix, Arizona, 9:00–12:00 noon.

Coordinator: Clay J. Hall, Traffic Safety Programs (NTS–11), 202–426–9581.

June 19–21, 1979

National Highway Safety Advisory Committee Meeting, Washington, D.C

Purpose: Progress reports of the Committee's task forces will be heard. Reports and recommendations for the Secretary, Department of Transportation, may be prepared.

Coordinator: Robert Doherty, Executive Secretariat (NOA–10), 202–426–2872.

June 1979

Child Passenger Protection Workshops (City locations and dates below)

Purpose: To assist interested organizations to inform parents of the importance of using restraint systems when their children are riding in automobiles. Meeting are scheduled as follows: June 21–22, Seattle; June 25–26, Berkley, CA.

Coordinator: Elaine Winestein, Traffic Safety Programs (NTS–14), 202–426–2180.

June to September 1979

Occupant Protection Workshops for State Officials (City locations and dates below)

Purpose: The NHTSA manual on safety belt usage prepared to assist States to develop comprehensive Safety Belt Usage programs will be introduced to appropriate State officials. Schedule: June 20–22, Albany, New York; June 26–28 Kansas City, Missouri; August—Baltimore; September 5–7, Denver; September 19–20, Seattle.

Coordinator: James L. Nichols, Office of Traffic Safety Programs (NTS–14), 202–426–2180

June to December 1979

NHTSA-Public-Industry Technical Meetings, EPA Environmental Laboratory Facility, Ann Arbor, Michigan.

Purpose: Technical, interpretative or procedural questions from the public and industry regarding NHTSA's bumper, vehicle safety and consumer information program will be answered. Questions may relate to the research and development, rulemaking, or enforcement (including defects) phases of these activities. Schedule: June 20; August 15; October 17; December 19.

Coordinator: Wm. H. Marsh, Executive Secretariat (NOA–10), 202–426–2872.

August 1979

Evaluation of Feasibility of a Single Beam Headlighting System; Final Contractor Briefing, Trans Point Building, Washington, D.C.

Purpose: To report results of a research study designed to determine the parameters of beam patterns for improved low beam headlamps.

Coordinator: Michael Perel, Research and Development (NRD–41), 202–755–8753.

August or September 1979

Results of Computer Analysis of Vehicle Side Structure, Washington, D.C.

Purpose: Research results from validation and application of the WRECKER program used in analyzing vehicle side structures will be presented. WRECKER is a computer program to do finite element analysis of automobile structures under crash loadings. The word is a nickname, not an acronym.

Coordinator: William T. Hollowell, Research and Development (NRD–12), 202–426–4862.

September 10–11, 1979

Public Meeting on Heavy Duty Truck Safety, Washington, D.C.

Purpose: To solicit comments and suggestions from the drivers, owners, manufacturers, as well as interested individuals and organizations on the adequacy of NHTSA's Five Year Rulemaking Plan as related to heavy duty truck safety.

Coordinator: Anees A. Adil, Rulemaking (NRM–11), 202–426–2715.

September 27–29, 1979

National Highway Safety Advisory Committee Meeting—Orientation for New Members, Cliffside Motor Inn, Harpers Ferry, West Virginia.

Purpose: Orientation session for newly appointed members of the Committee.

Coordinator: Robert Doherty, Executive Secretariat (NOA–10), 202–426–2872.

October 16–17, 1979

Biomechanics Advisory Committee Meeting, DOT Headquarters Building, Washington, D.C.

Purpose: This Committee reviews NHTSA's procedures, programs and projects requiring the use of live and deceased humans for research in order to validate the need for such use, to minimize the risk of injury to volunteers, and to assure the rights and dignity of the subjects.

Coordinator: Kathy Hasse, Executive Secretariat (NOA–10), 202–426–2872.

October 23–25, 1979

National Highway Safety Advisory Committee, DOT Headquarters Building, Washington, D.C.

Purpose: Progress reports of the Committee's task forces will be heard. Reports and recommendations for the Secretary of Transportation, may be prepared.

Coordinator: Robert Doherty, Executive Secretariat (NOA–11), 202–426–2872.

October 31–November 2, 1979

International Conference on Automotive Fuel Economy Research, Washington, D.C. (Sheraton-International Hotel, Arlington, Virginia).

Purpose: Automotive fuel economy research and technology will be exchanged.

Coordinator: James C. Shively, Research and Development (NRD–10) 202–426–1551

November 1979

Symposium on Side Impact Protection, Washington, D.C.

Purpose: To provide a public forum for the exchange of information on side impact protection and to inform the public, press, and industry of the status of the NHTSA rulemaking activities in upgrading side impact protection.

Coordinator: August Burgett, Rulemaking (NRM–12), 202–426–2802 or James Hackney, Research and Development (NRD–12), 202–426–4881.

November of December 1979

International Symposium on Automobile Ratings, Washington, D.C.

Purpose: To exchange information on the "state-of-the-art" of automobile ratings. The symposium will provide a forum for an in-depth examination of the various methods used to rate crashworthiness, damageability and ease of diagnosis and repair. Experienced technical experts, rating groups, insurance and auto industry representatives and consumer representatives will present their views on current and proposed ways used to rate automobiles.

Two-thirds of the time will be devoted to technical presentations, reviewing current and proposed methods of rating automobiles. One-third will be dedicated to developing requirements for the ratings.

Coordinator: Jack Gillis, Rulemaking (NRM–30), 202–426–1740.

November or December 1979

Public Hearing on Proposed Light Truck Average Fuel Economy Standard for Model Years' 1982–1984, Washington, D.C.

Purpose: Public comments on the proposed fuel economy standard for light trucks and vans for model years' 1982–1984 will be received.

Coordinator: Frank Turpin, Rulemaking (NRM–21), 202–472–6902.

December 3–5, 197

National Conference on Child Passenger Protection, Sheraton International Convention Center, Reston, Virginia.

Purpose: Specialists in the field of highway safety and child development will meet to exchange information on ways to increase the use of child restraints designed for motor vehicles.

Coordinator: Elaine Winestein, Traffice Safety Programs (NTS–14), 202–426–2180.

January 1980

Motorcycle Accident Factors Research, DOT Headquarters Building, Washington, D.C.

Purpose: Results of a research study to determine the causes of motorcycle accidents, the causes of injuries, the severity of the injuries and effective methods of reducing accidents, deaths, and injuries will be reported.

Coordinator: Nicholas G. Tsongos, Research and Development (NRD–32), 202–426–4820.

April 1980

Symposium on Vehicle Agressivity and Compatibility, Washington D.C.

Purpose: Research on vehicle aggressivity and improved compatibility will be presented. Techniques for testing compliance with vehicle compatibility requirements will be discussed.

Coordinator: James R. Hackney, Research and Development (NRD–12), 202–426–4862

November 1980

Symposium on Motor Vehicle Fuel Economy Research: Contractors' Coordination Meeting, Washington, D.C.

Purpose: Progress reports on the contracts which have been funded through the Automotive Fuel Economy Research Program will be given. How individual tasks fit into the research and rulemaking program and the thrust of the Automotive Fuel Economy Program will be explained.

Coordinator: Charles Gauthier, Research and Development (NRD–31), 202–426–2957.

Persons desiring additional information on a particular meeting may write or phone the coordinator indicated above.

Address for Meeting Coordinators: The Office of Rulemaking; The Executive Secretariat; The Office of Traffic Safety Programs, are located at: DOT Headquarters Building, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

The Office of Research and Development is located at: Trans Point Building, National Highway Traffic Safety Administration, 2100 Second Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C., on June 6, 1979.

Wm. H. March,

Executive Secretary.

[FR Doc. 79–18372 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–59

INTERSTATE COMMERCE COMMISSION

[Notice No. 95]

Assignment of Hearings

June 11, 1979

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains

prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation of postponements of hearings in which they are interested.

MC–82841 (Sub-229F), Hunt Transportation, Inc., now assigned for hearing on July 12, 1979 (2 days), at Dallas, TX, in a hearing room to be later designated.

FD–29021F, Consolidated Rail Corporation (Conrail)—Discontinuance of Passenger trains Nos. 453–456 Between Vaparaiso, IN, And Chicago, IL, now assigned for hearing on June 25, 1979 3 days), at Chicago, IL, and will be held in Room No. 1944C, Everett McKinley Dirksen Bldg., 219 S. Dearborn St.

MC–2900 (Sub-342F), Ryder Truck Lines, Inc., now assigned for continued hearing on July 11, 1979 (3 days), at Birmingham, AL, in a hearing room to be later designated.

MC–107678 (Sub-69F), Hill & Hill Truck Line, Inc., now assigned for hearing on July 17, 1979 (9 days), at Denver, CO, is canceled and reassigned to July 17, 1979 (9 days), at Houston, TX, in a hearing room to be later designated.

MC–C–10166, North American Van Lines, Inc., Molloy Bros. Trucking, Inc. Aero Mayflower Transit Company, Inc., Dahill Moving & Storage Co., Inc. Paramount Moving & Storage Co., and Red Ball Van Lines, Inc.—Investigation And Revocation of Certificates, now assigned for hearing on June 26, 1979 at the Offices of the Interstate Commerce Commission, Washington, DC.

MC–115162 (Sub-424F), Poole Truck Line, MC–115311 (Sub-293F), J & M Transportation Co. Inc., now assigned for continued hearing on July 9, 1979 (3 days), at New Orleans, LA, and will be held at the Monteleone Hotel, 214 Royal Street.

MC–107678 (Sub-69F), Hill & Hill Truck Line, Inc., now assigned for hearing on July 17, 1979 (9 days), at Houston, TX, and will be held at Whitehall Hotel, 1700 Smith Street.

MC–123407 (Sub-478F), Sawyer Transport, Inc., now assigned for hearing on June 25, 1979 (5 days), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–128270 (Sub-33F), Rediehs Interstate Inc., now assigned for hearing on June 25, 1979 (5 days), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–114457 (Sub-424F), Dart Transit Company, now assigned for hearing on June 20, 1979 (1 day), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–111545 (Sub-255F), Home Transportation Company, Inc., now assigned for continued hearing on July 17, 1979 (4 days), at Reno, NV, and will be held in Room 211, Bureau of Mines, University of Reno, Navada Campus, 1605 Evans, Ave.

MC–140247 (Sub-2F), Allstate Charter Lines, Inc., now assigned for hearing on July 23, 1979 (2 days), at San Francisco, CA, and will be held in Room 510, 5th Floor, 211 Main Street.

FF–514F, Southern Pacific Marine Transport, now assigned for hearing on July 25, 1979 (3 days), at San Francisco, CA, in Room 510, 5th Floor, 211 Main Street.

MC–115826 (Sub-361F), W. J. Digby, Inc., now assigned for hearing on June 21, 1979 (2 days), at Denver, CO, and will be held in Division 2, Court of Appeals, U.S. Court House, 1929 Stout Street.

MC–107678 (Sub-69F), Hill & Hill Truck Line Inc., now assigned for hearing on June 17, 1979 (9 days), at Houston, TX, and will be held in the White Hall Hotel, 1700 Smith Street.

MC–107295 (Sub-896F), Pre-Fab Transit Company, now assigned for hearing on July 16, 1979 (2 days), at Billings, MO, and will be held in Room No. 3033 Federal Bldg., 316 N. 26th Street.

MC–115931 (Sub-68F), Bee LIne Transportation, Inc., now assigned for hearing on July 18, 1979, (3 days), at Billings, MO, and will be held in Room No. 3033 Federal Bldg., 316 N. 26th Street.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79–18581 Filed 6–13–79; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29021F]

Consolidated Rail Corp. (Conrail)—Discontinuance of Passenger Trains Nos. 453–456 Between Valparaiso, IN, and Chicago, IL

AGENCY: Interstate Commerce Commission, Office of Policy and Analysis, Energy and Environment Branch.

ACTION: Notice of availability of draft environmental impact statement dealing with action contemplated in the above-entitled proceeding.

SUMMARY: On June 15, 1979 the Energy and Environment Branch will serve on the public and the Environmental Protection Agency (EPA) a copy of the draft environmental impact statement prepared in the above-entitled proceeding. Copies of this document will be available at the Washington headquarters and Chicago field office of the Interstate Commerce Commission. This notice is intended as a supplement to that which will be published by EPA (approximately one week later), if upon review it finds the subject statement to be acceptable for filing. It is hoped that this early notice will afford interested parties additional time to review the document before hearings on the matter, which are scheduled to commence in Chicago on June 25, 1979.

FOR FURTHER INFORMATION CONTACT:

Steve Botts (Washington, D.C. office) Telephone: 202–275–7917, or
Duty Officer (Chicago office) Telephone: 312–353–6125.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79–18583 Filed 6–13–79; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Board Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission within 30—days after the date of this publication. Failure seaonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protestes must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synoposes form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC–FC–78171 filed May 29, 1979. By decision of June 7, 1979, the Motor Carrier Board approved the transfer to Furnal Truck Line, Inc., 503 1st Ave., North, Altoona, IA 50009 of operating rights held by Ray Burris Truck Line, Inc. (same address) in permits Nos. MC 142805 and MC 142805 Sub 1, issued March 10, 1978, and March 6, 1979,

authorizing dry soybean meal, from Redfield, IA, and points in Polk County, IA, to portions of MO, NE, and MN, under contract with Cargill, Inc., and A. E. Staley Manufacturing Company; soybean meal, from points in Polk County, IA, to Freeport, Rockford, Dixon, Mendota, Bushnell, Monmouth, Beardstown and Rock Island, IL, under contract with A. E. Staley; and defluorinated phostate from Rock Island, IL, to Baxter, IA, under contract with Gooch Feed Mill Corporation. Transferee holds no authority from the Commission, but owns transferor. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309.

H. G. Homme, Jr.,

Secretary.

[Fr Doc. 79-18580 Filed 6-13-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 98]

Motor Carrier Temporary Authority Applications

June 8, 1979.

The following are notices of filing of applications for temporary authority under Section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the dae the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "SUB" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Republication: Previously published March 8, 1979 in **Federal Register.** Purpose of republication is to show origin and destination points.

MC 140489 (Sub-18TA), filed January 29, 1979. Applicant: ROBERTS TRUCKING CO., INC., U.S. Highway South, P.O. Drawer G, Poteau, OK 74953. Representative: Prentiss Shelley (same as applicant). Contract carrier: irregular routes. (1) *Materials, equipment and supplies* used in the manufacture of clothing, bedspreads, curtains, draperies and similar soft goods, (2) *clothing, bedspreads, curtains, draperies and similar soft goods,* (except commodities in bulk, in tank vehicles) between points in the United States (except Alaska and Hawaii). Restricted to traffic destined to or shipped from the facilities of the Kellwood Company. Supporting shipper(s): Kellwood Company, 200 Sears Road, Perry, Georgia 31069. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18582 Filed 6-13-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28799 (Sub-Nos. 7 and 8)]

Los Angeles & Salt Lake City Railroad Co. and Union Pacific Railroad Co.—Trackage Rights Over Southern Pacific Transportation Co. in Orange County and in Los Angeles/Long Beach Harbor, Calif.

Los Angeles and Salt Lake city Railroad Company (LASL) and Union Pacific Railroad Company (UP), 1416 Dodge Street, Omaha, NE, represented by Peter W. Hohenhaus and Mark A. Kalafut, of the same address, hereby give notice that on May 16, 1979, they filed with the Interstate Commerce Commission at Washington, D.C. two applications under 49 U.S.C. 11343, in Finance Docket No. 28799 (Sub-No. 7) and Finance Docket No. 28799 (Sub-No. 8), seeking approval of trackage rights over lines of Southern Pacific Transportation Company (SPT) described in detail below. LASL and UP seek these trackage rights as protective conditions in the event the Commission approves the application in Finance Docket No. 28799 (Sub-No. 1), St. Louis Southwestern Railway Company—Purchase (Portion)— William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, Debtor. Notice of that application, as well as the directly related application, was published in the **Federal Register** on January 26, 1979, at 44 FR 5563 (1979).

Specifically UP and LA&SL propose to acquire trackage rights over the following portions of SPT's lines in the Orange County, CA area: (1) the Puente Branch between Bartolo, CA (at SPT's junction with UP's mainline) and Studebaker, CA, a distance of 7.3 miles; (2) the Santa Ana Branch between Studebaker, CA and approximately milepost 513, a distance of 15.4 miles (including operating rights over all trackage in Anaheim, CA, linking SPT's Santa Ana Branch with UP's Anaheim Branch), and the Tustin Branch from the junction with the Santa Ana Branch at South Anaheim to approximately milepost 513, a distance of 1.1 miles; and (3) the La Habra Branch from the junction with the Puente Branch at Los Nietos, CA to SPT's junction with UP's Anaheim Branch at Colima, CA a distance of 4.3 miles.

Applicants also seek bridge rights over segments of the following SPT branches to the Los Angeles/Long Beach Harbor area: Puenta, Santa Ana, La Habra and Wilmington. The requested trackage rights begin at the junction of UP's trackage near Redondo Junction, continuing westward to an area referred to as Amoco (at approximately milepost 485.7), then southward on SPT's Wilmington Branch through an area referred to as Slausson Junction (at approximately milepost 487.5). The requested track continues southward on the Wilmington Branch to Dominguez Junction (at milepost 496.5). At this point, SPT's San Pedro Branch parallels the Wilmington Branch for approximately 1½ miles to the point of the Dolores Yard around Dominguez Street (at approximately milepost 498). It would appear either of these two tracks may be used for movements between Dominguez Junction and the crossover, returning through movements to the San Pedro Branch. The proposed rights continue southward on the San Pedreo Branch to a point referred to as the Thenard Tower (at approximately milepost 501.3) then eastward around the north leg of a wye to SPT's Long Beach Branch continuing to a point east of the UP Mead Yard (at approximately

SPT's milespost 503). The trackage rights over SPT's Puente Branch have an eastern terminus at Bartolo, connection at Los Nietos with SPT's La Habra Branch (at milepost 496.5), continuing to a connection with the Wilmington Branch at Slausson Junction (milepost 487.7).

These two applications will be consolidated for disposition with the applications in Finance Docket No. 28799 (Sub-Nos. 1–6). The latter matters are the subject of an oral hearing presently being conducted by Administrative Law Judge Peter A. Fitzpatrick. Future procedural matters in Finance Docket No. 28799 (Sub-Nos. 7 and 8) should be directed to Judge Fitzpatrick.

The Commission is accepting these applications for consideration, although they are deficient in several ways. LASL and UP, by decision served June 14, 1979, have been advised of the specific deficiencies and given 30 days to complete the application.

Persons may participate formally in the proceedings by submitting written comments regarding the applications. Such submissions shall include the designation both for these proceedings (F.D. No. 28799 (Sub-Nos. 7 and 8)) and F.D. 28799 (Sub-No. 1). The original and two copies shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 10423, not later than July 30, 1979 (45 days after the date the filing of the applications are published in the **Federal Register.** Written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in the proceedings but who desire to comment thereon, may file statements and information as they may desire, subject to the same filing and service requirements. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation, and the Attorney General.

Dated: June 11, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Calpp and Christian. Commissioner Christian not participating.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79–18628 Filed 6–13–79; 8:45 am]

BILLING CODE 7035–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 116
Thursday, June 14, 1979

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

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Securities and Exchange Commission	7, 8

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., June 19, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Consideration of Application for Designation of Financial Futures Including Staff Response to Federal Reserve/Treasury Study:

ACE 90 Day T-Bill.
COMEX 90 Day T-Bill.
CBOT 4-6 Year Notes.
CME 4 Year Notes.

Petition of Dowdex Corporation for waivers of certain requirements of Commission Rule 32.12(a) which presently preclude Dowdex from granting dealer options on silver and copper.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey 254-6314.

[S-1180-79 Filed 6-12-79; 10:27 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., June 22, 1979.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1181-79 Filed 6-12-79; 10:27 am]

BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2 p.m. on Monday, June 18, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Request by the Comptroller of the Currency for a report on the competitive factors involved in the proposed merger of National Community Bank of New Jersey, Rutherford, New Jersey, and Arcadia National Bank, Secaucus, New Jersey.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Hull, Towill, Norman, Barrett & Johnson, Augusta, Georgia, in connection with the liquidation of First Augusta Bank & Trust Company, Augusta, Georgia.

Kantrow, Spaht, Weaver & Walter, Baton Rouge, Louisiana, in connection with the liquidation of Republic National Bank of Louisiana, New Orleans, Louisiana.

Parsons, Canzona, Blair & Warren, Red Bank, New Jersey, in connection with the liquidation of The Bank of Bloomfield, Bloomfield, New Jersey.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the receivership of American Bank & Trust Company, New York, New York.

Atkinson, Mueller & Dean, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Kaye, Scholer, Fierman, Hays & Handler, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Appeals pursuant to the Freedom of Information Act, from the Corporation's earlier denial or partial denial of requests for records.

Memorandum proposing the appointment of an agent for service of process in the State of Mexico.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle L. Robinson, Executive Secreary (202) 389-4425.

[S-1178-79 Filed 6-12-79; 10:27 am]

BILLING CODE 6714-01-M

4

AGENCY: Federal Deposit Insurance Corporation.

TIME AND DATE: 2:30 p.m. on Monday, June 18, 1979.

PLACE: Board Room, 6th Floor, FDIC Building, 550 17th Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Citizens Bank of Northport, a proposed new bank to be located at 2100 McFarland Boulevard, Northport, Alabama, for Federal deposit insurance.

Seaport Citizens' Bank, a proposed new bank to be located at 639 Bryden Avenue, Lewiston, Idaho, for Federal deposit insurance.

Woodburn State Bank, a proposed new bank to be located at 110 South Pacific Highway, Woodburn, Oregon, for Federal deposit insurance.

Application for consent to merge and establish branches:

First State Bank, Waynesboro, Mississippi, an insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Leakesville, Leakesville, Mississippi, and for consent to establish the three offices of Bank of Leakesville as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,943-L—Franklin National Bank, New York, New York.

Case No. 43,948-L—Franklin National Bank, New York, New York.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with liquidation activities:

Hughes, Hubbard & Reed, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of

subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personal actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Mr. Hoyle L. Robinson, Executive Secretary (202) 389–4425.

[S–1179–79 Filed 6–12–79; 10:27 am]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 11, 1979, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Isaac (Appointive), that Corporation business required its addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a resolution revising certain delegations of authority with respect to liquidation activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter was eligible for consideration in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

Dated: June 11, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1182–79 Filed 6–12–79; 10:31 am]

BILLING CODE 6714–01–M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION: (Meeting of the Board of Directors).

TIME AND DATE: Meeting of the OPIC Board of Directors, Tuesday June 19, 1979, at 9 a.m. (closed session); 10:30 a.m. (open session).

PLACE: Offices of the Corporation, Seventh Floor Board Room, 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10:30 a.m. will be closed to the public. The open portion of the meeting will start at 10:30 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9 a.m to 10:30 a.m.).

1. Resumption of OPIC in Western Hemisphere Country.
2. Exception to Country List Requirement.
3. Finance project in Latin American Country.
4. Finance project in Sub-Sahara African Country.
5. Finance project in Central American Country.
6. Insurance project in Sub-Sahara African Country.
7. Insurance project in East Asia Country.
8. Claims Report.
9. Information Reports.

FURTHER MATTERS TO BE CONSIDERED: (Open to the Public 10:30 a.m.)

1. Approval of minutes of the previous Board meeting.
2. Confirmation of scheduled regular Board meetings.
3. Personnel matters.
4. Determination of countries qualifying as Eligible Developing Countries.
5. Inter-American Development Bank proposal for Multilateral Insurance Program for Latin America.
6. International Development Cooperation Administration.
7. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 632–1839.

Elizabeth A. Burton,

Corporate Secretary.

June 12, 1979.

[S–1185–79 Filed 6–12–79; 10:34 am]

BILLING CODE 3210–01–M

7

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 33236, June 8, 1979.

STATUS: Closed meeting.

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

DATE PREVIOUSLY ANNOUNCED: Monday, June 4, 1979.

CHANGES IN MEETING: Additional item.

The following additional item will be considered at a closed meeting scheduled for Wednesday, June 13, 1979, after the 10 a.m. open meeting:

Litigation matter.

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

At times changes in Commission priorities require alterations in the scheduling or meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Mike Rogan at (202) 755–1638.

June 11, 1979.

[S–1183–79 Filed 6–12–79; 10:31 am]

BILLING CODE 8010–01–M

8

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 18, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Tuesday, June 19, 1979, at 10 a.m. Closed meetings will be held on Tuesday, June 19, 1979, immediately following the 10 a.m. open meeting, and on Thursday, June 21, 1979, at 8:30 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4) (8) (9)(A) and (10) and 17 CFR 200.402(a) (8) (9)(i) and (10).

Commissioners Loomis, Evans, and Pollack determined to hold the aforesaid meetings in closed session.

The subject matter of the open meeting scheduled for Tuesday, June 19, 1979, at 10 a.m., will be:

1. Consideration of whether to (1) rescind, as obsolete, Rule 17e–1 under the Investment Company Act of 1940, which permits affiliated brokers to receive commissions on over-the-counter transactions greater than the statutory maximum, if the commissions paid do not exceed the fixed commission rates for similar securities on specified stock exchanges, and (2) adopt proposed Rule 17e–2 under the Investment Company Act (redesignated as new Rule 17e–1), which would allow investment company directors to establish procedures which are reasonably designed to provide that the commission received by an affiliated broker in a stock exchange transaction is reasonable and fair

compared to the commissions received by other brokers in comparable transactions. For further information, please contact Mark B. Goldfus at (202) 755–0230.

2. Consideration of Municipal Securities Rulemaking Board proposed rule G–34 concerning product advertising of municipal securities. The proposed rule would (i) prohibit a municpal securities broker or dealer from publishing or causing to be published an advertisement concerning municipal securities that such professional knows or has reason to know is false and misleading, and (ii) require that all advertisements concerning municipal securities be approved in writing by appropriate supervisory personnel prior to first use, and that a separate recofd be maintained of such advertisements. For further information, please contact Marcia L. MacHarg at (202) 755–7128.

3. Consideration of whether to resubmit to Congress proposed legislation which would (1) amend the Securities Act of 1933 and Trust Indenture Act of 1939 to delete the exemptions for certain industrial development bonds, (2) make certain conforming amendments to the Securities Exchange Act of 1934, and (3) eliminate the "separate security" rubric currently established by Rule 131 under the Securities Act and Rule 3b–5 under the Securities Exchange Act. For further information, please contact Jennifer A. Sullivan at (202) 376–3584.

4. Consideration of whether to authorize the acquisition of two New Mexico public utility companies under Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 by Estacado, Inc., a New Mexico corporation, and deny a request for hearing concerning said acquisition. For further information, please contact Grant G. Guthrie at (202) 523–5156.

5. Consideration of whether to issue a release about the use of arbitration clauses in broker-dealer customer agreements. For further information, please contact Justin Klein at (202) 523–3952.

The subject matter of the closed meeting scheduled for Tuesday, June 19, 1979, immediately following the 10 a.m. open meeting, will be:

Formal orders of investigation.
Access to investigate files by Federal, State, or Self-Regulatory Authorities.
Settlement of injunctive actions.
Freedom of Information Act appeals.
Insitution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Personnel security matters.
Opinion.

The subject matter of the closed meeting scheduled for Thursday, June 21, 1979, at 8:30 a.m., will be:

Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Beverly Rubman (202) 755–1103.

June 11, 1979.

[S–1184–79 Filed 6–12–79; 10:31 am]

BILLING CODE 8010–01–M

federal register

Thursday
June 14, 1979

Part II

Environmental Protection Agency

Proposed Consolidated Permit Regulations

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 122, 123, 124]

[FRL 1225-1]

Consolidated Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CAA Prevention of Significant Deterioration; CWA National Pollutant Discharge Elimination System; and Section 404 Dredge or Fill Programs

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This rule establishes consolidated permit program requirements governing the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) permit program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act, for three primary purposes:

(1) To consolidate program requirements for the RCRA and SDWA programs with those already established for the NPDES program.

(2) To establish, for the first time, requirements for State programs under the RCRA, UIC and Section 404 programs.

(3) To consolidate permit issuance procedures for EPA-issued Prevention of Significant Deterioration permits under the Clean Air Act with those for the RCRA, UIC, NPDES and State 404 programs.

DATES: Comments must be received by September 12, 1979.

Public hearings to discuss and to receive comments on the proposed Consolidated Permit regulations, the proposed Underground Injection Control regulations (proposed at 44 FR 23738, April 20, 1979) under the Safe Drinking Water Act, and on the Consolidated Permit Application Forms, will be held in four cities, over three days in each city. The meetings are scheduled for the following places:

July 16, 17 *, 18, 1979, Dallas, Texas.
July 23, 24 *, 25, 1979, Washington, DC.
July 26 *, 27, 28, 1979, Chicago, Illinois.
July 30, 31 *, August 1, 1979, Seattle, Washington.

ADDRESSES: Interested persons may participate in this proposed rulemaking by submitting comments to Edward A. Kramer (A-2) Permits Division (EN-336), Office of Water Enforcement, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Due to the length and complexity of the regulations, all comments should be organized by page and section number. Because a number of program offices will be involved in the review of comments received, EPA requests that *four* copies of comments be submitted. A copy of all comments received will be available for review during normal business hours at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, SW, Washington, DC 20460.

Four public hearings have been scheduled at the following locations:

July 16, 17 *, 18, 1979, Northpark, Inn, 9300 North Central Expressway, Dallas, Texas.

July 23, 24 *, 25, 1979, HEW Auditorium, 330 Independence Avenue, S.W., Washington, DC.

July 26 *, 27, 28, 1979, Water Tower Hyatt, 800 North Michigan Avenue, Chicago, Illinois.

July 30, 31 *, August 1, 1979, EPA—Region X, 1200 6th Avenue, Seattle, Washington.

The format for each of the hearings will be the same. Each day in a series will be devoted to a separate subject: Day 1 will cover the proposed Part 146 UIC technical regulations, Day 2 and Day 3 will cover the proposed consolidated regulations, the application form, and proposed changes to the NPDES permit program regulations on application requirements. The evening session will cover all subjects. Following registration there will be a short presentation by EPA officials concerning the topic of that day's hearings, an opportunity for anyone in the audience to make a statement, and a question and answer session.

A court reporter will be present at each of the public hearings. Official transcripts will be available at cost.

Anyone requesting an evening session or wishing to make an oral statement at the Consolidated Permit Regulations and Application Form hearings should notify in writing, specifying the hearing and the city in which they are interested: Ms. Judith Shaffer, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Anyone wishing to make an oral statement at the hearings on the UIC regulations should notify in writing, specifying the hearing and the city in which they wish to make the statement: Ms. Sharon Gascon, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Pamphlets describing the proposed regulations and their impact on the various programs are available from the Environmental Protection Agency, Public Information Center (PM-215), 401 M St., SW, Washington, DC 20460. Please order by title and code.

- A Guide to New Regulations for NPDES (C-1).
- A Guide to the Underground Injection Control Program (C-2).
- A Guide to Consolidated Permit Programs (C-3).
- A Guide for States on Consolidated Permit Programs (C-4).
- A Guide to the Hazardous Waste Management Program (C-5).
- A Guide to the Dredge or Fill Permit Program (C-6).
- A Guide to the Consolidated Permit Application Form (C-7).

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (A-2), Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

Background

The proposed rules integrate program descriptions, State program requirements and procedures for decision-making for four EPA regulatory programs: (1) the Hazardous Waste Management Program established under the Resource Conservation and Recovery Act (RCRA), (2) the Underground Injection Control (UIC) Program established under the Safe Drinking Water Act (SDWA), and (3) the National Pollutant Discharge Elimination System (NPDES) and 404 (Dredge or Fill) program established under the Clean Water Act (CWA). Also consolidated are permit issuance procedures for EPA-issued Prevention of Significant deterioration (PSD) permits under the clean Air Act. (CAA).

These proposed regulations are an important element of an Agency-wide effort to consolidate and make uniform procedures and requirements applicable to EPA and State-administered programs.

Work began in the early Fall of 1978 to consolidate permit program regulations for one existing program—the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act, and two new programs—the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA) and the Underground

* Day and evening sessions.

Injection Control (UIC) program under the Safe Drinking Water Act. State program requirements under the section 404 Dredge or Fill program of the Clean Water Act were also included. In October of 1978, the Administrator established a Permits Consolidation Task Force to examine the benefits, costs and possible extent and range of permit consolidation that could be undertaken by EPA. The Task Force completed its examination and concluded in its Report to the Administrator that consolidation of permit activities could result in significant benefits for the environment, the regulated public and EPA. One of the Task Force recommendations to the Administrator was the continuation of development of consolidated permit program regulations, particularly procedural regulations, for the RCRA hazardous waste management, UIC, NPDES and 404 programs. The Task Force also recommended that procedures for issuance of Air PSD permits should be the same as those for the four above programs, where procedural requirements are shared.

These proposed regulations are the first step in EPA's effort to consolidate permit programs. The proposal focuses on consistency and unification, to the extent possible, between RCRA, UIC, and NPDES program definitions and descriptions, State program requirements and permit issuance procedures. The proposed regulations also consolidate State program requirements under section 404 of CWA (permits for discharges of dredged or fill material), and EPA permit issuance procedures for Air PSD program.

Draft consolidated application forms are published with these proposed regulations, so as to enable a more complete review of EPA's Permits Consolidated efforts. The Agency also intends to move in the direction of issuing a single consolidated permit for a facility that requires multiple EPA permits, which would cover all EPA permit requirements for the facility.

As the first expression of this process, the Agency has developed a single form for applying for permits under the Consolidated Permit regulations. This form appears as a notice for public comment in a separate part of today's Federal Register. The Consolidated Application form consists of a single part to collect general information from all applicants, followed by separate program-specific parts which collect information needed to issue permits under each program. Today's notice includes the general information part and parts for hazardous waste permits under RCRA and for certain water discharges under NPDES. The parts for the other permit programs will be developed in the near future, and will be incorporated into the consolidated application form when they are ready.

A set of NPDES regulations is also being proposed today as part of the Consolidated Application form package. These proposed NPDES regulations, which are closely tied to the proposed application form, are numbered to correspond with the Consolidated Permit regulations and the two should be read together. The preamble to the proposed conforming regulations contains a detailed discussion of the new NPDES application form requirements and their place in the entire NPDES permitting process.

Although nothing in these regulations would require States to undertake a reorganization of environmental permitting functions, EPA encourages States to begin or continue efforts toward "one-stop" permitting, or other forms of permit program consolidation.

The Agency anticipates a number of benefits to the environment, the regulated community, the general public and its own institutional efficiency in the Permits Consolidation effort:

• *Environmental Benefits:* Consolidation of procedures, regulations and permit review functions should result in more comprehensive management and control of wastes or residuals, and elimination of gaps in managing these wastes.

• *Regulatory Burden Reduction:* The use of uniform procedures and program requirements among EPA permit programs should result in more consistent and predictable requirements for the regulated community, and should reduce the costs of complying with multiple program requirements. The use of common program regulations, and future use of a single application form for EPA-issued permits should reduce the paperwork and increase efficiency in processing permits.

• *Institutional Benefits:* The Agency has already experienced greater coordination, sharing of information, and resolution of inconsistencies and overlaps among the various programs during the development of these proposed regulations. By October, 1979, the Agnecy will be establishing centralized permit-writing units in the Regions.

• *Public Participation Benefits:* Procedures and opportunities for public participation in permit program decisions and in State program approvals will became more uniform and predictable under these regulations. This should facilitate public involvement in the implementation of the RCRA, UIC, NPDES and 404 programs.

• *Resource Benefits:* EPA expects that consolidation of permit programs should result in some reduction in overall Agency permitting resource needs over the next few years, measured against what the expanding scope of EPA permit programs would otherwise require, particularly as implementation of the RCRA and UIC programs begins and the consolidated application form is utilized. If States adopt similar approaches, resource benefits could also be felt at the State level.

Organization of Proposed Regulations

The proposed regulations will revise 40 CFR 122, 123 and 124, presently used for NPDES program regulations. These Parts of the Code of Federal Regulations are being used because they already provide the skeleton for organizing permit regulations, namely:

Part 122—Program Descriptions.

Part 123—State Program Requirements.

Part 124—Procedures for Decision-making.

To structure the proposed regulations in an understandable format, parts 122, 123 and 124 have been organized into Subparts. Subpart A of each Part applies to each permit program included in that Part. Subsequent Subparts set forth program-specific requirements for the individual programs.

Although the Agency has attempted to unify and consolidate these proposed regulations, statutory and programmatic considerations preclude complete uniformity. Thus, to review the regulations for a particular program, one must read both the general subpart plus the applicable specific subpart.

In adopting the proposed format, the Agency considered various alternative formats for combining requirements for the covered programs. The Agency solicits comments on the proposed format and any alternative approaches.

The Agency recognizes that these regulations are long and complicated. However, if each program were to publish separate regulations, they would be approximately 40 percent larger in total. This savings has resulted from the formulation of generally applicable requirements for all programs.

Summary of Proposed Regulations

Proposed Part 122—Establishes program definitions and basic program requirements for the RCRA, UIC, NPDES and 404 programs. Part 122 also provides certain requirements for State programs,

to the extent Part 123 explicitly references Part 122 requirements. This Part spells out in detail who must apply for a permit; what terms, conditions and schedules of compliance must be incorporated into permits; when and how monitoring and reporting of permit compliance must be performed; when permits may be revised or reissued; and other requirements.

Proposed Part 123—Establishes the requirements for State programs. Each of the programs described in Part 122 may be administered by any State, in lieu of EPA, that has received the approval of the Administrator. In addition of the hazardous waste, UIC and NPDES programs, Part 123 governs State section 404 permit programs for discharges of dredged or fill material. After receiving the approval of the Administrator a State may issue section 404 permits, in lieu of the United States Army Corps of Engineers, in so called "Phase II and III" waters (sometimes referred to as traditionally non-navigable waters). In addition, Part 123 contains the procedures for State program approval, revision and withdrawal.

Proposed Part 124—Establishes the procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD and NPDES permit programs, including procedures to enable public participation in permit decisions, consultation with State and Federal agencies, procedures for consolidated review and issuance of two or more permits to the same facility or activity, and mechanisms for appeal from permit decisions. Most requirements in Part 124 are only applicable where EPA is the permit-issuing authority. Part 123 requires States to comply with some of the Part 124 provisions, such as the public participation aspects of permit issuance.

Relationships Between Programs

The programs covered in these regulations overlap one another in two different ways. The first type of overlap occurs where different activities associated with a single source require permits under two or more of the programs covered by these regulations. For example, a facility may store hazardous waste in surface facilities, inject some of its waste into the ground, and have a discharge of other waste into surface waters. The basic reason for proposing these consolidated regulations is to assure that permit decisions are consistent, and that the procedures for permit issuance are efficient and coherent.

The second type of overlap occurs where the same activity is regulated under two or more of the statutes authorizing these regulations. For example, disposal of hazardous waste by well injection must have a permit under section 3005(a) of RCRA, a permit under section 1421(b) of SDWA and, if located in a State with an approved NPDES program, a permit under section 402(b)(1)(D) of the CWA. The following is a discussion of the approaches the Agency is proposing in this second area:

UIC/NPDES—Under section 402(b)(1)(D) of the CWA approved State NPDES programs are required to "control the disposal of pollutants into wells." The UIC program, likewise, requires States to establish programs for controlling well injections. EPA believes that these two requirements are complementary and that a single permit issued by a State to a well injector can satisfy the requirements of both acts.

Although EPA has required NPDES States to demonstrate the legal authority to issue permits for well disposal, it has never specified how States should exercise this authority. No technical requirements have been established under the NPDES program for well disposal; States are merely required to exercise their authority "to protect the public health and welfare and to prevent the pollution of ground and surface waters." EPA believes that the legal authority possessed by NPDES States can serve as the nucleus for development of State UIC programs. Therefore, in many instances, these States will be able to develop UIC programs without any further action by their State legislatures. Once a State develops regulations and other program components in accordance with UIC regulations under Part 146 (proposed at 44 FR 2378 (April 20, 1979)), and receives the approval of the Administrator under Part 123, a State-issued permit for well injection should satisfy both CWA and SDWA requirements.

UIC/RCRA—The UIC program imposes requirements on all well injection, while the hazardous waste program under RCRA imposes requirements on treatment, storage and disposal of hazardous waste. When materials which are hazardous wastes for purposes of the RCRA program are injected into a well, that well falls within the definition of a Hazardous Waste Management Facility (HWM) facility and, consequently, is subject to regulation under both programs.

To avoid any possible duplication and inconsistency in regulation, EPA proposes to regulate hazardous waste injection wells under the UIC program because it is specifically oriented toward underground injection as a technique of disposal. EPA believes that the degree of environmental protection afforded by the UIC regulations meets the requirements of RCRA. EPA has taken several actions to assure that hazardous waste is adequately covered under the UIC program. In cases where a site has both an injection well and surface facilites that treat, store or dispose of hazardous wastes, the surface facilities will be subject to a hazardous waste management program permit. The appropriate RCRA requirements will be applied through that mechanism. In cases where a well receives wastes accompanied by a manifest, the UIC controls will apply exclusively. Those controls, however, will incorporate the RCRA requirements for notification, manifest, recordkeeping and reporting.

However, any pits, ponds, lagoons, storage tanks or other surface facilities associated with an injection well that are used to treat of store hazardous waste are still required to obtain a RCRA permit. For further discussion of this approach, see the preamble to Subpart B of Part 122 of these regulations.

Another particular concern of the Agency was that the imposition of controls over hazardous waste under RCRA might make underground disposal of such waste more economically attractive in States that were not yet listed as requiring a UIC program. Under the UIC program, State program requirements are only triggered once a State has been listed by EPA. EPA has therefore decided to implement UIC controls over well injections on the same schedule as the RCRA hazardous waste program. All the remaining unlisted States will be listed by May of 1980 as needing a UIC program.

The UIC Program also proposes to ban all Class IV wells (i.e., wells owned or operated by generators of hazardous wastes or by hazardous waste management facilities that inject into or above underground sources of drinking water). Since the operators of these wells are subject to RCRA requirements, they will have to notify EPA under section 3010 of RCRA. The initial inventory of Class IV wells will be developed through the notification process under RCRA.

NPDES/RCRA—Publicly owned treatment works(POTW) which receive wastes defined as hazardous under the RCRA program are also point sources subject to the NPDES permit program of secion 402 of the CWA. This creates the possibility of duplicative regulation of

the same activity. In an effort to avoid this result, EPA is proposing a "permit by rule" under the RCRA program for publicly owned treatment works (POTW) which receives hazardous wastes and are regulated by the NPDES program. Under this proposal, POTW's would be "deemed to have a permit" for purposes of RCRA if the facility has an NPDES permit and if it adheres to the notification requirements of section 3010 of RCRA, as well as the manifest, recordkeeping and reporting requirements of 40 CFR Part 250 under sections 3001–3004 of RCRA. EPA believes that this approach accomplishes the protective goals of RCRA in a way which eliminates much of the administrative burden which parallel regulation would cause. For further discussion of this approach, see the preamble to Subpart B of Part 122.

Applicability of NEPA to the Consolidated Permit Programs

With the exception of EPA-issued permits for new sources, none of the permitting requirements under these regulations is subject to requirements of the National Environmental Policy Act (NEPA), 43 U.S.C. section 4332(2)(E). NPDES permits, other than for new sources as defined in section 306 of CWA, are removed from NEPA by the terms of section 511(c) of CWA. That section expressly exempts from NEPA requirements all actions taken by the Administrator pursuant to CWA, except issuance of permits to new sources and construction grants for publicly owned treatment works. PSD permits under the CAA are similarly exempted by statute from NEPA. See Energy Supply and Environmental Coordination Act of 1974, section 4(c)(1), 15 U.S.C. 793(c)(1).

EPA permits for hazardous waste facilities under RCRA are also not subject to the formal requirements of NEPA. The courts have recognized that Federal regulatory action taken by an agency with recognized environmental expertise, when circumscribed by extensive procedures, including public participation for evaluation environmental issues, constitutes the functional equivalent of NEPA's requirements. See *Portland Cement Assoc.* v. *Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973), cert. den., 417 U.S. 921 (1974); *Maryland* v. *Train*, 415 F. Supp. 166, 122 (D. MD. 1976). EPA has determined that the procedures regarding EPA's issuance of RCRA permits clearly satisfy that standard.

The Agency also anticipates that the functional equivalence principle will apply to EPA-issued UIC permits, and that such permits are similarly exempt from formal NEPA requirements.

Finally, NEPA requirements do not apply to State-issued permits. *Chesapeake Bay Foundation, Inc.* v. *United States*, 453 F. Supp. 122 (E.D. Va. 1978).

The Agency believes that the proposed regulations will have a positive environmental impact by providing more comprehensive environmental review of facilities which require EPA permits under the NPDES, PSD, RCRA or UIC permit programs, particularly where two or more of these permits may be required for the same facility or activity. We believe that the possible transfer of various programs to State responsibility will not affect the stringency of program administration. The State programs must meet Federal Standards in order to receive Federal approval, and they will be subject to Federal oversight. While transfer of aspects of the 404 program to the States will eliminate the NEPA requirement for some 404 permits, it is unclear whether this transfer will lead to narrowed environmental review of the subject activities, since States are free to adopt a more stringent approach to regulation and many States have their own EIS-type requirements.

Previous Publication of Regulations for RCRA, UIC, and NPDES Programs

Portions of these proposed regulations have appeared previously in the Federal Register in either proposed or final form. Comments on any prior proposal will *not* automatically be considered part of the record of this proposal. Commenters should resubmit such comments as comments on this proposal if they want to make sure that EPA will consider them.

RCRA Program: Under the RCRA program, Guidelines for State Hazardous Waste Programs were proposed as Part IV of the February 1, 1978, Federal Register (43 FR 4366). These consolidated regulations contain changes which reflect comments on the February 1978, proposed guidelines. Because the consolidated regulations may surface issues on which the public has not had a chance to comment, the consolidated regulations are a reproposal of the RCRA Section 3006 guidelines.

UIC Program: Regulations for the UIC program were originally proposed on August 31, 1976, as 40 CFR Part 146. In response to numerous public comments, EPA has made significant changes in the regulations and has reproposed them for further public comment. (See 44 FR 23738 (April 20, 1979)). Many elements of the UIC program are now being proposed for inclusion in Parts 122, 123 and 124, while the technical criteria and standards by which the Director of an EPA or State-administered UIC program makes decisions continue to remain in Part 146.

NPDES Program: Subparts D of the proposed Parts 122 and 123, and Subparts D, E and F of proposed Part 124 are virtually identical to each of the contents of the NPDES Parts 122–124 which were recently promulgated. These NPDES regulations were made final after a comment period of 90 days during which over 500 comments were received. The comments were fully considered by the Agency, and the final NPDES regulations now occupy Parts 122–124. The consolidated permit program regulations, when finally promulgated, will incorporate and take the place of the final NPDES regulations in Parts 122–124. There are some minor changes to the Final NPDES regulations which occurred in the process of generalizing requirements for all programs in Subpart A. In addition, there are several new provisions applicable to the NPDES program, such as procedures for the withdrawal of State programs under Part 123, and new permit modification and confidentiality of information provisions under Part 122. These changes are highlighted in this preamble discussion.

Technical Requirements for RCRA, UIC, and NPDES Programs

Technical requirements and criteria which apply to decision-making under these three programs have been developed separately from Parts 122–124. These regulations set the standards for the actual contents of permits under the three programs and provide some of the technical bases for determining the adequacy of State programs and individual permit decisions.

RCRA Program: For the RCRA permit program, Parts 122–124 should be read, where appropriate, in conjunction with technical standards proposed under 40 CFR Part 250 on December 18, 1978, (43 FR 58946–59028) under sections 3001, 3002 and 3004 of RCRA prescribing (1) criteria for identifying and listing hazardous wastes, identification methods, and a hazardous waste list, (2) standards for generators of such waste for recordkeeping, labeling, containerizing and using a manifest, and (3) performance standards for hazardous waste management facilities including human health and environmental protection levels and design and operating standards as well as recordkeeping, monitoring, reporting,

contingency plans and training and financial responsibility requirements. These proposals together with those under section 3003, (April 28, 1978, FR 18506–18512), section 3005 (40 CRF Parts 122 and 124), section 3006 (40 CFR Part 123), section 3008 (August 4, 1978, FR 34738–34747), and section 3010 (July 11, 1978, FR 29908–29916) of RCRA and that of the Department of Transportation (May 25, 1978, FR 22626–22634) under the Hazardous Materials Transportation Act constitute the hazardous waste regulatory program under subtitle C of RCRA.

UIC Program: Technical criteria and standards for Underground Injection Control Programs under the SDWA were proposed as 40 CFR Part 146, on April 20, 1979 (44 FR 23738).

NPDES Program: NPDES criteria for decision-making will be located in 40 CFR Part 125, which was recently promulgated. In addition, effluent guidelines used in setting permit effluent limitations are located in 40 CFR Subchapter N.

404 Program: Interim final guidelines detailing the environmental concerns to be considered in evaluation of section 404 Permit applications (i.e., the section 404(b)(1) guidelines are set forth in 40 CFR Part 230; however revised guidelines will soon be proposed to amend Part 230. Procedures under section 404(c) for use of EPA's authority to prohibit or restrict disposal sites are detailed in 40 CFR Part 231 and regulations covering activities under section 208(b)(4) of CWA will be in 40 CFR Part 130.

Part 122

What does this Part do?

Subpart A of Part 122 provides both general and program-specific definitions for the EPA administration of RCRA hazardous waste, SDWA underground injection control, and CWA NPDES programs. In addition, all Subparts of Part 122 describe basic program elements for the three programs, including application requirements, standard permit conditions, permittee monitoring and reporting requirements and other requirements. Both the general Subpart (A) and the appropriate individual Subpart (B-D) must be consulted for a full description of any program.

Certain of these requirements are made applicable, as indicated in Part 123, to State programs which operate in lieu of EPA programs after receiving EPA approval. In the case of section 404, State programs operate in lieu of the Corps of Engineers program in so-called "Phase II and III" waters.

Subpart A

The major elements of Part 122, Subpart A are:

Program definitions (§ 122.3). Definitions for the RCRA, UIC, NPDES and 404 programs are set forth in § 122.3. Definitions applicable to all programs appear under "General Definitions," and those applicable only to a particular permit program are set forth separately.

Wherever possible, common definitions have been provided for the four programs. In some cases, where different definitions must be employed due to the differing statutory requirements, differences between definitions for two or more programs are highlighted. For instance, the definitions of "State" and "person" under the three Acts are necessarilydifferent and are highlighted in § 122.3(a).

Both the RCRAand UIC programs propose to use a similar definition of "underground sources of drinking water" or "underground drinking water source" (USDW). Any aquifer or its portion qualifies as an USDW if:

(1) It is currently in use as a source of drinking water;

(2) It produces water with fewer than 10,000 mg.1 of total dissolved solids (TDS); or

(3) It is designated as an USDW by the Administrator or State (as appropriate).

Under the UIC program, however, flexibility is granted in the application of the definition to recognize those situations where the aquifer or its portion may technically meet the definition but in fact has no real potential to serve as a drinking water source. Therefore, in those instances where the aquifer or its portion does not currently and will not in the future serve as a source of drinking water, it need not be designated if:

(i) It is mineral, oil or geothermal energy producing;

(ii) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

(iii) It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption.

To balance the flexibility provided, the UIC program will require the designations of USDW's to be made after public hearing and subject to approval by the Administrator.

The RCRA program does not propose a similar degree of flexibility in the application of the definition. It is the Agency's judgment that where hazardous wastes are concerned, a stricter level of protection is prudent. Since little discretion is available, the HWM program also does not propose to require public hearings or review by the Administrator.

Both the NPDES and section 404 programs employ the concepts of best management practices (BMP's) and general permits. Because of the differences in the regulatory programs, differing definitions are applicable to these concepts (no definition of "general permit" is given for purposes of NPDES although EPA is considering formulating one). The public is invited to comment on whether it is appropriate to develop unified definitions for these concepts.

Signatories to permit program forms (§ 122.5). These regulations require that permit applications, except those for Class II wells under the UIC program, must be signed by a principal executive officer of at least the level of vice-president or equivalent official for partnerships or public facilities. Permit applications for Class II wells, reports required under Part 122, and certain requests for information forms may be signed by a duly authorized representative. Applications for permits for Class II wells under the Underground Injection Control program are distinguished from other applications due to the large numbers of small and physically dispersed Class II wells associated with oil and gas operations involving the injection of fluids. All signatories for permit program forms must represent that they have made sufficient inquiries to certify the truth of any statements made in the forms.

Duration of Permits; Continuation of Expiring Permits; Transferability of Permits (§ 122.8). This section establishes requirements for the duration of RCRA, UIC, 404 and NPDES permits, the continuation of expiring EPA-issued permits, and requirements that must be met by permittees who transfer ownership of their facilities.

NPDES and section 404 permits are required under the Clean Water Act to have fixed terms not to exceed five years. Neither RCRA nor the SDWA establish specific permit terms for hazardous waste or underground injection control permits. Section 122.8 proposes that RCRA and UIC permits may be issued with terms up to the life of the permitted facility. A lifetime permit was selected for these facilities so as to enable them to obtain more favorable financing, to avoid continuous facility siting problems and to save paperwork burdens on EPA or State permit writers. NPDES and 404 permits

will continue to be issued for terms that do not exceed five years. However, to insure a regular review of permits particularly where a RCRA, UIC, or 404 permit is issued to a facility or activity that requires an NPDES permit, review of each permit issued for a given facility or activity is required each time another permit for the same facility is modified, reissued or terminated. This review will thus coincide with the NPDES reissuance cycle and will be conducted for purposes of considering whether modification or revocation and reissuance of any other permit(s) is warranted. These proposed periodic reviews are mandatory on both EPA and approved States.

After reviewing a permit, a decision whether or not to modify the permit will be made by the EPA Regional Administrator or the State Director. Reasons for modifying a permit would include new information about human health or environmental risks, changes in the national standards, and changes in the type or volume of hazardous waste(s), injected fluids or pollutants. Facility siting will not be considered at the time of permit modification unless new information or standards indicate a threat to human health or the environment exists which was unknown at the time of permit issuance or unless new data has been developed since the time the permit was granted.

Regardless of whether another permit expires or is modified or terminated, review of single UIC or RCRA permits for a given facility is required in any event at least every five years and upon public request where information is submitted which indicates that grounds for permit modification exist.

The Agency solicits public comment on this approach to ensure comprehensive, regular review of permits. In particular, the Agency solicits comment on an alternative that was considered and rejected during the development of these regulations. Under this alternative, where multiple permits are required for a single activity or facility, all permits would be set to expire at the same time. Where only a single permit under any program is required, it would be subject to review and reissuance at the time that an additional permit under another program is required in the future. This option would assure that a comprehensive review of the permit(s) from the standpoint of all programs is accomplished concurrently and on a regular basis. It would insure regular review of multiple permit and public participation during the issuance/reissuance process because of the built-in expiration and reissuance of permits. In addition, this option would enable continuing EPA review of State-issued permits for the same facility or activity, if the requirement were made applicable to States.

Review and Modification or Revocation and Reissuance of Permits. Section 122.9 covers both modification and revocation and reissuance of permits. These are alternative means of accomplishing very similar results. Either action can be chosen by the State Director or the Regional Administrator as a means of changing the terms of a permit, if cause exists under § 122.9(e). In general, however, the Director would choose to revoke an existing permit and reissue a new permit when permit terms and conditions are to be extensively changed, or where the remaining term of the existing permit is short and it would be to the advantage of the permittee to obtain a new permit with a longer term. This latter situation will involve primarily the shorter term NPDES and 404 permits, since most, if not all, UIC and RCRA permits will be set for the life of the facility. Additional program-specific provisions for modification of NPDES permits are contained in Subpart D. Most modifications under this section require compliance with §§ 124.5 and 124.7, which require the issuance of a draft permit for permit modifications, thus initiating the public review process under Part 124. Such modifications are processed in the same manner as permits, except that public comment is sought only on the proposed modifications. However, certain minor modifications under § 122.9(g) do not require compliance with § 124.5, unless the modifications would render the permit less stringent or unless contested by the permittee. These minor modifications take effect immediately when issued, and do not require the preparation of a draft permit or public notice and comment. In addition, Section 404 permit modifications will be processed according to procedures set forth in Part 123, Subpart E.

Termination of permits. Section 122.10 specifies conditions under which permits will be terminated for cause by the permitting authority. While revocation and reissuance is a mechanism for changing permit terms and conditions in light of changed conditions, termination is essentially an enforcement mechanism. The term "termination", as it is used in Part 122, includes permit suspension or revocation under section 3008 of RCRA. Procedures for termination of RCRA permits are provided in 40 CFR Part 22 (proposed 43 FR 34738 (August 4, 1978)).

Conditions applicable to all permits (§ 122.11). Section 122.11 specifies general conditions applicable to all permits under the RCRA, UIC, NPDES and 404 programs. Additional specific conditions are also included in Subparts B–D, unique to the individual permit programs.

Schedules of Compliance. Section 122.12 specifies requirements for schedules of compliance leading to expeditious compliance with program requirements. For NPDES permits, these schedules of compliance lead the permittee to compliance with the CWA's statutory treatment deadline requirements, as well as other program requirements. For permits under the RCRA, UIC and 404 programs, schedules of compliance will be used to set timetables for expeditious compliance with program requirements. These schedules are required, under proposed § 122.12(a), to set interim compliance dates where the total schedules exceed nine months. Permittees are required to provide written notice to the Director of the permittee's compliance or noncompliance with interim or final requirements. For most EPA-issued permits this notice must be provided within 14 days of each interim or final date. However, UIC permits issued by EPA will require such notice within 30 days. This variation in the notice requirements for UIC permits results from an effort to make the UIC program requirements in these proposed regulations consistent with those that were proposed as Part 146 on April 20, 1979 (44 FR 23738). However, EPA requests comments on the most appropriate time for providing such notice, and whether the notice requirements for all programs should be the same.

In addition, proposed § 122.12 allows approved State programs to choose different intervals for interim compliance dates, and up to 30 days for providing written notice following an interim or final compliance date. Comments on this approach are also solicited.

Section 122.12 also provides for two alternate schedules of compliance in cases where an EPA permittee may choose to terminate operations rather than meet permit requirements. One schedule reflects the dates for the proposed termination of operations, and the other reflects dates for compliance with all permit requirements. Very specific requirements for these alternate schedules are proposed for NPDES permits issued by EPA, because NPDES permits are subject to statutory deadline requirements under the CWA. However,

because the UIC and RCRA programs are expected to encounter situations in which alternate schedules will be necessary to assist both the Regional Administrator and the permittee in making the decision to terminate operations or meet compliance, alternate schedule provisions are also provided for these programs. Comments are solicited on the use of alternate schedules for the UIC and RCRA programs.

Recording and Reporting of Monitoring Results. Section 122.14 establishes general requirements applicable to all permittees for the recording and reporting of monitoring results to the permitting authority.

Noncompliance Reporting (§ 122.15). This section outlines the general requirements for noncompliance reporting that must be met by both EPA Regional offices and approved States. Reports are required on a quarterly basis for major permits under the three programs, and on an annual basis for minor permits. Additional or more specific reporting requirements are provided in Subparts B–D.

Confidentiality of Information (§ 122.16). This section provides for claims of confidentiality by persons submitting information to EPA under these regulations. Such claims will be processed in accordance with the procedures set out in 40 CFR Part 2. Paragraph (b) describes forms, documents and other materials will not be given confidential treatment.

Relationship of Subpart A to the Final NPDES Regulations, Part 122

Certain elements of the NPDES program have been modified slightly in Subpart A of Part 122, as a result of the consolidation with the RCRA and UIC programs. Among these changes are the following:

Review and Modification or Revocation and Reissuance of Permits (§ 122.9)

Under these proposed Consolidated regulations, NPDES permits must be reviewed to determine whether cause exists for modification or revocation and reissuance every time that another permit for the same facility or activity is modified, revoked and reissued, or terminated, and when information is presented to the Director indicating that cause exists for action under § 122.9(e). The final NPDES regulations did not require this kind of review by the Director. (See § 122.31 of the NPDES regulations.)

Conditions Applicable to all Permits (§ 122.11)

The standard conditions spelled out in § 122.11 of these proposed consolidated regulations are very similar to those contained in § 122.14 of the final NPDES regulations; however, in certain cases the language has been adjusted to better reflect all programs. Additional conditions in § 122.68 uniquely applicable to NPDES permits are identical to their counterparts in the final NPDES regulations, § 122.14.

Confidentiality of Information (§ 122.16)

The confidentiality of information section is an expansion of provisions contained in § 124.131 of the final NPDES regulations (Public Access to Information), and incorporates references to the procedures of 40 CFR Part 2, for processing claims for confidential treatment.

Subpart B

Subpart B of Part 122 sets forth specific requirements for Hazardous Waste Management Programs to supplement the general requirements of Subpart A. This section will discuss those specific requirements after a brief description of EPA's overall efforts to implement Subtitle C of RCRA.

Subtitle C of RCRA creates a "cradle-to-grave" control system for the management of hazardous waste including appropriate monitoring, recordkeeping and reporting. Section 3001 requires EPA to define criteria and methods for identifying and listing hazardous wastes. Wastes which are identified or listed as hazardous by these means are then included in the management control system established under sections 3002 through 3006 and 3010. Those wastes which are not identified or listed will be governed by the requirements of Subtitle D of RCRA for the management of municipal solid waste.

Section 3002 requires EPA to define the standards applicable to hazardous waste generators. Section 3002 also requires establishment of a manifest system to track hazardous wastes from their generation to their ultimate disposition in a permitted treatment, storage or disposal facility.

Section 3003 requires EPA to define standards applicable to transporters of hazardous wastes to insure proper management of hazardous wastes during transportation. The Agency is exploring opportunities for integrating this program with proposed and existing Department of Transportation regulations on the transportation of hazardous materials.

Section 3004 requires EPA to develop performance standards for the location, design, construction and operation of hazardous waste treatment, storage and disposal facilities. Facilities, whether on or off the site of hazardous waste generation are covered by these standards and are required to obtain permits. Section 3004 standards comprise the criteria against which applications for permits will be evaluated.

Section 3005 requirements, as proposed in Part 124 of these regulations establish the procedures for obtaining a permit to construct and/or operate a hazardous waste treatment, storage or disposal facility.

Section 3006 requires EPA to issue guidelines for State programs and procedures by which States may seek authorization to carry out the hazardous waste program in lieu of the EPA-administered program. Regulations to implement section 3006 are proposed in Part 123.

Section 3010 regulations establish procedures by which any person generating or transporting hazardous waste, or owning or operating a facility for storage, treatment, and/or disposal of hazardous waste, must notify EPA of this activity within 90 days of promulgation of regulations defining a hazardous waste (section 3001). Section 3010 provides that no hazardous waste subject to Subtitle C regulation may be transported, treated, stored or disposed, unless this notification is timely given to EPA.

Table I appearing below cross references the numbered sections of RCRA to the Subpart designations to be used in the regulations:

Table I

Solid Waste Disposal Act (as amended) Subtitle C Numbering System

40 CFR Part 250, Subpart A (proposed at 43 FR 58946–58968 (Dec. 18, 1978))—Section 3001 Standards for Criteria, Identification, and Listing of Hazardous Waste.

40 CFR Part 250, Subpart B (proposed at 43 FR 58969–58981 (Dec. 18, 1978))—Section 3002 Standards Applicable to Generators.

40 CFR Part 250, Subpart C—(proposed at 43 FR 18506–18512 (April 28, 1978))—Section 3003 Standards Applicable to Transporters.

40 CFR Part 250, Subpart D (proposed at 43 FR 58982–59028 (Dec. 18, 1978))—Section 3004 Standards for Owners and Operators of Treatment, Storage and Disposal Facilities.

40 CFR Part 122 and 124 Subparts A and B—Section 3005 Permits for Treatment, Storage and Disposal of Hazardous Waste.

40 CFR Part 123 Subparts A and B—Section 3006 Guidelines for Authorized State Programs.

40 CFR Part 250, Subpart G—(proposed at 43 FR 29908–29916 (July 11, 1978)—Section 3010 Preliminary Notification of Hazardous Waste Activities.

Application for a permit (§ 122.23)

The information requirements for a RCRA Hazardous Waste Management Facility permit will be divided into two parts (A and B). This approach is being taken in order to expedite and simplify the permit issuing process so that existing facilities may comply with the statutory requirement for attaining "interim" status [section 3005(e) of RCRA]. Additional discussion on this approach is included later in this Preamble. Section 122.23 of these regulations specifies the information that will be required in each part of the application and is discussed briefly here.

The Agency is now preparing the necessary forms that will be needed, as part of the effort to consolidate the application forms for the RCRA, NPDES and UIC programs. These forms appear as a notice for public comment elsewhere in today's **Federal Register.**

Part A of the application requirements is reflected in two sections (Forms 1 and 3) of the consolidated application form. These information requirements include: submission of a U.S. Geological Survey topographical map of the general area where the facility is located; a description of the hazardous waste handled and a brief description of how it will be handled; the annual quantity of each hazardous waste handled; and copies of all available drawings and specifications for the facility.

Part B of the application requires submission of detailed data concerning the geology, hydrology and engineering aspects of the HWM facility. A master plan including a detailed facility map also must be submitted. In addition, detailed information concerning such factors as financial responsibility, employee training, contingency plans, operation plans and closure plans, and plans for air and water monitoring must be submitted in enough detail to allow the permitting authority to determine if the RCRA section 3004 standards are met.

A separate application form will not be developed for Part B as part of the Consolidated Application form due to the detailed nature of the information required. In supplying Form B information, applicants must comply with the information requirements of this Subpart.

Existing facilities must submit Part A within 180 days of the date of promulgation of the regulations under section 3001 of RCRA (40 CFR Part 250, Subpart A). This requirement will be satisfied by submitting Form 1 and Form 3 of the Consolidated Application forms. This information will be used to determine the priority for requesting the submission of Part B for final determination of the permit application. For new facilities, both Part A and B application requirements must be submitted together, at least 180 days before physical construction is scheduled to start.

Permitting Requirements—General

With some exceptions (discussed later), any person who owns or operates or proposes to own or operate a facility for the treatment, storage or disposal of hazardous wastes as identified or listed in proposed 40 CFR 250, Subpart A, must obtain a RCRA hazardous waste management facility ("HWM facility") permit. Owners/operators of existing HWM facilities must meet this requirement by submitting Part A of the application requirements within 180 days of promulgation of 40 CFR Part 250, Subpart A and by submitting Part B and the remainder of the required information upon request of the permitting authority. Owners/operators of new HWM facilities must submit both parts of the information requirements no later than 180 days before the scheduled physical construction date for the facility for which the permit is sought. Part A will provide the Director with general information on the various HWM facilities in his/her area. Part B will furnish more detailed data necessary to bring the permitting effort to a conclusion.

EPA is today proposing this two-part application process with separate filing dates for existing facilities for the following reasons: First, the ready information which Part A (Forms 1 and 3 of the Consolidated Application Forms) will supply (See § 122.23(c)) will enable the State Director or the Regional Administrator to establish a system of priority review for HWM permits. He or she can review Part A forms to determine which facilities warrant prompt attention under 40 CFR Part 250, Subpart D (Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) and can then require an earlier submission of Part B of these applicants. Hence, permits could be issued earlier to the facilities which are in greatest need of regulation. Because EPA expects that approximately 30,000 existing facility permits will have to be issued, it foresees a 5 year period for issuing all permits. Given this span of time, EPA believes this attempt to issue permits on a priority basis to be the most effective and efficient use of limited resources.

Second, the immediate submission of Part A which should not entail lengthy preparation on the part of owners and operators, will satisfy the "permit application" requirement for obtaining interim status under section 3005(e) of RCRA. Third, a later submission of Part B assures that the detailed information upon which permit decisions will be based is complete and current.

The owner/operator of an existing HWM facility is required to submit Part B of the permit application on the date established by the Director. The Director must give the owner/operator at least six months notice of the date for submission of Part B (§ 122.23(a)(2)). Submitting Part B on time will assure that a facility with interim status maintains interim status during permit review; conversely, failure to submit Part B on time will result in loss of interim status. Part B of the permit application, which must be signed by a appropriate official (§ 122.5), will not be considered to be submitted until all of the required information is supplied, except that the Director may waive submission of certain information upon request as authorized in § 122.23(d)(7).

With respect to determining which permit applications will receive priority review and action, the Director shall consider several factors. These factors include the amount and nature of the hazardous waste handled by the facility, the apparent adequacy of the facility's design and operation, and the environmental sensitivity of the geographic area in which the facility to be permitted is located.

A permit application for a new HWM facility must be submitted at least 180 days before the date on which physical construction is expected to begin (§ 122.25(b)). Actual time for processing of applications and for issuing of permits will vary depending on the degree of complexity and extent of public participation involved. Since physical construction of a new facility cannot begin until a final permit has been issued, the burden is on the applicant to submit an application far enough in advance of the physical construction date to enable the Director to satisfy all of the review requirements of the regulations and not jeopardize the planned construction dates. Within 30 days of receipt of an application, the

Director must determine whether the application is complete.

Establishing Permit Terms and Conditions

EPA is proposing to allow "minor" modifications to existing permits issued under RCRA that may be appropriate under limited circumstances, as stated in § 122.24, at the discretion of the Director. This limited modification shall only be granted if: (1) the Director has determined that a particular HWM facility is capable of handling the type or volume of waste proposed in the modification without violating any other terms and conditions of the section 3004 standards of RCRA, and (2) the HWM facility can demonstrate that it will receive these proposed wastes in a manner that cannot be anticipated through contract provisions or by other means available at the time of initial permit issuance.

The Director shall issue public notice in accordance with § 124.11 prior to or at the time of approving any minor modification. By requiring a public notice to be issued and the requirement that all applicable section 3004 standards be met, EPA believes that human health and the environment will be adequately protected while, at the same time, any unnecessary paperwork required of permit applicants will be reduced. Comments on this approach are solicited.

Permitting Requirements—Special Categories

These proposed regulations would not impose the detailed permit requirements of Subpart B upon several categories of HWM facilities, where EPA is the permit-issuing authority. Two classes of facilities, health care facilities and experimental facilities, would be required to obtain a "special permit" in lieu of the regular permit described above. Three other classes of facilities, special waste facilities, publicly owned treatment works accepting wastes under a manifest or other delivery document, and barges or other vessels accepting waste under a manifest or delivery document for ocean disposal, would be regulated under a "permit by rule" mechanism. Finally, injection wells which dispose of hazardous wastes and certain solid waste management facilities which accept small amounts of hazardous wastes would not fall under the permitting requirements of these regulations. States approved by EPA to administer hazardous waste programs are also authorized, but *not* required, to regulate such facilities in the same manner as EPA.

Special Permits—Health Care Facilities (§ 122.25(a))

Certain departments of hospitals and veterinary hospitals routinely produce wastes which fall under the broad definition of "hazardous waste" as set forth in proposed 40 CFR Part 250, Subpart A. These facilities when storing or otherwise treating such waste on their premises will be considered as HWM facilities. In most cases, however, health care facilities are closely regulated by existing State laws. EPA has concluded that detailed permitting requirements under RCRA are unnecessary for health care facilities which are complying with State law.

Specifically, these regulations require health care facilities which are operating under and complying with a comprehensive and enforced State law to submit only an abbreviated application. The application would describe the type of facility and would provide certain operational information, including certification that the facility is operating under a State license. If the application satisfies the requirements of this Subpart, EPA would issue a special permit. Because State law would be adequately controlling the treatment and storage of hazardous waste by the facility, the permit would impose no additional express controls.

Special Permits—Experimental Facilities (§ 122.25(b))

EPA is also proposing to issue special permits for "experimental facilities", i.e., facilities which are or would be engaged in technology advancing activities which are intended to improve the state-of-the-art for hazardous waste treatment, storage or disposal. As with health care facilities, the applications which owners/operators of experimental facilities should submit should be easy to prepare and limited in informational requirements. EPA is proposing the special permit mechanism for experimental facilities for two reasons. First, EPA seeks to encourage inquiry into new and innovative ways to handle hazardous wastes. Relieving some of the administrative prerequisites to operating such a facility may facilitate that end. Secondly, and equally important is the distinct possibility that the Part 250, Subpart D standards, which are designed primarily for typical containment facilities, might not apply functionally to facilities implementing a new technology for hazardous waste management. It would not be sensible to force an innovative facility to comply with informational or other requirements not suited to its design.

Of course, these facilities will be required to comply with all of the applicable standards of Part 250, Subpart D. Additionally, the regulations limit the term of such permits to one year (with an additional one year extension under certain conditions) and establish requirements for submission of full-evaluation reports.

Permit by Rule—Special Waste Facilities (§ 122.26(a))

Proposed 40 CFR Part 250, § 250.46, creates a special category for owners and operators of facilities which treat, store or dispose of "special wastes." Special wastes are hazardous portions of certain large volume wastes on which the Agency has limited information. These large volume wastes are cement kiln dust, utility waste (fly ash, bottom ash, and scrubber sludge) phosphate rock mining waste, benefication and processing waste, uranium mining wastes, other mining waste, and gas and oil drilling muds and oil production brines. In Part 250, Subpart D, EPA is proposing to exempt these facilities from compliance with generally applicable requirements in favor of certain special standards (40 CFR 250.46–1 through 6). EPA intends to propose comprehensive standards for these facilities when sufficient information on which to base a regulatory program becomes available.

Because the generally applicable performance standards do not apply to special waste facilities, EPA has determined that imposing the full permitting burden on members of this class serves no useful purpose. Consequently, in its place EPA is proposing to require only a "permit by rule." A permit by rule would simply mean that the owner or operator of a special waste facility would be deemed to have a permit, without having to submit any application for it, if the facility complied with the special waste facility standards of 40 CFR 250.46. After data is available to the Agency, this regulatory approach would be modified as appropriate.

Permit by Rule—Publicly Owned Treatment Works and Ocean Disposal Vessels (§ 122.26 (b) and (c))

EPA is also proposing to use the permit by rule mechanisms for two other HWM facilities, publicly owned treatment works which accept hazardous wastes under a hazardous waste manifest or other delivery document, and barges or other vessels which receive hazardous wastes under a manifest or delivery document for purposes of ocean disposal.

Similar to the situation of the special waste facilities, use of the permit by rule mechanism should save owners and operators of these types of HWM facilities from paperwork burdens which accompany the task of preparing and submitting permit applications.

EPA is eliminating the affirmative requirement to secure a permit for these facilities because they are currently regulated under other EPA water pollution control programs. Publicly Owned Treatment Works (POTW's) fall under the National Pollutant Discharge Elimination System (NPDES) permit system of the Clean Water Act and ocean dumping vessels come under the permit system of the Marine Protection, Research, and Sanctuaries Act. These ongoing programs should provide a degree of environmental protection equivalent to that of Part 250. In recognition of this fact, Part 250, Subpart D, specifically exempts both of these types of HWM facilities from its requirements (40 CFR 250.40(e), 43 FR 58996 (Dec. 18, 1978)).

Thus, a POTW or ocean disposal vessel would be deemed to have a permit if it operates in accordance with the NPDES and Ocean Dumping permits and if the owner or operator complies with the notification, manifest, recordkeeping and reporting requirements.

Underground Injection Wells Permitting

These regulations propose to relieve the activity of injecting hazardous waste into underground injection wells from RCRA permitting requirements. As in the case of POTW's and ocean disposal vessels, injection wells are technologically dissimilar to more conventional HWM facilities and, therefore, many performance standards of Part 250, Subpart D, are functionally inapplicable. Also, as in the case of POTW's and ocean disposal vessels, underground injection wells fall under an alternate Federal regulatory program. Consequently, Part 250, Subpart D, has been made specifically inapplicable to underground injection wells (40 CFR 250.46(e)).

The alternate regulatory program is the underground injection control (UIC) program of Title C of the Safe Drinking Water Act, which is proposed for public comment in these regulations and in 40 CFR Part 146 (proposed at 44 FR 23738 (April 20, 1979)). The UIC program requires that all hazardous waste injection wells comply with its minimum standards. Injection wells, including those injecting hazardous wastes, are exclusively regulated by those minimum standards. Thus, in an instance where one site contains surface facilities which treat, store or dispose of hazardous wastes, as well as a hazardous waste injection well, the surface facilities will be required to comply with the requirements of the RCRA program only and the injection well will be required to comply solely with the requirements of the UIC program.

But, in order to assure that these parallel regulatory efforts work together, the UIC program has included in 40 CFR 146.09 a subset of standards from the RCRA program regarding notification, reporting, recordkeeping and the manifest system. Injection wells which inject hazardous wastes, as a general matter, must comply with these RCRA-originated standards to assure that the informational system of that program successfully tracks all hazardous wastes.

In instances where the RCRA informational system requirements have already been met, for example, when the wastes received by the well are supplied by an on-site surface facility which has already complied with these requirements under the RCRA program, the well operator need not comply with the requirements a second time. Wastes received by such wells would not be "accompanied by a minifest or other delivery document" as stipulated in § 146.09.

The pemit by rule mechanism is not needed because compliance with the notification, recordkeeping, reporting and manifest requirements of Part 250, Subpart D is provided in the UIC regulations themselves. The Agency has done so in 40 CFR 146.09; the permit by rule, thus, has become operationally unnecessary.

The Agency is well aware that section 3005(a) of RCRA asserts a broad permitting requirement for all HWM facilities. Despite this language, EPA is making a concerted effort to streamline its procedures and does not want to impose non-beneficial and duplicative regulations which seemingly do not further the goals of the statute. The Agency solicits comments on the adequacy of environmental protection which these alternate regulatory programs offer, on the appropriateness of establishing "special permits", "permits by rule", or the alternate mechanism to cover UIC wells, and on the legal and practical implications of the entire effort.

Solid Waste Disposal Facilities Which Receive Small Amounts of Hazardous Wastes

These regulations also exempt from RCRA permitting requirements certain solid waste disposal facilities which receive hazardous wastes in small quantities. These facilities are those which receive wastes exclusively from persons subject to 40 CFR 250.29 (proposed at 43 FR 58979, Dec. 18, 1978). Persons under § 250.29 are those who produce and dispose of no more than 100 kilograms (approximately 220 pounds) of hazardous waste in any one month; any retailer disposing of hazardous waste (other than waste oil); and certain farmers who dispose of pesticides and follow specified operating procedures.

40 CFR 250.40(c)(5) exempts these facilities from meeting any of the section 3004 standards for HWM facilities because they will be regulated as solid waste disposal facilities under Subtitle D of RCRA. Moreover, the relatively small amounts of hazardous wastes which these facilities would receive would not change their overall character as solid waste disposal facilities; nor would these facilities in any way provide an insufficient level of protection to human health and the environment (see preamble to 40 CFR Subpart D, 43 FR 58985). Thus, in the definitional section (§ 122.3(b)) of Subpart A of this Part, EPA is proposing to remove this class of facility from the scope of the term "hazardous waste management facility."

Interim Status (§ 122.23)

Section 3005(e) of RCRA provides a mechanism for existing facilities to continue receiving hazardous wastes prior to obtaining a permit under these regulations. That mechanism is "interim status." Under the terms of section 3005(e), a facility with interim status "shall be treated as having been issued a permit until such time as final administrative dispostion of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application." To qualify for interim status, a facility must have complied with the notification requirements of section 3010 of RCRA, and must have submitted Part A of the permit application. Moreover, during the interim status period, facilities must comply with a limited set of operating procedures (see 40 CFR 250.40(c)). EPA interprets Congressional intent, in providing interim status, as a means for allowing the continued receipt and handling of hazardous wastes by HWM facilities during the "start-up" period of

the RCRA program. Therefore, existing facilities which are participating in the program would not be subject to the general prohibition against treating, storing or disposing of hazardous wastes in the absence of a permit.

Because these regulations do not require site-specific permits for three classes of facilities (special waste facilities, certain POTW's, and ocean dumping vessels) these three classes of facilities need not submit a Part A application (Forms 1 and 3 of the Consolidated Application Forms) to qualify for interim status. EPA is proposing this approach because it would be contradictory for the agency to ease a requirement to avoid regulatory overlap on the one hand, and, then, to simply reinstitute the requirement for another reason. Consequently, for these classes of facilities, EPA intends to consider the submission of notification under section 3010 as satisfying the "permit application requirement" of section 3005(e). Section 3010 notifications supply the same information, although in lesser detail, as do Part A applications. More importantly, however, allowing interim status to these facilities is in keeping with the intentions of Congress.

These regulations also adjust the scope of coverage of section 3005(e) interim status. The statute specifically extends interim status, upon satisfaction of the prerequisites, to all HWM facilities in existence on the date of enactment of RCRA. EPA is extending the option to obtain interim status to HWM facilities in existence on the date of promulgation of regulations under section 3001 of RCRA. Again, EPA believes that this adjustment implements the intent of the legislation. Congress intended that the flow of wastes would not be interrupted during the start-up of the Federal progam. Indeed, the continued availability of disposal sites to take ever-increasing amounts of hazardous wastes can be termed realistically as a public health necessity. If EPA were to disallow the continued receipt of hazardous wastes by post-enactment facilities for all or a portion of the anticipated five years it will take to fully implement the permitting program, it could seriously disrupt ongoing hazardous waste control efforts. To do so would contradict the entire premise of the statute.

Moreover, it would be inequitable to interrupt operations of HWM facilities for which all possible steps to comply with new regulatory requirements have been taken.

EPA specifically requests comment on this implementation of section 3005(e).

Major Facilities (§ 122.3(b))

One of the primary administrative tasks which EPA will undertake once these regulations come into effect is the systematic review of permit applications received by approved States and of draft hazardous waste permits prepared by approved States. EPA will undertake this effort to assure routine compliance with these regulations and Part 250. However, it became apparent early during preparation of these regulations that this review function could overwhelm the Agency—approximately 30,000 RCRA permits will be issued under these provisions in the next five years. Consequently, recognizing administrative limitations on its review function, EPA does not intend to review permit applications and draft permits for facilities subject to a State program which are small, non-complex, and non-controversial. Instead, it intends to review these documents as they relate to "major" facilities. EPA will consider a facility to be "major" if it handles, or would handle, more than 5,000 metric tons of hazardous wastes per year. Permits for major facilities must be accompanied by fact sheets containing relevant information on the facility; permits for non-major facilities must be accompanied by a less detailed "statement of basis." (See §§ 124.8 through 124.9.)

EPA considers the use of a tonnage cutoff figure to establish the "major" character of a facility to be the most telling and straightforward way of reliably and simply accomplishing the objective. EPA considered other means of doing this, but found them less preferable. For example, EPA considered basing this determination on an analysis of the relative hazard of wastes received by each facility. As was discussed in the preamble to EPA's regulations defining "hazardous waste", (Part 250, Subpart A), the Agency was unsuccessful in this effort.

EPA requests comments from the public on the use of a volume criterion to distinguish major and non-major facilities. Moreover, EPA request comment on the selection of 5,000 metric tons per year as the criterion. EPA believes that use of this figure should result in review of facilities which truly warrant close attention. As EPA's data indicates that the median HWM facility handles about 1,100 metric tons of hazardous waste annually, EPA anticipates that, under this criterion, it would review approximately 10 percent of permit applications and draft permits processed by States.

EPA, however, recognizes that its information on the relative sizes of HWM facilities is incomplete. Because the utility of the 5,000 metric ton criterion is largely dependent upon the actual capacities of existing HWM facilities, the Agency intends to continue investigating its appropriateness. Information from the regulated community and other interested persons in this regard is solicited.

Other Environmental Factors

During the development of these regulations, the Agency recognized that certain "secondary" environmental impacts from factors including roadway traffic to and from facilities, access routes to facilities, noise, dust, odor, aesthetics, etc., were not amendable to control through the RCRA section 3004 standards nor by these regulations. Thus, these regulations do not address these general environmental issues. The Agency did consider the following options before deciding not to propose regulations in this area:

1. Require that an Environmental Impact Statement (EIS) be prepared. EPA has determined that the permitting process under section 3005 is not subject to the EIS requirement of section 102(2)(c) of the National Environmental Policy Act. A legal memorandum on this point has been prepared and will be made available upon request. The permitting process as specified in Part 124 of these regulations fully allows and encourages involvement of the public in section 3005 decision making. The Agency also has determined that the regulation of secondary environmental impacts is outside the scope of authority granted to the Agency by RCRA: States and local authorities can more suitably regulate these impacts.

2. Require applicants for permits to analyze the impact of the environmental factors outline above, and to submit a "Supplementary Environmental Analysis" (SEA) with the application for a permit. The SEA would be a part of the application, would be made public, and would be addressed during the permit application review process.

3. Same as Option 2, except EPA in granting permits to facilities would insert conditions in such permits based on the impact analyses of the SEA.

4. Require applicants for permits to certify that all State and local laws and ordinances regarding the environmental factors outlined above will be complied with.

Comments on these options, or suggestions for other options or approaches to this issue are solicitied.

Emergency Authorization (§ *122.28*)

These regulations also provide the Director with emergency authority to respond appropriately to immediate hazards to the environment or to human health. They provide that, in such event, the Director may issue a temporary authorization to a permitted facility, not to exceed 90 days, to accept hazardous wastes not covered by a permit. The authorization may be oral or written. If oral authorization is given, it must be followed withn five days with a written order. Emergency authorization can be rescinded at any time. EPA has included this proposed emergency authorization because it believes that the Director should have broad discretion to respond in a measured and effective way to emergency situations. The Agency requests comments on the propriety and scope on this emergency authority.

Subpart C—The UIC Program

Congress has authorized EPA in sections 1421–1424 of the Safe Drinking Water Act to establish by regulation: (1) minimum requirements for effective State UIC programs; and (2) a procedural mechanism whereby States may obtain EPA approval to operate all or part of such programs. Were States do not obtain EPA approval, EPA is empowered to establish and operate programs for those States.

As a result of the consolidation of the NPDES and RCRA programs with the UIC program, EPA examined the overlaps inherent in the three programs' statutory authority as described above. As a result, the Agency has decided to regulate injection wells primarily under the UIC program. Comments are solicited on the propriety of the Agency's assigning primary jurisdiction over underground injection control to the UIC program.

In addition, any well that injects hazardous waste could be regulated under RCRA. In those cases, also the Agency has chosen to regulate such wells under the UIC program and to apply certain RCRA requirements (e.g., closing of the manifest cycle) through the UIC regulations.

At one point in developing these regulations, EPA contemplated subjecting only wells that injected into, through or above underground sources of drinking water to these regulations. However, even wells which do not inject into, through or above underground sources of drinking water may cause fluid to move underground in such a fashion as to contaminate such sources. The Agency decided that the proper approach would be initially to bring all wells into the regulatory system so that every injection activity could be publicly known. Each well may then be classified properly, (see discussion below) resulting in requirements that the well injection practice be regulated or banned entirely or, where appropriate, not controlled at all.

Comments are solicited on the above approach. In addition, the Agency seeks data on off-shore injection operations and information on special problems that control of off-shore injection wells may pose, if any.

Listing of States

The UIC program becomes operative in a State only after the State has been listed by EPA under section 1422 of SDWA as needing a UIC program, and either the State obtains EPA approval of its program or EPA establishes a program for that State. State program requirements and approval procedures are set forth in Part 123.

On September 25, 1978, EPA listed 22 States as needing a UIC program: Arizona, Arkansas, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, West Virginia and Wyoming. See 43 FR 43420 (September 25, 1978). Since that time, Maryland has petitioned to be listed.

The Agency had initially intended to focus its efforts on these listed States and to phase in other States gradually. The purpose was to focus Agency resources and grant funds upon areas which appeared to have the most urgent need for such programs. However, as a result of its consolidation efforts, the Agency became aware of potentially different timetables for the listing of States under the UIC program and the establishment of RCRA programs in those States. States are expected to begin operating approved hazardous waste programs in mid-1980. This raises the possibility that some disposers of hazardous waste will seek to avoid RCRA requirements by injecting hazardous waste underground in unlisted States. To ensure consistency of coverage, the Agency has decided to list the remaining unlisted States in two stages by May of 1980.

Designation of Underground Drinking Water Sources (§ 122.33)

As part of developing its UIC program, the State must designate those aquifers which are to be protected as underground drinking water sources and those which are not. The criteria for designation are contained in Part 146, and are explained in detail in the Preamble discussion on Subpart A of this Part.

Section 122.33 specifies procedures for State designation of aquifers. All aquifers will automatically be designated as underground drinking water sources unless specifically excluded. Any exclusion must define the excluded area in geographic terms, rather than by name, to ensure that injectors have adequate notice as to whether or not they will be injecting above, into or through a designated underground drinking water source.

Classes of wells (§ 122.34)

The injection wells covered by the UIC regulations are divided into the following five classes:

(a) Class I includes industrial and municipal disposal wells and nuclear storage and disposal wells that inject below all underground sources of drinking water in the area.

(b) Class II includes all injection wells associated with oil and gas storage and production.

(c) Class III includes all special process injection wells, for example, those involved in the solution mining of minerals, *in situ* gasification of oil, shale, coal etc., and the recovery of geothermal energy.

(d) Class IV includes wells used by generators of hazardous wastes or hazardous waste management facilities to inject into or above underground sources of drinking water.

(e) Class V includes all other injection wells.

Due to basic differences in function and/or environmental effects of the above classes of wells, they are treated differently in many respects, as explained below.

Once a State UIC program is effective, all new Class I, II and III injection wells must obtain a permit to begin operation. All existing wells in these three Classes (except existing enhanced recovery and hydrocarbon storage wells) must also obtain permits within five years of the effective date of the program according to priority schedule to be established by the permitting authority.

Existing wells requiring a permit must be authorized by rule until the permit is applied for and processed. Such rules must apply the appropriate monitoring, reporting and abandonment requirements set forth in 40 CFR 146. Existing enhanced recovery and hydrocarbon storage wells may be authorized by rule for the life of the facility. These rules are to apply essentially the same requirements as permits under Class II. However, while

each permit is to establish a specific compliance schedule, rules are to set forth a general timetable for the attainment of applicable requirements.

To obtain a permit, owners or operators of wells must submit applications to the Director in accordance with the requirements of Subpart C of Part 122. Because most of the information relied upon by the Director to write a permit is in many cases already contained in State Files, only a few basic items of information must be contained in an application to a Director of a State-administered UIC program unless the Director requests further information (either because State files are incomplete or because the Director wishes to update the information). In the case of EPA-administered programs, the application must contain all the information which the Director needs to write the permit. Part 146 (proposed at 44 FR 23738 (April 20, 1979)) sets forth the information which a Director must consider when writing a permit.

A well may be covered by an area rather than an individual permit. To qualify for an area permit, the wells must be:

(1) Under the control of a single person;

(2) Of the same type (e.g., Frasch process, enhanced recovery, or salt water disposal);

(3) Within a single well field, project or site;

(4) Injecting into the same zone or aquifer; and

(5) Covered by the same application for a permit.

The requirements which apply to an individually permitted well apply equally to a well authorized by an area permit. However, under an area permit, new wells may be authorized administratively as long as they are under the control of the person holding the area permit, are essentially of the same construction and are intended for the same purposes as existing wells.

EPA requests comment on the advisability of the use of area permits. In particular, comment is solicited on whether the conditions (e.g., the use of "well field") have been properly framed to provide the intended relief from environmentally unproductive administrative burdens.

Section 122.42 contains two additional requirements of the UIC program. First, the permittee must notify the Director of his or her intention to cease operation and follow the Director's prescribed procedures for abandoning the well. Second, the permittee must maintain fiscal responsibility in some form to close, plug and abandon the well in a manner which does not endanger underground drinking water sources.

Temporary Authorization

The Agency has identified two types of situations where it may be necessary to authorize underground injection temporarily before permit-issuance procedures may be carried out.

The first situation is where an imminent hazard to human health or the environment may occur unless immediate injection is authorized. One example might be a spill or leak which would result in significant releases of hazardous wastes to the environment. While the Agency cannot predict all of the situations where this may occur, it has concluded that a temporary authorization should be available under the circumstances defined in these proposed regulations.

The other situation is where oil and gas production would be delayed, resulting in loss of such natural resources, unless reinjection of brine if immediately authorized. Temporary authorization in this situation is consistent with sections 1421(b)(2) and 1422(c), which provide that the UIC program may not interfere with oil and gas production except as necessary to protect underground sources of drinking water. The Agency proposes to allow temporary authorization in the above situation, provided that timely application for a permit could not have been made, and that the injection will not cause fluid movement to underground sources of drinking water.

Comments are solicited on both types of temporary authorizations. Are they well defined? Should certain criteria be added or deleted? Should temporary authorization be added for other situations?

Class IV wells

Class IV wells are expected to involve the injection of hazardous waste into or above underground drinking water sources, a practice which is inherently unsafe. Unlike the case of deep disposal wells, it is not possible to prevent endangerment of underground drinking water sources by establishing construction and operation requirements. EPA proposes, therefore, that existing class IV wells will be inventoried and closed, and that injection into new class IV wells will be prohibited.

Existing class IV wells are proposed to be authorized by rule until the time of their closure.

Comments are solicited on the Agency's proposed approach to class IV wells.

Class V wells

There are many types of class V wells, and Agency studies indicate the existence of perhaps a 250,000–500,000 such wells in the United States. The Agency is not presently in a position to determine which wells are safe or unsafe, and whether some of these wells should be either regulated or phased out. As a result, Directors of UIC programs will be required to inventory class V wells within their States, provide EPA with assessments of the impact of these wells, and recommend possible means of regulating them. If necessary, EPA will then amend these regulations to cover class V wells in a manner which will prevent endangerment of underground drinking water sources. In the meanwhile, immediate action will be required to address those wells that pose a significant risk to human health.

Class V wells will be authorized by rule pending amendment of these regulations to regulate such wells.

Comments are solicited on the need to regulate particular types of class V wells and how to do so. In particular, EPA solicits comments on whether special procedures for regulating class V wells should be provided.

Subpart D—Specific Requirements Applicable to the NPDES Program

Subpart D of Part 122 contains requirements which are identical to the final NDPES regulation, Part 122, as well as certain application requirements from final NPDES Part 124.

Part 123

What does this Part do?

This Part establishes the requirements for State NPDES, UIC, RCRA, (hazardous waste) and section 404 (discharges of dredged or fill material) programs and the process for approval, revision and withdrawal of State programs. While State programs are established and operated under State law, approved CWA, RCRA, or SDWA State programs implement Federal law. A permit issued by a State under State law after the program has been approved satisfies the Federal permit requirement.

Part 123 is divided into a general subpart (Subpart A) and program specific subparts (Subparts B–E). The requirements of Subpart A are generally applicable to all four of the State Programs covered by this Part. The other Subparts provide requirements

additional to those of Subpart A. Since EPA does not issue section 404 permits (these are issued by the Corps of Engineers in the absence of an approved State program), Part 122 does not contain a Subpart E. Part 123 Subpart E, therefore, contains the additional permit processing requirements applicable to State 404 programs.

Subpart A

Purpose and scope (§ 123.1). This section notes that Part 123 is related to, among others, Parts 122 and 124. However, only those sections of Parts 122 and 124 which are adopted by reference in Part 123 are applicable to State programs. Part 123 lists all the requirements applicable to State programs. In addition, applicable portions of Part 122 may, in turn, adopt requirements derived from other Parts of this Chapter.

The approach of the statutes authorizing the programs covered by this Part is that the Federal government should set minimum standards, with any State being given the freedom to impose any more stringent approach it deems appropriate. The only exception to this is in the hazardous waste program where Congress determined that the need for consistency between the States outweighs any one State's interest in hazardous waste regulation. This exception has been narrowly construed and is discussed further in the preamble discussion of Subpart B.

State programs are developed and implemented under State law. While this Part sets minimum requirements for State programs, it generally does not require that State authorities be worded or structured the same as the applicable Federal authorities. Nonetheless, the Agency encourages States to incorporate by reference, to the extent allowable under State law, Federal requirements, especially those which are technical in nature.

Elements of a program submission (§ 123.3). This section lists the contents of a complete State application for program approval. Each of the elements must be received by EPA before the formal statutory review starts. Each of the laws authorizing the State programs covered by this Part limits the time for EPA review of a State application for authorization. Therefore, it is necessary that EPA have complete information, organized in a particular way, about the State program before formal review commences. States are encouraged to consult with EPA in developing the submision.

Attorney General's Statement (§ 123.5). In understanding the requirements of State law, EPA gives great weight to the interpretations made by the State's Attorney General. Indeed, the Attorney General's Statement is necessary for EPA to adequately judge the legal basis for the State programs. EPA will develop a model Attorney General's Statement format for each of the programs.

Memorandum of Agreement with Regional Administrator (§ 123.6). The Memorandum of Agreement (MOA) between EPA and a State defines the basic working relationship between the agencies, thereby avoiding confusion and legal uncertainty which might otherwise exist.

The MOA may not be used as a substitute for adequate legal authority. While it may be appropriate for a State to give, in the MOA, its assurance that it will abide by certain requirements, the authority to do so must be present in State law.

Relationship Between Memorandum of Agreement and State/EPA Agreement

The State/EPA Agreement is an overall management tool which provides a way for the Regional Administrator and the State to coordinate and, to the maximum extent feasible, integrate program administered by EPA and the State, emphasizing problem-solving approaches to specific environmental problems. The State/EPA Agreement reflects important decisions on Environmental priorities, administrative problems, timing, responsibilities and allocation of resources. In FY 1980, the State/EPA Agreement is to cover programs under the Clean Water Act, Safe Drinking Water Act and Resource Conservation and Recovery Act. Other environmental programs will be added to the process in following years.

The Memorandum of Agreement, is a document signed by the Administrator and the State which formally sets forth the relationship between EPA and State in the administration of an approved State permit program and details specific procedures that must be followed by both parties in the development, issuance, review and enforcement of permits. The Memorandum of Agreement is one of the means by which EPA assures that State issued permits are consistent with the requirements of the appropriate Act and implementing regulations. Because of this, any proposed change to an MOA must be reviewed and agreed to the Administrator to assure it is consistent with the requirements of this Part.

The Memorandum of Agreement and the State/EPA Agreement should be consistent. This should not present a problem since they generally address different areas of the State/EPA relationship. The State/EPA Agreement should include the MOA. However, it may not override it in the instance of any inconsistency. If the State/EPA Agreement indicates that a change is needed in the MOA, the proposed change must be reviewed and agreed to by the Administrator.

Operational Requirements (§ 123.8). This section sets out, by cross referencing applicable sections of Parts 122 and 124, certain operational aspects of State permit programs. To demonstrate compliance with these sections, States do not need authorities identical to EPA's. Compliance may be shown by any set of authorities which enable the State Director to meet these requirements or requirements which are more stringent. Where these regulations require that certain activities be covered by permit, a State authority to regulate the activity by rule will not be approved.

Compliance evaluation programs (§ 123.9). States must have a systematic program for evaluating compliance with permit conditions and other program requirements. These programs must have the ability to evaluate reports submitted by permittees, to conduct inspection and to investigate evidence of violations submitted by the public.

Enforcement authority (§ 123.10). This section proposes that States should have an array of enforcement tools available. These must include a procedure for immediately responding to emergency situations endangering public health, injunctive relief, civil penalties and criminal fines. Each of these remedies is available to EPA where it is administering the program and States must have equivalent authorities.

The requirements for the programs vary slightly because each of the Federal acts have different provisions for EPA enforcement. For example, establishing the degree of criminal intent of the violator is a necessary element of any criminal prosecution. This section provides that the degree of criminal intent which the State must establish shall be no greater than that in the appropriate Act for EPA prosecution.

Likewise, the penalty amounts recoverable by the State shall be at least the same as those recoverable by EPA. See Table II.

Table II

Sanction	Maximum penalty amount			Intent		
	RCRA	UIC	NPDES/404	RCRA	UIC	NPDES/404
Civil penalty	$25,000	$5,000	$10,000	None	None	None.
Criminal fine	25,000—doubled for second offense.	10,000	25,000—doubled for second offense.	Knowingly	Willfully	Negligently.
Criminal fine for false reporting/tampering.	25,000	10,000	10,000	Knowingly	Willfully	Negligently.

EPA proposed to require States to have the maximum penalty amounts at least the same as those listed in Table I. States are encouraged to comment on this requirement. In particular, EPA is interested in finding out which States have existing programs which are unable to meet these requirements, what enforcement remedies are available to those States and what other legislative changes, if any, must be made by those States to meet the requirements of this Part.

The State need not always adopt the same terminology on degree of criminal intent. For example, if the burden of proof for establishing "criminal negligence" in State court is equivalent to that for establishing "negligence" in a criminal proceeding in Federal court, such State authority satisfies the requirements of this section.

Each of the three Acts implemented by these regulations provide citizens with the right to initiate legal action in Federal court to enforce permit requirements. This right exists even when a permit program is administered by a State after approval by EPA. The three Acts also provide citizens with the right to intervene in enforcement actions brought by EPA. However, EPA has concluded that requiring States to allow citizens to intervene in State enforcement actions is neither necessary to foster public involvement in permit enforcement nor required by law. Accordingly, these regulations do not provide that States must provide for citizen intervention in enforcement actions brought by States in State courts. Although there is some possibility than an inadequate State effort could thwart effective citizen involvement in enforcement of State issued permits, EPA believes that the opportunity for citizens to being enforcement actions in Federal courts makes that risk minimal. Comment on this point is invited. For further information on citizen involvement in enforcement, see the preamble to the recently promulgated NPDES permit program regulations (44 FR 32854).

Approval process (§ 123.12). The process for approving State programs was not stated in Subpart A because of the differences which exist between the statutes involved. Therefore, these are set out in the individual program subparts.

Withdrawal (§§ 123.14 and 123.15). These sections set forth the proposed criteria and process for withdrawal of State programs including the requirements for voluntary relinquishment of Federal program responsibility by a State. The criteria set out in § 123.14 are an elaboration of the criteria set out in each of the applicable Federal statutes.

It should be noted that program withdrawal is an extreme remedy which is likely to be employed only where all other efforts to insure that a State program complies with this Part have failed.

§ *123.15(a)* sets out the basic process for voluntary relinquishment of Federal program responsibility by a State. It provides for a 180-day advance notice by the State accompanied by a plan for the orderly transfer of necessary information. It further provides for 30 days advance public notice of the transfer. These provisions may be modified by agreement.

§ *123.15(b)* sets out a formal hearing process for withdrawing State programs (other than UIC programs, which are covered in Subpart C). This process may be initiated by the Administrator on his or her own motion or in response to a formal petition from any interested person. In order to avoid the need for the Agency to develop a new set of formal hearing procedures, this paragraph adopts by reference certain provisions from the regulations of Part 22 of this Chapter. (Part 22 regulations were proposed on August 4, 1978, 43 FR 34730, and will be promulgated shortly in essentially the form proposed. All citations are to the proposed version.)

Relationship of Subpart A to the Final NPDES Regulations

Certain elements of the NPDES program have been modified or added to in Subpart A, as a result of consolidation with the other programs. Comments are welcome on these changes or additions. For example, the criteria and process for withdrawal of State programs, including NPDES and section 404 programs, are new to these regulations. In addition, the proposed requirement that States have at least the same penalty amounts as EPA is a change from the existing requirement.

Subpart B

Subpart B of Part 123 establishes additional substantive and procedural requirements for State hazardous waste management programs under section 3006(a) of RCRA. This Subpart controls both "Authorization" and "Interim Authorization" of State programs under sections 3006 (b) and (c) of RCRA, respectively. Proposed Guidelines for State Hazardous Waste Programs were published as Part IV of the February 1, 1978 **Federal Register** (43 FR 4366). They are reproposed here.

EPA's response to several recurring substantial comments, received concerning the February 1, 1978, proposal, and discussions of certain program decisions, are set forth below.

Under section 3009 of RCRA, States may not impose any requirements less stringent than those under Subtitle C of RCRA. However, some latitude will be allowed in the degree of stringency of the State's criteria and standards during the interim authorization period. When "full" authorization (hereafter called "authorization") is approved under section 3006(b), the State's standards and criteria must be no less stringent than those promulgated by EPA under sections 3001–3005 of RCRA. See Table I.

For example, as a condition for such authorization, EPA expects such State programs to control at least the same universe of hazardous wastes as the Federal program. This may be accomplished most easily by adopting EPA's criteria and listings under section 3001 of RCRA, although such an adoption is not a requirement for authorization. See proposed 40 CFR Part 250, Subpart A, as referenced in Table I.

The State program also must control at least the same universe of generators and transporters and contain standards that are at least as stringent as those of the Federal program under sections 3002 and 3003 of RCRA, including recordkeeping, labeling, use of appropriate containers, reporting and management of a waste tracking (manifest) system using the Federal manifest format. See proposed 40 CFR Part 250, Subparts B and C, as referenced in Table I.

Finally, the State program must control at least the same universe of treatment, storage and disposal facilities and must not compromise the human health and environmental standards under section 3004 of RCRA. The adequacy of the State's general facility standards treatment, storage and disposal facility standards and special waste standards will be evaluated against those issued by EPA under section 3004 in order to determine if the State program is equivalent to the Federal program. See proposed 40 CFR Part 250, Subpart D, as referenced in Table I.

In addition, a State's past performance in responding to situations involving hazardous waste which may present an endangerment to health or the environment will be considered by EPA in deciding whether to approve State hazardous waste programs.

Comments or suggestions on the evaluation of the equivalence of State programs are solicited. One option under consideration is to require States to adopt the Part 250 regulations.

Another alternative requirement for authorization of a State hazardous waste program would be to require States to issue all hazardous waste permits under their jurisdiction within a set time frame, such as three or four years. EPA estimates that complete permit issuance without such a requirement will probably take at least seven years. On the other hand, State resources are limited, and the imposition of such a requirement could deter some States from seeking approval of their programs. Comments are solicited on this problem, and on alternative approaches.

Concurrent enforcement authority is provided EPA under § 3008(a)(2) of RCRA in States with either type of authorization. EPA can use this enforcement authority and will not hesitate, under appropriate circumstances, to enforce directly against any facility or activity violating the Federal standards.

Manifests. To satisfy the operational requirements specified in § 123.39, a State need not have an operating system for controlling manifests during the period of interim authorization. However, a State must have adequate legislative authority and should be capable of commencing routine operation of the manifest system, reporting, and recordkeeping immediately after full authorization. It is important for the regulated community to note that although the manifest system control is not a requirement for interim authorization, manifests must nevertheless be prepared and used in a State with interim authorization. In conjunction with the management of the information reported through the manifest system, the Agency is developing an Automated Data Processing (ADP) system which will be made available to the States. Use of the ADP system by the States is optional.

Free Movement of Hazardous Wastes. A decision by the United States Supreme Court (*City of Philadelphia* v. *New Jersey*, No. 77–404, June 23, 1978), invalidated New Jersey's ban on the importation of wastes for disposal on the grounds that it imposed an undue restraint on interstate commerce. Based on this decision, it is reasonable to assume that other present and future interstate waste importation bans would likewise be struck. The Agency, therefore, has chosen to propose a provision in these regulations which would deny authorization to any State with such a ban.

Furthermore, States should note that section 112 of the Hazardous Materials Transportation Act (HMTA) of 1974 (Pub. L. 93–633) prohibits a State (or its political subdivisions) from imposing requirements which are inconsistent with the Federal Department of Transportation (DOT) regulations. In addition, HMTA authorizes DOT to preempt any State requirement if such requirement places an unreasonable burden on commerce. DOT, however, can only preempt State regulations for which DOT has existing authority and standards. State regulations are not preempted if they afford an equal or greater level of protection to the public and do not unreasonably burden commerce. If preemption occurs, *only the standard* that places a burden on commerce would be preempted, *not the entire program.*

Partial Authorization. Approximately three-quarters of the comments received on partial authorization provision, which were included in the February 1, 1978 proposal, were opposed to partial authorization on the grounds that it would be burdensome and confusing to the regulated community. EPA understands these concerns and has decided not to include the "partial authorization" provision in this proposed rule. The Agency intends to enter into cooperative agreements with States to allow States to participate fully in the program as administered by EPA until such time as the State becomes eligible for authorization. Similar arrangements with several States have worked well for the NPDES program.

Interim Authorization. Section 3006(c) of RCRA (as recently amended by Pub. L. 95–609) provides for a "interim authorization" of State programs for up to two years "beginning on the date six months after the [*actual*] date of promulgation of regulations under sections 3002 through 3005." (Emphasis added.) This interim authorization could be granted to States with a hazardous waste program *substantially equivalent* to the Federal program existing "pursuant to State law before the date ninety days after the [*actual*] date of promulgation of regulations" under sections 3002 through 3005 (Emphasis added). The recent amendment to RCRA (Pub. L. 95–609) allows the cutoff dates for the existence of State legislation and the onset of the interim authorization period to be related to the promulgation of the bulk of EPA's other Subtitle C regulations. Consequently, the phasing of the application for and initiation of interim authorization is now based on the actual promulgation date of regulations under section 3001 of RCRA, since EPA intends to use this section as the "trigger" for the Federal program. States are encouraged to begin evaluation of their legislation and regulations and to assess the adequacy of their programs. However, EPA will not be able to formally act on applications until after the promulgation of section 3001 regulations (40 CFR 250, Subpart A), due to the lack of a reference point against which EPA can judge a program. In granting interim authorization, EPA will require the State to prepare an "authorization plan" which will describe the additions or modifications to the State programs, including changes needed in State legal authority and a time schedule to achieve changes, so as to enable the State to become eligible for authorization.

The intent of RCRA as expressed in the legislative history of RCRA, was to allow States to develop and implement hazardous waste programs equivalent (not necessarily identical) to the Federal program, thus utilizing the police power of the States rather than creating another Federal bureaucracy to implement RCRA. (House Report No. 94–1491, September 9, 1979, p. 30.) State primacy is a common theme running through the legislative history. (Op. cit., pp. 5, 6, 24 and 29.) Interim authorization was specifically established under section 3006(c) in order to facilitate State assumption of the program. The requirement for interim authorization of "substantially equivalent" State programs was used "* * * (1) so that existing progress in the area of State hazardous waste law does not come to

an abrupt halt, as has been the situation with the passage of other environmental laws, and (2) to give such States that have begun developing or implementing a hazardous waste program sufficient time to bring such program into conformity with the Federal minimum standards." (Op. cit., p. 29). However, Congress neither defined what a "substantially equivalent" State program was, nor gave further directives as to how EPA was to set such "Federal minimum standards" without disrupting the progress of existing hazardous waste programs.

EPA's proposed approach to this problem (see § 123.12) is as follows: In order to implement RCRA's legislative intent of not disrupting the progress of existing programs, EPA's proposed *minimum* Federal standards for determining "substantial equivalence" (and therefore suitability for interim authorization) would require the States to implement (i.e., regulate and enforce) controls over at least either on-site or off-site disposal of hazardous wastes. (See § 123.32). Note that this is a *minimum* requirement and that during the two-year period States *must implement all* statutory and regulatory hazardous waste management authorities they possess. (For example, States with interim authorization which have the necessary authorities in existence to implement a manifest system and/or control of treatment and/or storage facilities *must do so*. See § 123.34(a)(2)).

Since it is clear that Congress intended this interim period to provide a "grace" period to the States to develop a program suitable for authorization of a full program, the major difference between "equivalent" (section 3006(b)) and "substantially equivalent" (section 3006(c)) State hazardous waste management programs is that the latter program would reflect some of the limitations of existing statutory authority at the State level. Similarly, the degree of stringency of a given regulation may, during this interim period, be less than Federal standards. This temporary relazation from strict "equivalence" to "substantial equivalence" and the corresponding latitude in degree of stringency for the interim period, EPA believes to be consistent with the intent of Congress to facilitate the entry by the maximum number of States into the interim hazardous waste management program, and ultimately, into a full program.

In the wake of such incidents as Love Canal, public pressure for State primacy is increasing. Many States are increasing their commitment of resources and developing programs; at this time, it appears to be more prudent for EPA to be as flexible as possible in order to build on existing State programs, than to hamper their development. The proposed approach should result in a greater degree of protection of public health and the environment than if EPA had to conduct the hazardous waste program in a large number of States.

Before reaching this conclusion, the Agency gave special consideration to two alternatives as requirements for interim authorization. The first was to require States to have authority to control either the on-site or off-site disposal of hazardous waste, while the second was to require authority for broader control. Analysis of current State legislative authority indicates that the first alternative would allow significantly greater State participation in the hazardous waste programs than would the second. Furthermore, it is expected that it will be easier for a State with interim authorization to upgrade its program than it would be for an unauthorized State to take over a full program. On the other hand, there could be a significant risk to public health and the environment in requiring States to control disposal but not treatment or storage. However, it is likely that the degree of protection of public health and the environment which States could offer by carrying out programs controlling disposal while building the other elements would exceed the degree of protection which EPA could offer in attempting to implement a large number of full programs in unauthorized States with limited resources.

Although EPA recognizes that control of treatment and storage facilities, full control of all disposal facilities, and other elements necessary for authorization of a full program (such as implementation of the manifest tracking system) are essential in a full comprehensive program of hazardous waste management, the vast majority of the environmental damage has resulted from improper disposal. EPA also recognizes that the proposed approach does involve some risk that direct control of certain portions of the complete hazardous waste management program could be deferred for as much as two years (the maximum duration of the interim authorization period). For example, according to data based on *national* averages, 80 percent of the quantity of hazardous wastes generated is disposed on-site. These on-site disposal facilites amount for about 90 percent of the total number of disposal facilities in the nation. Current information available to EPA on the status of State legislation and regulations in the 30 States which generate most of the hazardous wastes, indicates that as many as three of these States lack statutory or regulatory authority to control on-site disposal and as many as seven States lack statutory or regulatory authority to control treatment and/or storage. Similar problems might be encountered in the remaining smaller States.

The risk of non-regulation, however, is tempered by several factors. During the first six months after promulgation of section 3001 regulations, EPA will be reviewing proposed State programs as well as conferring "interim status" under section 3005(e) to *all* HWM facilities (see previous discussion of "interim status" under the RCRA portion of the Part 122 preamble). Receipt of the information necessary to confer "interim status" to facilities under section 3005(e) will provide EPA the basis for making an assessment of which facilities may be actual or potential violators of Federal standards under the section 3004 regulations (which call for an extensive set of requirements to be met. (see the interim status facility standards of 40 FR 250.40(c) proposed December 18, 1978, at 43 FR 58995). EPA is empowered by section 3008(a) of RCRA to take direct enforcement action against all hazardous waste management facilities or activities on a case-be-case basis regardless of the type of State authorization conferred. In especially egregious circumstances, EPA also can enforce under the imminent hazard provisions of section 7003 of RCRA. Finally, although direct State oversight of the manifest system is not a requirement for interim authorization, EPA can use its enforcement powers to follow up on noncompliance with national manifest requirements. (See previous discusion of "manifests" under RCRA portion of Part 123 in this Preamble).

Based on current information, it is expected that very few States will be in a position to undertake the full hazardous waste program when the Subtitle C regulations are promulgated. Additionally, some of those States which already have, or which will have, some type of hazardous waste programs when the regulations are promulgated would prefer to control the program from the beginning, rather than assuming a program that has been initiated by or operated concurrently with EPA. The proposed approach will minimize the disruption and uncertainty caused by changing administration of the program.

Comments are requested on the possible alternatives for EPA regulation of activities that are not regulated by the State during the interim authorization period. EPA recognizes the potential problems with this arrangement. This concept resembles that of "Partial Authorization", which EPA rejected for the reasons described above. Ths new concept also has drawbacks. First, the regulated community has strenuously contended that a single entity should carry out the entire program in a given State, arguing that a sharing of responsibility would result in confusion and duplication of effort for the agencies, and greatly increased complexity for regulated firms. Second, the availability of this arrangement could encourage some States capable of qualifying for authorization, to take over only selected program elements. Third, the delineation of responsibilities between the Region and the State would undoubtedly be a lengthy and difficult process. Finally, the existence of this arrangement could remove some of the incentive for strenuous State efforts toward authorization. However, this alternative would assure more comprehensive control of all hazardous waste facilities during the interim authorization period.

Comments are also requested on the alternatives of requiring control of all disposal, or additional elements of the requirements for full authorization under RCRA, and the impact this would have on State participation.

Federal Role After Program Approval. Many comments were received concerning the Federal role after a State has been authorized as outlined in the February 1, 1978 proposal. EPA has primary responsibility under RCRA for protecting public health and the environment and is charged with developing a consistent and effective national program to meet this responsibility. Thus, in authorizing State programs EPA's prime concern is to ensure that the State program is at least as effective in controlling at least the same universe of hazardous wastes as does the Federal program. The purpose of EPA's oversight activities, subsequent to authorization of a State program, is to ensure that State programs are being operated in accordance with these regulations.

Federal oversight of State programs is conducted in a number of ways. The Agency has encountered much interest and comment from States and others on three specific aspects: reporting, review of permits, and facility inspections.

With regard to reporting, the Agency has chosen to reduce the number and complexity of the reports required in these regulations. Quarterly reports that will be required are: a list of major facilities out of compliance, and a summary of international shipments of wastes. For States with Interim Authorization a semi-annual report on progress toward attaining authorization will be required. Finally, an annual report, including a list of permit actions completed and summary information on wastes managed (quantities, types, method of management) is also required. It should be recognized that EPA has a responsibility to develop and maintain a national data base on the generation and management of hazardous wastes. It may be necessary to negotiate additional reporting requirements in the Memorandum of Agreement in particular cases, such as in a State with an unproven program. The Memorandum of Agreement is a more flexible document than these regulations, and can be changed to accommodate expected changes in the need for nationally significant information.

Concerning review of permits, the Agency could not possibly review all permits issued by a State, nor is such a review necessary or desirable. Therefore, EPA will only review a sufficient number of permit applications and draft permits to assure that the State permit program is being operated in a sound manner consistent with the requirements of these regulations. Accordingly, these regulations require that authorized States forward to EPA copies of permit applications, and draft permits for major facilities only. (The definition for "major" facilities is discussed earlier in the preamble). Normally, the number of draft pemits or permit applications reviewed by EPA should amount to about 10 percent of the total number of permits processed. In some cases, where a history of sound program administration by a State exists; EPA may agree to reduce this level of review even further. In others, for example, where a State program is new and inexperienced, the Regional Administrator may choose to review some minor permits as well. In either case, such agreements should be contained in the Memorandum of Agreement.

These regulations in § 123.38 specify the bases on which EPA will comment on permit applications and draft permits. Reasons for each comment will be given as well as recommendations for actions to be taken by the State Director to address each comment. The State Director is also provided with the opportunity to respond to EPA's comments.

In regard to EPA's conducting inspections of facilities, § 123.37 specifies the provisions which will be included in the Memorandum of Agreement, normally including notification before EPA conducts inspections, and opportunity for States to investigate situations where EPA has reason to believe that violations may be occurring.

Comments are solicited on the practicality and impact of these and other oversight procedures.

National Enforcement Information System. EPA is aware of the need to centralize reported information concerning hazardous wastes by both the Agency and authorized States. It is necessary for enforcement compliance monitoring purposes to have a single system which contains all this information. Therefore, EPA is considering requiring, as a condition of authorization, that each State applying for such authorization either (1) agree to insert its reporting data directly into EPA's national ADP system (discussed earlier in the preamble under *Manifests*) or (2) allow EPA to so input the data for the State. The National ADP system is being designed so that any such State may use this system for its own purpose. Comments are solicited on the advantages and disadvantages of such a requirement.

Subpart C

Subpart C sets forth additional requirements for State programs as well as the procedures EPA will use in taking the required approval, disapproval or partial approval actions on UIC programs under sections 1422(b) and (c) of SDWA.

Elements of an Approvable State UIC program. In order to obtain EPA approval for primacy, a State must demonstrate the ability, adequate legal authority and resources to implement the following program elements:

- Designate underground sources of drinking water within the State;
- Develop and maintain an inventory of injection wells;
- Issue permits or rules that incorporate requirements of Part 146;
- Issue permits which include conditions that incorporate UIC requirements for monitoring, recordkeeping and reporting by the permittee;
- Conduct a program of enforcement, inspection and surveillance of injection well facilities.

EPA-approval. The Administrator is to approve, disapprove or partially

approve State participation in the UIC program within 90 days of the receipt of a complete State application by the State. Prior to ruling on the application, EPA must also provide the opportunity for public comment and hearings.

A State need not develop a regulatory program for a type of injection well that does not exist in that State. In such case, however, the States must show it has adequate legal authority to initiate a control program should such wells seek to operate in the State in the future. Comments are solicited on this approach. EPA is particularly concerned whether States could develop a control program quickly enough to issue proper regulations where a new type of well injection operation commences in a State.

Unlike the other programs covered by this Part, EPA may in its discretion, approve a State UIC program in part. In the case of partial approval, the Agency's intention is to approve only a complete program by type of well. In other words, EPA would authorize a State to regulate, for example, Frasch process mines or hydrocarbon storage wells if it had the necessary legal authority and were prepared to carry out the full range of regulatory requirements applicable to such wells. However, the Agency does not intend to approve a portion of a State program if the program provides only for partial regulation, i.e., it provided for State issuance of permits to Frasch process wells but left enforcement up to EPA. The Agency believes that this approach is sensible from an administrative point of view and is least confusing to the regulated community and public. Comments are solicited on the advisability of this approach.

Finally, it should be noted that the 1977 amendments to the Safe Drinking Water Act have clarified State authority over Federal facilities within its boundaries (sections 1477(a) and 1422(b)(1)(D) of SDWA). Nonetheless, management of wells on Indian lands remains an EPA responsibility unless the State has adequate authority to implement the program (SDWA section 1477(c)).

In cases where the State is developing an application for primacy, EPA intends to promulgate the UIC program for which it is responsible (i.e., on Indian lands) at the same time as the approved State program becomes effective. In cases where a State program is disapproved, EPA will promulgate a UIC program within 90 days from disapproval in whole or in part. If a State informs EPA that the State does not intend to adopt a UIC program, EPA will promulgate the whole UIC program for the State within one year (270 days plus 90 days approval process) of the effective date of these regulations or of 40 CFR Part 146 (proposed at 44 FR 23738 (April 20, 1979)), whichever is later.

Oversight—EPA has a statutory duty to oversee State UIC Programs. To enable EPA to carry out this responsibility, Part 123 requires States to provide to the Agency the following:

- Access to State files and documents;
- Annual reports;
- Quarterly reports on the compliance status of major wells;
- A mid-course review after the first year of program operation to assess the requirement to perform corrective action in the area of review. The State analysis will be used by EPA to assess the associated costs and environmental benefits, and may result in appropriate changes in the requirement.

In addition, under SDWA the Agency is given the authority to enforce against program violations if the State fails to enforce adequately.

Procedures for the withdrawal of approval from a State program provide the State with the opportunity to present its case that withdrawal is not warranted. If the Administrator has cause to believe that a State is not in compliance with the SDWA or these regulations, he must give the State 30 days of notice to demonstrate its compliance. If not satisfied, the Administrator must convene a public hearing not less than 60 days after notice of the hearing. If, after the hearing, the Administrator concludes that the State is not in compliance, he must notify the State of the particulars. The State then has 90 days to give up the program or come into compliance. This process for withdrawal is different from the withdrawal process for the other programs covered by Part 123 because of the difference in the statutes involved.

Subpart D

This Subpart sets forth requirements which are unique to the NPDES which supplement the Subpart A requirements. For a further discussion of the NPDES requirements see the preamble to those regulations.

Subpart E

The first 14 sections (§§ 123.9–123.104) of this Subpart were promulgated in Part 123 of the NDPES regulations and, like Subpart D, are discussed in the preable to those regulations. The only exceptions are § 123.98, transmission of information to EPA, which has been changed and § 123.99, which is now contained, in changed form, in § 123.110. The remaining sections (§§ 123.105–123.112) are being proposed for the first time and were to be promulgated as Part 126 until the decision was made to incorporate it into these consolidated regulations. There will be no Part 126.

Although the final NDPES regulations specify that State section 404 programs must designate one agency to be responsible for issuing permits (§ 123.4(b)(1)), the Agency is reconsidering this position and invites further comment on this requirement (§ 123.95(a)). In particular, the Agency would like to receive comments on whether such a requirement would interfere with State efforts to coordinate and consolidate their own permit programs.

The following are major provisions of Subpart E:

Application procedures § 123.105. The specific information required of all applicants is discussed, as well as general application procedures. Public notice must be published for all permit applications, except when a draft permit must be prepared, and all permit denials. Since, in most instances, EPA and the public will review only permit applications, detailed application information is required.

Draft permits. Section 123.98(c) provides that the State section 404 programs may circulate permit applications for public and EPA review and comment, in most instances. However, in some cases the State will be required to reach a tentative determination and formulate a draft permit (where the tentative determination is to issue a permit) for public and EPA review and comment. (It should be noted that all the other programs covered by these proposed consolidated regulations are required to formulate draft permits in all cases.)

Draft State 404 permits are required for:

(1) Discharges which may affect the waters of another State;

(2) Major discharges;

(3) Discharges into critical areas such as National Parks and Wildlfe refuges;

(4) General permits; and

(5) Discharges containing toxic pollutants in toxic amounts and hazardous substances in reportable quantities.

Comments are solicited on this list (which is also the list of activities for which EPA will not waive its right to review State permits). In particular, EPA would appreciate comments on the following issues:

(1) What discharges should be considered "major"? In this regard EPA is considering acreage limitations which might vary in different parts of the country. Other discharges may be considered major based on different criteria.

(2) Should the list of critical areas be expanded to include others?

(3) Are the criteria that toxic pollutants be present in *toxic amounts* and hazardous substances in *reportable quantities* proper? EPA believes that a cut-off is necessary since many discharges which contain trace quantities of these substances are not of concern. In addition, the criteria must be clearly defined and workable. On this basis, EPA rejected formulations of this language which were couched in terms of "significant" of "substantial" since these may not be readily meaningful in the context of a particular discharge.

Waivers. EPA solicits comments on the extent to which the Agency should continue to receive permit applications and permits from a State for those discharges the Agency has waived review.

General permits. Procedures for public notice of proposed general permits, review of proposed permits, issuance and enforcement are included in § 123.106.

Coordination procedures. The State Director must assure coordination of permit with appropriate Federal and Federal-State water-related planning and review processes, as required by section 404(h)(1)(H) of CWA. Requirements for implementing such coordination are in § 123.110.

Review procedures. All permit applications or draft permits are subject to review by EPA and the public (although under § 123.92 EPA may waive such review in many cases). During the review process, the Regional Administrator provides opportunity for comment by the Corps of Engineers, the Fish and Wildlife Service and the National Marine Fisheries Service, as well as from other interested Federal agencies, and these must be considered in his or her review.

Waters Subject to State Regulation

Under section 404(g)(1) of CWA, the Corps of Engineers will, in all cases, retain jurisdiction over disposl of dredged or fill material into those waters of the United States, together with their adjacent wetlands, that are subject to the ebb and flow of the tide and/or are presently used, or may be susceptible to use for interstate transport or foreign commerce. A State may apply for a section 404 authority to regulate all other waters within the State. As a prerequisite for program approval (§ 123.93) an agreement is required between the State and the Corps of Engineers, which sets forth a description of those waters over which the Corps of Engineers will retain jurisdiction, and those waters over which the State will have jurisdiction.

Major Issues

(1) An earlier formulation of these regulations provided for preparation by the States of a draft and proposed permit prior to Federal review. Several reviewers expressed concern that processing procedures, and in particular, the processing schedule for permits, were unnecessarily lengthy and complex. EPA's specific concerns (based on comments received) included:

(a) The three-stage process would substantially extend the time required to process applications. The 1977 amendments to the CWA, together with its legislative history, establish a strong sense of Congressional insistence on the elimination of unnecessary delay in section 404 permit processing.

(b) Due to the nature of activities regulated under section 404, EPA believes that public participation and right to comment will usually be adequate if the permit application is circulated rather than a draft permit.

The proposed regulation has been redrafted to eliminate the "draft permit" and the "proposed permit" stages in most instances, except as described above, and thus to provide for public and agency review input during a single continuous period that normally will not exceed 90 days from receipt of the permit application. Safeguards were added to ensure that permit applications are complete. To ensure that there is adequate basis for review of specific projects provision was made for the Regional Administrator to require submission of additional information, including a draft or proposed permit where appropriate. EPA believes that this process more nearly accords with the overall Congressional emphasis on timely processing of section 404 permit applications, and is consistent with meaningful review. However, this approach differs from the other programs under this part, which require preparation of a draft permit in all cases as a basis for public comment. Comments on this issue are solicited.

(2) By far the most controversial issue raised in the review of this proposed regulation was the interpretation of section 404(f)(1)(A) of the Clean Water Act, as treated in § 123.107 of the proposal. Section 404(f)(1)(A) provides that discharges of dredge or fill material in connection with certain activities enumerated in section 404(f)(1)(A) through (F) are not subject to regulation under the 404 program, with the caveat in section 404(f)(2) that any discharge of such material incidental to any activity having as its purpose to bring an area of navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable water may be impaired or the reach of such waters may be reduced, will require a 404 permit.

The background and legislative history of section 404(f)(1)(A) is exceedingly complex and has led to several schools of thought on what the section really means. At one extreme, proponents of a liberal interpretation argue that section 404(f)(1)(A) exempts all, or virtually all, discharges of dredged or fill material associated in any way with agricultural, silvicultural, and ranching activities, except where such activities are recaptured by section 404(f)(2). Under this view, neither the word "normal" nor the specific activities listed significantly limit the scope of the exemption. A more moderate view is that the word "normal" is intended to signify that the exempted farming, silvicultural, and ranching activities must be established and ongoing, and that the exemption only extends to the particular activities named in the statute or other activities of similar character. At the other extreme, proponents of a conservative interpretation take the view that section 404(f)(1)(A) refers to activites which do *not* involve discharges (either because no earth is moved, there is no point source, or no waters of the United States are involved), and that such activities are not merely exempt (e.g., still subject to (f)(2), but rather are excluded entirely from regulation under section 404. Under this view, activities which are not excluded will always need a permit. There are several variations of these interpretations which incorporate components of both the exclusion and exemption approaches and construe the listed activites in various ways. The interpretation of section 404(f) is exceptionally complex, especially since no one view is consistent with both the literal language of the statute and all the often ambiguous and conflicting legislative history.

These regulations follow a middle ground. Section 123.107 specifies that any discharge "that may result from" the named activities "is not prohibited by or otherwise subject to regulation," except when recaptured by the provisions of section 404(f)(2). The proposed

regulation defers to the language of the statute, which when taken literally, clearly contemplates that discharges of dredge or fill material may occur in conjunction with the activities listed in (f)(1)(A). The practical effect of this language is to assure that such activities are not subject to the permit requirement, whether or not any actual discharge or dredge or fill material is associated with them. Consistent with section 404(f)(2), however, the regulation precludes any such exemption where an activitiy involves the discharge of materials containing any section 307(a) toxic substance; or, any discharge incidental to an activity which converts waters of the Untied States to new uses, where flow or circulation may impaired or the reach of the waters reduced.

The proposed regulations interpret the exemption in 404(f)(1)(A) as applicable only to the activities *named* in the statute and other activities of essentially the same character as those named. This interpretation derives from the "such as" language of (f)(1)(A), which in EPA's view, precludes the extension of the exemption for "normal farming, silvicultural, and ranching activities" to activities that are unlike those named. Support for this position is seen in paragraphs (C) and (D) of subsection (f), which provide for specific farming and silvicultural exemptions in addition to those in (f)(1)(A). If (f)(1)(A) intended an across-the-board exemption for agricultural, silvicultural, or ranching practices, there would have been no need for the additional specific exemptions of (f)(1) (D) and (E).

Part 124—Procedures for Decision-making

What Does This Part Do?

Proposed Part 124 establishes the procedures EPA will use in issuing RCRA, UIC, PSD and NPDES permits either separately or in combination with each other. It sets the framework for receiving permit applications, writing draft permits, soliciting public comment on them, and issuing the final permit. Where NPDES permits are concerned, this Part also contains the procedures for conducting evidentiary hearings. These include both procedures for the traditional evidentiary hearing (Subpart E) and special procedures for "initial licensing" (Subpart F). (As discussed below, EPA believes that evidentiary hearings are not required for issuance or modification of RCRA, UIC and PSD permits.) Some of the requirements of this Part are made applicable by Part 123 to States with approved permit programs.

In addition, this Part includes procedures for issuing permits implementing the "prevention of significant deterioration" (PSD) provisions of the Clean Air Act. These procedures are very similar to those presently contained in 40 CFR 52.21(r). No parallel requirements have been included in Parts 122 and 123 because the established mechanisms for approving State programs under the Clean Air Act are somewhat different from those for approving other permit programs. Consolidating the procedures is the aspect of consolidation with most immediate benefit to those affected; EPA will explore the possibility of more comprehensive consolidation in the future.

Subpart A

Basic Permit Issuance Procedures

Under the permitting procedures established by the Part, permits must first be applied for in accordance with permit application requirements set forth in Part 122, (or 40 CFR 52.21 in the case of PSD permits). After receipt of a complete application a draft permit will be prepared under § 124.6. This permit must be accompanied by a "fact sheet," for "major" permits, explaining the basis for the draft permit in some detail under § 124.9. A "statement of basis" must be prepared for all other permits under § 124.8. Because there are practical limits to EPA's ability to explain each of the permits it issues in comprehensive detail, the discussion in the fact sheet or statement of basis should be proportional to the importance of the issues involved and the degree of controversy surrounding them. Modifications to permits and processed as draft permits in accordance with § 124.6, under the requirements of § 124.5 and § 124.7, except or minor modifications as described under § 122.9(g).

Under § 124.10, an "administrative record" must be assembled, containing appropriate supporting documents. When the draft permit has been formulated and public notice is issued under § 124.11, §§ 124.12 and 124.13 provide for a comment period and, in suitable cases, a public hearing. This process will provide a forum for any interested persons to bring forward any comments or questions they may have about the draft permit or its supporting materials. After the comment period has closed, EPA will prepare and issue the final permit under § 124.17. It will be accompanied by a response to all the significant comments received under § 124.19. This response to comments plus any additional supporting material will constitute a final administrative record for the final permit under § 124.20. When the final permit has been issued, there will be an opportunity under § 124.21 for discretionary review of RCRA, UIC and PSD permits by the Administrator. In the case of NPDES permits, there will also be an opportunity for an evidentiary hearing and opportunity for appeal to the Administrator following the evidentiary hearing under Subpart E or F.

A few of the provisions of Part 124, particularly those affording basic public participation in permit issuance, are applicable to State programs (except for State PSD programs). States must prepare a draft permit, provide public notice and opportunity for a hearing and allow the public 30 days to comment on the draft permit before final permit issuance. A statement of basis or fact sheet (for major permits) is also required.

Hearing Requirements for RCRA, UIC, PSD and NPDES Programs

The procedures for issuing RCRA, UIC and PSD permits are relatively more simple than those for NPDES permits both because the programs are newer and because the underlying statutes are not as detailed as the applicable provisions of the Clean Water Act. The major difference between the procedures for these three programs and those for the NPDES program is that no provision for the traditional form of evidentiary hearing is made for RCRA, UIC or PSD permits, while a full evidentiary hearing (under Subpart E or F) is required for NPDES permits.

Three Courts of Appeals have held that the Clean Water Act requires an evidentiary hearing before NPDES permits can be issued. However, these decisions rested largely on specific interpretations of the language of the Clean Water Act, and EPA does not believe that the other three statutes contain analogous provisions. To the extent the decisions expressed a broader concern for reasoned and documented decision-making, EPA shares that concern and believes there are alternative and preferable ways of satisfying it.

Unlike the Clean Water Act, the Resource Conservation and Recovery Act does not explicitly require any "hearing" at all before issuing permits. Section 3008(b) of RCRA provides what EPA interprets to be an adjudicatory hearing for permit revocation, but neither this section nor any other

provides any procedures for permit issuance.*

Similarly, there is no requirement in section 1422 of the Safe Drinking Water Act that any hearing is a prerequisite to EPA issuance of a UIC permit. Where Congress intends that a hearing must precede issuance of a permit, the intention is manifest in the language of the Act, as in the requirement for a hearing on the record for State permitting under section 1421(c)(2) (temporary permits) and section 1424 (interim permits). Additionally, since section 1421(b)(1) of SDWA authorizes State regulation of underground injection by rule as well as by permit, Congress could not have intended for informal rulemaking procedures to apply to the former, but trial-type procedures to apply to the latter.

Section 165 of the Clean Air Act does require a hearing before PSD permits are issued, but the text of the statute makes clear that a formal adjudicatory hearing was not intended. See 165(a)(2). No person who commented in the extensive rulemaking leading up to promulgation of EPA's current PSD regulations alleged that the statute required a formal hearing.

When the statute does not require any hearing at all, the traditional rule of thumb is that evidentiary procedures are not required even for licensing. EPA takes the silence of these statutes on necessary EPA permitting procedures (or the explicit rejection of adjudicatory hearings, in the case of PSD), as an invitation to the agency to develop permitting procedures that are expeditious and informal and still satisfy the requirements of due process and sound administrative procedure. Accordingly, EPA has developed the procedures in these proposed regulations which are described below. These should be enough to allow a thorough ventilating of the facts and policy choices at issue in any permit proceeding.

Coordination of One Permit Program With Another

A major purpose of these regulations is to provide as much coordination as feasible between the permit programs covered. To some extent, this should be accomplished simply by the parallel structure of these regulations in general, and of the common procedures in Part 124 in particular. In addition, these regulations provide several specific mechanisms for closer integration of permit decisions:

Under § 124.4, facilities or activities which will need a permit under more than one of the programs covered will be able to delay filing the applications due first in order to consolidate them with the application due last, by providing EPA with written notice of intent to delay the filing date. Part A applications under the RCRA program are excluded from this provision because the submission of a Part A RCRA application triggers interim status under section 3005 of RCRA, and interim status is only available for a limited period. PSD applications are also excluded from this provision. Because EPA is currently allocating increment on a first-come, first-served, basis (43 FR 26401, June 19, 1978), postponement of a source's application date could cause delay in processing later applications from other sources. This provision could also present an opportunity for abuse by applicants seeking unfairly to reserve increment in the future and to escape the requirements imposed for construction of a source that would affect certain non-attainment areas after July 1, 1979. Such an applicant could attempt to unfairly reserve increment and escape the July 1 deadline by claiming that since its full application had properly been postponed under this section, it should be treated as having been filed earlier. EPA specifically solicits comments on this exclusion of the PSD program. EPA solicits comments on this general approach, and whether there are certain other categories of permit applications that should not be delayed for purposes of consolidation.

The regulations provide explicitly for joint issuance of draft permits for a facility or activity which requires permits under more than one statute, joint comment periods, and joint hearings. Where EPA is issuing all the permits, it may elect to choose this consolidated route at any time. Where responsibility is divided between EPA and a State, the regulations encourage such joint proceedings by mutual agreement. EPA solicits comments on this approach, and whether there are certain other categories of permit applications that should not be delayed for purposes of consolidation.

These regulations also prescribe ways to coordinate the traditional evidentiary hearing portions of the NPDES procedures with the "hybrid" procedures that will be used to make RCRA, UIC and PSD permit decisions. Briefly, they allow the initial comment proceedings on the draft permit to become formal when that might avoid the need for a subsequent evidentiary hearing, and allow NPDES evidentiary hearings to consider matters relating to RCRA, UIC and PSD permit decisions which are indissolubly linked to the decision on the NPDES permit. They thus provide some limited flexibility to shift the consideration of issues back and forth between the two stages as circumstances dictate. Although stays based on cross-effects are possible under certain limited circumstances under § 124.18, the general pattern will be that RCRA and UIC permits will not be stayed while an evidentiary hearing on an NPDES permit issued to the same source is in progress. However, a stay of contested PSD permit term(s) is unavailable under proposed § 124.18. Review of a PSD permit is uniquely dependent on the resolution of earlier PSD applications because of the first-come, first-served allocation scheme being employed by EPA for these permits. The stay provisions of § 124.18 might seriously impede the ability of EPA to process later PSD applications expeditiously.

Where the new "initial licensing" procedures for NPDES permits can be used, a much greater degree of procedural consolidation should be possible. Here the regulations provide that all permits which have been consolidated with the NPDES permit shall simply be passed through the same procedures as the NPDES permit. EPA explicitly invites comment on whether this approach might "overjudicialize" the process of issuing RCRA, UIC or PSD permits, and on alternative approaches that might be acceptable.

Relationship of Subpart A to the Final NPDES Regulations, Part 124

The final NPDES regulations that were recently promulgated contain a number of requirements that are similar, but not identical, to those required for all three programs in Subpart A. Changes to the Part 124 procedures for the NPDES program are the result of an effort to provide uniform procedures for the issuance of permits that accommodate the programmatic and statutory requirements of all three permit programs. These changes include:

Consolidation of Applications. NPDES permit applications can now be consolidated under § 124.5 with permit applications for other programs, and application deadlines may be delayed for purposes of this consolidation.

Statement of Basis and Fact Sheet. The statement of basis required for

* One pre-proposal comment argued that the reference to "order" in section 3008(b) make a hearing necessary since the granting of an initial license may be an "order" under the APA. However, the term is clearly used in section 3008 as a synonym for the "compliance orders" described in paragraph (a), and nothing more. See, e.g., section 3008(c), which is entitled "Requirements of Compliance Orders" and then immediately uses "order" as a synonym.

NPDES permits under the Consolidated regulations is the same as that required under the final NPDES regulations (§ 124.33). However, the requirements for fact sheets required for major NPDES permits have been changed slightly to enable the establishment of common requirements. The changes were mostly in the nature of providing more general requirements than those applicable to NPDES fact sheets in the final NPDES regulations. Certain additional unique NPDES requirements for fact sheets are provided in Subpart D, and these are identical to those required under the final NPDES regulations.

Public Hearings. The public hearing requirements in § 124.13 of the consolidated regulations are considerably more detailed than those provided under the final NPDES regulations (see § 124.42), and contain additional requirements that are designed to provide procedural safeguards for the issuance of RCRA, UIC and PSD permits, which do not require evidentiary hearings. NPDES permits must nonetheless be subject to subsequent evidentiary hearings under Subpart E of these regulations where NPDES permit provisions are contested. Where related permit provisions are contested under NPDES, RCRA, UIC or PSD permits for the same facility or activity, these provisions may be consolidated in the NPDES evidentiary hearing to facilitate decision-making on the related issues.

Subpart B—Specific Procedures Applicable to RCRA Permits

One additional requirement for RCRA permits is provided in Subpart B. Public notice of the receipt of a permit application for a major hazardous waste management facility is required under § 124.31, in addition to the public notice of the issuance of a draft permit required under § 124.11. This additional notice will provide both States and the general public with early notice of a request to permit a hazardous waste management facility and should facilitate coordination with State programs regarding the issuance of a permit to a facility located in that State. The permitting and siting of these facilities is expected to be controversial in some areas of the country, and this section seeks to ensure full public participation in the permit decision process.

In addition, a summary of significant permit applications may be prepared and will be made available upon request.

Subpart C—Specific Procedures Applicable to PSD Permits

Incorporation of the PSD permit requirements into this Part is not meant to change the structure of the program currently set forth at 40 CFR 52.21. The procedures set forth at 40 CFR 52.21(r), which is the analogous provision of that section, are very similar to the ones in Subpart A.

One specific provision has been included in this Subpart. It provides that PSD applications from small sources shall be processed expeditiously under the existing Part 52 regulations.

In the past, determinations by EPA that a source was required to apply for a PSD permit have been litigated as final agency action. EPA believes that in most cases such litigation represents an avoidable waste of judicial time and conflicts with the principles of administrative primary jurisdiction. Accordingly, the approach implicitly adopted by these regulations is that the determination that a source must apply for a PSD permit is not reviewable when it is made. Instead, the source may challenge that threshold determination during the permit issuance process and a final decision will be made at the time of the final decision of other issues.

In some cases such as those in which the threshold determination raises purely legal issues, this course may not be appropriate. In most cases the Regional Administrator will be able to designate the threshold determination as final action subject to immediate judicial review by publishing it in the **Federal Register**. See section 307(b) of the Clean Air Act.

Subparts D, E and F—Specific Procedures Applicable to NPDES Permits

These Subparts contain a number of additional requirements for NPDES permit processing that are largely unique to the Clean Water Act and the NPDES program, including evidentiary hearing procedures. They incorporate without substantive change requirements contained in the final NPDES regulations that were recently promulgated.

Note.—The final regulations for Parts 122–124 will include a plan to evaluate it within five years of implementation. The plan will describe criteria for assessing the degree of success of the regulations. The sources of data that will be used to evaluate the regulations under these criteria, and the resources anticipated as necessary to gather and analyze the data and conduct the reviews.

The Environmental Protection Agency has determined that this document, except for the UIC and RCRA provisions, does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044.

Analyses of the environmental, economic and regulatory impacts of the entirety of Subtitle C, RCRA, Hazardous Waste Management (including the RCRA programs in Parts 122–124 proposed) and on the UIC program are being or have been performed.

Drafts of the Environmental Impact Statement and the Economic Impact Analysis on the RCRA program are available by contacting:

Ed Cox, Solid Waste Information Office, Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 42560 (513–684–8491).

In addition, copies of these RCRA documents are available for review in the EPA Library Reading Room, Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C., and in the EPA Regional Office libraries. Comments on these documents must be received on or before September 12, 1979. Final versions of these documents will be issued at the time of promulgation of the RCRA Part 250 regulations.

Comments and the following supporting documents on the UIC program will be available for public inspection and copying at a reasonable fee during normal business hours at the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W. Washington, D.C. 20460. Copies of the supporting documents will also be available for inspection and copying in the Library at the ten EPA Regional Offices.

The supporting documents are:

1. "Analysis of Costs Underground Injection Control Regulations, Class I and Class III."

2. "Methods and Costs for Inventory and Assessment of Injection Wells Covered Under Classes IV and V."

3. "Estimated Cost of Compliance, Proposed Underground Injection Control Program Regulations, Class II Wells."

4. "Draft Environmental Impact Statement-State Underground Injection Control Program, Proposed Regulation."

5. "Supplement to Draft EIS, Reproposed Regulations."

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

1. It is proposed to revise Parts 122, 123 and 124 as follows:

PART 122—PROGRAM DESCRIPTIONS: THE HAZARDOUS WASTE PERMIT PROGRAM; THE UNDERGROUND INJECTION CONTROL PROGRAM; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; AND THE 404 DREDGE OR FILL PROGRAM

Subpart A—General Program Requirements

Sec.
122.1 Purpose and scope.
122.3 Definitions.
122.4 State authorities.
122.5 Signatories to permit program forms.
122.6 Application for a permit.
122.7 Permit issuance; effect of a permit.
122.8 Duration of permits; continuation of expiring permits; and transferability of permits.
122.9 Review and modification or revocation and reissuance of permits.
122.10 Termination of permits.
122.11 Conditions applicable to all permits.
122.12 Schedules of compliance.
122.13 Establishing permit terms and conditions.
122.14 Recording and reporting of monitoring results and compliance by permittees.
122.15 Noncompliance reporting.
122.16 Confidentiality of information.

Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

122.21 Purpose and scope.
122.22 Law authorizing hazardous waste control program.
122.23 Application for a permit.
122.24 Establishing permit terms and conditions.
122.25 Special HWM facility permits.
122.26 Permits by rule.
122.27 Reporting requirements.
122.28 Emergency Authorization.

Subpart C—Additional Requirements for UIC Programs Under the SDWA

122.31 Purpose and scope.
122.32 Law authorizing UIC program.
122.33 Designation of underground drinking water sources.
122.34 Classification of injection wells.
122.35 Authorization of underground injection by rule.
122.36 Authorization of underground injection by permit.
122.37 Area permits.
122.38 Corrective action.
122.39 General Prohibition against movement of fluid into underground sources of drinking water.
122.40 Temporary Authorization.
122.42 Establishing UIC permit terms and conditions.
122.43 Noncompliance reporting.
122.44 Special Requirements for wells managing hazardous wastes.
122.45 Elimination of all class IV wells.
122.46 Inventory of class V wells.

Subpart D—Additional Requirements for National Pollutant Discharge Elimination System Programs Under Clean Water Act

122.61 Purpose and scope.
122.62 Law authorizing NPDES permits.
122.63 Exclusions.
122.64 Application for a permit.
122.65 Effect of an NPDES permit.
122.66 Duration of permits.
122.67 Prohibitions.
122.68 Additional conditions applicable to NPDES permits.
122.69 Applicable limitations, standards, prohibitions and conditions.
122.70 Calculation and specification of effluent limitations and standards.
122.71 NPDES requirements for recording and reporting of monitoring reports.
122.72 NPDES noncompliance reporting requirements.
122.73 Modification or revocation and reissuance of NPDES permits.
122.74 Termination of NPDES permits.
122.75 Disposal of pollutants into wells, into publicly owned treatment works or by land applications.
122.76 Concentrated animal feeding operations.
122.77 Concentrated aquatic animal production facilities.
122.78 Aquaculture projects.
122.79 Separate storm sewers.
122.80 Silvicultural activities.
122.81 New sources and new dischargers.
122.82 NPDES general permit program.
122.83 Special considerations under Federal law.

Appendix A—Point Source Categories and Permit Expiration Dates.

Authority: Resource Conservation and Recovery Act, 42 USC 6901 et seq.; Safe Drinking Water Act, 42 USC 300f et seq.; and Clean Water Act, 33 USC 1251 et seq.

Subpart A—General Program Requirements

§ 122.1 Purpose and scope.

(a) The regulations in this Part define three permit programs administered by EPA. They apply to the permit programs as they are administered by approved States, to the extent incorporated by reference in Part 123. These permit programs are:

(1) The Hazardous Waste Permit Program (the RCRA Program) under section 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–560, as amended by Pub. L. 95–609) (RCRA);

(2) The Underground Injection Control Program (the UIC Program) under section 1421 of the Safe Drinking Water Act (Pub. L. 93–523, as amended by Pub. L. 95–190) (SDWA); and

(3) The National Pollutant Discharge Elimination System (the NPDES Program) under sections 318, 402 and 405(a) of the Clean Water Act (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) (CWA).

(b) These regulations also apply to State section 404 programs under CWA as set out in Part 123.

(c) The consolidation of these permit programs into one set of regulations is authorized by sections 101(f) and 501(a) of the CWA, sections 1006 and 2002 of RCRA, and section 1450 of SDWA.

(d) The regulations in Parts 123, 124, 125, 146 and 250 also apply to the RCRA, UIC, NPDES and section 404 permit programs in the following manner:

(1) Part 123 describes the requirements for State participation in these programs;

(2) Part 124 describes the procedures for issuing permits. These procedures apply in their entirety to EPA and in part to approved States as described in Part 123; and

(3) Subchapter N of this Chapter and Parts 125, 146, and 250 describe technical criteria and standards for determinations under the NPDES, UIC and RCRA programs, respectively. They apply to both EPA and State programs. The technical criteria of 40 CFR Part 230 apply to State section 404 programs.

(e) The regulations in this Part and in Parts 123 and 124 establish the requirements for public participation in the State permit issuance process and in the approval of State RCRA, UIC, NPDES, and 404 programs. These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25, and supercede the requirements of that Part as they apply to actions contained under Parts 122, 123 and 124.

§ 122.3 Definitions.

The following definitions apply to this Part and to Parts 123, 124 and 125. Terms not defined in this Part shall have the meaning given by the appropriate Act.

(a) General definitions

"Administrator" means the Administrator of the United States Environmental Protection Agency, or his/her designee.

"Application" means the EPA standard national forms for applying for a permit, including any subsequent additions, revisions or modifications to the form; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

"Appropriate Act and/or Regulations" means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); the Safe Drinking Water Act (SDWA); the Clean Air Act (CAA); and applicable regulations

promulgated under these laws. This term is used to describe the application of general requirements to specific program activities under one or more of the above laws, as appropriate.

"Approved program" means a State program which has been submitted to and approved by EPA under Part 123 and the appropriate Act. An "approved State" is one administering an "approved program."

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding useable quantities of groundwater.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

"Contaminant" means any physical, chemical, biological or radiological substance or matter in water. "Contaminant" includes, but is not limited to or by, the term pollutant, as defined in this Part.

"Director" means the Regional Administrator, or the State Director, as defined in this section, as the particular context may require.

[*Comment:* Where there is no approved State program, the term "director" refers to the Regional Administrator. Where there is an approved State program, the term "director" normally refers to the State director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program; e.g., where EPA issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.71 and § 123.91. In such cases, the term "director" means the Regional Administrator and not the State Director.]

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Facility or activity" means any facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, or NPDES programs.

"Ground water" means water in the saturated zone beneath the land surface.

"Hazardous waste" has the meaning given in section 1004(5) of RCRA as further defined and identified in 40 CFR Part 250, Subpart A, § 250.13 and .14 (proposed at 43 FR 58955–9).

"Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the appropriate Act and regulations.

"NPDES" ("National Pollutant discharge Elimination system") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to sections 402, 318, and 405 of CWA. The term includes any State or interstate program which has been approved by the Administrator.

"Owner or Operator" means the owner or operator of any facility or activity subject to regulation under the RCRA, UIC, NPDES or 404 programs.

"Permit" means a permit or equivalent control document that complies with all of the requirements and procedures of this part and Parts 123 and 124, issued by EPA or an approved State. In Part 124, references to "permit" may include permit modification, revocation or denial.

"Person" means an individual, corporation, partnership, association, State or municipality or Federal agency. Under RCRA and CWA, "person" also means a commission, political subdivision of a State, or interstate body. Under RCRA only, "person" also means a trust, firm or joint stock campany; and under SDWA only, "person" also means a company or federal agency, and includes officers, employees, and agency of any corporation, company, association, State municipality, or Federal agency.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels; or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

[*Comment:* The legislative history of the CWA indicates that "radioactive materials" as included within the definition of "pollutant" in section 502 of the CWA means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials defined by the Atomic energy Act [AEA[of 1954, as amended, and regulated under the AEA. Examples of radioactive materials not covered by the AEA and, therefore, included within the term "pollutant" or radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.* 426 U.S. 1 (1978).]

"Publicly owned treatment works" or "POTW" means a treatment works as defined in section 212 of the Clean Water Act (CWA), which is owned by a State or municipality (as defined under § 122.3(d)), excluding any sewers or other conveyances not leading to a facility providing treatment.

"Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the delegated representative of the Regional Administrator.

"Regulated activity" or "Activity subject to regulation" means any activity subject to regulation under the RCRA, UIC, or NPDES programs.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609).

"SDWA" means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900).

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the appropriate Act and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Site" means the land or water area upon which a facility or activity is physically located or conducted, including but not limited to adjacent land used for utility systems, as repair, storage, shipping or processing areas, or other areas incident to the controlled facility or activity.

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), and the Northern Mariana Islands (except in the case of (CWA).

"State Director" means the chief administrative officer of a State agency or interstate agency approved under Part 123 by EPA to administer a State program, or the delegated representative of the State Director. If responsibility is divided within a State agency or among two or more State or interstate agencies,

"State Director" means the administrative officer authorized to perform the particular procedure or function to which reference is made.

"Stratum" means a single sedimentary bed or layer, regardless of thickness, that consists of approximately the same kind of rock material. Strata is the plural of stratum.

"Total dissolved solids" ("TDS") means the total dissolved (filterable) solids as determined by use of the method promulgated at 40 CFR 136.3, Table I. (The method is described in EPA's "Methods for Chemical Analysis of Water and Wastes, 1974," pages 266–267.)

"Underground Drinking Water Source" or "Underground Source of Drinking Water," except as specified in § 146.04 means:

(1) An aquifier or its portion supplying drinking water for human consumption;

(2) An aquifer or its portion in which the groundwater contains less than 10,000 mg/1 total dissolved solids; or

(3) An aquifer or its portion designated as such by the Administrator or the Director;

[*Comment:* Both the RCRA and UIC programs will use this definition of underground source of drinking water (USDW). However, under the UIC program latitude is given to the responsible authority in designating USDW's (see §§ 122.33 and 146.04). As a balance to this latitude, designations under the UIC program must be made after public hearing and are subject to the approval of the Administrator.]

(b) Definitions applicable to RCRA program requirements

"Application, Part A" means that part of the application which a RCRA permit applicant must complete to qualify for interim status under section 3005(e) of RCRA and for consideration for a permit.

[*Comment:* Part A of the application consists of Form 1 (General Information) and Form 3 (Hazardous Waste Information Summary) as proposed in today's **Federal Register** as "Public Notice of the Consolidated Application Form."]

"Application Part B" means that part of the application which a RCRA permit applicant must complete to be considered for a permit.

[*Comment:* ERA is not proposing a specific form for Part B of the permit application.]

"Authorization" means authorization, or approval by EPA of a State program which has met the applicable requirements of section 3006(b) of RCRA and Part 123, Subparts A and B.

"Close Out" means the point in time at which Hazardous Waste Management facility owners/operators discontinue accepting hazardous waste for treatment, storage or disposal.

[*Comment:* This definition has been changed from the one included in 40 CFR Part 250, Subpart 250.41 (proposed at 43 FR 58996 (December 18, 1978)) so as to clearly indicate that close-out begins when the facility discontinues accepting hazardous wastes. Comments received on this provision, as well as those submitted on the Part 250 definition of "close-out", will be considered together and will be conformed when these regulations are finally promulgated.]

"Closure" means tha act of securing a Hazardous Waste Management facility pursuant to the requirements of 40 CFR Part 250, § 250.43–7 (proposed at 43 FR 59004 (December 18, 1978)).

"Delivery Document" means a shipping paper (bill of lading, waybill, dangerous cargo manifest, or other shipping document) used in lieu of the original manifest to fulfill the recordkeeping requirements of 40 CFR Part 250, § 250.33 (proposed at 43 FR 18510 (April 28, 1978)).

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

A "Disposal facility" means any Hazardous Waste Management facility which disposes of hazardous waste.

"Existing HWM facility" means a Hazardous Waste Management facility which was in operation or under physical construction, on or before the date of promulgation of the regulations under § 3001 of RCRA, 40 CFR 250, Subpart A, (proposed at 43 FR 58954 (December 18, 1978)).

"Generator" means any person or Federal agency whose act or process produces hazardous waste identified or listed under 40 CFR Part 250, § 250.13 and .14 (proposed at 43 FR 58955–9 (December 18, 1978), provided, however, that certain producers may or may not be generators depending on whether they meet the criteria specified in 40 CFR Part 250, § 250.29 (proposed at 43 FR 58979 (December 18, 1978)).

A "Hazardous Waste Management facility" ('HWM facility') means any facility, land and appurtenances thereto used for the treatment, storage, and/or disposal of hazardous waste, except that solid waste disposal facilities which receives hazardous wastes only from persons subject to 40 CFR 250.29 shall not be considered HWM facilities.

[*Comment:* Persons subject to 40 CFR 250.29 are those who produce and dispose of no more than 100 kilograms (approximately 220 pounds) of hazardous wastes in any one month, retailers who dispose of hazardous wastes other than waste oil, and farmers who dispose of pesticides which are hazardous and who follow certain specified operating procedures.]

"In operation" means Hazardous Waste Management facilties that are actively treating, storing, or disposing of hazardous waste.

"Interim authorization" means authorization or approval by EPA of a State program which has met the applicable requirements of section 3006(c) of RCRA and Part 123, Subparts A and B.

The term "Major Hazardous Waste Management facility" means a facility used for the treatment, storage or disposal of hazardous waste at a rate equal to or greater than 5,000 metric tons per year.

[*Comment:* This definition is used in conjunction with the reqiuirements for EPA's review of State issued permits in § 123.38, the issuance of public notices in § 124.11, and the issuance of fact sheets in § 124.9, and shall not be construed to mean that any of the application procedures or public hearing procedures are waived for any facility.]

"New HWM facility" means a Hazadous Waste Management facility which does not meet the definition of an existing facility as defined in this section.

"Off-site" means any site that does not meet the definition of "on-site" as defined in this section.

"On-site" means on the same or geographically contiguous property. Two or more pieces of property which are geographically contiguous and are divided by public or private rights(s)-of-way are considered a single site.

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment or any other activity involving the actual preparation of the Hazardous Waste Management facility.

"Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

"Storage facility" means Hazardous Waste Management facility which stores hazardous waste, except for generators who store their own wastes on-site for less than 90 days for subsequent transport off-site, in accordance with regulations in 40 CFR Part 250, § 250.20(c)(2) (proposed at 43 FR 58976 (December 18, 1978)).

"Transporter" means a person or Federal Agency engaged in the transportation of hazardous waste by air, rail, highway or water.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"Treatment facility" means any Hazardous Waste Management facility which treats hazardous waste.

(c) Definitions applicable to UIC program requirements

"Approval in part" means action by the Administrator which authorizes a State to administer a UIC program covering less than all types of injection wells within the State. In order to be approved in part, the State program must meet all the requirements of Part 123 for those injection wells for which authorization is given.

[*Comment:* States which have not received full approval are not eligible to receive program grants under section 1443 of SDWA.]

"Area of review" means the area surrounding an injection well which is described according to the criteria set forth in § 146.06.

"Effective date of a UIC program" means the date that a State UIC program is approved or the date that a UIC program is established by the Administrator.

"Existing injection wells" means all injection wells other than new injection wells as defined in this section.

"Fluid" means material or substance which flows or moves whether semisolid, liquid, sludge or any other form or state.

"Injection well" means a well into which injection occurs, including the following types of injection wells (which are divided into the classes in § 122.34):

(1) "Air conditioning return flow well" means a well used to return to the supply aquifer the water used for heating or cooling in a heat pump.

(2) "Cesspool" means an underground device with an open bottom and often with perforated sides that receives wastes.

[*Comment:* The UIC requirements will *not* apply to single family residential cesspools.]

(3) "Cooling water return flow well" means a well used to inject water previously used for cooling.

(4) "Disposal well" means a well used for the disposal of waste into a subsurface stratum.

(5) "Drainage well" means a well used to drain surface fluid, primarily storm runoff, into a subsurface stratum.

(6) "Dry well" means a well that is used for the injection of wastes into the unsaturated zone above an underground drinking water source.

(7) "Enhanced recovery injection well" means a well used to inject fluids for the purpose of facilitating recovery of oil or natural gas.

(8) "Frasch process well" means a well used for the production of sulfur by the Frasch process.

(9) "Geothermal well" means a well used to inject fluids to extract heat from the earth's interior.

(10) "Hydrocarbon storage well" means: (i) a well used to inject hydrocarbons into an underground formation or reservoir for the purpose of storage or (ii) a well for the injection of fluids for the purpose of recovery of stored hydrocarbons.

(11) "In situ gasification well" means a well used for the injection of air and/or fuels to gasify by partial combustion fossil fuel such as coal, tar sands and oil shale.

(12) "Industrial waste disposal well" means a well used for the disposal of waste fluids from an industrial facility into a subsurface stratum.

(13) "Municipal disposal well" means a well used for the disposal of effluent or sludge from a municipal wastewater collection, storage or treatment facility into a subsurface stratum.

(14) "Nuclear disposal or storage well" means a well used for the injection of nuclear materials or wastes into a subsurface stratum, whether for temporary storage or ultimate disposal.

(15) "Produced fluid disposal well" means a well used for the injection of water or other fluids which are brought to the surface in connection with oil or natural gas production into a subsurface stratum other than the oil producing formation.

(16) "Recharge well" means a well used to artificially replenish the water in an aquifer.

(17) "Salt water intrusion barrier well" means a well used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.

(18) "Sand backfill well" means a well used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines.

(19) "Septic system well" means (i) a well used to inject the waste or effluent from a multiple dwelling, community or regional septic tank; or (ii) a multiple dwelling, community or regional cesspool; or (iii) a septic tank system well used to dispose of hazardous wastes; but does not mean individual residential waste disposal systems.

(20) "Solution mining well" means (i) a well used to inject fluid containing leaching chemicals to effectuate in-situ leaching and subsequent recover of metals such as copper and uranium, or (ii) a well used for the injection of water or other fluids for the purpose of recovering minerals such as sodium chloride, potash and phosphate.

(21) "Subsidence control well (not for the purpose of oil and gas recovery)" means a well used to inject fluids into a non-oil gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water.

"Listed State" means a State listed by the Administrator under section 1422 of the SDWA as needing a State UIC program.

"New injection wells" means those wells which begin injection after a UIC program applicable to such wells becomes effective in the State.

"Underground injection" means the subsurface emplacement of fluids by well injection.

"Well injection" means the subsurface emplacement of fluids (except drilling muds, cement and similar construction materials) through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater then the largest surface dimension.

(d) Definitions applicable to NPDES program requirements

"Applicable standards and limitations" means all State, interstate and Federal standards and limitations to which a discharge or a related activity is subject under the CWA, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards for prohibitions, best management practices, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Best management practices" ("BMPs") include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may be imposed in addition to or in the absence

of effluent limitations, standards, or prohibitions.

"Contiguous zone" means the entire zone established by the United States under article 24 of the Convention on the Territorial Sea and the Contigous Zone.

"Direct discharge" means the discharge of a pollutant or the discharge of pollutants.

"Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

"Discharge of a pollutant" and "discharge of pollutants" each means: (i) Any addition of any pollutant or combination of pollutants to navigable waters from any point source, or

(ii) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharges into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

"Discharge Monitoring Report" ("DMR") means the EPA uniform national form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA.

[*Comment:* EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo and other similar information, as appropriate, in place of EPA's]

"Effluent limitation" means any restriction imposed by the Director on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters, the waters of the contiguous zone or the ocean.

"Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works which introduction does not constitute a "discharge of pollutants."

"Municipality" means a city, town, borough, county, parish, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA.

"Navigable waters" means "waters of the United States, including the territorial seas". This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate of foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters indentified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (1)–(5) of this section; ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalance of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(7) *Provided,* That treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[*Comment:* For purposes of clarity the term "waters of the United States" is primarily used throughout the regulations rather than "navigable water."]

"New discharger" means any building, structure, facility or installation (1) which on October 18, 1972, had never discharged pollutants and (2) which has never received a finally effective NPDES permits and (3) from which there is or may be a new or additional discharge of pollutants and (4) which does not fall within the definition of "new sources".

"New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(i) After promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or

(ii) After proposal of standards of performance under section 306 of the CWA which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment:* See § 122.81 for the criteria and standards to be used in determining whether a source has begun construction within the meaning of this definitions, for the types of construction activities which result in new sources or new discharges, and for the effect of a new source determination.]

"Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Process waste water means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of the CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

"Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

"Variance" means any mechanism or provision under section 301 or 316 of CWA and Part 125, or in the applicable effluent limitation guidelines which

allow modification to or waivers of the effluent limitation requirements of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and sections 301(c), 301(g), 301(h), and 316(a) of CWA, where appropriate.

"Waters of the United States"means navigable waters, as defined in this section.

(e) Definitions applicable to section 404 program requirements

"Best Management Practices" ("BMPs") means methods, measures, practices or design and performance standards to prevent or reduce the pollution of waters of the United States. BMPs include but are not limited to schedules of activities, prohibitions of practices, and maintenance procedures. BMPs developed by State section 404 Agencies must insure compliance with the section 404(b)(1) environmental guidelines, (40 CFR 230), and effluent limitations and prohibitions under section 307(a), and water quality standards.

"Cultivating" means physical means of soil treatment employed within established agricultural and silvicultural lands upon planted farm or forest crops to aid and improve their growth, quality and yield.

"Discharge of dredged material" means any addition of dredged material into waters of the United States. The term includes, without limitation, the addition of dredged material into waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the subsequent onshore processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may also require a permit from the Corps of Engineers.

"Discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes without limitation, the following activities in waters of the United States: placement of fill that is necessary for the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

"Disposal site" means that portion of the waters of the United States enclosed within fixed boundaries consisting of a water surface area (when present), a volume of water (when present), and a substrate area. In the case of wetlands on which water is not present, the disposal site consists of the wetlands surface area. Fixed boundaries may consist of fixed geographic point(s) and associated dimensions, or of a discharge point and specific associated dimensions.

"Dredged material means material that is excavated or dredged from waters of the United States.

"Fill material" means any material used for the primary purpose of replacing any water of the United States with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under section 402 of CWA. The Director, in consultation with the section 402 permitting authority, will make determinations as to the primary purpose of proposed activities.

[*Comment:* In some instances the proposed activity will require both a section 402 and a section 404 permit. (e.g., diking an area of waters of the United States to fill it with municipal wastes.) Where this is the case, every attempt should be made to jointly process the permit application, including joint public notices and public hearings if necessary. Consideration is presently being given to changing the primary purpose test. Should this occur the above comment will no longer be applicable.]

"General permit" means either a State permit or a Corps of Engineers Army permit that is issued under section 404 of CWA after notice and opportunity for public hearing, on a local State, Regional or nationwide basis to authorize any discharges of dredged or fill material from clearly described categories of activities involving discharges of dredged or fill material that are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment.

"Harvesting" means physical measures employed directly upon farm, or forest crops to bring about their removal from farm lands or forest land, but does not include the construction of farm or forest roads.

"Impoundment" means a standing body of open water created by artificially blocking or restricting the flow or circulation of a water of the United States. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land areas to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing, and actually used for such purposes.

"Minor drainage" means construction and maintenance of facilities for the removal of excess soil moisture from drylands (uplands). It includes ditching and tiling incidental to the planting, cultivating, protecting, or harvesting of crops. The connection of such drainage ways from uplands to the waters of the United States is considered to be minor drainage. The discharge of dredged or fill material incidental to connecting an upland drainageway to water of the United States, adequate to the purpose of removing excess soil moisture incidental to the above activities is minor drainage. The term does not include discharges incidental to the construction of ditches or other drainage features which converts any water of the United States to farming, ranching, or silvicultural uses, nor does it include discharges incidental to the drainage of a forested wetland to convert it to any type of nonwetland forest.

"Navigable waters" and "Wetlands" are defined under the NPDES program definitions.

"Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing; and similar physical means utilized on established farm land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of spoil, rock sand, or other superficial materials in a manner which changes any area of the waters of the United States to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas will require a permit whenever the affected areas lie within the waters of the U.S.

"Seeding" means the manual or mechanical sowing of seed and placement of seedlings for the production of farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm lands and forest lands.

"State regulated waters" means those waters of the United States in which the Corps of Engineers will suspend the

issuance of section 404 permits upon approval of a State's section 404 permit program by the Administrator under section 404(h). These waters shall be identified in the Memorandum of Agreement between the State and the Secretary as required by § 122.93.

[*Comment:* CWA section 404(g)(1) requires that the Secretary retain jurisdiction, for purposes of section 404 over the following waters:

(1) Waters which are subject to the ebb and flow of the tide;

(2) Those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark; and

(3) Wetlands adjacent to waters in (1) and (2).]

§ 122.4 State authorities.

Nothing in Parts 122–124 precludes more stringent State regulation of any activity covered by these Parts, except as provided for the RCRA program in § 123.33(c).

§ 122.5 Signatories to permit program forms.

(a) All permit applications, except for those submitted for Class II wells for the UIC program (see paragraph (b) below), shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

(b) All reports required by permits or otherwise required by the Director, other requests for information made by the Director, and all permit applications submitted for Class II wells under § 122.36 for the UIC program shall be signed by a person designated in paragraph (a), or by a duly authorized representative of such person; if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the regulated activity originates, e.g., a plant manager, superintendent or person of equivalent responsibility;

(2) The authorization is made in writing by the person designated under paragraph (a); and

(3) The written authorization is submitted to the Director.

(c) Any changes in the written authorization submitted to the permitting authority under paragraph (b) which occur after the issuance of a permit shall be reported to the Director by submitting a copy of a new written authorization which meets the requirements of paragraph (b) (1) and (2).

(d) Any person signing a document under paragraph (a) or (b) of this section shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[*Comment:* Permit applications are being revised to incorporate this statement. Where a program document does not contain the statement, the certification must accompany the appropriate document.]

(e) This section is applicable to approved State programs (see § 123.8). States may adopt language that is equivalent to but not identical to, the certification statement in paragraph (d), if such equivalent language is approved by the Regional Administrator.

§ 122.6 Application for a permit.

(a) Any person who conducts or who proposes to conduct an activity for which a permit is required under this Part shall complete, sign, and submit an application to the Director as described in § 122.23, 122.36 and 122.64.

§ 122.7 Permit issuance; effect of a permit.

(a) The permit issuance process is initiated by the receipt of a complete application by the Director.

(b) The issuance of a permit does not: (1) convey any property rights of any sort, or any exclusive privileges; (2) authorize any injury to private property or invasion of other private rights, or any infringement of Federal, State, or local law or regulations, or (3) preempt any duty to obtain State or local assent required by law for the authorized activity.

(c) Any permittee who wishes to continue a regulated activity after the expiration date of a permit must apply for a new permit under the applicable sections of this Part, Part 124, and in the case of section 404 permits, Part 123, Subpart E.

§ 122.8 Duration of permits; continuation of expiring permits; transferability of permits.

(a) NPDES and section 404 permits shall be issued for a term not to exceed five years. Permits of less than five (5) years duration may be issued in appropriate circumstances (for example, see § 122.69). Except as provided in paragraph (c), the term of an NPDES permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) RCRA and UIC permits shall be issued for a period not to exceed the designed operating life of the facility (in the case of new facility) or the remainder of the designed operating life of the facility (in the case of an existing facility), except as provided in § 122.25(b) (RCRA Experimental Special Permits).

(c) *Continuation of expiring permits.* (1) Where EPA is the permit issuing authority, the terms and conditions of an expired permit are automatically continued under 5 U.S.C. § 558(c) pending issuance of a new permit if:

(i) The permittee has submitted a timely and sufficient application for a new permit under § 122.23, § 122.36, or § 122.64; and

(ii) The Regional Administrator is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit (e.g., where it is impracticable due to time and/or resource constraints).

(2) Permits continued under this paragraph remain fully effective and enforceable.

(3) Where the permittee is not in compliance with the terms and conditions of the expiring permit:

(i) The permit may be continued under this section pending a final determination by the Regional Administrator on the application for a new permit and enforcement action may be taken based upon the continued permit; or

(ii) The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The owner or operator would then be required to cease the activities authorized by the permit or be subject to enforcement action for operating without a permit.

(d) States authorized to administer the RCRA, UIC or NPDES programs may continue permits in a similar manner if so authorized by State law. However, a permit is not continued under Federal law where EPA originally issued the permit, but the State is the permitting

authority at the time the permit expired. In such case, the activity or facility is operating without a permit from the time the EPA-issued permit expires to the time that the State-issued permit is effective.

(e) *Transferability of permits.* A permit may be transferred to another person by a permittee if:

(1) The permittee notifies the Director of the proposed transfer;

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director; and

(3) The Director within 30 days does not notify the current permittee and the new permittee, of his or her intent to modify, revoke and reissue or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

[*Comment:* A new application could be required under this paragraph where the change of ownership is accompanied by a change or proposed change in process, wastewater, or hazardous waste characteristics or a change or potential change in any circumstances that the permitting authority believes will affect the conditions or restrictions in the permit.]

§ 122.9 Review and modification or revocation and reissuance of permits.

(a) The Director shall review each issued UIC or RCRA permit at least once every five years to determine whether the permit should be modified or revoked and reissued for one or more of the causes listed in paragraph (e) of this section.

[*Comment:* The purpose of paragraph (a) is to ensure that RCRA and UIC permits are subject to comprehensive review at specified times and modification or revocation and reissuance as may be desirable to better carry out the statutory purpose(s). Accordingly, the Director is as free to propose and adopt permit modifications for a life-term permit as the result of such a review as he would be to propose and adopt new permit terms as the result of the expiration and reissuance of a fixed term permit. Permit modifications for cause during the term of a permit are also possible where cause exists under paragraph (e).]

(b) Where permits under two or more programs under this Part are issued for a single facility or activity, the Director shall review all the permits issued for that facility or activity whenever any one of the permits is reviewed pursuant to paragraph (a), or any one of the permits expires pursuant to § 122.8 or is terminated under § 122.10. The purpose of this review shall be to determine whether the permit should be modified or revoked and reissued for one or more of the causes listed in paragraph (e) of this section. The permit shall specify a date for review under this section whenever the date of expiration of another permit for the same facility or activity is available.

(c) The Director may review an issued permit at any time and shall review an issued permit on the request of any person who presents information which, if valid, would constitute cause for a modification or revocation and reissuance under paragraph (e) of this section.

(d) The Director may base his/her review on any or all of the following:

(1) Information submitted by the permittee in periodic reports;

(2) Information collected by the Director in inspections of the permitted facility;

(3) Information requested of the permittee, including all or part of the information which the Director might otherwise request in an application for the issuance or reissuance of a permit; or

(4) Any other pertinent information that the Director may obtain.

(e) Cause for modification or revocation and reissuance exists:

(1) Where there are material and substantial alterations or additions to the permitted operation which are not covered by the effective permit; provided that for NPDES permits, such alterations or additions do not constitute a replacement of the process or production equipment of an existing source, converting it to a new source under § 122.81.

[*Comment:* Such alterations or additions include but are not limited to material or substantial changes in the quantity (increase or decrease) or composition of the wastes, fluids or pollutants injected, discharged, treated, disposed or stored; changes in the injection, discharge, treatment, disposal or storage methods or other operational methods employed, production changes, relocation or combination of discharge points, changes in the nature or mix of products produced.

Certain reconstruction activities may cause the new source provisions for NPDES permits under § 122.81 to become applicable to the permittee. In such cases, the new source permit issuance procedures of § 122.64 and § 124.61 shall be followed instead of the modification or revocation and reissuance process and an EIS may be required for an EPA-issued new source permit.]

(2) Where the existence of any factor(s) which, if properly and timely brought to the attention of the Director, would have justified the application of different permit terms and conditions, but only if the requester show that such factors arose after the final permit was issued.

(3) Where the standards and/or regulations on which the permit was based have been changed by promulgation of amended standards and/or regulations or judicial decision after the permit was issued, except that NPDES permits may be modified during their terms for such reasons only to the extent set forth in § 122.73;

(4) Where an existing permittee proposed a change of ownership or control of the permitted activity or facility, and the Director determines under § 122.8 that modification or revocation and reinssuance is appropriate;

(5) Where modification, revocation and reissuance or termination of another permit issued to the same facility or activity requires a modification or revocation and reissuance of the permit;

(6) Where the permit fails to apply any applicable requirements under the appropriate Act or regulations, which are in effect prior to the effective date of permit issuance; and

(7) For NPDES and section 404 permits only, where cause exists for termination under § 122.10 or § 122.74.

[*Comment:* The Director will generally base his/her decision on whether to modify, instead of revoking and reissuing a permit, where cause exists under paragraph (e) of this section, on the extent of the anticipated changes and on the length of the remaining term of the permit. For instance, where the remaining permit term is only two years, it may be desirable to revoke the existing permit and issue another permit incorporating the changes. See also § 122.69 for certain circumstances when NPDES permits will be revoked and reissued.]

(f) Except as provided for minor modifications under paragraph (g) of this section the modification or revocation and reissuance of permits under this section shall comply with § 124.5 and § 124.7.

(g) The following minor permit modifications shall not require public notice and opportunity for hearing under § 124.5 or § 124.7, unless they would render the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, provided the change would not exceed 120 days or would not interfere with attainment of a final compliance date; and

(4) A change in ownership or operational control of a facility where the Director determines that no major change of the permit is necessary under § 122.8(d).

(5) To the extent authorized under § 122.24, changes in quantities or types of wastes treated, disposed or stored which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its capacity to meet conditions prescribed in the permit.

(6) To the extent authorized under § 122.24, changes in treatment, disposal or storage methods or operations which, in th judgement of the Director, are equivalent to or better than those on which their permit is based.

(7) Extension of the term of a State section 404 permit so long as the extension does not conflict with § 122.8(a).

(h) Minor modifications as defined in paragraph (g) of this section shall become immediately effective or effective on a date specified by the Director.

§ 122.10 Termination of permits.

(a) An issued permit may be terminated, in whole or in part, during its term for cause as specified in this section.

(b) Cause for termination includes:

(1) Violation of any term or condition of the permit or requirement of the appropriate Act by the permittee;

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevent facts by the permittee in the application or during the permit issuance process;

(3) Information indicating that the permitted activity poses a threat to human health or the environment;

(4) A change in ownership or control of a source which has a permit where required by the Director in accordance with § 122.8(e); or

(5) Other good cause.

[*Comment:* Termination under this section includes the suspension or revocation of a permit under section 3008 of RCRA. Procedures for termination or suspension and revocation of RCRA permits are provided in 40 CFR Part 22 (proposed at 43 FR 34739 (August 4, 1978).]

§ 122.11 Conditions applicable to all permits.

The following conditions apply to all permits and shall be incorporated into all permits either expressly or by reference.

[*Comment:* If not incorporated by reference, the inclusion of the requirements of this section into permits may require some wording changes. Where this is the case, the permit conditions should be worded substantially similar to the requirements of this section, and should be of equivalent force.]

(a) The permittee must comply with all terms and conditions of the permit whether they are directly stated or incorporated by reference.

[*Comment:* Any failure in compliance constitutes a violation of the appropriate Act and constitutes grounds for an enforcement action.]

(b) The permit shall be reviewed at times specified in § 122.9(a), (b) and (c), and may be modified, revoked and reissued or terminated during its term for cause as described in § 122.9(e) and § 122.10.

(c) Any permittee who knows or has any reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation and reissuance under § 122.9(e) must report his/her plans or such information to the Director so that the Director can decide whether action to modify or revoke and reissue a permit under § 122.9 will be required. The Director may require submission of a new application.

(d) Unless and until a permit is modified or revoked and reissued, a permittee must comply with the terms and conditions of the existing permit whether or not that existing permit would allow the permittee to begin the activity described in paragraph (c) of this section.

(e) The permittee shall allow the Director or an authorized representative, upon the presentation of credentials and such other document as may be required by law:

(1) Enter upon the permittee's premises where a regulated facility or activity is conducted or located, or where records must be kept under the terms and conditions of the permit;

(2) Have access to and copy, at reasonable times, any records or labels that must be kept under the terms and conditions of the permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring equipment) or operations regulated under the permit; and

(4) Sample at reasonable times any substances which the permittee is required to monitor under the permit, including any discharge of pollutants, hazardous wastes, and injected fluids.

(5) Sample at reasonable times any substances at any monitoring point which the permittee is required to monitor under the permit.

[*Comment:* This subparagraph includes both the sampling of pollutants, wastes and fluids which are discharged, treated, stored, disposed or injected and also the monitoring of surrounding environment, e.g., the sampling of adjacent parts of aquifers by use of monitoring wells.]

(f) The permittee shall furnish to the Director copies of records required to be kept under the terms and conditions of the permit upon request within a reasonable time, as specified in § 122.14.

(g) The permittee shall at all times maintain in good working order and operate efficiently all facilities and systems of treatment or control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

(h)(1) If, for any reason, the permittee does not comply with or will be unable to comply with any terms or conditions of a RCRA, UIC, or 404 permit, or the maximum daily or average weekly discharge limitations or standards of an NPDES permit, the permittee shall provide the Director with the following information:

(i) A description of the noncompliance and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times; and/or, if not corrected, the anticipated time the noncompliance is expected to continue;

(iii) Steps taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance; and

(2) The information required under subparagraph (1) shall be provided as follows:

(i) In the case of noncomplying activities which could constitute a threat to human health, welfare or the environment, the Director may require that the information required by subparagraph (1) be provided within 24 hours or five days from the time the permittee becomes aware of the circumstances. Where the Director requires 24 hour notice, if the information is provided orally, a written submission covering the information must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph. This requirement shall not apply to NPDES discharges subject to subparagraph (2)(ii).

[*Comment:* The Director may require a permittee to report noncompliance within 24 hours under paragraph (h)(2)(i) when the noncompliance involves CWA section 311 pollutants, toxic pollutants or pollutants which could cause a threat to public drinking water supplies; or, in the event of a release or discharge of hazardous waste, a fire or an explosion from a HWM facility that has the potential for damaging human health or the environment, the permittee shall report such an incident immediately after discovering it as required in 40 CFR Part 250, § 250.43–3(c).]

(ii) In the case of any discharges from an NPDES-permitted facility subject to any applicable toxic pollutant effluent standard under section 307(a), the information required by subparagraph (1) regarding a violation of such standard shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the NPDES permittee becomes aware of the circumstances covered by this paragraph.

(3) Where a permittee orally reports a violation within 24 hours in accordance with paragraphs (h)(2)(i) or (ii), the Director may waive, on a case-by-case basis, the requirement that a written submission be provided within five days of the time the permittee becomes aware of the violation.

(4) In all cases not covered by subparagraph (2), information required under subparagraph (1) shall be provided in accordance with the requirements of § 122.15.

(i) The permittee shall take all reasonable steps to minimize any adverse impact on the environment resulting from noncompliance with the permit.

(j) The permittee shall halt or reduce its business activities whenever and to the extent necessary to maintain compliance with the terms of a permit.

(k) The permittee shall at all times comply with the requirements for testing, monitoring, recordkeeping, and reporting as specified in the permit and in applicable regulations. The permittee shall not falsify, tamper with or knowingly render inaccurate any monitoring device or method referred by the permit or regulations; or knowingly make a false statement, representations, or certification, in any document or record required under the permit or by regulations.

§ 122.12 Schedules of compliance.

(a) The permit shall specify a schedule of compliance leading to expeditious compliance, where appropriate.

[*Comment:* For NPDES permits, schedules of compliance are required where necessary to achieve compliance with applicable standards and limitations and other requirements. NPDES new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into navigable waters do not qualify for compliance schedules under this section and are subject to § 122.81(d)(4). Schedules of compliance shall require compliance as soon as possible, but in no case later than the applicable statutory deadline under the CWA.]

(1) Except as provided in paragraph (b) and (d), if a permit establishes a schedule of compliance which exceeds 9 months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement.

(i) In no event shall more than 9 months elapse between interim dates.

(ii) If the time necessary for completion of any interim requirements (such as the construction of a control facility) is more than 9 months and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

[*Comment:* Examples of interim requirements include: 1) let a contract for construction of required facilities; 2) commence construction of required facilities; 3) complete construction of required facilities; and 4) submit a complete Step 1 construction grant (for POTW's).]

(2) Except as provided in paragraph (d), no later than 14 days following each interim date and the final date of compliance, the permettee shall provide the Director with written notice of the permittee's compliance or noncompliance with the interim or final requirements.

(3)(i) The Director, upon request of the permittee, may modify, in accordance with § 122.9, a schedule of compliance in an issued permit if he/she determines good and valid cause exists for such revision, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control or remedy. However, in no case shall an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory treatment deadline.

(ii) In the case of a POTW which has received a grant under section 202(a)(3) of CWA, to fund 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2), the schedule of compliance for an NPDES permit may be modified to reflect the amount of time lost during construction of the innovative and alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(b) Where an applicant for an EPA-issued UIC or RCRA permit chooses to cease conducting regulated activities rather than taking steps to meet permit control requirements, the Director may establish two alternative schedules of compliance in the permit:

(1) A schedule leading to termination and/or proper closure in accordance with regulations under the appropriate Act or regulations by the predicted termination or closure date. If at any time the permittee chooses *not* to terminate his/her regulated activities and cease conducting regulated activities according to this schedule, the steps required under subparagraph (2) below shall be met; and

(2) A schedule which would result in compliance with the appropriate Act and regulations. In no event shall a permittee be authorized to operate without complying with this schedule, even where the permittee actually terminates his/her operations and later resumes these or other operations.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in CWA under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (iii), (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the divide discharge by a date which is no later than the statutory deadline;

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permitee has made a decision pursuant to paragraph (3)(i), it shall:

(A) Follow the schedule required by paragraph (3)(ii) if the decision is to terminate its discharge; or

(B) Follow the schedule required by paragraph (3)(iii) if the decision is not to terminate its discharger; and

(4) If the permittee has made a decision to terminate its direct discharge in accordance with this section, it shall not post a bond within 30 days of permit issuance, or the date of the decision, in the amount of the cost of compliance with applicable limitations and standards, payable to the permit issuing authority in the event that termination or compliance with applicable limitations and standards is not achieved by the statutory deadline or the date set forth in the permit, if earlier.

(5) In all cases, the permittee's decision to terminate his/her direct discharge of pollutants shall be evidenced by a Board of Director's resolution which has been made public or by such other means as EPA determines evidence a firm public commitment.

[Comment: A permittee may evidence a firm public commitment: (1) by a resolution of the Board of Directors signed by the Chairman of the Board and the Chief Executive Officer; (2) in the case of a public facility, by appropriate action by either the principal executive officer or elected official or (3) as otherwise appropriate for partnerships, sole proprietorship, etc.]

(6) Where a source recommences discharge after terminating operations, or where an indirect source commences direct discharge to navigable waters, any permit issued to such source shall require the source to meet all applicable standards and limitations as specified in § 122.81(d)(4).

(d)(1) Where agreed to in the Memorandum of Agreement, an approved State program may use intervals of up to one year (rather than 9 months) for establishing interim requirements under subparagraph (a)(1).

(2) State programs may provide for up to 30 days (rather than 14 days) for reporting compliance or non-compliance with interim or final requirements under subparagraph (a)(2).

§ 122.13 Establishing permit terms and conditions.

Permit terms and conditions shall be established in permits as set out in Subpart B through D, as appropriate.

§ 122.14 Recording and reporting of monitoring results and compliance by permittees.

(a) All permits shall include:

(1) Requirements concerning the proper use, maintenance, and installation, where appropriate, of monitoring equipment or methods (including biological monitoring methods where appropriate), and

[Comment: Generally installation of monitoring equipment is not required under the UIC program.]

(2) Required monitoring frequency, type and intervals sufficiently frequent to yield data which are representative of the monitored activity, including, where appropriate, continuous monitoring.

(b) Samples and measurements taken for the purposes of this Part shall be representative of the volume, weight, pressure or nature of the monitored activity;

(c) The permittee shall maintain records of all such monitoring information (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records). Such records shall be retained by the permittee for three years. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee; or as requested by the Director. Such records shall include:

(1) The date, exact place and time of sampling, or measurements;

(2) The person(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(d) Permittees shall report the results of any monitoring specified in the permit to the Director on an EPA-approved form as often as required by the permit, but in no case less than once per year. Reporting frequency requirements will be based upon the minimum intervals specified in Subparts B–D, and, in addition, upon the impact of the regulated activity.

[*Comment:* NPDES permittees must report monitoring results on a Discharge Monitoring Report (DMR). NPDES permittees need not submit data on internal process of waste streams, or data collected by third parties unless it indicates a violation, but shall be identified as a supplement to the DMR.]

(e) The permittee shall provide the Director with written notice of the permittee's compliance or noncompliance with the interim and final compliance schedule requirements in accordance with § 122.12(a)(2) and (b)(2).

§ 122.15 Noncompliance reporting.

Reports shall be prepared and submitted by the Director as detailed below and in §§ 122.27, 122.43, 122.72 and 123.113.

(a) *Quarterly Report.* Narrative reports of noncompliance by major RCRA, UIC, NPDES and section 404 permittees shall be submitted using the following format:

(1) Name, location, and permit number of each noncomplying permittee;

(2) A brief description and date of each instance of noncompliance. Instances of noncompliance may include one or more of the following:

(i) Failure to complete construction elements;

(ii) Failure to complete or provide compliance schedule reports;

(iii) Noncompliance with applicable standards and limitations;

(iv) Failure to provide effluent, or other monitoring reports as required by the permit; and

(v) Deficient reports.

(3) A brief description and date(s) of action(s) taken by the Director to ensure compliance;

(4) Status of the instance of noncompliance with the date of the action or resolution; and

(5) Any information which tends to explain or mitigate an instance of noncompliance or to explain actions by the Director.

(b) *Annual Reports.* (1) Statistical reports shall be submitted on minor RCRA, UIC and NPDES permittees, where compliance has been reviewed by the Director, indicating number of noncomplying minor permittees, number of enforcement actions, and number of changes in permit status.

(2) Additional information for RCRA, UIC, NPDES and section 404 programs is detailed in §§ 122.27, 122.43, 122.72 and 123.113.

[*Comment:* For the distinction between "major" and "minor" permittees under RCRA see § 122.3(b) (definition of "major HWM facility"). The distinction between "major" and "minor" permittees for NPDES, UIC and section 404 is established in EPA's annual operating guidance for the EPA Regional Offices and the States.]

(c) Reports required under this section from the State Director shall be submitted to the Regional Administrator, and reports from the Regional Administrator shall be submitted to EPA Headquarters.

§ 122.16 Confidentiality of information.

(a) Except as provided in paragraph (b), any information submitted to EPA pusuant to these regulations may be claimed as entitled to confidential treatment by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be disclosed only in accordance with the procedures in Part 2 of this title.

(b) The following information may not be accorded confidential treatment;

(1) The name and address of any permittee;

(2) Permits, draft permits, fact sheets, comments received by the permit issuing authority with respect to draft or proposed permits and statements of basis;

(3) In the case of section 402 and 404 permits under CWA, permit applications and effluent data; and

(4) In the case of UIC permits, any information applications and effluent data.

Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

§ 122.21 Purpose and scope.

(a) The requirements in this Subpart contain the specific elements and permit conditions for the RCRA hazardous waste permit program. They apply to EPA, and to approved States to the extent set forth in part 123. In case of inconsistencies between this Subpart and Subpart A of this Part, this Subpart is controlling.

(b) Six months after the date of promulgation of regulations under section 3001 of RCRA, 40 CFR 250, Subpart A (proposed at 43 FR 58954 (December 18, 1978)), the storage, treatment and disposal of hazardous waste is unlawful unless owners/operators of existing Hazardous Waste Management facilities have notified EPA under 40 CFR 250 Subpart G § 250.800 (proposed at 43 FR 2991 (July 11, 1978)), and have submitted a permit application in accordance with this Subpart and Part 124.

(c)(1) Any hazardous waste storage pits, ponds, or lagoons and/or storage tanks and any distribution systems which are associated with an underground injection well that receives hazardous waste(s) must obtain a RCRA permit.

(2) Any one/shore hazardous waste treatment or storage facilities associated with an ocean disposal operation must obtain a RCRA permit.

(3) Any surface impoundment associated with a wastewater treatment plant, other than a POTW, that treats and/or stores hazardous waste must obtain a RCRA permit for that part of the facility up to the point of discharge.

[*Comment:* See 40 CFR Part 250.45–3 (proposed at 43 FR 59011 (December 18, 1978)).]

(4) Any on-site treatment, storage, or disposal facilities for managing hazardous wastes resulting from treatment or control of wastewaters by a wastewater treatment plant, other than a POTW, must obtain a RCRA permit.

§ 122.22 Law authorizing hazardous waste control program.

Sections 3001 through 3005 of RCRA authorize EPA to promulgate regulations establishing a Federal hazardous waste management program. Section 3006 of RCRA authorizes EPA to promulgate guidelines for State assumption and operation of the hazardous waste management program (with EPA approval) in lieu of a Federal program.

[*Comment:* Regulations under Sections 3001, 3002, and 3004 are published at 40 CFR 250, Subparts A, B, and D, (proposed at 43 FR 58946 (December 18, 1978)). Regulations under Section 3003 are published at 40 CFR 250, Subpart C, (proposed at 43 FR 18506 (April 28, 1978)). Regulations under Section 3010 are published at 40 CFR 250, Subpart G, (proposed at 43 FR 29908 (July 11, 1978)).]

§ 122.23 Application for a permit.

(a) Any person who owns or operates an "existing HWM facility" as defined in § 122.3 of this Part, shall:

(1) Notify as required by 40 CFR Part 250, Subpart G (proposed at 43 FR 29911 (July 11, 1978)); and

(2) Submit Part A of the permit application within six months after the date the regulations under 40 CFR Part 250, Subpart A (proposed at 43 FR 58946 (December 18, 1978)) are promulgated, in order to qualify for interim status under RCRA. To satisfy the application deadline of this subsection, and to qualify for interim status under RCRA, an applicant shall submit only the information required in Part A of the application, or in the case of an application for a special HWM facility permit under § 122.25, the application shall contain the requirements specified in the appropriate subsection of § 122.25. The Director shall advise the applicant of the receipt of Part A of the application. This advisement shall signify the beginning of interim status if the application was timely submitted. A date for submission of Part B of the application shall be established by the Director at a later date. The Director shall provide at least six months notice for the submission of Part B of the application. Failure to submit an adequate Part B of the application by the date established by the Director shall result in automatic loss of interim status on such date.

[*Comment:* Owners or operators of existing HWM facilities under interim status who elect to modify these facilities must nevertheless meet the requirements of 40 CFR Part 250, Subpart D (proposed at 43 FR 58994 (December 18, 1978)) at the time that a permit is issued for the facility. Any modification made during interim status is therefore subject to the review of the Director at the time of permit issuance and is undertaken at the risk that additional changes to the facility will be required in order to meet the requirements of 40 CFR Part 250, Subpart D.]

(b) Owners/operators of new HWM facilities shall submit both a Part A and a Part B application at least 180 days before physical construction is expected to commence. No physical construction shall commence until a final permit is issued. In the case of an application for a special HWM facility permit under § 122.25, the application shall contain the requirements specified in the appropriate subsection of § 122.25.

(c) Part A of the Application shall include the following as a minimum:

(1) Name, title and address of the applicant; name and address of the facility;

(2) A description of the boundaries of the HWM facility, including a topographic map of the area for a distance of one mile (1.6km) beyond the boundaries of the HWM facility as required in the permit application forms. This map shall correspond to a 7½ minute series map published by the U.S. Geological Survey. If a 7½ minute series

map is not available, a 15 minute series map may be substituted.

(3) A detailed description of the hazardous waste to be handled at the HWM facility (name and common code) by its Department of Transportation (DOT) proper shipping name (49 CFR Part 172), § 172.101 (proposed at 43 FR 22631 (May 25, 1978)). If the DOT proper shipping name "NOT OTHERWISE SPECIFIED" (NOS) is used, the EPA name (as identified in 40 CFR Part 250, § 250.14 (proposed at 43 FR 58957–9 (December 18, 1978)) must be included after the DOT proper shipping name NOS. If no EPA name exists, then only the DOT proper shipping name NOS shall be used;

(4) The hazard class of each waste as identified or listed under DOT hazard class (49 CFR Part 172), § 172.101 (proposed at 43 FR 22631 (May 25, 1978)) or by the EPA characteristics (as identified in 40 CFR Part 250, § 250.13 (proposed at 43 FR 58955–7 (December 18, 1978)) if the DOT hazard class is not applicable. If the DOT hazard class "OTHER REGULATED MATERIAL" (ORM) is used, the EPA characteristic or property, as identified in 40 CFR Part 250, § 250.13 (proposed at 43 FR 58955–7 (December 18, 1978)) must be used after the DOT hazard class ORM;

(5) The annual quantity of each hazardous waste to be treated, stored or disposed by volume or weight, in either the metric or the English system;

(6) A brief description of how the hazardous waste is to be treated, stored or disposed of at the HWM facility; and

(7) For an existing HWM facility, copies of all available drawings and specifications for the HWM facility, its processes and equipment.

(d) Part B of the Application shall include the following as a minimum:

(1) A master plan for the HWM facility, including a topographic map with a scale of one inch (2.5 cm) equal to not more than 200 feet (60.8 m) and a contour interval not greater than five feet (1.5 m) for the area within one thousand feet (304 m) of the boundaries of the HWM facility and indicating any five-hundred-year flood prone areas. The master plan shall include a detailed description of:

(i) For a new HWM facility, or for modification to an existing facility, any structures, buildings, equipment and machinery to be used at the HWM facility including site preparation plans, design plans and specifications for treatment, storage or disposal facilities;

(ii) A detailed plan of operation and maintenance, including operating conditions, projected hours of operation, security and access control, plans for covering and compaction, plans for controlling odor, air, surface water and/or groundwater pollution, plans for controlling leachate production, plans for vector control and control of burrowing animals, and other related items;

(iii) The planned life of the HWM facility based on projected use and the expansion potential and plans for the use or disposition of the HWM facility after closure;

(iv) The contingency plan for emergency situations, including the procedures, equipment and facilities to be used, a listing of the fire departments, ambulance services, hospitals, and other emergency services that will serve the facility and the response time, the person responsible for implementing the contingency plan, the on-site plan for fire control, spill prevention control and countermeasure plans under section 311 of CWA, best management practices under sections 304(c) and 402(a)(1) of CWA (see 40 CFR Parts 125 and 151), and 40 CFR Part 250, § 250.43–3 (proposed at 43 FR 59001–2 (December 18, 1978));

(v) The plan for closure of the HWM facility, including the estimated cost of closure, post closure expenses, proposals for controlling access, steps that are planned to control leachate production, and the plan for maintenance of the HWM facility after final closure for disposal operations;

(vi) The plan for visual inspections of the HWM facility conditions and for monitoring air, surface water, and groundwater pollution, including the period after closure;

(vii) The plan for segregation of incompatible wastes and how wastes will be placed or located within the treatment, storage, or disposal facility; and

(viii) The plan for conducting trial burns at incinerator facilities as required under 40 CFR Part 250, § 250.45–1 (proposed at 43 FR 59008 (December 18, 1978)).

(2) A detailed description of site geology of the area within one thousand feet (304 m) of the boundaries of the HWM facility, including a description of physiography, soil depth and types including chemical and physical properties; and a detailed description of the geologic column including intrusive bodies, fluids, fractures, faults, joints, and fracture traces. Where access to adjacent properties for obtaining geological data is not reasonably available, data available from public sources may be substituted.

(3) For HWM disposal facilities and HWM surface impoundment facilities, a detailed description of the site hydrology and the hydrology of the area within one thousand feet (304 m) of the boundaries of the facility, including known or recorded springs, depth to ground water, thickness, extent, characteristics of aquifers, perched water zones, porosity and permeability of soils, directions and rate of flow of groundwater, recharge and discharge areas, drainage patterns and divides, distance to surface water, location of public, livestock, and private water supplies, background quality of groundwater as specified in 40 CFR Part 250, § 250.43–8(c)(1) (proposed at 43 FR 59005 (December 18, 1978)) and other related items. Where access to adjacent properties for obtaining hydrological data is not reasonably available, data available from public sources may be substituted.

(4) A description of the climate in the area, including average annual rainfall, average annual evapotranspiration rates, average annual wind speed, prevailing wind direction, and other factors that may affect water or air pollution.

(5) Position or job descriptions covering the persons responsible for the operation of the HWM facility, including education, training, and work experience requirements and a description of the training program to be used to prepare persons to operate and maintain the facility in a safe and environmentally adequate manner.

(6) A listing of the applicant's performance bonds, insurance carriers and policies, trust instruments, escrow accounts or other instruments which constitute continued financial responsibility in accordance with standards in 40 CFR Part 250, § 250.43–9 (proposed at 43 FR 59006–7 (December 18, 1978)).

(7) The Director, upon the written request of the applicant, may waive certain of the application requirements in Part B of the Application if he/she determines that the information is not applicable to the facility and is not needed to establish compliance with the standards in 40 CFR 250.42 and 250.43 (proposed at 43 FR 58999 (December 18, 1978)). A request for a waiver of certain Part B application information shall be submitted in writing by the applicant and shall state why the specified information is not needed to determine compliance with the standards in 40 CFR 250.42 and 250.43 (proposed at 43 FR 58999 (December 18, 1979)). The Director shall grant or deny the waiver request in writing, including a statement of the reasons for the decisions.

[*Comment:* Examples of where such waivers may be granted include the waiver of site geological information for facilities that only incinerate hazardous waste and dispose of any residues off-site, and site geological information for above-ground storage tanks that are not associated with any other treatment, storage, or disposal HWM facilities.]

(8) The Director shall determine whether or not an application of permit is complete and shall notify the applicant in writing of such determination within 30 days of receipt of such application. The application shall not be considered as submitted to the Director until it is in complete form.

(9) Where an approved State is the permit-issuing authority, the application must contain at least the information required under this section, paragraph (c), and paragraph (d) unless waived under § 122.23(d)(7).

§ 122.24 Establishing permit terms and conditions.

In addition to the terms and conditions specified in Subpart A of this Part, any RCRA permit shall include the following terms and conditions:

(a) Each of the applicable requirements specified in 40 CFR 250.43, 250.44, 250,45 and 250.46 (proposed at 43 FR 58999–59016 (December 18, 1978)), except where an alternative requirement is established and included in the permit in accordance with 40 CFR 250.43, 250.44, 250.45 and 250.46;

(b) Such additional requirements as the Director deems nesessary to comply with the human health and environmental standards in 40 CFR 250.42 (proposed at 43 FR 58999 (December 18, 1978.)) .

(c) Requirements alternative to those established in the regulations in accordance with the variance criteria incorporated in the notes in 40 CFR 250.43–45 (proposed at 43 FR 58999–59016 (December 18, 1978)).

(d) Provisions for minor modification to a permit under § 122.9(g) (5) and (6), where appropriate. The Director shall issue a public notice in accordance with § 124.11 prior to or at the time that he/she approves such minor modification.

(1) Minor modifications may be made under this paragraph only where the Director determines that a particular HWM facility has the capacity and equipment necessary to handle a variety of different types of hazardous waste without violating any other permit terms and conditions or the requirements specified in 40 CFR 250.43, 250.44, 250.45 and 250.46 (proposed at 43 FR 58999–59016 (December 18, 1978)), and where the facility can demonstrate that it will receive different quantities and/or types of hazardous wastes on an unpredictable basis.

(2) In modifying the permit under this paragraph, the Director may limit the types and/or quantities of hazardous wastes that can be the subject of minor modifications under § 122.9(g) (5) and (6).

[*Comment:* Provisions for minor modifications under this paragraph and § 122.9(g) (5) and (6) are not intended to be generally included in RCRA permits, but are appropriate only under certain limited circumstances as specified in this paragraph, and at the discretion of the Director. This paragraph does not apply where the types or quantities of wastes can be anticipated through contract provisions or by other means, making it possible to include provisions covering such wastes in the initial permit. Modifications not covered by this paragraph must comply with the applicable requirements of §§ 122.9, 124.5 and 124.7.]

(e) No HWM facility shall commence treatment, storage or disposal of hazardous waste in a modified or newly constructed facility until such construction or modification is complete; and

(1) The permittee has submitted to the Director a certified letter signed by the permittee and a registered professional engineer in the State where the facility is located, stating clearly that construction or modification of the facility has compiled with the permit, and in the case of incinerator facilities, a trial burn and result analysis has been completed and is submitted to the Director; and

(2) The Director has inspected the modified or newly constructed facility and finds that the facility is in compliance with all terms of the permit; provided that, the Director has notified the permittee, within *ten (10)* days of receipt of such letter, of his/her intent to inspect; and

(3) The Director authorizes commencement of treatment, storage, or disposal of hazardous waste.

(f) Where an approved State is the permit-issuing authority, the permit must establish such terms and conditions as are necessary to provide a degree of control and protection of human health and the environment equivalent to that required under this section.

§ 122.25 Special HWM facility permits.

(a) *Health Care Facility Special Permit.* (1) A person who owns or operates a health care facility which treats or stores hazardous waste may apply for a health care facility special permit if the following conditions are satisfied:

(i) The Health care facility is licensed under a State licensing law and such license requires compliance with requirements for the storage, sterilization, inceneration, or treatment of all hazardous waste generated;

(ii) The State licensing law and control program provides for the adequate enforcement of the program by withholding or withdrawing the license of the health care facility where compliance with license requirements is not being achieved;

(iii) If incineration is used, the incinerator is operated under the terms and conditions of a license issued under applicable State law; and

(iv) The person owning or operating the health care facility submits a certification of compliance with an issued license signed by the appropriate State licensing official.

(2) An applicant for a health care facility special permit shall submit the following information:

(i) The name and address of the facility;

(ii) Certification signed by the appropriate State licensing authority specifying that the facility has an effective license and is in compliance with such license; and

(iii) A list of the hazardous wastes covered by the State license.

(3) The licensing law requirements of a State shall be judged against the applicable RCRA 3004 standards, 40 CFR 250, Subpart D (proposed at 43 FR 58982 (December 18, 1978)) to determine if an equivalent degree of control is provided.

(4) Whenever the conditions of subparagraph (1) are not being met, the health care facility loses eligibility for a special permit under this section.

[*Comments:* (1) Health care facilities include hospitals as defined by SIC Codes 8062 and 8069 and veterinary hospitals as defined by SIC Codes 0741 and 0742. See 40 CFR 250.14(b)(1)(i) (proposed at 43 FR 58958 (December 18, 1978)).

(2) Under § 123.39, States are authorized, but not required, to issue special facility permits in the same manner and covering the same facilities as those covered by EPA under this section.]

(b) *Experimental Special Permit.* (1) The Director may grant an experimental special permit to a person for the treatment, storage, or disposal of hazardous waste using advanced technology where the Director determines that such technology will significantly improve the state-of-the-art for hazardous waste treatment, storage or disposal.

(2) An applicant for an experimental special permit shall submit all of the

applicable information specified in § 122.23(c) and (d) and such other information as the Director may require including plans for the immediate termination of all acitvities if intended results are not achieved.

(3) In granting an experimental special permit, the Director shall require the submission of an evaluation of test results and shall set a specific date for its termination which shall not exceed one (1) year. An extension of no more than one additional year may be granted by the Director upon written request from the permittee, including the submission of such information as the Director may require, including a full evaluation of any test results from the facility for the period of operation.

[Comment: Under § 123.39, States are authorized, but not required, to issue experimental special permits in the same manner and covering the same facilities as those covered by EPA under this section.]

§ 122.26 Permits by rule.

(a) *Permit by Rule for HWM Facility Accepting Special Waste.* A facility which treats, stores, or disposes only special wastes and does not comingle different types of special wastes, as listed in 40 CFR 250.46 (proposed at 43 FR 59015 (December 18, 1978)), shall be considered as having a permit for the treatment, storage or disposal of such wastes if the owner/operator of the facility complies with all the applicable requirements for control of special wastes, as specified in 40 CFR 250.46, including the notes thereunder, (proposed at 43 FR 59015 (December 18, 1978)), and notifies EPA In accordance with 40 CFR Part 250, Subpart G (proposed at 43 FR 29908 (July 11, 1978)).

[*Comment:* Special wastes are: Cement Kiln Dust; Utility Waste (fly ash, bottom ash, scrubber sludge); Phosphate Rock Mining, Beneficiation, and Processing Waste; Uranium Mining Waste; Other Mining Waste; and Gas and Oil Drilling Muds and Oil Production Brines. These wastes, typically, are generated in large volumes and some portions are expected to be classified as hazardous under the Section 3001 standards. The Agency, however, has very little information on the composition, characteristics, and the degree of hazards posed by these wastes. Therefore, the Agency is proposing to remove the provision requiring facilities to obtain site-specific permits. Moreover, EPA requests comments on alternate approaches, such as the use of either a general permit (applicable to many sites, rather than only one site), or of special site-specific permits of the type proposed in § 122.25 of this Subpart. Finally, the Agency requests comments on the applicability of these approaches to assessing equivalency of State programs as required under Part 123].

[*Comment:* Under § 123.39, States are authorized, but not required, to issue permits by rule in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

(b) *Permit by Rule for Ocean Disposal Barges or Vessels.* A barge or other vessel which accepts hazardous waste for ocean disposal shall be deemed to have an HWM facility permit if the following conditions are met:

(1) The owner or operator of the barge or vessel is authorized to ocean dump such waste under an ocean dumping permit issued to him or her under 40 CFR Subchapter H;

(2) The owner or operator of the barge or vessel complies with the terms of his or her ocean dumping permit; and

(3) The owner or operator of the barge or vessel complies with the following hazardous waste treatment, storage and disposal facility regulations, as applicable:

(i) 40 CFR Part 250, Subpart G (notification);

(ii) 40 CFR 250.43–5(a), (manifest system);

(iii) 40 CFR 250.43–5(b)(6)(recordkeeping); and

(iv) 40 CFR 250.43–5(c)(5)(i)–(iii)(A)–(F), (H); and (c)(6) (reporting).

[*Comments:* (1) Shoreside facilities of ocean disposal operations which handle hazardous wastes will require regular RCRA permits. However, disposal vessels which dump wastes into the ocean are adequately regulated by the Marine Protection, Research and Sanctuaries Act, as amended, 33 U.S.C. 1420 *et seq.* Even so, to assure the smooth operation of the manifest system, such facilities will have to comply with manifest, recordkeeping and reporting requirements.

(2) Under 123.39, States are authorized, but not required, to issue permits by rule in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

(c) *Permit by Rule for Publicly Owned Treatments Works (POTWs).* A publicly owned treatment works (POTW) which accepts for treatment hazardous waste shall be deemed to have a HWM facility permit if the following conditions are met:

(1) The POTW has an NPDES permit;

(2) The POTW complies with the terms of its NPDES permit;

(3) The waste meets all Federal, State and local pretreatment requirements which would be applicable to such waste if it was being discharged into the POTW through a sewer, pipe or similar conveyances; and

(4) The owner/operator of the POTW complies with the following hazardous waste treatment, storage and disposal facility regulations, as applicable:

(i) 40 CFR Part 250, Subpart G (notification);

(ii) 40 CFR 250.43–5(a) (manifest systems);

(iii) 40 CFR 250.43–5(b)(6) (recordkeeping); and

(iv) 40 CFR 250.43–5(c)(5) (i)–(iii) (A)–(F), (H); and (c)(6) (reporting).

[*Comments:* (1) General pretreatment regulations are found at Part 403 of this Chapter and specific pretreatment requirements for industrial categories are found generally in Subchapter N of this Chapter (Effluent Guidelines and Standards). An industry generating hazardous waste and shipping waste to a POTW must provide all the treatment which would be required if the industry were discharging the waste directly into the treatment system. POTWs which receive wastes that may be classified as "hazardous" but which are solid or dissolved materials in domestic sewage do not come under these regulations because sections 1004(5) and 1004(27) of RCRA exclude these materials from the definition of "hazardous wastes." These POTWs are controlled under the NPDES system of the Clean Water Act. However, for those POTWs which receive hazardous waste for which a manifest or other delivery document is required, compliance with the manifest system, recordkeeping and reporting requirements is necessary to assure the smooth operation of the manifest system.

(2) Under § 123.39, States are authorized, but not required, to issue permits by rule in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

§ 122.27 Reporting requirements.

In addition to the reporting requirements of § 122.15, the Director shall prepare the following reports:

(a) *Quarterly international shipment reports.* The Director shall submit two copies of a report within four weeks of the last day of March, June, September and December. The report shall contain a compilation of shipments which originated during the reporting quarter and were sent from generators and owners and operators of treatment, storage, and disposal facilities within the State to a location outside the jurisdiction of the United States. Such reports shall contain the generator or HWM facility identification code, name, address, and the information required by 40 CFR 250.23(c) (2)–(7) (proposed at 43 FR 58978 (December 18, 1978)).

(b) *Annual program reports.* The Director shall prepare two copies of a program report within four weeks of the last day of September. The report shall contain information (in a manner and form prescribed by the Administrator) on generators, transporters, the permit status of regulated facilities, and summary information on the quantities and types of hazardous wastes

generated, transported, stored, treated and disposed during the preceding year.

(c) Reports required under this section from the State Director shall be submitted to the Regional Administrator, and reports from the Regional Administrator shall be submitted to EPA Headquarters.

§ 122.28 Emergency authorization.

Notwithstanding any other provision of this Part or Part 124, in the event of an immediate hazard to human health or the environment (as determined by EPA, other Federal agencies or State or local authorized officials) the Director may issue temporary authorization to a permitted HWM facility to allow treatment, storage or disposal of hazardous waste not covered by a permit. Such authorization:

(a) May be oral or written. If oral, it shall be followed within 5 days by written authorization;

(b) Shall not exceed 90 days in duration;

(c) Shall clearly specify wastes to be received, and the manner and location of their treatment, storage or disposal;

(d) May be revoked by the Director at any time if he/she determines that revocation is appropriate to protect human health and the environment; and

(e) Shall be accompanied by a public notice published according to methods provided in § 124.11(a)(2) and specifying the:

(1) Name and address of the office granting the emergency authorization;

(2) Name and location of the permitted HWM facility;

(3) Brief description of the wastes involved;

(4) Brief description of the action authorized and reasons for authorizing it; and

(5) Duration of the authorization.

[*Comment:* Under § 123.39, States are authorized, but not required, to grant temporary authorization in the same manner and covering the same facilities or circumstances as those covered by EPA under this section.]

Subpart C—Additional Requirements for UIC Program Under the SDWA

§ 122.31 Purpose and scope.

(a) The regulations in this Subpart set forth the specific requirements for the UIC program. Additional general requirements have been set forth in Subpart A. In case of inconsistencies between this Subpart and Subpart A, this Subpart is controlling.

(b) SDWA provides for authorization of underground injections in listed States by permit or, where provided for by these regulations, by rule. This Subpart defines the types of activities subject to authorization by permit or rule, and sets forth the specific elements applicable to either type of authorization.

[*Comment:* References to Part 146, the technical regulations for the UIC program, appear frequently in this Subpart. These technical regulations were proposed on April 20, 1978 (44 FR 23738).]

§ 122.32 Law authorizing UIC program.

(a) Section 1421 of SDWA requires the Administrator to propose and promulgate regulations establishing (1) minimum requirements for UIC programs and (2) a procedural mechanism whereby States may obtain EPA approval to operate such programs.

(b) Section 1422 of SDWA requires the Administrator to list in the **Federal Register** "each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources" and to establish by regulation a program for EPA administration of UIC programs in the absence of a State program in a listed State.

(c) Section 1423 of SDWA provides procedures for EPA enforcement of UIC requirements where the State fails to enforce those requirements.

(d) Section 1445 of SDWA authorizes (1) such recordkeeping, reporting, and monitoring requirements "as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title," and (2) a "right of entry and inspection to determine compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities * * *."

(e) Section 1450 of the SDWA authorizes the Administrator "to prescribe such regulations as are necessary or appropriate to carry out his functions" under SDWA.

§ 122.33 Designation of underground drinking water sources.

(a) The Director shall identify (by narrative description, illustrations, maps or other means) all aquifers or parts of aquifers which are not underground sources of drinking water, in accordance with the criteria contained in § 146.04. The Director shall propose this designation and provide opportunity for comment and a public hearing on it. All aquifers not so identified shall be designated underground sources of drinking water.

(b) Aquifers identified under paragraph (a) shall be described in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

[*Comment:* Aquifers not identified under paragraph (a) of this section may be described by use of maps, where such information is available, or by narrative description. Identifications of aquifers in accordance with paragraph (a) should be accompanied by narrative descriptions of why those aquifers do not qualify for designation as underground sources of drinking water.]

(c) Where a UIC program is administered by a State, designation and identification by the State Director under this section shall be subject to the approval of the Administrator at the time of program approval under Part 123.

[*Comment:* Designation and identification subsequent to program approval shall be treated as program modifications under § 123.6(b)(8).]

§ 122.34 Classification of injection wells.

The Director shall classify injection wells as follows:

(a) Class I: Industrial and municipal disposal wells and nuclear storage and disposal wells which inject beneath the lowermost stratum containing an underground source of drinking water.

(b) Class II: Well injection of produced water or other fluids which are brought to the surface in connection with oil or natural gas production, well injection of fluids for enhanced recovery of oil or natural gas and well injection of fluids for storage of hydrocarbons.

(c) Class III: Well injection of fluids for special processes such as mining of sulfur by the Frasch process, well injection for solution mining of uranium, salt, potash, copper and other minerals, and well injection for in situ gasification of oil shale, coal, lignite, tar sands and other similar fuel sources, and well injection to recover gas thermal energy.

(d) Class IV: Wells used by generators of hazardous wastes and owners or operators of hazardous waste management facilities (as defined in § 122.3(b)) to inject into or above strata containing underground drinking water sources.

(e) Class V: Injection wells not included in Classes I, II, III or IV (examples are recharge wells such as subsidence control wells, air conditioning or cooling water return flow wells, and drainage wells; and waste disposal wells such as sand backfill wells, non-residential septic system wells, dry wells, and industrial and municipal waste disposal wells).

§ 122.35 Authorization of underground injection by rule.

(a) *Types of underground injections which may be authorized by rule.* The Director may authorize underground injections by rule in the following instances:

(1) Underground injection into all existing class I, II (except existing enhanced recovery and hydrocarbon storage) and III wells may be authorized by rule for a period up to 5 years from the effective date of the UIC program. All class I, II and III wells except enhanced recovery and hydrocarbon storage wells must be issued permits within five years in accordance with the permitting schedule established by the Director. All such authorizations by rule shall require compliance with the applicable monitoring, reporting and abandonment requirements of Part 146 as soon as possible but no later than one year after the authorization by rule.

(2) Underground injections into existing enhanced recovery and hydrocarbon storage wells may be authorized by rule, rather than by permit, for the life of the well. All such authorizations by rule shall require compliance with the applicable construction, abandonment, operating, monitoring, reporting, and financial responsibility requirements of Part 146 as soon as possible but no later than one year after the authorization by rule.

(3) Underground injections into existing class IV wells which have submitted the information required under § 146.42 shall be authorized by rule ending at the time of their closure under § 146.43(a). Such authorization shall require monitoring and reporting as set forth in § 146.44 within 90 days of the authorization.

[*Comment:* The operation of *new* Class IV wells shall be prohibited by rule. See § 122.45.]

(4) Underground injections into class V wells which have submitted the information required under §146.52 may be authorized by rule for a period ending at the time when new requirements promulgated by EPA became applicable.

(b) Owners or operators of underground injection facilities who have not complied with applicable rules are subject to enforcement action by the State or, where appropriate, EPA.

§ 122.36 Authorization of underground injection by permit.

(a) *Who must apply.* All underground injections into Class I, II (except existing enhanced recovery and hydrocarbon storage) or III wells in listed States must be authorized by permit.

(b) *Time to apply.* Any person who performs or proposes an underground injection for which a permit is required shall submit an application to the Director in accordance with the State UIC program (including the State permit plan under part 123) as follows:

(1) For existing injection wells, as expeditiously as practicable and in accordance with the schedule contained in State permit plan, but no later than four years from the effective date of the State UIC program.

(2) For new injection wells, a reasonable time before injection is expected to begin. Injection may not begin until the owner or operator has received a permit.

(c) *Contents of UIC application.* Applicants for UIC permits shall submit the following information to the Director:

(1) All applicants must submit the identity of the owner or operator of the injection operation, the location or proposed location of the injection well, and the purpose or function of the well.

(2) Applicants for State-issued permits for existing injection wells shall submit, in addition to the information required by subparagraph (1), such other information as the Director requires.

[*Comment:* In many States, most or all of the information which the Director must consider in writing permit conditions is already contained in State files. Part 146 Subparts B–D list the information which the Director must consider for various classes of wells. The Director may review the State files upon receipt of an application and then require the applicant to submit any applicable information which either is not contained in the State file or is in need of correction or updating. Only new information submitted by the applicant that is not already contained in State files is subject to the signatory requirements of §122.5.]

(3) Applicants for State-issued permits for new injection wells shall submit, in addition to the information required by subparagraph (1), all additional information which the Director will be required under Part 146 to consider for the applicable class of well. Certain maps, sections, and tabulations of wells within the area of review (see §§ 146.15, 146.25 and 146.36), may be included in the application by reference provided they are available to the Director and sufficiently identified to be retrieved.

(4) Applicants for EPA-issued permits shall submit, in addition to the information required by subparagraph (1), all additional information which the Director will be required under Part 146 to consider for the applicable class of well.

(d) *Mechanical integrity.* The Director shall issue no permits to wells which lack mechanical integrity as determined under § 146.08.

§ 122.37 Area permits.

(a) The Director may issue permits on a well-by-well basis or an area basis, provided that all injection wells covered by an area permit are:

(1) Within a single well field project, or site in a single State;

(2) Covered by the application for the permit;

(3) Of the same type as determined under § 122.34;

(4) Injecting into the same aquifer or zone; and

(5) Controlled by a single person.

(b) Area permits shall specify the boundary within which underground injections are authorized and shall identify by location each injection well covered by the area permit.

(c) A permittee may obtain administrative authorization from the Director for additional new injection wells within the permitted area without public notice and hearing:

(1) If the permittee notifies the Director of his/her intent to place an additional injection well within the permitted area and provides information on the location of the proposed well;

(2) If the permittee demonstrates to the satisfaction of the Director that the additional underground injection well is similar in construction to wells already covered by the area permits and will meet the operation requirements of Part 146; and

(3) Where authorization under this paragraph is obtained orally, the information in (1) and (2) must be provided in writing within 30 days.

[*Comment:* Such authorization of additional injection wells does not constitute a permit modification subject to § 122.9.]

§ 122.38 Corrective action.

(a) Where the Director's review of an application for a class I, II (other than existing) or III well indicates that the proposed injection well's area of review contains wells which are improperly completed and/or plugged or that the remedial actions proposed by the applicant are inadequate, he/she shall prescribe such steps or modifications as are necessary to prevent fluid migration ("corrective action"). In determining such steps or modifications, the Director shall consider the factors set forth in § 146.07.

(b) In the case of a new or existing class II injection well in an existing

injection field, the Director shall by rule (or by permit) require that where a source of leaking fluids may cause a significant risk to public health, the leak shall be corrected in the shortest reasonabale period of time or the operator shall cease injecting.

(c) In the case of an existing injection well which must be authorized by permit, the Director shall issue the permit with a condition that if any required corrective action is not accomplished within the shortest reasonable time, the permit shall be revoked.

(d) In the case of a new injection well authorized by permit, the operation shall not begin unless all required corrective action has been taken.

(e) In the case of a class I, II or III well which is authorized by rule, if any monitoring indicates the migration of injection or formation fluids into underground sources of drinking water, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring or reporting (including closure of the injection well) as are necessary to prevent such migration.

[*Comment:* In the case of wells authorized by permit, such additional requirements may be imposed by modifying the permit in accordance with § 122.9.]

(f) If at any time the Director gains knowledge of a Class V well which presents a significant risk to the health of persons, he/she shall prescribe such action as necessary (including the immediate closure of the injection well) to remove such hazard.

§ 122.39 General prohibition against movement of fluid into underground sources of drinking water.

No class I, II or III well shall cause or allow movement of fluid into underground sources of drinking water.

§ 122.40 Temporary authorization.

(a) Notwithstanding any other provision of this Part, the Director may, in the following circumstances, temporarily authorize a specific underground injection which has not otherwise been authorized by rule or permit:

(1) An imminent and substantial hazard to human health or the environment will result unless temporary authorization is granted; or

(2) If a substantial and irretrievable loss of oil or gas resources will occur unless temporary authorization is granted to a Class II well; and

(i) Timely application for a permit could not have practicably been made; and

(ii) The temporary authorization will not result in the movement of fluids into underground sources of drinking water.

(b)(1) Any authorization under paragraph (a)(1) shall be for no longer than required to prevent the hazard or loss of such resources.

(2) An authorization under paragraph (a)(2) shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the authorization until the permit is granted or denied.

(c) Notice of any authorization under this paragraph shall be published in accordance with § 124.11 within 10 days of the authorization.

§ 122.42 Establishing UIC permit terms and conditions.

(a) Permit terms and conditions shall at a minimum establish, in addition to terms and conditions required under §§ 122.9 and 122.11, the following:

(1) Construction requirements as set forth in Part 146;

(2) Corrective action as set forth in § 122.38 and § 146.7;

(3) Operation requirements as set forth in Part 146;

(4) Monitoring and reporting requirements as set forth in § 122.12 and Part 146;

(5) Schedules of compliance. Schedules shall set forth dates which are as early as possible but no later than three years after the dates of permit issuance. No later than 30 days following each interim or final date, the permittee shall provide the Director with written notice of compliance or noncompliance with the interm of final requirements;

(6) Plugging and abandonment of injection wells. Where a permittee intends to cease underground injection, the permittee shall immediately notify the director and follow the procedures prescribed by the director for plugging and abandonment of the well; and

(7) Fiscal responsibility of permittees. The permittee shall maintain fiscal responsibility and resources, in the form of performance bonds or other appropriate form, to close, plug and abandon the underground injection operation in a manner prescribed by the Director.

[*Comment:* To assure that the well is constructed and operated in accordance with the requirements of Part 146, the permit should set forth the specific data on which the permit is based. For example, the permit should establish injection volumes and pressures which will assure compliance with the Part 146 operating requirements.

(b) The director may impose additional terms and conditions on a case-by-case basis if necessary to prevent the migration of fluids into underground sources of drinking water.

§ 122.43 Noncompliance reporting.

(a) The Director shall submit, as part of the quarterly report required under § 122.15(a), information concerning noncompliance by major underground injectors with permit requirements or the requirements of any applicable rule.

(b) The following shall be contained in the noncompliance report:

(1) *Failure to Complete Construction Elements.* Noncompliance shall be reported in the following circumstances:

(i) When an injector has failed to complete, by the date specified in the permit or rule, an element of the compliance schedule involving planning for construction (e.g., award of contract, preliminary plans, ets.) or a construction step (e.g., begin construction, attain operation level); and

(ii) The injector has not returned to compliance within 30 days from the date a report is due under Part 146.

(2) *Failure to Complete/Provide Compliance Schedule Reports.* Noncompliance shall be reported in the following circumstances:

(i) When an injector has failed to complete or provide a report required in the compliance schedule (e.g., progress reports, notification or compliance/noncompliance etc.); and

(ii) The injector has not submitted a complete report within 30 days from the date the report is due.

(3) *Noncompliance with Operational Requirements.* Noncompliance shall be reported in the following circumstances;

(i) When a permittee or an injector authorized by rule has violated an operational requirement and has not returned to compliance with applicable requirements within 45 days from the date notification of noncompliance under Part 146 was due; or

(ii) When the Director determines that a pattern of noncompliance with applicable operational requirements exists for any injector over a period of 12 months prior to the end of the current reporting period. This includes but is not limited to:

(A) Any violation of the same requirement in two consecutive quarters; and

(B) Any violation of one or more requirements in each of the four quarters comprising the 12-month period.

(4) *Failure to Report Data.* The State shall include in its report instances

where reports are received or the reports provided by the injector are so deficient as to cause misunderstanding on the part of the Director and impede the review of the status of compliance.

[*Comment:* Noncompliance reported under this paragraph shall be reported in successive reports until the noncompliance is resolved. This resolution of noncompliance shall also be reported. Once the noncompliance is reported as resolved, it need not appear in subsequent reports.]

(d) Where the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. Where EPA is the permit-issuing authority, the Regional Administrator shall submit any reports required under this section to EPA Headquarters.

§ 122.44 Special Requirements for wells managing hazardous wastes.

(a) The owner or operator of any well that is used to inject hazardous wastes accompanied by a manifest or delivery document shall obtain authorization to inject as specified in §§ 122.35 and 122.36.

(b) In addition to the applicable requirements of this Part and Part 146 Subparts B-F, the Director shall, for each facility meeting the requirements of paragraph (a), require that the owner or operator comply with:

(1) The notification requirements of Part 250, Subpart G (proposed at 43 FR 29911 (July 11, 1978)); and

(2) The manifest system record-keeping, and reporting requirement of § 250.43–5(a), (b)(6), (c)(5)(i), (c)(5)(ii), (c)(5)(iii), (c)(5)(iii)(A)–(F) and (c)(5)(iii)(H), and (c)(6) (proposed at 43 FR 59003 (December 18, 1978)).

[*Comment:* Wells which inject hazardous wastes qualify as hazardous waste management facilities under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.* This section is designed to integrate regulatory coverage of these wells under RCRA and SDWA to avoid imposing inconsistent requirements.]

§ 122.45 Elimination of all class IV wells.

(a) *Existing class IV wells.* Existing class IV wells shall be inventoried and closed by the Director as described in §§ 146.42 and 146.43.

(b) *New class IV wells.* The Director shall by rule prohibit all new class IV wells immediately upon the effective date of the UIC program.

§ 122.46 Inventory of class V wells.

(a) The Director shall by rule require the owner/operator of any class V well to submit the information required in § 146.52.

(b) The Director shall, within two years of the effective date of the State program:

(1) Conduct an assessment of the contamination potential of class V wells;

(2) Conduct an assessment of the available corrective alternatives where appropriate and their environmental and economic consequences; and

(3) Submit a report to EPA containing items (1) and (2) as well as recommendations for appropriate regulatory approaches and remedial actions.

Any underground injection for which the required information is not submitted will not be authorized by either rule or permit and will thus be subject to appropriate enforcement action.

[*Comment:* Based on the submitted information, States shall develop reports and recommendations, which the Agency will use as a basis for promulgating minimum national requirements to bring class V wells under regulatory control.

The assessment mandated for class V wells represents solely the recognition that insufficient information is available to the Agency at this time. EPA has every intention of continuing to seek the necessary environmental amd economic data.]

Subpart D—Additional Requirements for National Pollutant Discharge Elimination System Programs Under the Clean Water Act

§ 122.61 Purpose and scope.

(a) This Subpart sets forth additional requirements for the National Pollutant Discharge Elimination System (NPDES) program including permit programs under sections 402, 318 and 405 of the Act; it applies to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(b) Section 402 of the Clean Water Act (CWA, formerly referred to as the Federal Water Pollution Control Act), (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) establishes the NPDES program. The NPDES program also includes permit program requirements under sections 318 and 405 of the Act. This program regulates the discharge of pollutants from point sources and related activities into the waters of the United States. All such discharges or activities are unlawful absent an NPDES permit. After a permit is obtained, a discharge not in compliance with all permit terms and conditions is unlawful.

§ 122.62 Law authorizing NPDES permits.

(a) Section 301(a) of CWA provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402(a)(1) of CWA provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, . . . upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 318(a) of CWA provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(d) Section 405 of CWA provides, in part, that "where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act."

(e) Sections 402(b), 318(b) and (c), and 405(c) of CWA authorize EPA approval of State permit programs for discharges from point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(f) Section 404 authorizes EPA approval of State permit programs for the discharge of dredged or fill material.

(g) Section 304(i) of CWA provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisitions of information from dischargers in approved States and establishing minimum procedural and other elements of approved State NPDES program.

(h) Section 501(a) of CWA provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(i) Section 101(e) of the Act provides that "Public participation in the

development, revision, and enforcement of any regulation, standard, effluent limitation, plan or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

§ 122.63 Exclusions.

(a) The following discharges do not require an NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material into waters of the United States and regulated under section 404 of CWA.

(3) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.

[*Comment:* This exclusion applies only to the introduction of pollutants into publicly owned treatment works. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to apply for and receive permits until all discharges of pollutants to waters of the United States are eliminated. All applicable pretreatment standards promulgated under section 307(b) of CWA must also be complied with, and may be included in the permit to the publicly owned treatment works.

This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers of other conveyances owned by a State, municipality or other party not leading to treatment works. (See § 122.3(d)).]

(4) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to:

(i) Discharges from concentrated animal feeding operations as defined in § 122.76;

(ii) Discharges from concentrated aquatic animal production facilities as defined in § 122.77;

(iii) Discharges to aquaculture projects as defined in § 122.78; and

(iv) Discharges from silvicultural point sources as defined in § 122.80.

(b) The exemption of a discharge from NPDES requirements in paragraph (a) of this section does not preclude State regulation of the exempted discharge under State authority, in accordance with section 510 of the CWA.

§ 122.64 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.82 or excluded under § 122.63, shall complete, sign, and submit an application (which includes a BMP program if necessary under § 125.102) to the Director in accordance with Part 124.

(b) Persons currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Results in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit.

(2) Have expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the regional Administrator.

[*Comment:* Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay.]

(d) *Special provisions for applications from new sources.* (1) The owner or operator of any facility which may be a new source as defined in § 122.3(d) and which is located in a State without an approved NPDES program must comply with the provisions of this paragraph.

(2)(i) Before beginning any on-site construction as defined in § 122.81, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under subparagraph (2)(i) of this paragraph.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.11 of the new source determination under subparagraph (2)(1) of this paragraph. The notice shall state that the applicant, if determined to be a new source must comply with the environmental review requirements of 40 CFR Part 6.900 *et seq.*

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

(e) *Applications for variances from and modifications of effluent limitations by non-POTWs.* A discharger which is not a publicly owned treatment works may request a variance from or modification of otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.12. The request shall explain how the requirements of § 124.15 and 40 CFR Part 125, Subpart D have been met.

(2) A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator; or pursuant to section 301(g) of CWA because of certain environmental considerations, where those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial application to the Regional Administrator and the

State Director stating the name of the applicant, the permit number, the outfall number(s), the applicable effluent guideline, and whether the applicant is applying for a section 301(c) or section 301(g) modification or both. This application must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977;

(ii) Submitting a completed request demonstrating that the requirements of § 124.15 and the applicable requirements of Part 125 have been met no later than the close of the public comment period under § 124.12.

(iii) Requests for variance of effluent limitations based on other than effluent limitation guidelines, shall comply only with paragraph (ii) and need not submit an initial application under paragraph (i).

(3) An extension under CWA section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) of CWA based on delay in completion of a publicly owned treatment work into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant publicly owned treatment works requests an extension under paragraph (f)(2) of this section, whichever is later. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available control technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.12 for the discharger's initial permit requiring compliance with the best available technology economically achievable. The request shall demonstrate that the requirements of § 124.15 and Part 125, Subpart C have been met.

(5) A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.12 on the permit from which the variance is sought. The request shall demonstrate that the requirements of that section have been met.

(6) A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section. If thermal effluent limitations are established under CWA section 402(a)(1) or are based on water quality standards the application shall be filed by the close of the public period under § 124.12. A copy of the application as required under 40 CFR Part 125, Subpart H shall be sent simultaneously to the appropriate State or interstate certifying agency. (See § 124.67 for special procedures for section 316(a) thermal variances.)

(f) *Applications for variances from and modifications of effluent limitations by POTW's.* A discharger which is a publicly owned treatment works (POTW) may request a modification of otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) A preliminary application for a modification under CWA section 301(h) from requirements of CWA section 301(b)(1)(B) for discharges into marine waters must have been submitted to the Agency no later than September 25, 1978. A final application must be submitted in accordance with the filing requirements of 40 CFR Part 125, Subpart G, after that Subpart is promulgated, and shall demonstrate on its face that all the requirements of 40 CFR Part 125, Subpart G have been met. (See § 124.66 for special rules for CWA section 301(h) modifications.)

(2) An extension under CWA section 301(i)(1) from the statutory deadlines in CWA sections 301 (b)(1)(B) or (b)(1)(C) based on delay in the construction of POTWs must have been requested on or before June 26, 1978.

(3) A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations may be requested no later than the close of the public comment period under § 124.12 on the permit from which the modification is sought.

(g)(1) Notwithstanding the time requirements in paragraphs (e) and (f), the Director may notify the applicant before a draft permit is published pursuant to § 124.6 that the draft permit will likely contain limitations which are eligible for variances or modifications. In such notice the Director may require the applicant as a condition of consideration of any potential variance request to submit an application explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and to require its submission within a specified reasonable time before the draft permit is formulated. This notice can be sent before the application under this section has been submitted.

[*Comment:* This paragraph is intended to reduce the time for permit issuance, especially in those cases where it is clear that a CWA variance or modification will be applied for.]

(2) A discharger who cannot file a complete request required under paragraphs (e)(2)(ii), (e)(2)(iii), (e)(3)(ii) or (e)(3)(iii) may request an extension to apply. Extensions shall be limited to the time the Director determines is necessary to satisfy the requirements of the appropriate regulations, but shall be no more than 6 months in duration. The request may be granted or denied in the discretion of the Director.

§ 122.65 Effect of an NPDES permit.

Compliance with a permit during its term constitutes compliance, for purposes of sections 309 and 505, with applicable standards and limitations of CWA, except for any standard imposed under section 307 for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in §§ 122.9 and 122.73.

§ 122.66 Duration of permits.

No NPDES permit issued to a discharger within an industrial category listed in Appendix A of this Part, prior to the applicable permit expiration date listed in Appendix A, may be issued to expire after that date, unless:

(a) The permit incorporates effluent limitations and standards applicable to the discharger which are promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of CWA; or

[*Comment:* EPA is presently reviewing and revising effluent limitations for industries listed in Appendix A. In some cases, EPA may approve existing effluent limitations or choose not to develop new limitations. If EPA decides not to develop new effluent limitations it will publish notice in the **Federal Register** that the limitations are "approved" for the purpose of this regulation.]

(b) The permit incorporates:

(1) The "reopener clause" required by § 122.69(b)(1);

(2) Effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of CWA.

[*Comments:* (1) NPDES States are urged to issue short term permits expiring on or before the dates listed in Appendix A. This will ensure that all appropriate provisions of CWA, including compliance with the effluent limitations by the statutory deadlines, are met in permits issued after the promulgation

of effluent guidelines under sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2). Even if States issue long term permits with later expiration dates (in accordance with paragraph (b)(2), dischargers are legally required to meet all applicable statutory deadlines and requirements, including compliance with any promulgated EPA effluent guidelines defining "best conventional pollutant control technology" (BCT) and "best available control technology economically achievable" (BAT).

(2) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (b) is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a new permit based on that determination is formulated.]

§ 122.67 Prohibitions.

No NPDES permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines requirements of CWA, or regulations.

(b) Where the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived.

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.99.

(d) Where the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States as required by section 401(a)(2) of CWA.

(e) Where, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(g) For any discharge from a point source inconsistent with a plan or plan amendment approved under section 208(b) of CWA.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under section 403(c) of CWA, unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of CWA, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

(i) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will:

(A) Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment (as defined in 40 CFR § 130.2(o)(2)) prior to the introduction of the discharge from the new source or new discharger; or

(B) Exceed the total pollutant load allocation if the discharge is into a water quality segment as defined in 40 CFR § 130.2(o)(1).

The owner or operator of a facility which is a new source or new discharger into a water quality segment must also demonstrate, at the time of applying for a permit that there are sufficient remaining pollutant load allocations to allow the discharge and that the facility is entitled to these allocations.

§ 122.68 Additional conditions applicable to NPDES permits.

The following conditions, in addition to those set forth in § 122.11, are applicable to all NPDES permits. They shall be either expressly incorporated into the permit or incorporated by reference.

(a) [Reserved]

[*Comment:* This paragraph is reserviced pending publication of a revised NPDES application form. This form, and accompanying regulations, are being proposed in today's **Federal Register**, as a separate part of the Permit Consolidation package. When finally promulgated, the regulations appearing with the revised NPDES form will be incorporated into the text of this section. The existing NPDES application forms should be utilized until the revised application form is available, except as otherwise provided in these regulations. See § 122.5.]

(b) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

[*Comment:* Effluent standards or prohibitions esablished under CWA section 307(a) for toxic pollutants injurious to human health are effective within the time provided in the implementing regulations, even absent permit modification.]

(c) *Bypass.* (1) *Definitions.*

(i) "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

(ii) " Severe property damage" means substantial damage to property damage to the treatment facilities which would cause them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. severe property damage does not mean economic loss caused by delays in production.

(2) *Conditions necessary for bypass.* Bypass is prohibited unless the following three conditions are met:

(i) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Director within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the Director, if possible, at least ten days before the date of the bypass.

[*Comment:* Fully efficient operation of treatment systems is required at all times. Although this generally requires the use of all portions of an existing treatment system, in some cases, maintenance necessary to ensure efficient operation may require bypassing portions of a system. Where such a bypass will not cause applicable effluent limitations or standards to be exceeded, it may be done without notification of the permitting authority. Where, however, a bypass is undertaken for reasons other than essential maintenance or where a bypass would cause effluent limitations or standards to be exceeded, it may be undertaken only in accordance with the provisions of this section.]

(3) *Prohibition of bypass.* The Director may prohibit bypass in consideration of the adverse effect of the bypass and the conditions set forth in paragraph (c)(2) of this section should have been provided by the treatment facility the bypass will not be allowed. If there is any doubt as to the necessity of the bypass or the availability of methods to reduce or eliminate the discharge, appropriate enforcement action may be taken.

(d) *Upset.* (1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary

noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragarph (d)(3) are met.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;

(iii) The permittee submitted information within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days); and

(iv) The permittee complied with any remedial measures required under § 122.11(i).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

[*Comment:* Although in the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance was caused by an upset, no determinations made in the course of the review constitute final Agency action subject to judicial review. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations.]

(e) The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

§122.69 Applicable limitations, standards, prohibitions, and conditions.

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of CWA and regulations promulgated under CWA. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit issued by a State with an approved NPDES program, or, in the case of a permit issued by EPA, which takes effect prior to the issuance of the permit except as provided in § 124.86(c). Permits shall ensure compliance with the following as applicable:

(a) Effluent limitations and standards under sections 301, 302, 303, 304, 307, 318 and 405 of CWA, including any interim final limitations and standards.

(b) For a discharger within any industrial category listed in Appendix A requirements under section 307(a)(2) of CWA, as follows:

(1) Prior to the applicable permit expiration date listed in Appendix A;

(i) If applicable standards or limitations have not yet been issued:

(A) The permit shall include conditions stating that, if an applicable standard or limitation is issued or approved under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) and such effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or, alternatively, revoked and reissued in accordance with such effluent standard or limitation and any other requirements of CWA then applicable.

[*Comment:* The following language is an acceptable permit condition for the purposes of this section:

"This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(i) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Clean Water Act then applicable."]

(B) The Director shall promptly modify, or alternatively revoke and reissue, the permit to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) is issued or approved if such effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

[*Comment:* The requirements of this section are intended to assure compliance with the 1984 statutory deadline for the achievement of best available technology economically achievable for pollutants now listed under section 307(a)(1) of CWA. When a permit is modified or revoked and reissued pursuant to subparagraph (B), additional limitations may be included in the permit to assure achievement of applicable statutory requirements (e.g., best conventional pollutant control technology for "conventional" pollutants and best available technology economically achievable for "non-conventional" pollutants) by appropriate statutory deadlines.]

(ii) If applicable standards or limitations have been issued, the permit shall include those standards or limitations.

(2) Any permit issued after the applicable permit expiration date listed in Appendix A, the permit shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved. Such permits need not incorporate the clause required by subparagraph (A) of this paragraph.

(c) Standards of performance for new sources under section 306 of CWA, including any promulgated interim final effluent limitations and standards.

(d) If the permit is for a discharge from a publicly owned treatment works, a condition requiring the permittee to:

(1) Provide adequate notice to the Director of the following:

(i) Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of CWA if it were directly discharging those pollutants; and

(ii) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

[*Comment:* For purposes of this paragraph, adequate notice shall include information on (1) the quality and quantity of effluent to be introduced into such POTW, and (2) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTW.]

(2) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under

section 307(b) of CWA and 40 CFR Part 403.

(3) Establish a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403.

(4) Require any indirect discharger to such POTW to comply with the reporting requirements of sections 204(b), 307, and 308 of CWA, including any requirements established under 40 CFR Part 403.

(e) Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

[*Comment:* Among other things, this paragraph contemplates permit conditions embodying measures to protect the POTW against overloading and schedules of compliance which are consistent with, and determined from, construction grant award dates.]

(f) Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 where necessary to:

(1) Achieve water quality standards established under section 303 of CWA;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions of a State certification under section 401 of CWA where EPA is the permit issuing authority;

(4) Conform to applicable water quality requirements under section 402(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards or schedules of compliance requirements established under Federal or State law or regulations in accordance with section 301 (b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under Part 125, Subpart M for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125 Subpart D;

(9) Incorporate other requirements, or conditions, or limitations into a new source permit under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* and section 511 of CWA, where EPA is the permit issuing authority.

(10) Establish on a case-by-case basis technology-based limitations controlling a pollutant not included in promulgated effluent limitations guidelines or standards in accordance with 40 CFR 125.2.

[*Comment:* Subparagraph (10) applies to all dischargers including new sources and new dischargers, even where covered by the protection period in § 122.81.]

(g) Best management practices to control or abate the discharge of pollutants where:

(1) Authorized under section 304(e) of the CWA for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible, or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intents of CWA.

[*Comment:* Examples of best management practices which may be imposed under subparagraph (g)(2) include: (a) proper operator qualifications of treatment facility personnel (see Decision of the General Counsel No. 19), and (b) sludge-handling requirements (see Decision of General Counsel No. 33). Examples of best management practices which may be imposed under subparagraph (g)(3) include: (a) coal mining operation's diversion of water from an active coal mining area to prevent contact between water and iron pyrites which could react to form sulfuric acid and wastewaters with low pH values; (b) the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; (c) ditching and diversion of rainfall runoff for treatment prior to discharge; and (d) the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution. Although these best management practices under subsections (2) and (3) would be required under the authority of *NRDC* v. *Costle,* (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977) they are similar to those in subparagraph (g)(1) and Subpart K of 40 CFR Part 125 imposed for toxic and hazardous materials under section 304(e).]

(h) Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(i) Where a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under §§ 122.9 or 122.73.)

Where effluent limitations were imposed under section 402(a)(1) of CWA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent guidelines);

(2) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent guideline; or

(3) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of CWA).

(j) In the case of a permit issued to a facility that may operate at certain times as a means of transportation over water, a general condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants.

(k) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

§ 122.70 Calculation and specification of effluent limitations and standards.

(a)(1) All NPDES permits shall impose final, and where necessary, interim effluent limitations, standards and prohibitions under §§ 122.11, 122.68 and 122.69 for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.69(g)(2) and paragraph (i) of this section.

(2) Except in the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on the actual production and not the designed production capacity of the

facility where the promulgated effluent guideline limitations and standards are based on production.

[*Comment:* Where design capacity is not representative of actual production, permit limitations will be calculated to reflect a reasonable measure of actual production, such as the high month during the previous year, or the monthly average for the highest year of the previous five years, for facilities where such data is available. For new sources, or new discharges, actual production generally will be projected production based on market data, and permit limitations may require modification once actual production figures are available.]

(3) In the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards or prohibitions established under §§ 122.11, 122.68 and 122.69 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under CWA specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis under § 122.69(1), it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of CWA.

(c) For continuous discharges all interim and final permit effluent limitations, standards and prohibitions established under § 122.11. § 122.68 and § 122.69, including those necessary to achieve water quality standards, shall be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

A "continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes or other similar activities throughout the operating hours of the facility.

The "Maximum daily discharge" is the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

The "average monthly discharge limitation" is the total mass, and concentration in the case of POTWs, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

The "average weekly discharge limitation" is the total mass and concentration of all daily POTW discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

[*Comment:* Calculations for all such limitations which require averaging of measurements or of daily discharges, shall utilize an arithmetic mean average, unless otherwise specified or approved by the Director.]

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(e) Except as provided in paragraph (g), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f)(1) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determined continued eligibility for and compliance with any such adjustments.

The discharger shall notify the Director if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under §§ 122.9 or 122.73.

(2) Permit effuent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this paragraph shall be given only to the extent that polluntants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water very physically, chemically or biologically from the pollutants limited by the permit. Nor shall effluent limitations or standards by adjusted when the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(h) Discharges which are not continuous, as defined in paragraph (c), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (e.g., a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (e.g., not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (e.g., not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (e.g., shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(i) Where permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards of discharges of pollutants may be imposed on internal waste streams prior to mixing with other streams or cooling water streams. In such instances, the monitoring required by Subpart C shall also be applied to the internal waste streams.

[*Comment:* Limits on internal waste streams will only be imposed in exceptional circumstances, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), where the wastes at the point of discharge are so diluted as to make monitoring impracticable, or where the interferences among pollutants at the point of discharge would make detection and/or analysis impracticable.]

§ 122.71 NPDES requirements for recording and reporting of monitoring reports.

(a) To assure compliance with permit terms and conditions, all NPDES permittees shall monitor as specified in the permit:

(1) The amount, concentration or other measurement specified in § 122.70 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) According to test procedures for the analysis of pollutants meeting the requirements of paragraph (b);

(4) As otherwise specifically required in the permit, e.g., as required under § 122.70(g)(2).

(b)(1) Test procedures identified in 40 CFR Part 136 shall be utilized for pollutants or parameters listed in that Part, unless and alternative test procedure has been approved under the Part.

(2) Where no test procedure under 40 CFR Part 136 has been approved, the Director shall specifiy a test method in the permit.

(3) Notwithstanding paragraph (1), the Director may specify in a permit the test procedure used in developing the date on which an effluent limitations guideline was based, or specified by the standards and guidelines.

(4) Where a method approved under 40 CFR Part 136 for any pollutant or parameter was used in developing the applicable standards and limitations or is specified by the standards and limitations, the same method shall be specified in the permit.

(c) The sampling frequency and other monitoring requirements specified by the director under paragraph (b) shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent guideline on which the effluent limitations in the permit are based.

(d) If the permittee believes that the monitoring requirements specified by the director under paragraph (b) in any draft permit under § 124.31, are not sufficient to yield data representative of the volume of effluent flow and the quantity of pollutants discharged, it should request that additional monitoring requirements sufficient to yield such data be included in the final permit. Compliance with effluent limitations contained in the permit will be determined in accordance with the monitoring requirements specified in the permit which, when finally effective, are deemed to yield data representative of the volume of effluent flow and the quantity of pollutants discharged.

(e) The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(f) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained under this section or § 122.14 shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

(g) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported and included in the calculation and reporting of the data submitted in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to 40 CFR 136 or as specified in the permit.

(h) The CWA provides that any person who knowingly makes any false statement, representation, or certification in the monitoring report or notice of compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.72 NPDES noncompliance reporting requirements.

(a) On the last working day of February, May, August, and November, the State director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the reporting schedule contained in paragraph (g). The Regional Administrator shall submit such information and shall also prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with paragraph (g).

(b) *Quarterly Reports.* The reports required by paragraph (a) shall include the following information:

(1) *Failure to complete construction elements.* Noncompliance shall be reported:

(i) When the permittee has failed to complete by the date specified in the permit, an element of the compliance schedule (e.g., award of contract, preliminary plans (e.g., begin construction or attain operational level)); and

(ii) The permittee has not returned to compliance by accomplishing the requirements of the permit within 30 days from the date a report is due under § 122.12(a)(2).

(2) *Failure to complete or provide compliance schedule reports.* Noncompliance shall be reported in the following circumstances:

(i) When the permittee fails to complete or provide a report required in the permit compliance schedule or under § 122.14 (e.g., progress reports or notification of compliance or noncompliance); and

(ii) The permittee has not returned to compliance by submitting the report within 30 day from the date it is due under § 122.12(a)(2).

(3) *Noncompliance with applicable standards and limitations.* Noncompliance shall be reported:

(i) When the permittee has violated an applicable standard or limitation and has not returned to compliance with the NPDES permit requirements within 45 days from the date that the DMR or notification of noncompliance under § 122.11(h) was due;

(iii) When a pattern of noncompliance with applicable standards or limitations as determined by the Director exists for any major discharger over a period of 12 months prior to the end of the current reporting period. This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring. A pattern of noncompliance shall be reported whenever there is:

(A) Any violation of the same permit or limitation or standard in two consecutive quarters; and

(B) Any violation of one or more permit limitations or standards in each of four consecutive quarters; or

(iii) When, as determined by the Director, a significant discharge of a pollutant occurs, such as a discharge of a toxic or hazardous substance.

(4) *Failure to report effluent data.* Noncompliance shall be reported where the permittee has failed to provide a DMR within 30 days of the date it is due or where the permittee has exceeded

effluent limitations and has failed to report this noncompliance.

(5) *Deficient reports.* Noncompliance shall be reported where the required reports provided by the permittee are so deficient as to cause misunderstanding by the permit issuing authority and thus impede the review of the status of compliance.

(6) *Modifications to schedules of compliance under § 122.12(a)(3).* Noncompliance resulting from or constituting the basis for a modification under § 122.12(a)(3) shall be reported.

[*Comment:* Noncompliance reported under this paragraph shall be reported in successive reports until the noncompliance is resolved. The resolution of noncompliance shall be reported, and when the noncompliance is reported as resolved, it will not appear in subsequent reports.]

(c) The narrative information required under paragraph (b) shall:

(1) Include the information required under § 122.15(a);

(2) Provide separate lists for non-POTWs, POTWs and Federal permittees;

(3) Combine information concerning schedule and effluent noncompliance in a single entry for each permittee; and

(4) Alphabetize all narrative listings by permittee name. Where two or more permittees have the same name, the lowest permit number shall govern the order of entry, i.e., the lowest number shall be entered first.

(d) Statistical information shall be reported quarterly on all other instances of noncompliance with permit requirements by major dischargers not set forth in paragraph (b).

(e) *Annual reports.* For minor dischargers whose compliance has been reviewed by the permitting authority, statistical information on the types of noncompliance listed under paragraph (b) shall be reported annually. In additional, a separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted annually in alphabetical order by name and permit number.

(f) *Reporting schedules.* (1) The schedule for reporting of noncompliance by major dischargers under paragraphs (b), (c), and (d) shall be as follows:

Quarters covered by reports on noncompliance by major dischargers:	*Dates for completion of reports*
January	May 31*.
February	
March	
April	August 31*.
May	
June	
July	November 30*.
August	
September	
October	February 28*.
November	
December	

* Report made available to the public on this date.

(2) The annual reporting period for noncompliance by minor dischargers under paragraph (e) shall end at the end of the Federal fiscal year (currently September 30), with reports completed and available to the public no more than 60 days later.

(g) All reports prepared under this section shall be made available to the public for inspection and copying.

[*Comment:* The distinction between "major and minor" dischargers is established in EPA's annual operating guidance for the EPA Regional offices and the States.]

§ 122.73 Modifications or revocation and reissuance of NPDES permits.

In addition to the causes set forth in § 122.9(e), NPDES permit may be modified, or revoked and reissued for the following causes:

(a) Where water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent guidelines) are revised, withdrawn or modified, *but only when:*

(1) The permit term or condition requested to be modified or revoked was based on a promulgated effluent limitation guideline or a EPA approved or promulgated water quality standard;

(2)(i) EPA has revised, withdrawn or modified that portion of the effluent limitation guideline on which the permit term or condition was based; or

(ii) EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(3) A request for modification or revocation and reissuance is filed in accordance with § 124.5 (or applicable State procedures meeting the requirements of § 124.5) within ninety (90) days after **Federal Register** notice of:

(i) Revision, withdrawal or modification of that portion of the effluent limitation guideline; or

(ii) EPA approval of a State action regarding a water quality standard.

(b) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within 90 days of the judicial remand;

(c) Where any modification or revocation and reissuance of permits is specifically authorized by CWA, e.g., sections 301(c), (g), (h), (i) or (k).

(d) As necessary under §§ 122.68(b), 122.69(b) and 122.12(a)(3)(i) and (ii).

(e) Failure of an approved State to notify another State whose waters may be affected by the discharge from the approved State, as required by section 402(b)(3) of CWA.

(f) The following additional minor permit modifications for NPDES permits shall not require public notice and opportunity for hearing under § 124.5 or § 124.7 unless they would render the permit less stringent, or unless contested by the permittee:

(1) A change in the construction schedule for a discharger which is a new source. No such change shall affect a dischargers obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.81; and

(2) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

§ 122.74 Termination of NPDES permits.

In addition to the causes for termination set forth in § 122.10, NPDES permits may be terminated where there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.

§ 122.75 Disposal of pollutants into wells, into publicly owned treatment works or by land applications.

(a) Where part of a discharger's process waste water is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent limitations and standards for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be

eliminated from calculation of permit effluent limitations or standards;

(2) In all cases other than those described in paragraph (1), effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

[*Comment:* This method may be algebraically expressed as:

$P=E\times N/T$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.]

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection.

(c) Paragraph (a) does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.11, 122.68 and 122.69.

§ 122.76 Concentrated animal feeding operations.

(a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in (b)(2) (i), (ii) or (iii) below:

(i) More than the numbers of animals specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering),

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 150 horses,

(E) 3,000 sheep or lambs,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with paragraph (c).

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: 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 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and

(v) Other such factors relative to the significance of the pollution problem sought to be regulated.

(2) No animal feeding operation with less than the numbers of animals set forth in subparagraphs (b)(2) (i) and (ii) above shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and passover, across, through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this paragraph until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program.

§ 122.77 Concentrated aquatic animal production facilities.

(a) Concentrated aquatic animal production facilities, as defined in this

section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) "Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

(3) "Warm water aquatic animals" include, but are not limited to the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish, e.g., respectively, catfish, sunfish and minnows.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined to be a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(1) The location and quality of the receiving waters of the United States;

(2) The holding, feeding and production capacities of the facility;.

(3) The quantity and nature of the pollutants reaching waters of the United States; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

In no case shall a permit application be required from a concentrated aquatic animal production facility designated under this subparagraph until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under the permit program.

§ 122.78 Aquaculture projects.

(a) Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this part, and be harvested within a defined geographic area.

§ 122.79 Separate storm sewers.

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the general permit program (see § 122.82).

(b) *Definition.* "Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

(1) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(2) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

"Separate storm sewer" does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provisions of this Part.

[*Comment:* Whether or not a system of conveyances is or is not a separate storm sewer for purposes of this Part shall have no bearing on whether or not the system is eligible for funding under Title II of CWA, see 40 CFR 35.925–21.]

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

(1) A Water Quality Management plan under section 208 of CWA, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined to be a significant contributor of pollution to the waters of the United States. In making this determination the following factors shall be considered:

(i) The location of the storm sewer with respect to waters of the United States;

(ii) The size of the storm sewer;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

[*Comment:* An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners-operators of such conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.]

§ 122.80 Silvicultural activities.

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States.

[*Comment:* The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff during precipitation events. However, some of these activities (such as stream crossing for roads) may involve point source

discharges of dredged or fill material which may require a CWA section 404 permit (see 33 CFR 209.120).]

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines pursuant thereto).

(3) "Log sorting and log storage facilities" means facilities whose discharges result 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 stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines pursuant thereto.)

§ 122.81 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3(d).

(2) "Source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants;

(3) "Existing source" means any source which is not a new source or a new discharger;

(4) "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing or water pollution treatment processes;

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria and standards for new source determination.* (1) The following construction activities result in a new source as defined in § 122.3(d):

(i) Construction of a source on a site where another source(s) is not located, or

(ii) construction of a source on a site where another source is located, provided that the process or production equipment which causes the discharge of pollutants from the other source is totally replaced by this construction or the construction results in a new or additional discharge.

[*Comment:* The fact that a source is constructed on a site so that it shares or uses common land or water areas of another source for utility systems, repair, storage, or shipping does not prevent that source from being considered a new source.]

(2) The modification of an existing source by changing existing process or production equipment, replacing existing process or production equipment (except as provided in paragraph (b)(1)) or by the addition of such 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. Modifications of this nature are subject to the provisions of § 122.9(e)(1).

(3) Construction of a new source as defined under § 122.3(d) has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment;

(B) Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(c) *Requirement of an Environmental Impact Statement.* (1) The issuance of an NPDES permit to a new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR 6, Subpart I. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 124.64(d) and 40 CFR 6, Subpart I;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) The EIS shall include a recommendation on whether the permit is to be issued or denied.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before issuance of a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant adverse environmental impact.

(ii) No on-site construction of a new source for which no EIS is required shall commence before 15 days following issuance of a negative declaration, unless such construction is determined by the Regional Administrator to not cause significant adverse environmental impacts.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in subparagraph (4). If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (1) Except as provided in paragraph (d)(2), any new discharger which commenced construction after October 18, 1972, or any new source which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards or to any more stringent technology-based

standards under section 301(b)(2) of CWA for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) 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.

[*Comment:* The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.]

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a); and

(ii) Additional permit conditions controlling pollutants not listed as toxic under section 307(a) of CWA or as hazardous under section 311 of CWA and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit-issued to a source enjoying a "protection period" under paragraph (d)(1) will expire on or before the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, in accordance with section 306(e) of CWA, it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

§ 122.82 NPDES general permit program.

(a) *Definitions.* (1) The term "separate storm sewer" is defined in § 122.79.

(2) The term "general permit program area" ("GPPA") means any area so designated under paragraph (c) of this section in which all owners or operators of separate storm sewers or other categories of point sources are subject to the same general NPDES permit, other than owners or operators of such sources to whom individual NPDES permits have been issued.

[*Comment:* All draft general permits for point sources other than separate storm sewers must be sent to the EPA Deputy Assistant Administrator for Water Enforcement during the public comment period for 90-day review. If the draft general permit does not meet the criteria of § 122.82(b)(2), the EPA Deputy Assistant Administrator may object to the issuance of the general permit within those 90 days. See §§ 123.73(g) and 124.7(a)(2).]

(3) The term "general permit" means an authorization to discharge which:

(i) Where issued by EPA, is published in the **Federal Register**;

(ii) Where issued by a State, is published in accordance with applicable State procedures; and

(iii) Is applicable to all owners and operators of separate storm sewers or other categories of point sources in a designated GPPA, other than owners and operators of such sources to whom individual NPDES permits have been issued.

(b) The Director may regulate the following discharges under general permits

(1) Separate storm sewers; and

(2) Such categories of point sources if there are a number of minor point sources operating in a geographical area that:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Would require the same effluent limitations or operating conditions;

(iv) Would require the same monitoring requirements and

(v) In the opinion of the Director would be more appropriately controlled under a general permit than under an indivdual NPDES permit.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of paragraph (b) within a GPPA designated by the Director.

(1) The GPPA shall correspond with existing geogrpahic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of the Act;

(ii) Sewer districts or sewer authorities;

(iii) City, county or State political boundaries;

(iv) State highway systems;

(v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(vi) Urbanized areas as defined by the Bureau of Census (see § 122.79(b)(1)); or

(vii) Any other appropriate divisions or combinations of the above boundaries which will encompass the sources subject to the same general permit.

(2) Any designation of any GPPA is subject to review by the Director at the expiration of the general permit for the GPPA, or if individual permits have been issued to all the owners and operators of the classes of point sources within the GPPA, or as necessary to address water quality problems effectively.

(3) NPDES General permits shall be issued in accordance with the applicable requirements of Part 124.

[*Comments:* The permit issuing authority is encouraged to provide as much actual notice of the draft general permit to the permittees as possible. This notice would be in addition to the public notice requirements in § 124.11(f) and could include notice in trade associations' journals and newsletters.]

(d) *Scope of NDPES General Permits.* (1) Each NDPES general permit shall cover all owners and operators of separate storm sewers or other designated categories of point sources in the GPPA for which the general permit is issued, except:

(i) As provided in paragraph (e); and

(ii) For owners and operators of separate storm sewers or other categories of point sources who are already subject to individual NPDES permits prior to the effective date of the general permit;

(2)(i) All sources not excluded from general permit coverage for these reasons are permittees subject to the terms and conditions of the general permit.

(ii) Sources excluded from NDPES general permit coverage solely because they already have an individual NPDES permit may request that the individual permit be revoked, and that they be

covered by the general permit. upon revocation of the individual NPDES permit, the general permit shall apply to such point sources.

(e) *Case-by-case designation.* (1) Under § 124.70, the Director may revoke a general permit as it applies to any person and require such person to apply for and obtain an individual NPDES permit. Interested persons may petition the Director to take action under this paragraph if one of the six cases listed below occurs. Cases where individual NPDES permits may be required include the following:

(i) The covered discharge(s) is a significant contributor of pollution;

(ii) The discharger is not in compliance with the terms and conditions of the general NDPES permit;

(iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the covered point source;

(iv) Effluent limitation guidelines are subsequently promulgated for point sources covered by the general NPDES permit;

(v) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(iv) The requirements of paragraph (b)(2)(i) through (iv) are not met.

(2) Where EPA is the permit issuing authority, the Regional Administrator may revoke a general permit as it applies to any person and require such person to apply for an individual NPDES permit if:

(i) There has been an on-site inspection of the facility and a determination that the point source should and could be regulated under an individual permit: and

(ii) The owner or operator has been notified in writing of the revocation of the general permit and that a permit application is required. This notice shall include an application form, a statement that the owner or operator has sixty days from receipt of notice to file the application, and a statement that the general permit no longer authorizes the owner or operator to discharge pollutants.

(3) Any owner or operator subject to a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit such application, with reasons supporting the request, to the Director no later than ninety days after the publication by EPA of the general permit in the **Federal Register** or the publication by a State in accordance with applicable State law. All such requests shall be granted by issuance of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) Where an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the general permit as it applies to the individual NPDES permittee is automatically revoked on the effective date of the individual permit.

(5) Any owner or operator applying for an individual NPDES permit under this paragraph is subject to the procedures set forth in Part 124.

§ 122.83 Special considerations under Federal law.

Under section 301(b)(1)(C) of CWA, permits shall be consistent with and reflect requirements under applicable Federal laws other than CWA and to the extent authorized by law, requirements under Executive Orders. For permits issued by the Regional Administrator such Federal requirements include but are not limited to the following:

(a) *Executive Order 11990 (Protection of Wetlands).*

(b) *Executive Order 11988 (Preservation of Floodplains).*

(c) Sections 3, 4, and 5 of the *Wild and Scenic Rivers Act,* 16 U.S.C. 1273 *et seq.*

(d) The *National Historic Preservation Act of 1966,* 42 U.S.C. 4321 *et seq.* (and the related Executive Order 11593).

(e) The *Land and Water Conservation Act,* 16 U.S.C. 460, *et seq.*

(f) Section 7 of the *Endangered Species Act.* 16 U.S.C. 1531 *et seq.*

(g) Section 307 of the *Coastal Zone Management Act,* 16 U.S.C. 1451 *et seq.*

[*Comment:* NPDES permits must be consistent with approved coastal zone management plans by virtue of sections 307(c)(3)(A) (Federally issued permits) and 307(c)(1) (approval and oversight of State permit programs).]

(h) The *Solid Waste Disposal Act,* as amended by the *Resource Conservation and Recovery Act of 1976,* 42 U.S.C. 6901 *et seq.*

(i) The *Safe Drinking Water Act,* 42 U.S.C. 300f *et seq.*

(j) The *Marine Protection, Research, and Sanctuaries Act* (the *Ocean Dumping Act),* 33 U.S.C. 1401 *et seq.*

(k) The *Surface Mining Control and Reclamation Act of 1977,* 30 U.S.C. 1201 *et seq.*

(l) The *Fish and Wildlife Coordination Act,* 16 U.S.C. 661 *et seq.*

Appendix A.—*Point Source Categories and Permit Expiration Dates*

Point source category	Permit expiration dates
Adhesives	June 30, 1981
Aluminum Forming	June 30, 1981
Auto and Other Laundries	June 30, 1981
Battery Manufacturing	June 30, 1981
Coal Mining	December 31, 1980
Coil Coating	June 30, 1981
Copper Forming	June 30, 1981
Electric and Electronic Components	June 30, 1981
Electroplating	June 30, 1981
Explosives Manufacturing	June 30, 1981
Foundries	June 30, 1981
Gum and Wood Chemicals	June 30, 1981
Inorganic Chemicals	March 31, 1981
Iron and Steel	September 30, 1980
Leather Tanning and Finishing	September 30, 1980
Mechanical Products	June 30, 1981
Nonferrous Metals	December 31, 1980
Ore Mining	December 31, 1980
Organic Chemicals	March 31, 1981
Paint and Ink	December 31, 1980
Pesticides	June 30, 1981
Petroleum Refining	September 30, 1980
Pharmaceuticals	June 30, 1981
Photographic Supplies	June 30, 1981
Plastics Processing	June 30, 1981
Plastic and Synthetic materials	March 31, 1981
Porcelain Enamel	June 30, 1981
Printing and Publishing	December 31, 1981
Pulp and Paper	March 31, 1981
Rubber	March 31, 1981
Soaps and Detergents	June 30, 1981
Steam Electric	September 30, 1980
Textile Mills	March 31, 1981
Timber	September 30, 1980

PART 123—STATE PROGRAM REQUIREMENTS

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Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Clean Water Act, 33 U.S.C. 1251.

Subpart A—General Program Requirements

§ 123.1 Purpose and scope.

(a) This part specifies procedural and other requirements which must be present in State programs in order to obtain approval of the Administrator under:

(1) Section 3006 (hazardous waste) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, (Pub. L. 94–580, as amended by Pub. L. 95–609, hereinafter called RCRA);

(2) Section 1422 (underground injection control—UIC) of the Safe Drinking Water Act (Pub. L. 93–523, as amended by Pub. L. 95–190, hereinafter called SDWA);

(3) The National Pollutant Discharge Elimination System (NPDES) (sections 318, 402 and 405 of the Clean Water Act, Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, hereinafter called CWA); and

(4) Section 404 (dredge and fill) of CWA.

[*Comment:* This Part should be read in conjunction with Parts 122 and 124 which provide general requirements of the Federal program and, by the references contained in this Part, to State programs.]

(b) A State program which conforms to the applicable requirements of this Part shall be approved by the Administrator.

(c) Upon approval of a State program the Administrator or the Secretary (in the case of section 404 programs) shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(d) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(e) In many cases States will lack authority to regulate activities on Indian lands. This lack of authority to regulate acitivities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part. However, States are required to exercise jurisdiction over Indian lands to the extent they are authorized to do so.

[*Comment:* Partial State programs are not allowed under RCRA, NPDES and section 404. However, failure of a State to regulate activities on Indian lands does not constitute a partial program. Similarly, a State can assume primary enforcement responsibility for the UIC program, notwithstanding § 123.51(e), where the State program is unable to regulate activities on Indian lands within the State. States are advised to contact the United States Department of Interior concerning authority over Indian lands. EPA or the Secretary, in the case of section 404 programs, will administer the program on Indian lands whenever the State lacks authority.]

(f) Except as provided in § 123.33(c), nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part.

[*Comment:* Where an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program. For example, where a State requires permits for discharges into publicly owned treatment works, these permits are not NPDES permits.]

§ 123.2 Definitions.

The definitions in Part 122 apply to this Part.

§ 123.3 Elements of a program submission.

(a) EPA will not begin formal review of a proposed State program until it receives three copies of a complete program submission. EPA will notify the State within 30 days whether its submission is complete. If a submission made by a State is found to be incomplete, the statutory review period (i.e., the period of time allotted for EPA review under the appropriate Act) shall not begin until all the requested information is filed with EPA.

(b) If the State's submission is materially changed during the statutory review period, the review period shall recommence.

(c) The State and EPA may extend the review period by agreement.

(d) The submission shall contain the following elements:

(1) A letter from the Governor of the State requesting program approval;

(2) An Attorney General's Statement as required by § 123.5;

(3) A Memorandum of Agreement with the Regional Administrator as required by § 123.6;

(4) A complete program description, as required by § 123.4, describing how the State intends to carry out its responsibilities under this Part;

(5) Copies of the following forms the State intends to employ in its program: the permit form(s); the application form(s); standard reporting form(s) and the manifest form. Except as provided in Part 122, forms used by States need not be identical to the forms used by EPA or

the Secretary but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

[*Comment:* States are encouaged to use uniform national forms established by the Administrator or the Secretary (in the case of section 404 programs). Uniform national forms may be modified to include the State Agency's name, address, logo and other similar information, as appropriate, in place of EPA's. NPDES States are required to use standard Discharge Monitoring Reports (DMR).]

(6) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(7) In the case of section 404 programs a Memorandum of Agreement with the Secretary as required by § 123.93; and

(8) The showing required by § 123.40(d) (RCRA) and § 123.58(b) (UIC).

§ 123.4 Program description.

Any State that wishes to administer a program shall submit to the Administrator a complete description of the program it proposes to establish and administer under State law or under an interstate compact. The program description shall include the information below. Additional requirements for State program descriptions are detailed in §§ 123.34 (RCRA), 123.52 (UIC), and 123.95 (404).

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program including the information listed below. If more than one agency is responsible for administration of a program, their responsibilities must be delineated, their procedures for coordination set forth, and one of the agenices may be designated a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. Where the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will be engaged in carrying out the State program, including the number and occupations of the employees;

[*Comment:* The State need not submit complete job descriptions for every employee engaged in carrying out the State program.]

(2) An itemization of the proposed or actual costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in subparagraph (1), cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in subparagraph (2) identifying any restrictions or limitations upon this funding.

(4) Information on the number, size and character of the activities that will be regulated under the approved State program. (See §§ 123.34 (RCRA), 123.52 (UIC), and 123.95 (404)).

(c) A description of applicable State procedures, including permitting procedures and any State appellate review procedures;

(d) A general description of the State's priorities for issuance of permits and for enforcement, including a complete description of the State's compliance tracking and enforcement program.

[*Comment:* It is anticipated that a more specific identification of priorities will be contained in subsidiary State/EPA agreements such as annual grant agreements.]

§ 123.5 Attorney General's Statement.

(a) Any State desiring to administer a program covered by this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel), that the laws of the State, or the interstate compact, provide adequate authority to carry out the program described under § 123.4 and to meet the requirements of this Part. This statement shall include citations to specific statutes, administrative regulations, and, where appropriate, judicial decisions to support the analysis. The authorities cited by the State Attorney General or other legal officer shall be in the form of lawfully adopted State statutes and regulations which shall be in full force and effect at the time the statement is signed.

[*Comment:* To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.]

(b) Where jurisdiction can be exercised over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 123.6 Memorandum of Agreement with the Regional Administrator.

(a) Before the Administrator approves any State program, the State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA), which the Administrator shall approve before or at the time of program approval. In addition to the requirements of paragraph (b), the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this Part. No Memorandum of Agreement shall be approved which contains provisions which restrict EPA's statutory oversight responsibility.

[*Comment:* The Administrator may delegate his or her authority to approve modifications of MOA's. In such cases, however, the Regional Administrator's decision would be subject to review by EPA Headquarters.]

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer of any pending permit applications or any other relevant information not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.) from EPA to the State. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by the Federal government. However, a procedure may be established to transfer responsibility for these permits. For example, a State could issue permits identical to the outstanding Federal permits which could be simultaneously revoked.]

(2) Provisions specifying classes and categories of permit applications and permits that the Regional Administrator will receive from the State for review, comment and, where applicable, objection;

[*Comment:* The nature and basis of EPA review of State permits and permit applications differs between the programs governed by this Part. See §§ 123.38 (RCRA), 123.78 (NPDES) and 123.99 (404). In addition, EPA will issue guidance on the significant types of permits that will be subject to EPA review pursuant to these Memoranda of Agreement.]

(3) Provisions specifying the frequency and content of reports (e.g., see § 123.11), documents and other information which the State must submit to EPA; and provisions on program evaluations. The State shall allow EPA to routinely review State records, reports and files relevant to the administration and enforcement of the State program. State reports may be combined with grant reports where appropriate;

(4) Provisions on the State's enforcement program, including:

(i) Compliance monitoring by the State and by EPA. These may specify the basis on which the Regional Administrator may select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least seven (7) days before any such inspection;

(ii) Fiscal arragnements for effective litigation support for the State attorney general or other appropriate legal officers;

(5) Where appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs.

[*Comment:* To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged to consider steps to coordinate or consolidate their own permit programs and activities.]

(6) Provisions for modification of the Memorandum of Agreement.

(c) The Memorandum of Agreement and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended in accordance with the procedures set forth in this Part. The State/EPA Agreement may not override the Memorandum of Agreement.

[*Comment:* Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. Where this is the case it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

§ 123.7 Requirement to obtain a permit.

Except where an activity may be authorized by rule as provided in §§ 122.35, 123.54 (UIC) and 123.39 (RCRA), State permit programs must have a statute or regulation, enforceable in State courts, which prohibits the activity requiring a permit under the appropriate Act, except as authorized by a permit in effect under the State program. Where an activity may be authorized by rule there must be a similar statutory prohibition against such activities except as authorized by a rule in effect under the State program.

§ 123.8 Operational requirements.

State programs must have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(a) § 122.5—(Signatories);

(b) § 122.7—(Permit issuance);

(c) § 122.8 (a) and (b)—(Duration);

(d) § 122.9—(Permit review and modification);

(e) § 122.10—(Permit termination);

(f) § 122.11—(Permit conditions);

(g) § 122.12 (a) and (d)—(Schedules of compliance);

(h) § 122.14—(Recordkeeping/Reporting);

(i) § 122.15—(Noncompliance reporting);

(j) § 122.16(b)—(Confidential information);

(k) § 124.6 (a) and (b)—(Draft permit) except as provided in § 123.98(c)(2) for State section 404 programs;

(l) § 124.8—(Statement of basis), except as provided in § 123.98(c)(2) for State section 404 programs;

(m) § 124.9—(Fact sheets), except as provided in § 123.98(c)(2) for State section 404 programs;

(n) § 124.11—(Public notice);

(o) § 124.12—(Public comments and requests for hearings);

(p) § 124.19 (a) and (c)—(Response to comments);

(q) Such other provisions as are specified in §§ 123.39 (RCRA), 123.57 (UIC) and 123.73 (NPDES).

§ 123.9 Compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, recordkeeping and investigation for possible enforcement of all notices and reports required of permittees (or failure to submit such notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by operators and permittees, compliance or noncompliance with applicable program requirements, standards and limitations, filing requirements and permit terms or conditions, including the following:

(1) A program which is capable of making comprehensive surveys of all waters and/or activities subject to the State Director's authority in order to identify persons subject to regulation who have failed to comply with permit application or other filing requirements. Any compilation, index, or inventory of such activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the activities subject to regulation. These inspections shall:

(i) Determine compliance or noncompliance with issued permit terms and conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring and other methods used by permittees to develop that information;

(3) A program for investigating evidence of violations of applicable program and/or permit requirements, which shall apply whether the evidence is indicated in the reports and notifications evaluated under paragraph (a) or by the survey, inspection, and surveillance activities provided in paragraph (b); and

(4) The State's enforcement program shall include procedures for receiving and ensuring proper consideration of evidence submitted by the public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State officers engaged in compliance evaluation activities shall have authority to enter any site or premises subject to regulation or in which records are kept in order to inspect, monitor or otherwise investigate suspected violations of the State program including suspected violations of permit terms and conditions;

[*Comment:* State programs which require a search warrant for entry conform with this requirement.]

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

§ 123.10 Enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of the appropriate Act:

(1) To restrain immediately and effectively any person by order or by

suit in State court from engaging in any unauthorized activity which is threatening or causing actual damage to public health or the environment, or, where EPA is authorized to take immediate action, to immediately notify the Regional Administrator by telephone of any unauthorized activity which is threatening or causing actual damage to public health or the environment;

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit terms and conditions, without the necessity of a prior revocation of the permit;

[*Comment:* Subparagraph (a)(1) requires that States have a mechanism (e.g., an administrative order or a temporary restraining order) to stop any unauthorized activity endangering public health or the environment, or, alternatively, to notify EPA of the situation so it may act. Where EPA cannot act immediately, e.g., in a State with a fully approved UIC program, the second alternative is not acceptable. Subparagraph (a)(2) merely requires that states have authority to permanently enjoin unauthorized activities.]

(3) To assess or to sue to recover in court civil penalties for the violation by any person of any of the following:

(i) Any applicable permit term or condition;

(ii) Any notice or reporting requirement;

(iii) Any duty to allow inspection, entry, or other monitoring activites; or

(iv) Any rule, regulation, or order issued by the state.

(4) To seek criminal remedies, including fines, for the violation by any person of any applicable program requirement, including violations of permit terms or conditions.

(5) To seek criminal remedies, including fines, against any person who knowingly makes any false statement, representation or certification in any program form or any notice or report, including those required by the terms and conditions of any issued permit or who knowingly renders inaccurate any monitoring device or method required to be maintained by the State Director;

[*Comment:* In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. While the State Director need not appear in court actions under this Subpart, he/she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalties and criminal fines that can be sought by the state under subparagraphs (a)(3), (4) and (5) of this section shall be at least the same as the maximum amounts that can be sought by the EPA under the appropriate Act. The maximum civil penalty or criminal fine shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

[*Comment:* The Agency welcomes comments on this requirement. In particular, EPA is interested in determining whether there are any State statutes which meet all the requirements of ths Part except the above subparagraph. Any State which believes this to be the case should, in addition, notify EPA of what, if any, criminal remedies are provided for under State law.]

(2) The burden of proof and degree of knowledge or intent required under state law for establishing violations under subparagraphs (a)(3), (4) and (5) shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

[*Comments:* (1) For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(2) Under CWA the Agency must establish that a violation was negligent or willful to maintain a criminal action. Under RCRA the degree of criminal intent for EPA prosecution is "knowingly" and under UIC "willful." Criminal prosecution under the State program shall require no greater burden of proof than that for EPA prosecution.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under subparagraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. In the event that such a civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances may warrant.

For a violation resulting from failure to meet a statutory or final permit compliance deadline, "appropriate to the violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, definance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires).

[*Comment:* In addition to the above, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

(i) Procedures for assessment by the State for the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(ii) Procedures which enable the State to assess or to sue any persons responsible for the unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon the human health and the environment resulting from the unauthorized activity, whether or not accidental;

(iii) Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, and for any other damages caused by unauthorized activity, either for the State for any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

(iv) Procedures for the administrative assessment of penalties by the Director.]

§ 123.11 Progress reports.

States with interim authorization under RCRA (see § 123.32) and States listed as needing a UIC program (see § 123.51) shall submit information every six months in accordance with § 123.36 (RCRA) and § 123.55 (UIC) on the status and progress of State efforts to obtain approval.

§ 123.12 Approval process.

The process for EPA approval of State programs is set out in §§ 123.40 (RCRA), 123.58 (UIC), 123.83 (NPDES) and 123.104 (404).

§ 123.13 Procedure for revision of State programs.

(a) Program revision may be initiated at the request of either EPA or the State. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's Statement, Memorandum of Agreement, or such other documents as are necessary under the circumstances.

(2) Whenever EPA determines that the proposed program modification(s) is substantial, the Agency shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed modifications and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest.

(3) The program modification shall become effective upon the approval of the Administrator. Notice of any substantial modification shall be published in the **Federal Register**. Non-substantial program modifications may be approved by a lettter from the Agency.

[*Comment:* The Administrator is expected to delegate his or her authority in this regard to the Regional Administrator. The Regional Administrator's action would, however, be subject to review by EPA Headquarters.]

(c) Approved State programs shall notify EPA whenever the State proposes to transfer all or part of any program from the approved State agency to any other agency, and shall identify any new division of responsibilities among the agencies involved. If such change affects the State's ability to meet the requirements of this Part, the new agency is not authorized to administer the program until approved by the Administrator. Organizational charts required under § 123.4(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances may have changed with respect to a State program, he may request, and the State shall provide a supplemental Attorney General's Statement, program description, other document or information as necessary.

§ 123.14 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval where a State program no longer complies with the requirements of this Part and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; and

(ii) Action by a State legislature or appellate level court striking down or limiting State authorities.

(2) Where the operation of the State program fails to comply with the requirements of this Part, including:

(i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this Part; and

(iii) Failure to comply with the public participation requirements of this Part.

(3) Where the State's enforcement program fails to comply with the requirements of this Part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek and collect adequate enforcement penalties; and

(iii) Failure to inspect and monitor activities subject to regulation.

(4) Failure to comply with the terms of the Memorandum of Agreement required under § 123.5; and

(5) Such other criteria as provided in the applicable provisions of Subparts B–D.

§ 123.15 Procedures for withdrawal of State programs.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to EPA (or to the Secretary in the case of 404 programs) by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator (and the Secretary in the case of Section 404 programs) 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications, etc.) which are necessary for EPA (or the Secretary in the case of section 404 programs) to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator (and the Secretary in the case of section 404 programs) shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal Government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program, other than a UIC program. The process for withdrawing approval of State UIC programs is set out in § 123.59.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part or of the appropriate Act as set forth in § 123.14. When the Administrator receives a petition to commence withdrawal proceedings he may conduct an informal investigation of the allegations to determine whether probable cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a proceeding under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of §§ 22.03 (a), (b), (i), (j), and (p) of this Chapter apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter or the proceeding;

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.* The following provisions of Part 22 of this Chapter are applicable to proceedings under this paragraph:

(i) Section 22.02—(use of number/gender);

(ii) Section 22.04(c)—(authorities of Presiding Officer);

(iii) Section 22.06—(filing/service of rulings and orders);

(iv) Section 22.07 (a) and (b)—*provided*, that the time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator—(computation/extension of time);

(v) Section 22.08—however substitute "order commencing proceedings" for "complaint"—(Ex Parte contacts);

(vi) Section 22.09—(examination of filed documents);

(vii) Section 22.11 (a), (c) and (d), *provided*, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is first published—(intervention);

(viii) Section 22.16 *provided*, service shall be in accordance with subparagraph (4) of this paragraph, and *provided further*, the words "recommended decision" shall be substituted for the words "initial decision, except as provided in § 22.28" in § 22.16(c),—(motions);

(ix) Section 22.19 (a), (b) and (c)—(prehearing conference);

(x) Section 22.22—(evidence);

(xi) Section 22.23—(objections/offers of proof);

(xii) Section 22.25—(filing the transcript); and

(xiii) Section 22.26—(findings/conclusions).

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed, by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs or other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying, upon payment of costs, by the parties or any other persons in the Office of the Hearing Clerk. Inquiries may be made at the office of the Administrative Law Judges, Hearing Clerk, 401 M Street, S.W., Washington, D.C. 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involve matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each such submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time and manner of service and the names of the persons served, certified by the person who made service; and

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he may not otherwise participate in the proceeding.

(6) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, the Presiding Officer shall evaluate the record before him, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a brief in support thereof.

(8) *Decision by Administrator.* (i) Within 60 days after the certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision;

(ii) If the Administrator concludes that the State has administered the program in conformity with the appropriate Act and regulations his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the appropriate Act he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that such appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take such appropriate corrective action and file a certified statement thereof, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes such appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(c) Withdrawal of authorization under this section and the appropriate Act does not relieve any person from complying with the requirements of State law.

§ 123.16 Sharing of information.

(a) Any information obtained or used pursuant to a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this Part. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA may furnish information to States in order to implement these regulations. In the case of information claimed as confidential by submitters, State access will be subject to the rules in 40 CFR Part 2, Subpart B.

§ 123.17 Coordination with other programs.

(a) Initial issuance of State permits under this Part may be coordinated whenever possible and appropriate in timing and procedure with initial issuance of RCRA, NPDES, 404 and UIC permits whether they are controlled by

the State or EPA. If steps are taken to accomplish this coordination, they shall be addressed in the Memorandum of Agreement.

(b) The State director of any approved program which may affect the planning for and development of hazardous waste management facilities and practices shall consult and coordinate with agencies designated under section 4006(b) of RCRA as responsible for the development and implementation of State solid waste management plans under section 40002(b) of RCRA (40 CFR Part 256, proposed at 43 FR 38534–38546, August 28, 1978).

Subpart B—Additional Requirements for State Hazardous Waste Programs

§ 123.31 Purpose and scope.

This subpart describes additional substantive and procedural requirements for State hazardous waste programs under section 3006 of RCRA, and additional features of EPA's review of State hazardous waste programs. In case of any inconsistency between this Subpart and Subpart A, this Subpart is controlling.

§ 123.32 Interim authorization.

(a) Interim authorization may be granted only for the 24 months beginning on the date six months after the date of promulgation of regulations under section 3001 of RCRA at 40 CFR 250, Subpart A (proposed at 43 FR 58954, December 18, 1978). The Administator shall grant interim authorization under section 3006(c) of RCRA if the State's program complies with the requirements of Subparts A and B of this Part (except as provided in paragraph (b)), and the State:

(1) Controls by permit system at least on-site or off-site hazardous waste disposal facilities. The legislative authority to meet this requirement shall be effective no later than 90 days after the date of promulgation of 40 CFR 250, Subpart A, (proposed at 43 FR 58954–58968, December 18, 1978);

(2) Commits adequate resources, and has the administrative capability to process permits and conduct an effective enforcement program, including a program for compliance evaluation.

(b) To obtain interim authorization States need to show compliance with Subparts A and B of this Part, except that they need only show substantial compliance with §§ 123.8, 123.10 and 123.39(a). States need not comply with §§ 123.33 and 123.39 (b), (c) and (d).

[*Comment:* A program to control hazardous waste treatment or storage facilities is desirable but is not required for interim authorization. Note, however, that States within interim authorization which have the necessary authorities in existence to implement a manifest system and/or control of treatment and/or storage facilities *must do so.*]

§ 123.33 Authorization.

(a) The Administrator will not grant authorization under section 3006(b) of RCRA to any State hazardous waste program until after the date of promulgation of regulations under section 3001 of RCRA at 40 CFR 250, Subpart A (proposed at 43 FR 58954–58968, December 18, 1978), or of this Part, whichever is later.

(b) No partial programs will be approved. A State program must comply with all the requirements of Subparts A and B of this Part in order to obtain the approval of the Administrator.

(c) In order to obtain approval, a State program must be consistent with the Federal program and State programs applicable in other States. For purposes of this paragraph, the phrase "State programs applicable in other States" refers only to those hazardous waste programs which have received authorization under this Part. Any aspect of the State program which restricts, impedes, or operates as a ban on the free movement across the State border of hazardous wastes from or to other States for treatment, storage or disposal at facilities having hazardous waste permits under the Federal or an approved State program may be deemed inconsistent for purposes of this paragraph.

§ 123.34 Program description.

The State's program description shall meet the requirements of § 123.4 and include the following:

(a) In the case of a submission for interim authorization the State's program description shall contain the following:

(1) A general description and estimate of:

(i) The number, types and relative sizes of activities to be regulated by the State during the interim authorization period; and

(ii) If available, the total quantity of hazardous wastes expected to be disposed of annually from both in-State and out-of-State sources.

(2) An "authorization plan" which shall describe the additions or modifications necessary to the State program to qualify for authorization under this Part by the end of the interim authorization period. This plan shall include a schedule which the State proposes to achieve those additions or modifications, and shall describe the nature of and schedules for any changes in State legal authority, resource levels, the permit system and the surveillance and enforcement program which will be necessary during the interim authorization period in order to enable the State to become eligible for authorization.

(b) In the case of a submission for authorization, the State's program description shall include:

(1) A description of the State manifest system.

(2) A description of the types and relative sizes of regulated activities, including an estimate of the number of the following:

(i) Generators;

(ii) Transporters; and

(iii) On- and off-site storage, treatment and disposal facilities which must file for or have been issued a State permit.

(3) If available, an estimate of the annual quantities of hazardous wastes:

(i) Generated within the State;

(ii) Transported into or out of the State; and

(iii) Stored, treated, or disposed of: (A) on-site; and (B) off-site.

(c) Where more than one agency within a State has responsibility for administering the State program, an identification of a "lead agency" and a description of how the State agencies will coordinate their activities.

(d) The State's program description may include such other matters as the State deems relevant.

[*Comment:* A State's past performance in responding to situations involving hazardous waste which may present an endangerment to health or the environment will be considered by EPA in deciding whether to approve its hazardous waste programs.]

§ 123.35 Attorney General's statement for interim authorization.

In the case of a submission for interim authorization, the Attorney General's Statement shall certify that the State has legal authority to implement the program (see, § 123.32) and that the authorization plan (see § 123.34(a)(2)), if carried out, would provide the State with the legal authority to meet the requirements for authorization.

§ 123.36 Progress reports.

In accordance with the reporting requirement of § 123.11, the State Director of a State with interim authorization shall submit a semi-annual progress report to the EPA Regional Administrator within four weeks of the date six months after the date of conferral of interim authorization status, and at six month intervals thereafter

until the expiration of interim authorization. Such reports shall briefly summarize, in a manner and form prescribed by the Administrator, the State's compliance in meeting the requirements of the authorization plan, the reasons and proposed remedies for any delay in meeting milestones, and the anticipated problems and solutions for the next reporting period.

§ 123.37 Memorandum of Agreement.

In addition to the requirements of § 123.6, the Memorandum of Agreement shall include provisions on the following:

(a) The Regional Administrator or his designee may conduct inspections of all major HWM facilities in each Federal fiscal year for which the State has received interim authorization or authorization. The Regional Administrator and the State Director may agree to limitations regarding inspections of non-major HWM facilities, generators and transporters.

(b) The State Director shall agree to forward to the Regional Administrator copies of draft permits and permit applications for all major HWM facilities for review and comment. The Regional Administrator and the State Director may agree to limitations regarding review and comment of draft permits and/or permit applications for non-major HWM facilities.

(c) No limitation on EPA inspection of non-major HWM facilities, generators and transporters under paragraph (a), shall restrict EPA's right to inspect any HWM facility, generator or transporter it has cause to believe is not in compliance with RCRA; however, before conducting an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evalution inspection.

[*Comment:* The inspections conducted pursuant to paragraph (a) are intended to be routine compliance evaluation surveys. Except for major HWM facilities, EPA may agree to limit these routine inspections. However, paragraph (c) provides that EPA may inspect any facility, generator or transporter which the Agency has cause to believe is violating RCRA after affording the State the opportunity to investigate the situation.]

§ 123.38 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits within the time provided in the Memorandum of Agreement.

(b) Where a comment indicates that EPA believes issuance of the permit would be inconsistent with RCRA or regulations promulgated thereunder, it shall set forth:

(1) A statement of the reasons for the comment (including the section of RCRA or regulations promulgated thereunder that support the comment); and

(2) The actions that should be taken by the State Director in order to address the comments (including the terms and conditions which the permit would include if it were issued by the Regional Administraor).

(c) The Regional Administrator shall withdraw such a comment if satisfied that the State met or refuted his or her concerns.

§ 123.39 Operational requirements.

(a) In addition to meeting the requirements of § 123.8, any State hazardour waste permit program must have legal authority to implement each of the following provisions and shall be administered in accordance with each of the following provisions:

(1) Section 122.23—(Application for a permit);

(2) Section 122.24–(Establishing permit terms and conditions); and

(3) Section 122.27—(Reporting).

(b) State hazardous waste programs must have legal authority to control the facilities and activites covered by §§ 122.25 (special HWM facility permits), 122.26 (permits by rule), and 122.28 (emergency authorizations). States may choose to regulate these facilities and activities in the same manner as EPA under §§ 122.25, 122.26 and 122.28 or in a more stringent manner.

[*Comment:* An example of more stringent control would be the issuance of an individual permit rather than to authorize the activity by rule.]

(c) Any State program shall provide a degree of control over the generation and transportation of hazardous wastes equivalent to 40 CFR Part 250, Subparts B and C (proposed at 43 FR 58969, December 18, 1978, and 43 FR 18506. April 28, 1978, respectively), and shall include the management of manifests involving both intrastate and interstate transportation of hazardous waste. States shall take such measures as may be appropriate to ensure that interstate shipments of hazardous wastes are sent to and arrive at permitted HWM facilities. States must use the manifest format published by the Administrator in the **Federal Register** (40 CFR 250.22(h), proposed at 43 FR 58977 and 58980), but may supplement that format as appropriate to meet specific requirements or needs.

(d) The State process for identification and/or listing of hazardous waste and the standards applicable to owners and operators of hazardous waste storage, treatement and disposal facilities shall provide a degree of control equivalent to 40 CFR 250, Subpart A and D (proposed at 43 FR 58954–58968 and 58994–59022 respectively, December 18, 1978).

[*Comment:* Section 3006(b) does not require State programs to be identical to EPA's program, but only "equivalent." These regulations identify what is necessary for a program to be considered "equivalent" to the Federal program, and provide the State a degree of flexibility within the basic framework. The degree of flexibility accorded to States has been carefully set out in the regulations thenselves. A program will be considered "equivalent" only if it meets all applicable requirements of Part 123.

To meet the requirements of this Part, States need not use the same language or structure as RCRA and its regulations. However, where allowable under State law, EPA encourage States to incorporate Federal requirements by reference.

The proposed regulations of 40 CFR Part 250 indicate, to an extent, certain requirements for State programs which are necessary in order to be deemed "equivalent." For example, 40 CFR 250.10(c), advises States that in order to be deemed equivalent "their programs [must] contain standards and procedures which identify as hazardous at least the same universe of wastes defined as hazardous" by EPA. In addition, the Agency is considering several alternative approaches for systematically judging equivalency with the 40 CFR Part 250 requirements, including requiring States to directly employ 40 CFR Part 250. For further information and discussion see the preamble to this Part.]

§ 123.40 Approval process.

(a) These regulations identify the procedures by which State Program applications for authorization or interim authorization will be developed and process. Except as exressly provided, each of these requirements apply both to requests for authorization and for interim authorization.

(b) Prior to submitting an application to EPA for approval of a State program, the State shall issue public notice of its intent to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons including:

(i) Publication in enough of the largest newspapers in the State to attract Statewide attention; and

(ii) Mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed submission may be reviewed by the public or discussed with agency officials in such

informational public meetings as the agency may choose to hold;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested members of the public can express their views on the proposed program;

(5) Provide that a public hearing will be held by the State or EPA if sufficient public interest is shown or, alternatively, schedule such a public hearing;

(i) Any public hearing to be held by the State on its application for authorization shall be scheduled no earlier than 30 days after the notice of hearing is published;

(ii) The State is not required to hold a separate public hearing on its application for interim authorization. If the State declines to hold a hearing, the State shall state in its notice of application that a public hearing will be held by EPA if sufficient public interest is shown. The State shall participate in any public hearing held by EPA in lieu of a State hearing (see § 123.40(e) (1) and (2));

(6) Indicate what type of authorization the State will seek and briefly outline the fundamental aspects of the State program and, where interim authorization is sought, of the authorization plan; and

(7) Indicate who an interested member of the public should contact with any questions.

(c) If the proposed State program is substantially modified after the public comment period provided in paragraph (b)(4) of this section, the State shall, prior to submitting its program to the Administrator, provide the opportunity for further public comment in accordance with the procedures of paragraph (b) of this section, *provided* that the opportunity for further public comment may be limited to those portions of the State's application which have been changed since the prior public notice.

(d) After complying with the requirements of (b) and (c) above the State may submit, in accordance with § 123.3, a proposed program to EPA for approval. The program submission shall include copies of all written comments received by the State, a transcript or recording of any public hearing which was held by the State and a responsiveness summary which identifies the public participation activities conducted, describes the matter presented to the public, summarizes significant comments received and responds to these comments, including explanations on what the State has done to accommodate these comments.

(e) Within ninety days from the date of receipt of a complete program submission, the Administrator shall:

(1) Make a tentative determination as to whether or not he expects to grant authorization to the State program or issue notice, in accordance with the procedures of paragraph (b) of this section, of a public hearing on the State's application for interim authorization. If the Administrator indicates that he may not approve the State program he shall include a general statement of his areas of concern. The Administrator shall give notice of this tentative determination in the Federal Register and in accordance with subparagraph (b)(1) of this Section;

(2) Schedule a public hearing to be held by EPA no earlier than 30 days after notice of the tentative determination of authorization or of a public hearing on interim authorization, *provided*, that if public interest in a hearing is not expressed, the hearing may be cancelled if a statement to this effect is included in the public notice;

(3) Afford the public 30 days after the notice to comment on the State's submission and the tentative determination; and

(4) Note the availability of the State submission for inspection and copying by the public.

(f) Within ninety days of the notice given pursuant to paragraph (e) of this section, the Administrator shall make a final determination whether or not to approve the State's program taking into account any comments submitted. The Administrator shall give notice of this final determination in the Federal Register and in accordance with subparagraph (b)(1) of this section. If the Administrator determines not to approve the State program, the notification shall include a concise statement of the reasons for this determination.

§ 123.41 Criteria for withdrawal.

In addition to the criteria set forth in § 123.14, any aspect of the State program which restricts, impedes or operates as a ban on the free movement across the State border of hazardous wastes from or to other States for treatment, storage or disposal at facilities having hazardous waste permits under an approved State or Federal program constitutes grounds for withdrawal of authorization.

Subpart C—Additional Requirements for State Underground Injection Control Programs

§ 123.51 Purpose and scope.

(a) This Subpart describes additional substantive and procedural requirements for State UIC programs authorized under sections 1421 and 1422 of SDWA. In case of any inconsistency between this Subpart and Subpart A, this Subpart is controlling.

(b) Each State listed in the Federal Register under section 1422(a) of SWDA shall submit to the Administrator a proposed State UIC program complying with § 123.3 of this Part within 270 days of the date of promulgation of these regulations or within 270 days of the date of listing under section 1422(a) of SDWA, whichever is later. The Administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(c) EPA will establish a UIC program in any State which does not comply with paragraph (b) of this section. EPA will continue to operate a UIC program in such a State until the State receives approval of a UIC program in accordance with the requirements of this Part.

(d) Any State which desires to operate a UIC program but which is not listed by the Administrator under section 1422(a) of the SDWA may, nonetheless, make a submission for program approval in accordance with the requirements of this Part. In addition to meeting the requirements of § 123.3 of this Part, such a submission shall contain a petition from the Governor of the State requesting that the State be listed.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

Unlisted States are also encouraged to seek UIC approval prior to listing. If EPA determines that the State's program is fully approvable the State will be listed and approved at the same time.]

(e) Whenever a State UIC program is fully approved by EPA, the State

assumes primary enforcement authority under section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part.

[*Comment:* States with fully approved programs have authority to enforce any violation of the underground injection control program. States which have partially approved programs have authority to enforce any violation of the approved portion. In either case, EPA retains authority to enforce violations of a State underground injection control program, except that, when a State has a fully approved program, EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with section 1423 of SDWA.]

(f)(1) If a State can demonstrate that there are no underground injections within the State for one or more types of injection wells subject to SDWA, the State need not submit a program to regulate such injections. However, the State shall demonstrate adequate legal authority to initiate control over such injections should they occur in the future.

(2) State UIC programs may be approved in part or in full within the discretion of the Administration. (See § 122.3, Definition of "Partial Authorization").

§ 123.52 Program description.

(a) In addition to the requirements of § 123.4, the State's program description shall include:

(1) A State permit plan in accordance with paragraph (b) of this section. This permit plan satisfies the requirements of § 123.4(b)(4);

(2) A detailed description of how the State will implement the authorization of underground injection by rule in accordance with § 122.35, including the procedures which will be followed in promulgating such rules.

(3) a brief description and schedule for the State's program to establish and maintain a current inventory of injection wells which are required to be permitted under State law;

(4) A description of aquifers or parts thereof which the State has determined are underground sources of drinking water under § 122.33, a detailed description of the aquifers, or parts thereof, not designated, and a summary of the data upon which the exemptions are based.

(5) A description and schedule for the State's program to establish an inventory of Class V wells, to prohibit Class IV wells and to assess the need for a program to regulate Class V wells.

(b) The State Director shall develop a permit plan which assures that all injection wells within the State, except those authorized by rule, are issued a UIC permit as expeditiously as possible but no later than 5 years after approval of the State UIC program. The permit plan shall:

(1) Describe the State's priorities for issuing permits including the number of permits by class of injectors which will be issued each year over the first five years of operation of the program;

(2) Describe how the State will implement the mechanical integrity testing requirements of § 146.08 including the frequency of testing that will be required and the number of tests that will be reviewed by the State each year; and

(3) Describe how the State will notify injectors of the requirement for a permit and when to file permit applications (i.e, by individual notice, rule, regulation, or statute). The notice required by this paragraph shall clearly establish application filing deadlines as soon as possible but not later than 4 years after program approval for each injection well which must receive a permit.

(c) In determining the priorities required by subparagraphs (b)(1) and (b)(2) the Director shall consider the following factors:

(1) Injection wells known to be contaminating underground sources of drinking water;

(2) Injection wells known to be injecting fluids containing toxic or hazardous contaminants;

(3) Likelihood of contamination of underground sources of drinking water;

(4) Potentially affected population;

(5) Injection wells violating existing State requirements;

(6) Coordination with the issuance of permits required by other State or Federal permits programs;

(7) Age and depth of the injection well; and

(8) Expiration dates of existing State permits, if any.

§ 123.53 Attorney General's Statement.

In addition to the requirements of § 123.5, the State's Attorney General's Statement shall include an analysis of the legal authority for and enforceability of any rule prohibiting or authorizing well injections without a permit.

§ 123.54 Requirement to obtain a permit.

The State may authorize certain well injections by rule rather than by permit. Any authorization by rule shall comply with § 122.35.

§ 123.55 Progress reports.

In accordance with § 123.11, each State listed by the Administrator as needing a UIC program (see § 123.51(b)) shall submit to the Administrator six months after the date of promulgation of these regulations, or six months after the date of listing, whichever is later, a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to § 123.51(b), the State shall submit a second report six months after the first report is due. The report shall be in a manner and form prescribed by the Administrator.

§ 123.56 Annual report.

(a) Each approved State shall submit each year a written report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(1) The noncompliance information required under § 122.15(b) including a summary of violations during the preceding year;

(2) A summary of enforcement actions taken by the State Director including actions taken to enforce the ban on Class IV wells;

(3) A detailed description of the State's implementation of its program;

(4) Any necessary changes to the program description and the permit plan which more accurately reflect the State's progress in issuing permits;

(5) A list of all permits issued where an alternative for tubing and packer has been approved by the State Director under 40 CFR § 146.12;

(6) An updated inventory of active underground injection operations in the State; and

(7) A summary of all surface water and ground water contamination cases which may have been caused or affected by underground injection.

(b) In addition to the requirements of paragraph (a) of this section the State Director shall provide the Administrator within three months of the completion of the first year of State operation of the UIC program a supplemental report containing information on remedial actions taken by operators of Class II wells based upon these regulations (including information on the results of mechanical integrity testing and on evaluations of construction of nearby wells located within the area of review). The supplemental report required by this paragraph may be submitted along with the annual report if the time for reporting under this paragraph coincides with that of paragraph (a).

[*Comment:* EPA will issue further guidance on the preparation of the "mid-course assessment" required under this paragraph.]

§ 123.57 Operational requirements.

In addition to the requirements of § 123.8, State UIC programs shall have legal authority to implement each of the following provisions and shall be administered in accordance with each of the following provisions:

(a) Section 122.33—(Designation of aquifers);

(b) Section 122.35—(Authorization by rule);

(c) Section 122.36—(Authorization by permit);

(d) Section 122.37—(Area permits);

(e) Section 122.38—(Corrective action);

(f) Section 122.39—(General prohibition against movement of fluids into underground sources of drinking water);

(g) Section 122.42—(Permit terms);

(h) Section 122.43—(Reporting);

(i) Section 122.44—(Special requirements for wells managing hazardous wastes);

(j) Section 122.45—(Elimination of Class IV); and

(k) Section 122.46—(Inventory of Class V).

§ 123.58 Program approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons can comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Indicate whom an interested member of the public should contact for further information.

(b) After complying with the requirements of paragraph (a) above any State may submit a proposed UIC program under section 1422 of SDWA and § 123.3 of this Part to EPA for approval. In accordance with § 123.3(d)(8), such a submission shall include a showing of compliance with paragraph (a) of this section including a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and responds to these comments.

(c) Upon determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission, provide an opportunity to comment, and schedule a public hearing. This notice may specify that a public hearing will not be held unless sufficient public interest is expressed.

(d) Within 90 days of the receipt of a complete submission (as provided in § 123.3) or material amendment thereto, the Administrator shall by rule, either fully approve, disapprove, or approve in part the State's UIC program.

§ 123.59 Withdrawal process.

Approval of a State UIC program may be withdrawn and a Federal program established in its place where the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of SDWA and this Part.

(a) *Notice to State of Public Hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this Part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(b) *Public Hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator, within 30 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss withdrawal of the State program. This hearing shall be convened not less than 60 days nor more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested parties shall be given opportunity to present written and oral testimony on the State's program at the public hearing.

(c) *Notice to State of Findings.* Where the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

§ 123.60 State UIC program revisions.

Within 270 days of any amendment to Parts 122, 123, 124 or 146 which revises or adds any requirement respecting an approved State UIC program, the State shall submit such information as is specified by EPA showing that the State UIC program meets the revised or added requirement. Failure by the State to comply with this provision is cause for disapproval or partial disapproval of the State program.

Subpart D—Additional Requirements for State Programs Under the National Pollutant Discharge Elimination System

§ 123.71 Purpose and scope.

(a) This subpart describes additional requirements for State NPDES programs under sections 318, 402 and 405 of CWA. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(b) These regulations are promulgated under the authority of sections 304(i) and 101(e) of CWA, and implement the requirements of those sections.

(c) No partial NPDES programs will be approved by EPA. The State program must regulate (except as provided in § 122.63) all point source discharges of pollutants, discharges into aquaculture projects and disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities.

Where more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.3 before formal EPA review will commence.

[*Comment:* Although these regulations require States to administer complete programs, EPA recognizes that, as a matter of Federal law, a State may lack authority to exercise jurisdiction over discharges from facilities on Indian lands. The lack of such authority does not constitute grounds for refusal to authorize State administration of a program. However, to the extent that States have authority to exercise jurisdiction, they are required to do so.]

(d) After program approval EPA shall retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA may, when ageed to by the State, continue to retain jurisdiction until the matter is resolved.

(e) In case of any inconsistency between this Subpart and Subpart A, this Subpart is controlling.

§ 123.72 Memorandum of Agreement.

(a) In addition to the requirements of § 123.6, the Memorandum of Agreement between the Regional Administrator and the State Director shall contain provisions specifying the extent to which EPA review of State-issued permits will be waived under sections 402 (d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" or permits, no waiver of review may be granted for the following discharges:

(1) Discharges into the territorial sea or contiguous zone;

(2) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(3) Proposed general permits (see § 122.82);

(4) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;

(5) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(6) Discharges from any major discharger or from any discharger within any of the 21 industrial categories listed in the Appendix A to Part 122;

(7) Discharges from other sources with a daily average discharge exceeding 0.5 (one half) million gallons per day, except that EPA review of permits for discharges on non-process wastewater may be waived, regardless of flow, with the prior concurrence of the EPA Deputy Assistant Administrator for Water Enforcement;

(b) Whenever a waiver is granted under paragraph (a), a statement that the regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the Director written notice of termination. The waiver shall not affect the duty of the State to supply EPA with copies of all permit applications, public notices and final permits.

§ 123.73 Operational requirements.

In addition to the requirements of § 123.8, State NPDES programs shall have legal authority to implement each of the following provisions and must be administered in conformance with each of the following provisions:

(a) Section 122.64 (e) and (f)—(Variance applications);

(b) Section 122.66—(Duration of permits);

(c) Section 122.67—(Prohibitions);

(d) Section 122.68—(Conditions applicable to all permits);

(e) Section 122.69—(Applicable limitations, standards, prohibitions and conditions);

(f) Section 122.70—(Calculation and specification of effluent limitations and standards);

(g) Section 122.71—(Recording/reporting of monitoring results);

(h) Section 122.72—(Non compliance reporting);

(i) Section 122.73—(Modifications);

(j) Section 122.74—(Permit termination);

(k) Section 122.75—(Disposal into wells, etc.);

(l) Section 122.76—(Concentrated animal feeding operations);

(m) Section 122.77—(Aquatic animal production facilities);

(n) Section 122.78—(Aquaculture projects);

(o) Section 122.79—(Separate storm sewers);

(p) Section 122.80—(Silviculture);

(q) Section 122.82—(General Permits), *provided* States are not required to implement the general permit program under § 122.82. If a State chooses to issue general permits, such action is subject to the following conditions:

(1) Any general permit shall be issued in accordance with § 122.82;

(2) Prior to, or at the time of proposal of any general permit, the State Attorney General (or other legal officer as appropriate, see § 123.5) shall certify that the State has adequate legal authority to issue and enforce general permits;

(3) EPA shall have 90 days to review any proposed general permit; and

(4) All general permits, except those for separate storm sewers, may be objected to on EPA's behalf by the EPA Deputy Assistant Administrator for Water Enforcement. The State shall transmit a copy of any such proposed general permit to the EPA Deputy Assistant Administrator for Water Enforcement at the same time the proposed permit is transmitted to the enforcement Division Director;

(r) Section 124.56—(Fact sheets);

(s) Section 124.58—(Public notice);

(t) Section 124.59—(Comments from government agencies);

(u) Subparts A, B, C, D, H, I, J, K and L of Part 125; and

(v) 40 CFR Parts 129, 133 and Subchapter N.

§ 123.74 Control of disposal of pollutants into wells.

State NPDES permit programs must have authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State Director to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions.

[*Comment:* States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program under section 1422 of SDWA. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which . . . control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

§ 123.75 Inspections, monitoring, entry and reporting.

Any State NPDES permit program shall provide adequate authority to inspect, monitor, enter, and require

reports to at least the same extent as required in section 308 of CWA.

§ 123.76 Receipt and use of Federal information.

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.6 shall provide for the following, in such manner as the State Director and the Regional Administrator shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.77 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the State Director and the Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director;

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application, including a copy of each proposed or draft permit and any terms, conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit. For proposed permits the State program shall provide a period of time (up to 90 days) in which the Regional Administrator or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement (see § 122.73(q)), may comment upon, object to, or make recommendations with respect to the proposed permit. A copy of any comment, objection or recommendation shall be sent to the permit applicant by the Regional Administrator. In the case of general permits, EPA shall have 90 days to comment upon, object to or make recommendations with respect to the proposed permit.

[*Comment:* Normally EPA review time is substantially less than 90 days. However, EPA reserves the right to take a full 90 days to supply specific grounds for objection where a general objection is filed within the review period of the Memorandum of Agreement.]

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) The State program shall provide for transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.68 and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice and a summary of any significant comments presented at any hearing on any draft permit if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments adverse to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice; and

(3) A quarterly noncompliance report in accordance with § 122.72.

(c) Within the time period agreed upon in the Memorandum of Agreement, (or 90 days in the case of proposed general permits), the Regional Administrator (or, where appropriate, the EPA Deputy Assistant Administrator for Water Enforcement) pursuant to the right to object provided in CWA and § 123.78, may comment upon, object to, or make recommendations on any proposed permit.

(d) The Regional Administrator may, by agreement with the State Director in the Memorandum of Agreement (see § 123.72) waive the right to review, object to, or comment upon proposed permits for classes, types or sizes of discharges within any category of point sources, including the right to receive information under paragraphs (a)(2) and (b)(2) of this section.

(e) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this Part.

§ 123.78 Objections to proposed permits.

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in subparagraph (2) of this paragraph for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of the proposed permit which has been objected to under subparagraph (1), or in the case of general permits within 90 days after receipt of the proposed general permit, the Regional Administrator, or, in the case of general permits other than for separate storm sewers, the EPA Deputy Assistant Administrator for Water Enforcement shall also set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator).

[*Comment:* This paragraph, in effect, modifies any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, where an agreement provides for an EPA review period of less than 90 days, EPA must file a general objection, in accordance with subparagraph (a)(1) within the time specified in the agreement. This general objection will be followed by a specific objection within the 90-day statutory period. This modification to the MOA's is necessary since the Clean Water Act of 1977 now requires EPA to provide detailed information concerning acceptable permit terms and conditions. To avoid possible confusion, MOA's should be changed to reflect this.]

(b) The Regional Administrator may object to the issuance of a proposed permit as being outside the guidelines and requirements of CWA. This

objection must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[*Comment:* Under the provisions of this section, a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines shall be subject to objection by the Regional Administrator.]

(2) In the case of any proposed permit for which notification to the Administrator is required under section 402(b)(5) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by CWA or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations under sections 301, 302, 306, 307, 318, 403 and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA;

[*Comment:* The provisions of this subparagraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, as the case may be.]

(7) Issuance of the proposed permit would in any other respect be outside the requirements of CWA, or regulations issued under CWA.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.77;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.77, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions of the record; and

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection;

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator shall provide public notice and hold a public hearing in accordance with the procedures of §§ 124.11 and 124.13 if warranted by significant public interest. A hearing shall be held whenever requested by the State or the interstate agency which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, he or she may issue the permit in accordance with Parts 121, 122 and 124 and any other guidelines and requirements of CWA in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

[*Comment:* Where the time set out in this paragraph expires without acceptable State action, exclusive authority to issue the permit passes to EPA.]

(h) In the case of proposed general permits for discharges other than from separate storm sewers substitute "EPA Deputy Assistant Administrator for Water Enforcement" for "Regional Administrator" whenever it appears in paragraphs (b), (c), (d), (f), and (g).

§ 123.79 Prohibition.

Any State permit program shall provide that no permit shall be issued when the Regional Administrator has objected in writing under section 402(d) of CWA.

§ 123.80 Compliance evaluation programs.

In addition to the requirements of § 123.9, State compliance evaluation programs shall:

(a) Have procedures and ability for:

(1) The maintenance of a comprehensive inventory of all sources covered by NPDES permits and a forecast of all reporting requirements to the State agency;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish the priority for further substantive technical evaluation;

(3) Where warranted, a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;

(4) The maintenance of a management information system which supports the compliance evaluation activities of this Part.

(b) Provide for inspections of the facilities of all major dischargers (see *Comment* to § 122.72) at least annually.

§ 123.81 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Parts 130 and 131

and shall assure that its approved planning process is at all times consistent with CWA.

§ 123.82 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(2) "Significant portion of income" shall mean 10 percent or more of gross personal income for a calendar year, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

§ 123.83 Approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the **Federal Register**, and in enough of the largest newspapers in the State to attract statewide attention, and shall mail notice to persons known to be interested in such matters, including all people on appropriate State and EPA mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register**;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.3 the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's program he or she shall notify the State and publish notice in the **Federal Register**. EPA shall suspend the issuance of permits as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

Subpart E—Additional Requirements for State Programs Under Section 404 of the Clean Water act

§ 123.91 Purpose and scope.

(a) This Subpart describes additional requirements, both procedural and substantive, for State permit programs under section 404 of the Clean Water Act (regulating discharges of dredged or fill material). Since EPA does not operate the section 404 program, there is no Subpart E to Part 122. Additional permit application and processing requirements applicable to State programs are set out in this Subpart.

(b) These regulations are promulgated under the authority of sections 101(e) and 501(a) of CWA.

(c) No partial section 404 programs will be approved by EPA. Except as provided in § 123.107, the State program must regulate all discharges of dredged or fill material into waters of the United States (as delineated in CWA section 404(g)(1)) within the State's jurisdiction.

(d) After program approval the Secretary shall retain jurisdiction over any permits (including general permits) which he or she has issued unless arrangements have been made with the State in the Memorandum of Agreement under § 123.93 for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, or modification requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal or modification request is not finally resolved when the Federally issued permit expires, the Secretary, upon agreement with the State, may continue to retain jurisdiction until the matter is resolved.

[*Comment:* Under section 404(h)(5) of CWA, States are entitled, after program approval, to administer and enforce general permits issued by the Secretary. If the State chooses not to administer and enforce these permits, the Secretary retains jurisdiction until they expire.]

(e) In case of any inconsistency between this Subpart and Subpart A, Part 122 or Part 124, this Subpart is controlling.

(f) Compliance with a permit issued by a State approved under this Part during its term, including any activity conducted in compliance with a general permit, constitutes compliance for purposes of sections 309 and 505 of CWA, with sections 310, 307 and 403, except for any standard imposed under section 307(a)(5) of CWA.

§ 123.92 Memorandum of Agreement.

(a) In addition to the requirements of § 123.6, the Memorandum of Agreement between the regional Administrator and the State Director shall contain provisions on the scope of the waivers available under sections 404(k) or (l) of CWA. The Regional Administrator and the State, after consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits. No waiver may be granted for the following activities:

(1) Discharges which may affect the waters of a State other than one in which the discharge originates;

(2) Major dischargers;

[*Comment:* EPA will formulate guidance defining what discharges are "major" under this paragraph. Comments are welcome.]

(3) Discharges into critical areas including fish and wildlife sanctuaries, National and historical monuments, wilderness areas and preserves,

National and State parks and the designated critical habitat of threatened or endangered species.

[*Comment:* EPA is considering adding to this list of critical areas. Comments are welcome.]

(4) Proposed general permits; or

(5) Discharges known or suspected to contain toxic pollutants in toxic amounts or hazardous substances in reportable quantities.

(b) Whenever a waiver is granted under paragraph (a), the Memorandum of Agreement shall contain a statement that the Regional Administrator retains the right to terminate the waiver, in whole or in part, at any time by sending the Director written notice of termination. Notwithstanding any waiver, the State shall continue to supply EPA with copies of permit applications, public notices and final permits when requested by EPA. Nothing in this Section shall diminish the Administrator's authority under section 404(c) or the State's obligation under section 404(h)(1)(F) of CWA.

§ 123.93 Memorandum of Agreement with the Secretary.

In the case of section 404 programs the State shall enter into a Memorandum of Agreement with the Secretary, which shall include:

(a) An identification of those waters in which the Secretary will suspend the issuance of section 404 permits (pursuant to sections 404(g)(1) and (h)(2) of CWA) upon approval of the State program by the Administrator;

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the Rivers and Harbors Act of 1899.

(c) An identification of those individual and general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce (including inspection, monitoring, and surveillance responsibilities) upon receiving approval of its program and a plan for transferring responsibility for these permits to the State.

[*Comment:* In many instances States will lack the authority to directly administer permits issued by the Federal government. However, procedures may be established to transfer responsibility for these permits. For example, a State could, in one action, issue permits identical to the outstanding Federal permits which could be simultaneously revoked. An individual Corps' permit may be transferred to a State only where the State has the authority to administer and enforce all terms and conditions of the Federal permit.]

(d) Procedures whereby the Secretary will transfer to the State pending section 404 permit applications and other relevant information, as specified in § 123.97.

(e) A provision stating that the State shall not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(f) Those "classes or categories", if any, of proposed State permits for which the Secretary waives the right to review.

(g) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[*Comment:* Where an approved State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue section 404 permits (by virtue of section 404(g)(1) of CWA), the State is strongly encouraged to establish in this MOA, procedures for joint processing of Federal and State permits, including joint public notices and public hearings.]

§ 123.94 Attorney General's Statement.

In addition to the requirements of § 123.5, the State Attorney General's Statement shall contain:

(a) An analysis of the State's law prohibiting the taking of private property without just compensation, including any applicable judicial interpretations, and assurance that this will not adversely affect the successful implementation of the State's regulation of the discharge of dredged or fill material.

(b) A certification that upon program approval, the State will have authority to prohibit, deny, restrict, or withdraw the specification of disposal sites for the discharge of dredged or fill material in any defined area of those waters for which the State receives section 404 authority, including:

(1) Authority to apply the criteria contained in 40 CFR Part 230;

(2) Authority (similar to EPA's authority under section 404(c)) to prohibit the discharge of dredged or fill material into areas where such discharges would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas;

[*Comment:* The above authority to prohibit, deny, restrict, or withdraw the specification of disposal sites should not be limited to situations where an application for a 404 permit has been made, but should also include the authority to designate areas which will not be available for disposal site specification, as described in 40 CFR 230.7(d). Nothing in subparagraph (b)(2) is intended to limit the Administrator's authority to take similar actions under section 404(c) of CWA.]

§ 123.95 Program description.

In addition to the requirements of § 123.4, the State's program description shall:

(a) Designate one agency to be responsible for issuing section 404 permits.

(b) Describe how the State section 404 agency will interact with other State and local agencies.

(c) Describe the categories and sizes of discharges of dredged or fill material for which the State Director proposes to issue permits. For each category, the following information shall be given:

(1) An estimate of the number of facilities within each catetgory which must file for a permit; and

(2) An estimate of the number and percent of activities within each category for which the State has already issued a State permit or equivalent document regulating the discharge.

(d) Describe the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) of CWA for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment in accordance with § 123.107.

(e) A description of how the State will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

§ 123.96 Inspections, monitoring, entry and reporting.

Any State permit program shall provide adequate authority to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of CWA.

§ 123.97 Receipt and use of Federal information.

Upon receiving EPA approval, the State agency administering a permit program shall be sent any relevant information which was collected by the Secretary. The Memorandum of Agreement under § 123.93 shall provide for the following, in such manner as the State Director and the Secretary shall agree:

(a) Prompt transmission to the State Director from the Secretary of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. Where existing permits are transferred to the

State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Secretary which the Secretary has identified as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.98 Transmission of information to EPA.

(a) Each State agency administering a section 404 permit program shall transmit by certified mail to the Regional Administrator, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service copies of permit programs forms and any other relevant information to the extent and in the manner agreed to by the Director and the Regional Administrator in the Memorandum of Agreement under § 123.6. The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of any complete permit applications received by the State Director. Where State law requires preparation of an environmental impact statement (EIS) or similar process, such EIS or other document shall accompany the permit application when transmitted to the Regional Administrator.

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application, including a copy of each proposed permit and any terms, conditions, requirements, or documents which are related to the proposed permit or which affect the authorization of the proposed permit. The State program shall provide:

(i) A period of time (up to 90 days) in which the Regional Administrator may comment upon, object to, or make recommendations with respect to the permit application or the proposed permit. A copy of any comment, objection or recommendation shall be sent to the permit applicant by the Regional Administrator.

[*Comment:* Except as provided in paragraph (c), EPA review is usually restricted to permit applications; however, in some cases the Agency may request the State to prepare a proposed permit.]

(ii) Procedures for action by the State agency following a written objection by the Regional Administrator under section 404(j) of CWA.

(iii) For the transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) Within the time period agreed upon the Memorandum of Agreement, the Regional Administrator, pursuant to the right to object provided in CWA and § 123.99, may comment upon, object to, or make recommendations with respect to any permit application or proposed permit. The Regional Administrator shall notify the State Director of his or her intent to comment upon or object to a permit application or a proposed permit within 30 days of receipt, however, if the State proposes to issue a permit which differs from that described in the permit application such approved permit shall be transmitted for review in accordance with this section and §§ 123.99 and 123.110. The Regional Administrator may notify the State that there is no comment but reserve the right to object based on any new information brought out by the public during the comment period or at a hearing.

(c)(1) For discharges listed in § 123.92(a), State section 404 programs shall comply with the draft permit requirements of §§ 124.6 (a) and (b), 124.8 and 124.9, as provided in § 123.8.

(2) For discharges not listed in § 123.92(a), EPA and public review shall be based on the permit application unless EPA requests the State to prepare a proposed permit under § 123.99(c)(2). For these discharges States need not comply with §§ 124.6 (a) and (b), 124.8 and 124.9.

§ 123.99 Objections to permits.

(a)(1) Within the period of time provided under the Memorandum of Agreement, the Regional Administrator shall notify the State Director of any objection to issuance of a permit. This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of a permit application or the proposed permit which has been objected to under subparagraph (1), the Regional Administrator shall also set forth in writing and transmit to the State Director:

(i) A statement of the reason(s) for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director in order to eliminate the objection (including the conditions which the permit would include if it were issued by the Regional Administrator).

(3) When the State Director has received an objection to a permit application or proposed permit under this section but has taken the steps required by the Regional Administrator to eliminate the objection, the revised permit shall be transmitted to the Regional Administrator for review. If no further objection is received from the Regional Administrator within 15 days of the receipt of the revised permit, the Director may issue the permit.

(b) Any objection under this section must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

(2) In the case of any proposed permit for which notification to the Administrator is required under section 404(h)(1)(E) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulations of the proposed permit failed in a material respect to comply with procedures required by CWA, regulations and guidelines thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts.

(5) Any provisions of the permit application or the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including water quality standards, required by CWA, by Part 230 guidelines issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable standards and limitations have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA; or any regulations issued under CWA;

(7) The information contained in the permit application is insufficient to judge compliance with 40 CFR Part 230; or

(8) Issuance of a permit would in any other respect be outside the requirements of section 404 of CWA, or regulations implementing section 404 of CWA.

(c) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to §§ 123.98 and 123.110.

(2) Shall, if the information provided is inadequate to determine whether the permit application or proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record or other information that the Regional Administrator determines are necessary for review. This request shall be made within thirty days of receipt of the State submittal under § 123.98. It shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions. Alternatively, the Regional Administrator, within thirty days of receipt may request the State Director to supplement the application with specified new information (which may include a proposed permit or other information) and resubmit such amended application to EPA and the other Federal agencies under § 123.98. Such amended application (and/or proposed permit) shall be considered a new application for the purposes of Federal and public review procedures.

[*Comment:* It is anticipated that proposed permits will be requested only in exceptional and/or complex cases.]

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to every interested person an opportunity to comment on the basis for an objection;

(d) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or any interested person may request that a public hearing be held by the Regional Administrator on the objection. Following a request, the Regional Administrator shall provide public notice and hold a public hearing in accordance with the procedures of §§ 124.12 and 124.13 if warranted by significant public interest. A hearing shall be held whenever requested by the State which proposed the permit.

(e) A public hearing held under paragraph (d) shall be conducted by an EPA panel in an orderly and expeditious manner. Members of this panel shall include the Regional Administrator, the Assistant Administrator for Enforcement, the General Counsel, the Assistant Administrator for Water and Waste Management, or their respective representatives.

(f) At the conclusion of the public hearing the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(g) Where the Regional Administrator has objected to a proposed permit under this section, the Secretary may issue the permit in accordance with the guidelines and regulations of CWA in the following circumstances:

(1) If no public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection; or

(2) If a public hearing is held under paragraph (d) and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (f) of this section.

(h) For purposes of this section any draft permit prepared under § 124.6 shall be considered a proposed permit.

§ 123.100 Prohibitions.

No permit shall be issued by the Director in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the requirements of CWA, or regulations and guidelines implementing CWA, including the section 404(b)(1) environmental guidelines. (40 CFR Part 230).

(b) Where the Regional Administrator has objected to issuance of the permit under section 404(j) of CWA and where such objection has not been satisfied or resolved.

(c) Where, in the judgment of the Secretary of the Army acting through the Chief of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(d) Where the proposed discharge would be into a defined area for which specification as a disposal site has been prohibited, restricted, denied, or withdrawn by the Administrator under section 404(c) of CWA, or by the State Director, and where such discharge would fail to comply with the Director's actions under those authorities.

§ 123.101 Enforcement authority.

In addition to the requirements of § 123.10, State section 404 programs shall include procedures which enable the State Director immediately and effectively to halt or eliminate any unauthorized discharges of dredged or fill material, including the authority to do each of the following:

(a) Issue a cease and desist or an interim protective order to any person responsible for, or involved in an unauthorized discharge.

(b) Sue in the appropriate State court to immediately restrain any person responsible for, or involved in an unauthorized discharge, and

(c) Immediately notify the Regional Administrator by telephone, and by subsequent written confirmation, of any actual or threatened endangerment to the public health and welfare resulting from any discharge of dredged or fill material.

§ 123.102 Continuing planning process.

Any State permit program shall have an approved continuing planning process under 40 CFR Parts 130 and 131 and shall assure that its approved planning process is at all times consistent with CWA.

§ 123.103 Agency board membership.

(a) Each State permit program shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of this section:

(1) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or an appeal.

(2) "Significant portion of income" shall mean 10 percent or more of gross personal income for a calendar year, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(3) "Permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of

Parks or a Department of Fish and wildlife.

(4) "Income" includes retirement benefits, consultant fees, and stock dividends.

(c) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments which the recipient does not know the identity of the primary sources of income.

§ 123.104 Approval process.

(a) Within 10 days of receipt of a State section 404 program submission under § 123.3 of this Part, the Administrator shall provide copies of the State's submission to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(b) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the **Federal Register**, and in enough of the largest newspapers in the State to attract Statewide attention, and shall mail notice to persons known to be interested in such matters, including all people on appropriate State, EPA and Corps of Engineers mailing lists and all permit holders and applicants within the State. This notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the **Federal Register**;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(c) Within 120 days of the receipt of a complete program submission under § 123.3, the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(d) If the Administrator approves the State's section 404 program he or she shall notify the State and the Secretary and publish notice in the **Federal Register**. The Secretary shall suspend the issuance of section 404 permits by the Corps of Engineers within the State, except for those waters specified in section 404(g)(1) of CWA as identified in the Memorandum of Agreement between the State and the Secretary (see § 123.93).

(e) If the Administrator disapproves the State program he or she shall notify the State of the reasons for the disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

§ 123.105 Applicable conditions and requirements.

In addition to the requirements of § 122.11, each permit issued by the State Director shall provide for and ensure:

(a) That the discharge will be conducted in compliance with the section 404(b)(1) environmental guidelines (40 CFR Part 230), including conditions to ensure that the discharge will be conducted in a manner which minimizes adverse impact upon the physical, chemical, and biological integrity of the waters of the United States.

(b) That if a toxic effluent standard or prohibition for dredged material (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of CWA for a toxic pollutant present in the permittee's discharge and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the State Director shall modify the permit to conform to the toxic effluent standard or prohibition and so notify the permittee.

(c) That the permit (other than general permits) shall include a detailed sketch, specifying location and boundaries of the proposed discharge site including a limitation of the quantity and type of dredged or fill material which may be discharged at that site. In open water sites, a delination of the disposal site shall be included.

(d) The State Director shall incorporate approved BMPs developed by a Statewide CWA section 208(b)(4)(B) regulatory agency into permits as provided in the agreement described in § 123.110(a)(1). Where BMP's were developed for application in a specific geographic area they shall only be incorporated into permits for that area. Where BMP's are less stringent than the conditions which are necessary to assure compliance with the 40 CFR Part 230, the BMP's shall be supplemented with additional and/or more stringent conditions incorporated into the 404 permit as necessary.

§ 123.106 General permits.

(a) General permits may be issued for activities which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse affects on the environment. If several activities are grouped in one general permit their similarity should be established when the general permit is proposed.

(b) In addition to the conditions in § 122.11 each general permit issued by the State Director shall include, where applicable, the following conditions:

(1) Conditions specified in § 123.105 (a) and (b);

(2) The maximum quantity and type of material that may be discharged and the maximum extent that an area may be modified by a single operation;

(3) A specification of the activities covered by the general permit with emphasis on unique factors, if present;

(4) Geographic area to which the general permit applies, including a clear description of the type(s) of water(s) (with specific references to wetlands) in which the activity(ies) are permitted;

(5) BMP's necessary to assure that environmental effects will be minimal;

(6) limitations on construction of any structures including the following factors:

(i) Size and type of structure(s) permitted;

(ii) Specifications for conservation and environmental protection, including, to the maximum extent practicable, minimizing impairments to the biological, chemical and physical integrity of the waters of the United States;

(iii) Site restoration after the structure is completed.

(iv) Depth of fill permitted.

(7) Any other conditions deemed necessary by the State Director.

(c) The State Director shall require advance notification by persons or agencies intending to discharge dredged or fill material under a general permit, including the name of the discharger, the location, nature and duration of the discharge. Advance notification is required unless the Regional Administrator concurs in writing that it is unnecessary.

[*Comment:* EPA envisions that the information required can be submitted on a postcard. Submission of information should be construed as a notification not as an application for a permit. This information can be used to monitor the individual and cumulative environmental effects of the activities authorized by the general permit and provide a basis for determining whether its modification or termination is necessary.]

(d) After a general permit has been issued, activities falling within the scope of the permit do not require an individual permit unless the State Director determines, on a case-by-case basis, that the concerns of the aquatic environment as expressed in 40 CFR Part 230 indicate the need for an individual permit.

(e) In addition to grounds in §§ 122.9 and 122.10, the State Director may modify, revoke and reissue or terminate a general permit on the following grounds:

(1) If he determines that the effects of the activities authorized by it are having or will have a more than minimal individual or cumulative adverse affect on the environment; or

(2) If he determines that the permitted activities are more appropriately permitted by individual permits.

(f) The State Director shall provide public notice of amendment or termination of a general permit.

(g) The public notice for proposed general permits, including proposed amendments to general permits, shall include:

(1) Applicable statutory authority or regulations;

(2) A copy of the proposed permit, describing the activities and waters to be covered;

(3) A description of the estimated environmental effects of the permit;

(4) Name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description and location of the site of each proposed discharge;

(5) Any other available information which may assist the public in evaluating the likely environmental affects of the proposed activity, if any, upon the integrity of the receiving waters;

(6) Address and telephone number of the place where interested persons may obtain further information;

(7) Name and address of person to whom comments should be addressed, deadline for submission of comments; and

(8) A statement of the right to request a public hearing, and that a hearing will be held if there is significant public interest.

§ 123.107 Activities not requiring permits.

(a) Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under this section:

(1) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.

The construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, marsh, bay or any other wetland or aquatic area lying within the waters of the United States is not considered minor drainage, and any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

The discharge of dredged or fill material incidental to the management or rotation of crops on lands in current active use for farming is a normal farming practice not requiring a permit. However, a permit is required for any discharge of dredged or fill material made for the purpose of converting waters of the United States to farming, forestry, or ranching uses (e.g., discharge of dredged or fill material to erect a dike, dam, levee or other structure to divert, reduce or eliminate the flow of water into or through a wetland.

(2) maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, grions, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. This exemption does not include maintenance that changes the character, scope, or size specific to the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches. This particular provision does not apply to the construction of drainage ditches. Any discharge of dredged or fill material incidental to the modification of a stream bank or other shoreline area within a water of the United States to connect any such water to a water intake structure or water discharge structure shall be required to have a section 404 permit.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing and excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These best management practices which must be applied to satisfy this provision shall include those detailed best management practices described in the State's approved program description pursuant to the requirements of § 123.95(d), and shall also include the following baseline provisions:

(i) Logging in streams is prohibited;

(ii) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) shall be held to the minimum feasible number, width and total length consistent with the purpose of specific farming, silvicultural or mining operations;

(iii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to avoid significant increases in sediment runoff;

(iv) The road fill shall be bridged or culverted to prevent the restriction of expected high flows;

(v) The discharge shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(vi) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(vii) The discharge shall consist of suitable material free from toxic pollutants in toxic amounts;

(viii) The discharge shall not take, or jeopardize the continued existance of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(ix) The fill shall be properly maintained during and following construction to prevent erosion and other non-point sources of pollution;

(x) Soil losses shall be held close to geological rates through careful selection of logging and farming methods, and through professional access route management;

(xi) A selective uneven-aged management cutting method should be employed on slopes, near streams, or in other sensitive areas unless the use of other forest management options would result in the same or less alteration of the chemical, physical and biological integrity of affected waters, including less sedimentation;

(xii) Vegetative disturbance shall be kept to minimum.

(xiii) Borrow material shall be taken from upland sources wherever feasible, and sufficient zones of vegetation adjacent to water bodies shall be preserved to filter out debris and sediment transported by runoff from nearby harvest sites and to prevent thermal pollution by preserving shade cover of water bodies.

(xiv) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xv) Upon removal of temporary roads, any area of the waters of the United States whose bottom elevation has been altered by discharge of the road bed fill shall be restored to its original elevation;

(xvi) The use of pesticides and herbicides shall be avoided where possible and shall not be used in water bodies, including wetlands, in conjunction with road construction;

(xvii) All operators electing to qualify for the exemption must be familiar with and shall apply as appropriate to specific practices, professional management methods that are available from technical assistance, training and advice provided by the U.S. Forest Service, State Foresters, the Soil Conservation Service, the office of surface mining, or by similar recognized public sources of technical information and guidance.

(6) Any activity with respect to which a State has an approved program under section 208(b)(4)(B) of CWA which meets the requirements of subparagraphs (B) and (C) of that section.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1)–(6) contains any toxic pollutant such discharge shall be subject to any effluent standard or prohibition established for such toxic pollutants pursuant to provisions of section 307 of CWA, and requires a permit under the State program.

(c) Any discharge of dredged or fill material into waters of the United States, incidental to any of the activities identified in paragraphs (a) (1)–(6) or to any other activity must have a permit if its purpose is to bring an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of United States may be impaired or the reach of such waters reduced.

[*Comment:* Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation *may* be impaired by such alteration, and the activity shall be required to have a section 404 permit. Any discharge which converts any area of the waters of the United States to dry land or which connects any such waters to dry land through dikes, levees or other fills shall be deemed to thereby reduce the reach of the waters of the United States and must have a section 404 permit. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of lands from silvicultural to agricultural use when a discharge of dredged or fill materials is made into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. The reach of the waters of the United States shall not, however, be deemed to be reduced by a discharge which elevates the bottom of waters of the United States without converting it to dry land.]

(d) Federal projects which qualify under the criteria contained in section 404(r) of CWA are exempt from State section 404 permit requirements.

§ 123.108 Permit application.

(a) *Publicity and Preapplication Consultation.* The State Director is encouraged to establish and maintain a program to inform, to the extent possible, potential applicants for permits of the requirements of the State program and of the steps required to obtain permits for activities in State regulated waters. As part of this program, the State Director is encouraged to include pre-application consultation to assist applicants in understanding the requirements of 40 CFR Part 230 and in fulfilling permit application requirements.

(b) *Application for Permit.* Except where an activity is authorized by a general permit or is exempt from the permit requirement under § 123.107, any person who proposes to discharge dredged or fill material into State regulated waters shall complete, sign and submit an application to the State Director.

[*Comment:* State application forms are subject to EPA review and approval, see § 123.3.]

(c) *Content of Application.* A complete application shall include:

(1) A complete description of the proposed activity including (i) necessary drawings, sketches or plans (in cross section and plan view) showing the general and specific site location including site address and character of all proposed activities; (ii) size relationship of the proposed discharge to the size of the affected waters and depth of water in the area relative to the ordinary high water mark; (iii) the purpose and intended use of the proposed activity, scheduling of the activity and the names and addresses of property owners adjacent to the site and, if appropriate, the location and dimensions of adjacent structures;

(2) The source of the dredged or fill material and method of dredging used, if any; a description of the type, composition and quantity of the material; the proposed method of transportation and disposal of the material, including the type of equipment to be used.

(3) The use of any specific structures to be erected on the fill.

(4) Information about the discharge area needed to evaluate compliance within 40 CFR Part 230, including documentation concerning the following factors:

(i) A discussion of alternatives to the proposed discharge, including alternative disposal site, construction methods, and methods of discharge, and also including reasons for rejecting the alternatives;

(ii) Physical and chemical characteristics of the discharge site including the bottom and the receiving water;

(iii) Plants, fish, shellfish and wildlife in the discharge site which may be dependent on water quality and quantity;

(iv) Site characteristics of the affected and adjacent areas that may require protection or preservation;

(v) Uses of the disposal area which might affect human health and welfare; and

(5) A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the discharge.

[*Comment:* Guidelines for minimizing the adverse effects of discharges of dredged or fill material are found in 40 CFR Part 230.]

(6) A list of the approvals required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(7) One original set or one good quality reproducible set of drawings and maps, as specified below:

(i) A vicinity map identifying the map or chart from which the vicinity map was taken and showing the following:

(A) Location of the activity site including latitude and longitude and river mile, if known;

(B) Name of waterway;

(C) All applicable political (e.g., county, borough, town, city, etc.) boundary lines;

(D) Names of all major roads in the vicinity of the site including the road providing closest practicable access to the site;

(E) Graphic scale; and

(F) North arrow.

(ii) A plan view of the proposed activity showing the following:

(A) Existing shorelines;

(B) North arrow;

(C) Graphic or numerical scale;

(D) Ordinary high water mark of the body of the water;

(E) Location of known wetlands;

(F) Delineation of dispoasl site;

(G) Water depths around the project;

(H) Principal dimensions of the structure or work and extent of encroachment beyond the applicable high water line;

(I) Waterward dimension from an existing permanent fixed structure or object;

(J) Distances to nearby Federal projects, if applicable;

(K) Number of cubic yards, type of material, method of handling, and location of fill or spoil disposal area if applicable. If spoil material is to be placed in approved dumping grounds, a separate map showing the location of the dumping grounds should be attached. The drawing must indicate proposed retention levees, weirs, and/or other devices for retaining dredge or fill materials; and

(L) Location of structures, if any, in waters of the United States immediately adjacent to the proposed activity, including permit numbers, if known. Identify purposes of all structures.

(iii) An elevation and/or section view of proposed project showing the following:

(A) Same water elevations as in the plan view;

(B) Depth at waterward face of proposed work, or if dredging is proposed, show dredging grade;

(C) Dimensions from applicable ordinary high water mark for proposed fill, float or pile supported platform. Identify any structure to be erected thereon;

(D) Graphic or numerical scale;

(E) Cross-section of excavation or fill, including approximate side slopes;

(F) Elevation of spoil areas;

(G) Location of wetlands; and

(H) Delineation of disposal site.

(iv) Notes on all maps or drawings submitted, including:

(A) A list of names of adjacent property owners whose property also adjoins the water and are not shown on plan view;

(B) A statement of the purpose of proposed activity;

(C) A statement of datum used and elevation views. (Use mean low water, mean lower low water, National Ocean Survey Datum or National Geodetic Vertical Datum of 1929); and

(D) A title block for each sheet submitted identifying the proposed activity and containing the name of the body of water; river mile, if applicable; name of county, and State; names of applicant or agent; number of the sheet and the total number of sheets in set; and date the drawing was prepared.

§ 123.109 [Reserved]

§ 123.110 Coordination requirements.

(a) *General Coordination.* (1) The State Director shall develop an agreement with the agency designated to administer a Statewide CWA section 208(b)(4) regulatory program. Such an agreement shall include:

(i) A definition of the activities to be regulated by each program;

(ii) Arrangements for the agencies providing an opportunity to comment on perspective permits, BMP's and other relevant actions; and

(iii) Arrangements for incorporating BMP's developed by the section 208(b)(4) program into section 404 permits, where appropriate.

[*Comment:* Where such a CWA section 208(b)(4) program has been approved, no permit shall be required for activities for which the Administrator has approve BMP's under such approved program except as provided in § 123.107. Until such Section 208(b)(4) program has been approved by the Administrator under CWA section 208(b)(4)(C), a person proposing to discharge must obtain an individual permit or comply with a general permit.]

(2) States are encouraged to receive and use information developed by the Fish and Wildlife Service as part of the National Inventory as it becomes available.

(b) *Coordination with Other Federal and Federal-State Review Process.* To assure coordination of a permit with Federal and Federal-State water related planning and review processes, the State Director shall take the following actions:

(1) Assure that the impact of the proposed discharge will be consistent with the Wild and Scenic Rivers Act where the proposed discharge could affect portions of rivers designated wild, recreational, scenic or under consideration for such designation.

(2) Assure that the proposed discharge will be consisitent with State water quality management planning under sections 208 and 303 of CWA.

(3) Consult the State agency(ies) with jurisdiction over fish and wildlife resources.

[*Comment:* Proposed discharges which are determined to be consistent with these authorities in (1)–(4) will nevertheless be denied section 404 permits if such discharge does not comply with other provisions of this Part and 40 CFR 230.]

The State Director shall furnish copies of the permit application to agencies consulted under this subsection.

(c) *Coordination with Other States.* If the proposed discharge may affect the quality of the waters of any State(s) other than the State in which the discharge occurs the State Director shall provide an opportunity for such State(s) to submit written comments within the public comment period on the effect of the proposed discharge on such State(s) waters, and to suggest additional permit conditions. If these recommendations are not accepted by the State Director, he shall notify the affected State and the Regional Administrator in writing of his failure to accept these recommendations, together with his reasons for so doing.

(d) *Review by Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service.* (1) All permit applications transmitted to the District Engineer, to the U.S. Fish and Wildlife Service, and to the National Marine Fisheries Service shall be accompanied by a statement that the agencies have 20 days from the date fo the receipt of the permit application to notify EPA whether they wish to comment. Failure to so notify EPA within 20 days may

constitute a waiver of the right to comment.

(2) In cases where the agencies have notified the Regional Administrator that they wish to comment, they should submit their evaluations and comments to the Regional Administrator within 50 days of receipt of the permit application. The agencies may request additional time. If the Regional Administrator finds that more time should be allowed he will advise the agencies of the new deadline. Written comments should normally be submitted within the initial 20 day period, or as soon as practicable thereafter.

(3) If any of these agencies feels that additional time is necessary to complete evaluation of any permit application, it shall notify the Regional Administrator, who may request an extension from the State Director. If the State Director allows additional time, the Regional Administrator shall notify the affected agencies.

(4) All comments from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service will be considered by the Regional Administrator in accordance with provisions of this section. If the Regional Administrator does not adopt an objection of any such agency, he shall consult with the objecting agency(s). The final decision to object or to require permit conditions will be made by the Regional Administrator.

§ 123.111 Emergency procedures.

In an emergency situation the requirements for public notice and full Federal review may be waived with the concurrence of the Regional Administrator. An emergency is a situation which would result in an unacceptable hazard to life or severe loss of property if corrective action requiring a permit is not undetaken within a time period less than the normal time needed to process the application under required procedures of this Part. Emergency permits shall include conditions for restoration of the disposal site.

§ 123.112 Reporting.

In accordance with the requirements of § 122.15, the State Director shall:

(a) Submit to the Regional Administrator a quarterly report on the last day of January, April, July, and October, which shall include:

(1) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction and a description of enforcement actions taken or contemplated;

(2) A description of investigations conducted to determine compliance with the conditions and limitations of any permits subject to the State's jurisdiction, including any enforcement actions taken against violators of permit terms or conditions.

(b) Submit to the Regional Administrator an annual report assessing the cumulative impacts of the State's permit program on the integrity of State-regulated waters. This annual report may be appended to the October quarterly report described in paragraph (a) as agreed in the Memorandum of Agreement, and shall include:

(1) The number and nature of individual permits issued by the State during the year. This should include the locations and types of water bodies where permitted activities are sited (e.g., wetlands, rivers, lakes, and any other categories which the Director and Regional Administrator may establish);

(2) The number of acres of each of the categories of waters in paragraph (b)(1) which were filled during the year (either by authorized or unauthorized activities);

(3) The number of acres of each of the categories of waters in paragraph (b)(1) which were protected under the State's authorities to prohibit, deny, restrict, or withdraw the specification of disposal sites for receiving dredged or fill material, as required by § 123.94.

(4) The number and nature of permits modified, revoked and reissued or terminated during the year;

(5) The number and nature of permits issued under emergency conditions, as provided in § 123.111;

(6) The approximate number of individuals in the State discharging dredged or fill material under general permits and an estimation of the cumulative impacts of these permitted activities.

PART 124—PROCEDURES FOR DECISION MAKING

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Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., Clean Air Act, 42 U.S.C. 1857 et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This Part specifies the procedures EPA will follow in issuing and modifying NPDES, RCRA and UIC permits, and permits to implement the "prevention of significant deterioration" (PSD) provisions of the Clean Air Act.

(b) This Part is designed so that permits for a given facility under two or more of the listed programs can be processed either separately or in combination at the choice of the permitting authority. This will allow EPA to combine the processing of permits where greater efficiency is likely to result, but will not bind the Agency to follow that course in all cases. Consolidation of permits can take place either when the permit applications are submitted or when draft of final permits are issued even where permit applications have been submitted separately. Permit applications may recommend whether or not their permit applications should be consolidated in any given case.

(c) Subpart A specifies procedures applicable to all three permit programs. Subparts B–E provide procedures specific to the RCRA, PSD and NPDES permit programs. Subpart F provides a procedure based on the "initial licensing" provisions of the APA that can be used instead of Subparts A–E in appropriate cases.

(d) State administration of each of RCRA, UIC, NPDES and 404 permit programs can be approved by EPA under Part 123. Only selected portions of this Part apply to these approved State programs, as listed in § 123.8. (In the case of PSD programs, none of the provisions of Part 124 has been made applicable to States.) However, there is a need for coordination in making decisions when two or more such permits will be issued to an activity by both EPA and by a State. Accordingly, the regulations provide that applications may be jointly processed, joint comment periods and hearings may be held, and final permits may be drafted on a cooperative basis whenever EPA and a State agree to take such steps either in general or in an individual case. Such joint processing agreements may be provided in the Memorandum of Agreement developed under § 123.6.

§ 124.2 Definitions.

The definitions in Part 122 apply to this Part.

§ 124.3 Application for a permit.

(a) Any person who requires a permit under the RCRA, UIC, PSD or NPDES program shall complete, sign, and submit an application for each permit required to the Director in accordance with §§ 122.6, 122.23, 122.25, 122.36, and 122.64 or 123.105, or the applicable requirements of 40 CFR 52.21, except as provided in § 124.82 for NPDES general permits or for RCRA permits by rule under § 122.26.

(b) No permit shall be issued until the applicant has fully complied with the governing application filing requirements of this Part and Part 122. If an applicant fails or refuses to correct deficiencies in the application, the permit shall be denied or appropriate enforcement actions may be taken under the provisions of the appropriate Act. These provisions include sections 308, 309, 402(h) and 402(k) of the CWA, section 3008 of RCRA, and sections 1423 and 1424 of SDWA.

(c) Permit applications are designed to fit the normal situation for most applicants. However, if the Director determines that further information of a site visit is necessary in order to evaluate the application completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information or scheduling of any necessary site visit.

(d) Permit applications must comply with the signature and certification requirements of § 122.5.

(e)(1) Any application submitted by a new source, new HWM facility or new injection well, and any Part B application for an existing HWM facility for an EPA-issued permit shall be reviewed for completeness by the Director within 30 days of its receipt. Upon completing this review, the Director shall inform the applicant in writing whether or not the application is complete and list any required additional information. The requirements of this paragraph shall not preclude a Director from requesting additional information from the applicant at a later time for purposes of clarification, modification or supplementation of previously submitted data.

(2) In the event of such a deficiency, the date of receipt of the application shall be, for the purposes of this section, the date on which the Director received all relevant information.

§ 124.4 Consolidation of applications.

(a) Except as provided for RCRA permit applications (Part A only) under § 122.23, any facility or activity requiring a permit under two or more of the RCRA, UIC or NPDES programs which will be issued entirely by EPA may postpone the filing date for any application for such a permit to consolidate it with another application which has a later filing date:

(1) For up to 180 days, provided:

(i) The other application legally must be filed by the later filing date and it will be timely filed; and

(ii) The permit applicant notifies the Regional Administrator, in writing of his/her intent to postpone the filing date; or

(2) For up to two and one half years, provided the permit applicant obtains the written permission of the Regional Administrator to so consolidate the permits.

(b) Except as provided for RCRA permits applications (Part A only) under § 122.23, if an agreement between EPA and an approved State so provides, any

facility that requires two or more of an RCRA permit, a UIC permit or an NPDES permit, one or more of which will be issued by EPA and one or more of which will be issued by an approved State, may postpone the filing date for any application for such a permit:

(1) For up to 180 days, in order to consolidate it with another permit application which legally must be filed within that period and which will be timely filed, if such person notifies the Regional Administrator and the State Director in writing of his/her intent to postpone the filing date; or

(2) With the written permission of both the Regional Administrator and the State Director, for up to two and one half years in order to so consolidate it.

(c) When permit applications are filed together under this section, neither the Regional Administrator nor the State Director is required to issue the corresponding draft permits under § 124.6 at the same time. Conversely, draft permits for a given facility under the RCRA, UIC and NPDES programs may be issued at the same time even where the permit applications were filed at different times.

[*Comments:* (1) States are encouraged to consolidate applications, where they have been approved by EPA to administer two or more of the RCRA, UIC or NPDES programs. However they are not required to do so.

(2) This section does not apply to Air PSD permits.]

§ 124.5 Requests for modification or revocation and reissuance or termination of permits.

(a) If a permittee believes that a modification to or revocation and reissuance of a RCRA, UIC, PSD or NPDES permit is justified under §§ 122.9 or 122.10, (or section 52.21 in the case of a PSD permit) he/she may request a modification or revocation and reissuance or termination from the Director in writing. The request shall set forth all facts or reasons known to the permittee which may be relevant to a decision on the request.

(b) If the Director agrees that the modification or revocation and reissuance request under paragraph (a) appears justified, he/she shall prepare and formulate a draft permit under § 124.6 incorporating the changes. The Director may request additional information or, in appropriate cases, may require the submission of a new permit application.

(c) If the Regional Administrator, or where appropriate, the State Director decides that the modification or revocation and reissuance request under paragraph (a) does not appear justified, he/she shall reply to the permittee briefly setting forth in writing the reasons for that decision.

(d) When a request for a modification under this section is granted and a new draft permit is formulated, only those terms dependent on the request will be reopened. All other aspects of the permit will remain in force until the expiration of the permit. If the permit is revoked and reissued, the draft permit is subject to the same procedures as if the permit had expired and was being reissued.

(e) In the case of a proposed modification to an existing 404 permit initiated by the permittee which involves any change in applicable conditions or requirements under §§ 122.11 or 123.105, such proposed modification shall be treated as a permit application and shall be processed in accordance with all requirements of § 123.113.

§ 124.6 Draft permit.

(a) If a permit has been properly applied for, or the Director, after analyzing the information concerning a permit furnished under that Part and any other relevant information, shall tentatively decide whether to issue or deny the permit. If the tentative decision is to issue the permit, a draft permit shall be prepared containing at a minimum the following information:

(1) All conditions or requirements specified in § 122.11;

(2) For:

(i) RCRA permits, standards for treatment, storage or disposal and other permit terms and conditions which meet the requirements of § 122.24;

(ii) UIC permits, permit terms and conditions that meet the requirements of § 122.42;

(iii) PSD permits, permit terms and conditions that meet the requirements of 40 CFR 52.21;

(iv) NPDES permits, effluent limitations, standards, prohibitions and conditions required under § 122.69, including where applicable any conditions certified by a State agency under § 124.55, and all variances or other modifications that are to be included under § 124.64. All effluent limitations and standards shall be calculated and specified as required under § 122.70;

(v) 404 permits, permit terms and conditions that meet the requirements of § 123.105;

(3) All compliance schedules required by § 122.12; and

(4) All monitoring requirements required by § 122.14.

(b) All draft permits formulated under this section and § 124.7 shall be accompanied by a statement of basis or fact sheet under §§ 124.8 or 124.9. In addition, EPA-formulated draft permits shall be based on the administrative record required by § 124.9.

[*Comment:* Additional requirements for draft NPDES permits incorporating CWA section 301(h) modifications are set forth in § 124.57.]

(c) If the Regional Administrator determines under 40 CFR Part 6.900 that an Environmental Impact Statement shall be prepared for an NPDES new source, the public notice of the draft permit under this section shall not be given until a draft environmental impact statement is issued.

(d) *Consolidation of draft permits.* (1) If a facility or activity will require a permit under two or more of the RCRA, UIC, PSD or NPDES programs the Regional Administrator may issue consolidated draft permits whether or not the permits were applied for at the same time, provided the conditions for issuance of each separate permit have been met. Whenever consolidated draft permits are issued the statements of basis (see § 124.8) or fact sheets (see § 124.9), administrative records (see § 124.10), public comment periods (see § 124.11) and any public hearings for those permits shall also be consolidated. However, the final permits need not all be issued together if in the judgment of the Regional Administrator, joint processing would result in unreasonable delay in the issuance of one or more permits.

(2) If a facility or activity will require two or more of a RCRA, UIC, PSD or NPDES permit, one or more of which is to be issued by EPA and one or more of which is to be issued by an approved State, the Regional Administrator and the State Director(s) may agree to issue the draft permits at the same time whether or not they were applied for at the same time. Whenever two or more draft permits are issued at the same time, administrative records (for EPA-issued permits only) should be consolidated for highly significant permits and any public hearings for those permits shall also be consolidated. However, the final permits need not all be issued together if, in the judgment of either the Regional Administrator or the State Director, such consolidation would result in unreasonable delay in the issuance of one or more permits.

(3) The Director shall not, without the written consent of the permit applicant, consolidate issuance of a PSD permit with issuance of any other permit under this section when to do so would delay

issuance of the PSD permit more than one year from the date of application.

(4) Whenever draft permits including an NPDES permit are consolidated under this subsection, and the Regional Administrator elects to make the special "initial licensing" provisions of Subpart F applicable to the NPDES permit, any permits with which that NPDES permit was consolidated shall likewise be processed under Subpart F.

(e) The decision to deny a permit which has been applied for shall be made through the same procedures as any other decision on a permit. A draft notice of intent to deny will be issued and made available for public comment, accompanied by a fact sheet or statement of basis. A response to comments and final decision will then be prepared. Appropriate appeals may then be made under this Part.

§ 124.7 Other draft permits.

(a) The Director may formulate a draft permit or notice concerning a RCRA, UIC, PSD or NPDES permit without having received an application, as provided in this section.

(1) If the Director decides that a permit should be:

(i) Modified or revoked and reissued under § 122.9, the Director shall formulate a draft permit containing the provisions required under § 124.6.

(ii) Terminated under § 122.10, the Director shall issue a notice of intent to terminate the permit.

(2) NPDES general permits under § 122.82 shall be proposed in draft form, shall contain the designation of the General Permit Program Area (under § 122.82(a)(2)), and, except for general permits for storm sewers, shall be sent to the EPA Deputy Assistant Administrator for Water Enforcement for concurrence or objection during the public comment period. No final permit shall be issued if the EPA Deputy Assistant Administrator for Water Enforcement objects to the general permit. Such objections must be made within 90 days from the public notice for the draft general permit under § 124.58(b).

(b) Any draft permit formulated under paragraph (a) shall be based on the administrative record as defined in § 124.10 and § 124.62 (for NPDES permits only).

[*Comment*: Public comment and hearings under §§ 124.12 and 124.13 pertaining to permit modifications will be limited to the terms of the proposed modification.]

(c) In the case of a proposed modification to an existing 404 permit initiated by the State Director which involves any change in applicable conditions or requirements under §§ 122.11 or 123.105, such proposed modification shall be treated as a permit application and shall be processed in accordance with all requirements of § 123.113.

§ 124.8 Statement of Basis.

A statement of basis shall be prepared for every draft permit formulated under § 124.6 for which a fact sheet is not required under § 124.9. The statement of basis shall briefly describe the derivation of the terms and conditions of the permit and the reasons for them. The statement of basis shall be part of the administrative record and shall be sent to the applicant and to interested State and Federal agencies and to other members of the public on request.

§ 124.9 Fact Sheet.

(a) A fact sheet shall be prepared for every draft permit for a major HWM facility, UIC facility, or NPDES discharger, for every NPDES general permit under § 122.82 and NPDES draft permit that incorporates a variance or modification, and for every draft permit which the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological and policy questions considered in setting the terms of the draft permit. The Director shall send this fact sheet to the applicant, to interested State and Federal agencies, and to any other person on request. Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include, where applicable:

(1) A brief description of the type of facility or activity which is proposed to be permitted;

(2) The type and quantity of wastes, pollutants or fluids which are proposed to be treated, stored, disposed of, discharged, emitted or injected;

(3) A brief summary of the basis for the proposed permit conditions including reference to applicable statutory or regulatory provisions and, for EPA permits, appropriate supporting references to the administrative record required by § 124.10, and § 124.62 (for NPDES permits only);

(4) Reasons why any requested variances, modifications, or alternatives to required standards do or do not appear justified;

(5) A description of the procedures for deciding on the final permit including:

(i) The beginning and ending dates of the comment period required under § 124.12 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

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

(6) Name and telephone number of a person to contact for additional information.

(c) "Major permit" means:

(1) In the case of an NPDES permit, any permit for dischargers on the state-by-state list of major dischargers;

(2) In the case of a UIC permit, any permit to an underground injection well identified as a major permit in EPA's annual operating guidance for EPA Regional Offices and States; and

(3) In the case of a RCRA permit, a permit for a major HWM facility as defined in § 122.3(b).

§ 124.10 Administrative record for EPA-issued permits.

(a) Decisions by the Regional Administrator to formulate a draft permit under § 124.6 shall be made only on the basis of the administrative record defined in this section.

(b) The record for formulating a draft permit under § 124.6 shall consist of:

(1) The initial application and any supporting data furnished by the applicant;

(2) The draft permit;

(3) The statement of basis under § 124.8 or any fact sheet under § 124.9;

(4) All documents cited in the fact sheet or statement of basis, unless they are published materials which are generally available, (in which case they should be specifically referenced);

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.

(6) For NPDES permits only, any environmental assessment, Environmental Impact Statement, negative declaration, or environmental impact appraisal that may have been prepared.

(c) The record for formulating a draft permit under § 124.7 shall consist of the draft permit, the statement of basis required by § 124.8 or fact sheet prepared under § 124.9 and all documents cited in the fact sheet or the statement of basis.

(d) Material readily available at the issuing Regional Office or published material which is generally available, and which is included in the administrative record under the

standards of paragraphs (b) and (c), does not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the statement of basis or the fact sheet.

[*Comments*: (1) The administrative record for draft permits under this section will comprise the bulk of the material for the final administrative record.

(2) See also § 124.62 for additional NPDES administrative record requirements.]

§ 124.11 Public notice of permits.

(a) Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of a draft permit shall allow at least 30 days for public comments and notice of a hearing shall be given 30 days before the hearing.

[*Comment*: In the discretion of the Director, this could also include press releases or the use of any other forum or medium to elicit public participation.]

(b) Notice of the formulation of any draft permit formulated under § 124.6 and notice of an initial new source determination under § 124.81, notice of receipt of a section 404 application and notice of all hearings required by § 124.13 shall be given by the Director:

[*Comment*: Notice of receipt of a section 404 permit application is required only where no draft permit is formulated. See § 123.98(c).]

(1) By mailing a copy of the notice to:

(i) The applicant;

(ii) Any other agency which has issued or will issue a RCRA, UIC, PSD or NPDES permit to the activity in question;

(iii) To any State agency responsible for plan development under sections 208(b)(2) or 303(c) of the Clean Water Act;

(iv) For NPDES permits only, to the U.S. Army Corps of Engineers, to Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources and to other appropriate governmental authorities including any affected state;

(v) For 404 permits only:

(A) To the Regional Director of the Federal Aviation Administration, if the discharge involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations;

(B) To any adjacent property owner;

(C) To any State agency(ies) responsible for administering water quality, fish, shellfish and wildlife resources and State Section 404 programs in the affected state, if the proposed discharge may effect the waters of any State(s) other than the State in which the work is to be done;

(2) By mailing a copy of the notice to any person on a mailing list developed;

(i) From those who request to be in the list;

(ii) By soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(iii) By notifying the public as to the availability of such notices through periodic press publication and notices in such publications as Regional and State funded newsletters, environmental bulletins, or State Law Journals. The mailing list may be updated from time to time by requesting an indication of continued interest in being on the mailing list; and

(3) By any of the following methods:

(i) By application of a notice meeting the requirements of paragraph (c) in a daily or weekly newsletter within the area affected by the facility or activity;

(ii) By posting a copy of the information required under paragraphs (c) and (d) at the principal office of the municipality or political subdivision affected by the facility or activity, and by posting a copy at the United States Post Office serving those premises;

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it; or

(iv) Where the program is being administered by an approved State, in any other manner constituting legal notice to the public under State law.

(4) Any person otherwise entitled to receive notice under subparagraph (1) of this paragraph may waive their right to receive notice for any classes and categories of permits.

(c) All public notices issued under this Part shall contain the following information:

(1) Name and address of the office processing the application or conducting the hearing;

(2) Name and location of the facility or activity to be permitted, except in the case of NPDES general permits under § 122.82;

(3) Name of the person, and address and telephone number where interested persons may obtain further information, including copies of the draft permit and statement of basis or fact sheet or, for section 404 permits only, copies of the application and proposed permit, if required.

(4) For EPA-issued permits, the location of the administrative record required by §§ 124.10 and 124.62 (for NPDES permits only) and the times at which it will be open for public inspection;

(5) For NPDES permits only: (i) a general description of the location of each existing or proposed discharge point, including the receiving water;

(ii) If the applicant has submitted data and information in accordance with CWA section 316(a) for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the application are available as part of the administrative record for public inspection during office hours. The notice shall also state that any person may comment in writing under § 124.12 upon the applicant's desired alternative effluent limitations and may also request a hearing; and

(6) For 404 permits only, applicable statutory authority and regulations;

(7) Any additional information considered necessary or proper.

(d) Public notice mailed to persons identified in paragraphs (b)(1) and (b)(2) shall contain the information required by paragraph (c) and the following information:

(1) A brief description of the applicant's activities or operations that are involved in the facility or activity described in the application and a statement whether the application pertains to a new or existing facility or activity.

(2) A summary of major terms of the draft permit;

(3) Brief description of the comment procedures required by § 124.12, and the time and place of any public hearing that will be held; and

(4) For NPDES permits only, if the discharge is from a new source, a statement of the Regional Administrator's decision as to whether an Environmental Impact Statement will be or has been prepared; and

(5) For 404 permits only:

(i) The purpose of the proposed activity and intended use, including a description of the type of structures, if any, to be erected, and a description of the type, composition and quantity of materials to be changed and means of conveyance; and any proposed conditions and limitations on the discharge;

(ii) Name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description and location of the site of each proposed discharge.

(iii) Any other available information which may assist the public in evaluating the likely environmental impact of the proposed activity, if any, upon the integrity of the receiving waters.

(6) A statement of the right to request a public hearing.

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

(e) In addition to the information required under paragraphs (c) and (d) above, the public notice of a public hearing held under § 124.13 shall contain the following information:

(1) Reference to the date of previous public notice relating to the permit;

(2) Date, time and place of the hearing; and

(3) In the case of mailed public notice, a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(4) For 404 permits only, a summary of major issues raised to date during the public comment period.

(f) Public notice issued under this section may describe more than one permit and more than one permitted activity. No public notice shall be given in cases where a request for permit modification is denied, but written notice of that denial shall be given the person requesting such modification. Public notice of the draft permit may be issued at the same time public notice of a hearing is given.

§ 124.12 Public comments and requests for hearings.

(a) During the public comment period provided under § 124.11(a), any interested persons may submit written comments and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in preparing the final permit and shall be responded to as provided in § 124.19.

(b) Written comments may be submitted: (i) For all permits except those section 404 permits for which no draft permit is required (see § 123.98(c)), on the draft permit and accompanying statement of basis or fact sheet or other portions of the administrative record;

(ii) For 404 permits for which no draft permit is required (see § 123.98(c)), on the permit application or amended application (including proposed permit where required).

(c) Where the Director finds a significant degree of public interest in a draft permit or permits, he/she shall hold a public hearing to consider the permit or permits. Public notice of that hearing shall be given as specified in § 124.11. Where a state authority other than the Director is required under State law to hold hearings, on permits, it rather than the Director may hold hearings under this paragraph.

(d) Any person may submit oral or written statements at hearings held under this section. Reasonable limits may be set upon the time allowed for oral statements.

§ 124.13 Public hearings.

(a)(1) When a public hearing will be held under § 124.13 and EPA is the permitting authority, the Regional Administrator shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct. The Regional Administrator may also designate an EPA panel to take part in the hearing. The membership of the panel in general should consist of EPA employees having special expertise in an area related to the issues to be addressed at the hearing. For this reason, the membership of the panel may change as different issues are presented for discussion. The Regional Administrator may also designate EPA employees who will not or possibly will not serve on the hearing panel to provide staff support to the panel as needed.

(2) Joint EPA-State hearings on permits subject to this Part, one or more of which will be issued by EPA and one or more of which will be issued by an approved state, may be held either as provided in § 124.4 or otherwise by agreement in individual cases. Where joint hearings are held with a State agency, the Presiding Officer and the panel members may be employees of either EPA or the State. The Presiding Officer, any panel members and any panel support staff shall be chosen by agreement of EPA and the State.

(b) At any hearing under this section, any person may submit oral or written statements and data concerning the proposed permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(c) The Presiding Officer and any panel member may question any person participating in the hearing. Persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his/her sole discretion, ask these questions, or allow a member of the panel to ask them.

(d) Participants in the hearing shall submit for the hearing record such additional material as the hearing panel may request within 10 days following the close of the hearing, or such other period of time as is ordered by the Presiding Officer. Participants may also submit additional information for the hearing record on their own accord within 10 days after the close of the hearing.

(e) The hearing shall be either stenographically reported verbatim or tape recorded.

§ 124.14 Cross-examination and other supplementary procedures.

(a) No cross-examination shall be permitted at any hearing held under § 124.13. However, any participant in such a hearing may submit a request for cross-examination after the hearing has closed. The request shall be received by EPA within one week after a full transcript of the panel hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in the light of the record made thus far, and the extent to which and why they can reasonably be considered material to the decision on the application for modification; and

(2) The person(s) a participant desired to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination requested can be expected to result in resolving the issue of material fact involved.

(b) As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such request, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues on which cross-examination action is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits as appropriate for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing where cross-examination shall take place.

(c) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submittal of additional written

information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(d) In issuing any order under paragraph (b), the presiding officer:

(1) May determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further.

(2) Shall consider the extent to which the issues raised are likely to be the subject of an evidentiary hearing under Subpart E and shall deny cross-examination with respect to any such issues. The presiding officer may grant cross-examination to the extent he/she finds such a grant would be likely to avoid the need for an evidentiary hearing.

(3) May require, as a precondition to ruling on the merits of such request, alternative means of clarifying the record to be used whether or not a request to do so has been made under paragraph (b). The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

§ 124.15 Obligation to raise points and provide information during the comment period.

All persons, including applicants, who believe any of the terms of a draft permit is not appropriate, must raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material by the close of the public comment period (including any public hearing period) required by § 124.12.

§ 124.16 Reopening of comment period.

If any information or arguments submitted during the public comment period, including information or arguments whose submission is required under § 124.15, appears to raise substantial new questions concerning a permit, the Regional Administrator may conclude that one of the following actions is necessary for an informed decision:

(a) Formulation a new draft permit, appropriately modified, under § 124.6.

(b) Preparation a fact sheet or revised fact sheet under § 124.9 and reopening of the comment period under § 124.12; or

(c) Reopening of the comment period under §124.12 to give interested persons an opportunity to comment on the information or arguments submitted.

In each case the notice required by § 124.11 shall be given.

§ 124.17 Issuance and effective date of permits.

(a) After the close of the public comment period (including any public hearing period) required by § 124.12 on a draft permit, the Regional Administrator shall prepare and issue a final permit and shall serve notice of that action on the applicant, and on each person who has submitted written comments or requested notice of the issuance of the final permit. This notice shall include reference to the procedures available to appeal a RCRA, UIC or PSD permit determination or to contest an NPDES permit determination.

(b) A permit shall become effective 30 days after the service of notice of the decision under paragraph (a), unless;

(1) A later effective date is specified in the decision; or

(2) Review is requested under § 124.21 (RCRA, UIC and PSD permits) or a request for an evidentiary hearing is granted under § 124.75 (NPDES permits).

§ 124.18 Stays of contested permit terms.

(a) *Stays.* (1) If a request for review of a RCRA or UIC permit under § 124.21 or § 124.60 is granted, the force and effect of the contested permit terms shall be stayed and shall not be subject to judicial review pending final agency action.

(2) Uncontested terms which are not severable from those contested shall be stayed together with the contested terms under subsection (a). Stayed provisions shall be designated by the Regional Administrator. All other provisions of a permit shall remain in full force and effect, and the permittee shall be subject to all these provisions.

(b) *Stays based on Cross-Effects.* (1) No stay may be granted based on the grounds that an appeal to the Administrator under § 124.21 will likely result in changes to a permit granted to a facility or activity under one statute that will in turn make changes to a permit under some other statute advisable, unless each of the permits involved has been appealed to the Administrator and he/she has accepted the appeal.

(2) If terms and conditions of a RCRA or UIC permit are marked down for reconsideration in an evidentiary hearing on an NPDES permit under § 124.82 then the affected terms and conditions shall be stayed pending both the presiding officer's recommended decision as to them and any action on any recommended changes by the Regional Administrator. Any decision by the Regional Administrator on the presiding officer's recommendation shall be treated like the issuance of a permit for purpose of § 124.17.

(3) No stay of an NPDES, RCRA or UIC permit issued by EPA shall be granted based on the staying for any reason of any such permit issued by a State except at the discretion of the Regional Administrator and upon written request from the State Director.

[*Comment:* NPDES stay provisions are provided in § 124.60.]

§ 124.19 Response to comments.

(a) At the time that any final permit is issued, the Director shall issue a response to comments for that permit. This response to comments shall contain:

(1) A specific indication of which provisions of the draft permit have been changed in the final permit, and the reasons for the change; and

(2) A brief description of and response to all significant comments on the draft permit of the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit as defined in § 124.20.

(c) The response to comments shall be available to the public.

[*Comment:* If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new material to the administrative record.]

§ 124.20 Administrative record for final permit where EPA is the permitting authority.

(a) Decisions of the Regional Administrator to issue a final permit under § 124.17 shall be made on the basis of the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and

(1) All comments received during the public comment period provided under § 124.12;

(2) The tape or transcript of any hearing(s) held under § 124.13.

(3) The response to comments required by § 124.19;

(4) For NPDES new source permits only, any final Environmental Impact Statement;

(5) Other documents contained in the supporting file for the permit, including correspondence, telephone and meeting memoranda, compliance reports, etc.; and

(6) The final permit.

(c) The additional documents required under paragraph (b) shall be added to the record as soon as feasible after their receipt or publication by the Agency.

(d) This section applies to all final RCRA, UIC, PSD and NPDES permits where the draft permit was subject to the administrative record requirements of § 124.10.

(e) Material readily available at the issuing Regional Office or published materials which are generally available, and which are included in the administrative record under the standards of this section or of § 124.19 ("Response to Comments"), do not need to be physically included in the same file as the rest of the record as long as it is specifically referenced in the administrative record or in the response to comments.

§ 124.21 Appeal of RCRA, UIC and PSD permits.

(a) Within 30 days after a RCRA, UIC or PSD permit has been issued under § 124.17, any person who filed comments on that permit or participated in the public hearing may petition the Administrator to review any term or condition of the permit. The thirty day period within which a person may request review under § 124.17 begins with the postmark date of notice of the Regional Administrator unless a later date is specified in such notice. The petition shall include a statement of the reasons supporting such review, including a demonstration that any points being raised were raised during the public comment period as required by § 124.12 and where appropriate, a showing that the term or condition in question is based on

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(b) The Administrator may also decide on his or her own initiative to review any term or condiditon of any RCRA, UIC or PSD permit issued under this Part.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. To the extent review is denied, the terms and conditions of the permit become the final decison of the agency. Public notice of any grant of review or a decision by the Administrator to take review under paragraph (b) shall be given as provided in § 124.11. Any such notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent to the person(s) requesting review.

(d) The Administrator may defer consideration of an appeal under this section until the completion of proceedings under Subpart E or F relating to an NPDES permit issued to the same source.

(e) A petition to the Administrator under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the agency.

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC or PSD permit is issued by EPA after Agency review procedures are exhausted. A final permit shall be prepared and issued by the Regional Administrator (i) when the Administrator issues notice to the parties that review has been denied if review is denied; (ii) when the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings or (iii) upon the completion of remand proceedings if the proceedings are remanded, unless the Administrator's Regional order specifically provides that appeal of the remand decision will be required in order to exhaust administrative remedies.

(2) Notice of any final action regarding a PSD permit shall promptly be published in the **Federal Register.**

§ 124.22 Additional time after service by mail.

Whenever a party or interested person has the right or is required to do some act or take some proceeding within a prescribed period after the service of notice or other paper upon him or her by mail, three days shall be added to the prescribed time.

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.31 Public notice of receipt of application and availability of summary.

(a) Upon receipt of a complete RCRA permit application, including both Part A and Part B, for major HWM facilities as defind in § 122.3(b), the Regional Administrator shall issue a public notice that an application has been received.

(b) This notice, as a minimum shall be distributed to the following:

(1) The appropriate State agency in the State where the proposed hazardous waste management facility will be located;

(2) The chief executive or legislative office of any county or municipality within a 10 mile (16 km.) radius of the proposed facility;

(3) The public library serving the location of the facility;

(4) The applicant;

(5) Any person on the mailing list referred to in Section 124.11, and

(6) Anyone else requesting it.

(c) The public notice shall include the following as a minimum:

(1) Name and address of the facility seeking a permit;

(2) Where complete copies of the application are available for inspection;

(3) The name of a person in the EPA Regional office who can be contacted for information or questions; and

(4) A statement that comments may be submitted in writing to EPA on the content of the application, the adequacy of the information submitted, recommendations regarding approval or disapproval of the permit, possible permit conditions, and other related matters during the period of permit review by EPA, and

(5) A statement whether or not a summary of the application will be prepared and when any such summary will be made available to persons requesting it.

(6) That after issuance of a draft permit, all interested persons will be given an opportunity to comment in accordance with § 124.11.

Subpart C—Specific Procedures Applicable to PSD Permits

§ 124.41 Procedures for small sources.

(a) The procedures in Subpart A shall not apply to a source whose increased allowable emissions are less than 50 tons a year, 1,000 pounds a day, or 100 pounds an hour. Instead, to the extent practicable, the Regional Administrator shall make every effort to observe the following schedule:

(1) Completion of the required analyses and notice of the tentative decision to issue or deny the permit within 30 days after receipt of a complete application; and

(2) Completion of the public participation process, to the extent required by § 52.21(r)(3), within 45 days after receipt of a complete application.

(b) At the time the Regional Administrator gives notice of his/her tentative decision, he/she shall also open the comment period, if necessary, for 30 days. If no response is received after 15 days, no public hearing shall be held. If no supportable concerns are received during the scheduled 30-day public comment period (or the public hearing, if one is held) the Regional Administrator shall issue a final decision.

Subpart D—Specific Procedures Applicable to NPDES Permits

§ 124.51 Purpose and scope.

(a) This Subpart sets forth additional requirements and procedures for decisionmaking for the NPDES program.

(b) Decisions on NPDES variance requests will ordinarily be made during the permit issuance process. Permit modifications and other changes in permit terms will be made generally through the same procedures that apply in making decisions on initial permits. Each such decision must move through the same procedures of notice-and-comment and potential hearings as the basic permit.

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of Part 122, Subpart D allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.76), concentrated aquatic animal production facilities (§ 122.77), separate storm sewers (§ 122.79), and certain other facilities covered by general permits (§ 122.82) that do not generally require an indvidual permit may be required to obtain an individual permit because of their contribution to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit should be required under this section, the Regional Administrator shall inform the discharger in writing of that decision, the reasons underlying it and shall include an application form in such notice. The discharger must then apply for a permit under § 122.64 within 60 days of such notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 and any subsequent hearing.

§ 124.53 State certification.

(a) Under section 401(a)(1) of CWA, EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) When an application is received which does not include a State certification, the Regional Administrator shall forward the application to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of a draft permit;

(2) A statement that the EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.55, or waived its right to certify; and

(3) A statement that the right to certify will be deemed waived unless exercised within a specified reasonable time which shall not exceed 60 days from the date the draft permit is sent to the State unless the Regional Administrator finds that unusual circumstances require a longer time.

(d) Any State certification shall be issued or denied within the reasonable time specified under § 124.53(c)(3). The State shall provide notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(e) A State certification shall be made in writing and shall include:

(1) The terms and conditions which will result in compliance with the applicable provisions of sections 208(e), 301, 302, 303, 306, and 307 of CWA and with appropriate requirements of State law;

(2) Where the State certifies a draft permit instead of an application, any conditions, more stringent than those in the draft permit, which the State finds necessary to comply with the requirements listed in subparagraph (1). For each such condition, the provision of CWA or State law which forms the basis for the condition shall be identified. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to such condition; and

(3) A statement with respect to each term and condition of the draft permit of the extent to which such term or condition can be made less stringent without violating the requirements of State law including water quality standards. Failure to provide such a statement shall be deemed a waiver of the right to certify with respect to any such less stringent condition which may be established during the EPA permit issuance process.

[*Comment:* The requirement of paragraph (e)(3) of this section is necessary to enable the certification to serve its statutory function without requiring continual resubmission to the State. For example, a State might certify that a draft permit containing a technology-based limitation of 300 kg/day of BOD will meet State water quality standards and other State law requirements. However, if during the permit issuance process EPA decides that 400 kg/day is the appropriate technology requirement, it is not clear at present whether the previous State certification continues to be valid. It would be impracticable and would add to delay in permit issuance if EPA resubmitted such permits to the State each time the EPA considered setting a less stringent limitation than contained in the draft permit. The requirement that States clearly identify what conditions are necessary to meet State law will simplify the permit issuance process and make certification more useful. However, States may not require EPA to adopt less stringent requirements. See § 124.54.]

§ 124.54 Special provisions for State certification and concurrence of applications for section 301(h) modifications.

(a) Where an application for a permit incorporating a request under 301(h) of CWA is submitted to the State, the appropriate State official shall either:

(1) Deny the request for the modified permit under section 301(h) (and so notify the applicant and EPA) and if the State is an approved NPDES State and the permit is due for reissuance, proceed to process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of this Subpart to the Administrator or a person designated by the Administrator.

(b) Where EPA issues a tentative determination on the request for modification permit under CWA section 301(h), and no certification has been received under paragraph (a), the Administrator or a person designated by

the Administrator shall forward the tentative determination to the State in accordance with § 124.53(b) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) within such reasonable time, certification will be deemed to be waived and the State will be deemed to have concurred in the issuance of a modified permit under CWA section 301(h).

(c) Any certification provided by a State under paragraph (a)(2) shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the section 301(h) modified permit subject to any conditions specified therein by the State.

[*Comment:* CWA section 301(h) certification/concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process. Accordingly, States must specify any conditions required by State law including water quality standards, in the certification.]

§ 124.55 Effect of State certification.

(a) Where certification is required under section 401(a)(1) of CWA, no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates any requirements specified in the certification under § 124.53(d)(1) and (2).

(b) If the State law upon which a certification is based changes, or if a State court stays, vacates or remands a certification, a State which has issued a certification under § 124.53 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received prior to final Agency action on the permit, the permit shall be issued consistent with any more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final Agency action on the permit, the Regional Administrator may modify the permit only to the extent necessary to delete any conditions based on a condition in a certification found invalid by a State court.

(c) A State may not condition a certification or deny a certification on the grounds that State law requires a less stringent condition. The Regional Administrator shall disregard any such certification conditions, and will consider such denials of certification to constitute waivers of certification.

[*Comment:* State certification rights proceed from the authority of States under section 510 of CWA to set more stringent limitations than those required by CWA. States may not require EPA to disregard or downgrade Federal requirements.]

(d) A permit may be modified during Agency review in any manner consistent with a certification meeting the requirements of § 124.53(d). No such modifications shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of conditions specified by the State shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

§ 124.56 Fact sheets.

(a) In addition to the requirements of § 124.9, NPDES fact sheets shall contain the following:

(1) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or standard provisions as required under § 122.69 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(2) Where appropriate, a sketch or detailed description of the location of the discharge described in the application;

(3) For EPA-issued NPDES permits, the results of any State certification under § 124.53.

(b) In addition to the requirements of § 124.9, the Director shall send all fact sheets for NPDES permits to the District Engineer of the Corps of Engineers, to the Regional Director of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, to other interested State and Federal agencies (including EPA where the draft permit is prepared by the State), and to any other person on request. Any of these persons may waive their right to receive notice for any classes and categories of permits.

§ 124.57 Requirements for NPDES draft permits incorporating section 301(h) modifications.

Sections 124.6, 124.7, 124.8, 124.9, 124.10 and 124.56 are applicable to draft permits incorporating section 301(h) modifications except that the terms "Administrator or a person designated by the Regional Administrator" shall be substituted for the term Director, as appropriate.

§ 124.58 Public notice.

(a) In addition to the information required under § 124.11 (c) and (d), mailed public notice of an NPDES draft permit for a discharge where a CWA section 316(a) application has been filed under § 122.64(e) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under sections 301 or 306 of CWA and a brief description including a quantitative statement of the thermal effluent limitations proposed under sections 301 or 306; and

(2) A statement that a section 316(a) application has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description including a quantitative statement of the alternative effluent limitations, if any, included in the application.

(3) If the applicant has filed an early screening application under § 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

(b) Notice of the formulation of a draft general permit under § 122.82 shall include:

(1) The requirements of § 124.11 (c) and (d), shall be concurrently published in a daily or weekly newspaper within the area affected by the discharge and in the **Federal Register** for EPA-issued permits in a manner constituting legal notice under State law for State issued permits.

(2) The public notice for general permits shall also include:

(i) A brief description of the types of activities or operations to be covered by the general permit;

(ii) A map or description of the General Permit Program Area; and

(iii) The basis for choosing the General Permit Program Area.

(3) The Director shall use all other reasonable means to notify affected dischargers of the draft general permit.

(c) A public notice of an evidentiary hearing under Subpart E shall contain the information required under § 124.11(c), (e)(1) and (e)(3) and a mailed public notice shall also include:

(1) Reference to any public hearing under § 124.12 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) Brief description of the permit terms and conditions which have been contested and for which the evidentiary hearing has been granted;

(4) Brief description of the nature and purpose of the hearing including the following declarations:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of this notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The terms and conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administrative determination.

(5) Names or organizational description of the EPA employees who shall constitute "Agency trial staff" and the "decisional body" under § 124.78 who are subject to the *ex parte* communication rules.

(6) The name, address and office telephone number of the Regional Hearing Clerk.

(d) A public notice for a draft permit that will be processed under Subpart F shall include the information in paragraphs (c) and a statement that any hearing will be held under the non-adversary procedures for initial licensing. In addition, a mailed public notice shall include:

(1) The information in paragraph (d) except that a public hearing under paragraph (d)(2) is discretionary with the Regional Administrator;

(2) A statement that the permit will be processed under the nonadversary procedures for initial licensing of Subpart F, together with a brief description of those procedures. This description shall state explicitly the manner and timing for any person to request a hearing on the permit. If EPA has decided on its own motion to hold a hearing, the notice shall so state, and shall also contain the information required by § 124.41(f);

(3) A statement that written comments on the draft permit and, in the case of a section 301(h) application, the tentative determination to grant or deny the application submitted to EPA within thirty (30) days of the date of the notice will be considered by EPA in making a final decision on the application. This 30-day period may be extended up to 60 days *sua sponte* or on request of an interested party;

(4) In the case of the public notice of the draft permit or denial of an application for a modified permit under section 301(h) shall include:

(i) A summary of the information contained in the application; and

(ii) A summary of the tentative determination prepared under § 124.114(f).

(e) A notice of a grant of a panel hearing requested under Subpart F shall include the applicable information from paragraph (d). In addition, the mailed public notices shall include:

(1) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(2) Names or organization description of the EPA employees who shall constitute the "decisional body" and the "Agency trial staff," under § 124.78 who are subject to the *ex parte* communication rules;

(3) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(4) The due date for filing a written request to participate in the hearing under § 124.117;

(5) The due date for filing comments under § 124.118; and

(6) The name, address, and office telephone number of the Regional Hearing Clerk.

§ 124.59 Terms requested by the Corps of Engineers and other governmental agencies.

(a) During the comment period for an NPDES draft permit, if the District Engineer advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this Part.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal Agency with jurisdiction over fish, wildlife or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of CWA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet or the draft permit.

§ 124.60 Issuance and effective date of NPDES permits.

In addition to the requirements of § 124.17, the following provisions apply to NPDES permits.

(a) If a request for an evidentiary hearing is granted under §§ 124.75 or 124.111(a)(3) regarding the initial permit issued for a new source or a new discharger, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the applicant shall be without a permit for the proposed new source or new discharge, pending final Agency action under § 124.101.

(b) Whether or not a draft NPDES permit was formulated or final permit was issued, the Regional Administrator, at any time prior to the rendering of an initial decision in an evidentiary hearing on that permit, may withdraw the permit in whole or in part and formulate a new draft permit under § 124.7 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc. as would apply to any other draft permit subject to this Part. Any portions of the permit which are not withdrawn and which are not stayed under § 124.60 shall remain in effect.

(c)(1) If a request for a hearing is granted in whole or in part under §§ 124.75 or 124.111(a)(3) regarding a permit for an exisiting source, or if a petition for review of the denial of a request for an evidentiary hearing with respect to such a permit is timely filed with the Administrator under § 124.101, the force and effect of the contested provisions of the final permit shall be stayed and shall not be subject to judicial review under section 509(b) of CWA, pending final Agency action under § 124.101. The Regional Administrator shall serve notice, in accordance with § 124.75, on the discharger and all parties identifying the terms of the final permit which are not contested and therefore are enforceable obligations of the discharger.

(2) Where effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) Where a combination of technologies is contested, but a portion of the combination is not contested, such portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) A term or condition, otherwise uncontested, shall not be identified as uncontested if it is inseverable from a contested term or condition.

(5) Uncontested terms and conditions shall become enforceable 30 days after the date of such notice, provided, however, that if a request for an evidentiary hearing on a term or condition was denied and the denial is appealed under § 124.101, then such term or condition shall become enforceable upon the date of the notice of the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing on such permit term.

(6) Uncontested terms and conditions shall include:

(i) Permit requirements for which an evidentiary hearing has been requested but the hearing has been denied;

(ii) Preliminary design and engineering studies or other requirements necessary to achieve the final permit term or conditions which do not entail substantial expenditures;

(iii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iv) Where the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain such less stringent level of treatment are consistent with the measure required to attain the limits proposed by the Agency; and

(v) Construction activities such as segregation of waste streams or installation of equipment which would partially meet the final permit terms or conditions and could also be used to achieve the discharger's proposed alternatives terms and conditions.

(d) Where an evidentiary hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit, as well as uncontested provisions of the new permit, shall continue in full force and effect until final Agency action under § 124.101. Upon written request from the applicant, the Regional Administrator may modify the existing permit to delete requirements which unnecessarily duplicate uncontested provisions of the new permit.

[Comment: The following examples demonstrate the application of paragraphs (c) and (d):

Example 1: The discharger requests and is granted an evidentiary hearing on its contention that the EPA's proposed effluent limitation for total suspended solids (TSS) at level X is too stringent and should be relaxed to level Y. Treatment technology A attains level Y whereas technology A plus B is necessary for level X. In this case, the discharger's obligation to install technology A is effective 30 days after service of the notice under § 124.75(b) and this obligation is not stayed by virtue of the contest as to the need for additional technology B. The discharger would be required to comply with all portions of the compliance schedule relating to design, construction and attainment of technology A, but would obtain a stay of such provisions with respect to technology B. This is true even if the schedule does not separate the two technologies. The discharger must of course also perform all basic work such as segregation of waste streams, site preparation, monitoring, reporting and initial construction because this will be necessary regardless of the outcome of the contest. The additional obligations of technology B are stayed.

Example 2: The same facts as in Example 1 except that a public interest group has also requested and been granted participation in the evidentiary hearing. The group intends that TSS level X is too lenient and should be tightened to level Z. Treatment technology C, which is inconsistent with both A and B technologies, is required for level Z. In this case the discharger's obligation to install technologies A, A and B or C are all stayed. The discharger's obligations to perform basic work such as segregation of waste streams, site preparation, monitoring, reporting and perhaps initial construction are not stayed because they are unaffected by the contest.

Example 3: The discharger requests an evidentiary hearing on two issues: that the permits total suspended solids (TSS) limit and pH limit are each too strict. The Regional Administrator grants the evidentiary hearing on the TSS issue but denies it on the pH claim. The TSS and pH technologies are independent and severable and the discharger does not appeal the denial of hearing on the pH control technology is not stayed and becomes effective 30 days after service of the Regional Administrator's notice under § 124.75(b). If the underlying technology for the TSS limit is at issue, the TSS limitation is stayed. However, as described in Example 1 and 2, the discharger's obligations to perform all work unaffected by the stay (e.g., segregation of waste streams, site preparation, initial construction, etc.) are not stayed.

Example 4: The same facts as in Example 3 that the equipment required for attaining the pH limit is achieved by the installation of the TSS equipment. In this the Regional Administrator may determine that the pH permit term is inserverable from the TSS contest and thus the limits for both parameters would be stayed by virtue of the hearing on TSS, although as noted in the preceding examples, the discharger's obligations to perform all work unaffected by the stay are not stayed. Noted however, that if the pH limit is achievable in an inexpensive and temporary alternative such as additional chemical treatment in the discharger's existing equipment, then the Regional Administrator may determine that the pH permit term is severable and refuse to stay the pH term.

Example 5: The same facts as in Example 3 except that the discharger appeals (to the Administrator) the Regional Administrator's denial of the evidentiary hearing on Issue No. 2 (the pH limit). In this case the pH limitation is also stayed (with the exceptions noted in the preceding examples) at least until the Administrator's decision on such appeal. If the Administrator affirms the denial of the evidentiary hearing on the pH limit then upon service of notice under § 124.75(b) the stay terminates. If the Administrator reverses and thus grants the evidentiary hearing on the pH term then the stay continues until final Agency action.

(e) When issuing a finally effective permit under Subpart F, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section; provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than five years after issuance under § 124.17(a).

[*Comment:* Extensions of compliance schedules will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the Act where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, where application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.]

(f) For purposes of judicial review under section 509(b) of CWA, final administrative action on a permit does not occur unless and until a party has requested and exhausted its Administrative remedies under Subparts E and F and § 124.101. Any party which neglects or fails to seek review under § 124.101 thereby waives its opportunity to exhaust available Agency remedies.

§ 124.61 Final environmental impact statement.

No final NPDES permit for a new source shall be issued until at least 30 days after the date of issuance of a final Environmental Impact Statement if one is required under 40 CFR 6.916.

§ 124.62 Administrative Record.

Whether or not a draft or final permit was prepared subject to these regulations, the Regional Administrator, in any case where it appears during the course of an evidentiary hearing on a permit that significant new factors affecting that permit should be considered, may withdraw the contested terms subject to the hearing and issue a new draft permit addressing those terms under §§ 124.6 or 124.7. Uncontested terms shall remain in effect. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing, etc., as would any other draft permit.

§ 124.63 Decision on Variances and Modifications.

(a) The Director may grant or deny the following modifications or variances (subject to EPA objection under § 123.78 for State permits):

(1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed application for:

(1) A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;

(2) A variance based on the economic capability of the applicant under section 301(c) of CWA;

(3) A variance based upon certain water quality factors under CWA section 301(g); or

(4) A modification of CWA section 302(b)(2) requirements under section 302(a) (water quality related effluent limitations).

(c) The Regional Administrator may deny, or may forward to the EPA Deputy Assistant Administrator for Water Enforcement with recommendation for approval, an application for a variance listed in paragraph (b) which is forwarded by the State Director, or submitted to the Regional Administrator by the applicant where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance application submitted under paragraph (c). If the EPA Deputy Assistant Administrator approves the variance, the Director may formulate a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under § 124.54.

§ 124.64 Procedures for variances and modifications where EPA is the permit issuing authority.

(a) In States where EPA is the permit issuing authority and an application for a variance or modification is filed as required by § 122.64, the application shall be processed as follows:

(1) If at the time an application for a variance or modification is submitted the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit but has not yet formulated a draft permit under § 124.6 covering the discharge in question, the Regional Administrator after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.63, shall set forth a tentative determination on the request at the time the draft permit is formulated as specified in § 124.6, unless this would significantly delay the processing of the permit. In that case the processing of the variance or modification request may be separated from the permit in accordance with paragraph (3), and the processing of the permit shall proceed without delay.

(2) If at the time an application for a variance or modification is filed the Regional Administrator has formulated a draft permit under § 124.6 covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall formulate a new draft permit including a tentative determination on the request, and the fact sheet required by § 124.9. However, if this will significantly delay the processing of the existing permit or the Regional Administrator for other reasons considers combining the variance request and the existing permit inadvisable, the request may be separated from the permit in accordance with paragraph (3), and the administrative disposition of the existing permit shall proceed without delay.

(3) If the permit has become final and no application under § 124.3 concerning it is pending or if the variance or modification request has been separated from a permit as described in paragraphs (1) and (2), the Regional Administrator shall formulate a new draft permit under § 124.6. This permit shall be accompanied by the fact sheet required by §§ 124.9 and 124.56 except that the only matters considered shall relate to the requested variance.

§ 124.65 Appeals of modifications and variances.

(a) Normally, the appeals of permit determinations are handled in one proceeding, either State or Federal. When a State issues a permit in which EPA has made a variance determination, a separate appeal on that determination is possible. In such cases, requests for appeal on the EPA permit conditions must be filed under Subpart F after the public notice of the grant or denial of the variance. If the owner or operator is challenging issues in a State proceedings on the same permit, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Appeals of modifications or variance determinations shall be governed by Subpart F unless the Regional Administrator determines that consolidation with an evidentiary hearing under Subpart E will expedite consideration of the issues presented.

[*Comment:* The panel proceedings of Subpart F will generally be utilized when there is a State issued permit and only the variance issues are in the Federal forum.]

(c) *Stays for section 301(g) variances.* Under the authority of CWA section 301(j)(2), if a request for an evidentiary hearing is granted regarding a variance under CWA section 301(g), or if a petition for timely review of the denial of a request for an evidentiary hearing is timely filed with the Administrator under § 124.101 with respect to such a variance, any otherwise applicable standards and limitations under section 301 of CWA shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files any bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances or modifications other than section 301(g) are granted pursuant to § 124.60.

§ 124.66 Special procedures for discharge into marine waters section 301(h).

(a) Where it is clear on the face of a section 301(h) application that the discharge is not entitled to a modification, the application shall be denied.

(b) In the case of all other section 301(h) applications the Administrator, or a person designated by the Administrator may either:

(1) Give written authorization to an applicant to submit information required by Part 125, Subpart G or the final application by a date certain, not to exceed 9 months, if:

(i) The applicant proposes to submit new or additional information and the applicant demonstrates that:

(A) The applicant made consistent and diligent efforts to obtain such information prior to submitting the final application;

(B) The failure to obtain such information was due to circumstances beyond the control of the applicant; and

(C) Such information can be submitted promptly; or

(ii) The applicant proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of an applicant to submit additional information by a date certain, not to exceed 9 months, if such information is necessary to issue a tentative determination under § 124.114(g).

All additional information authorized or requested under this paragraph which is timely received, shall be considered part of the original application.

(c) Applications for modifications under Section 301(h) shall be processed independently of any pending application for the issuance or reissuance of a permit requiring the applicant to meet effluent limitations based on secondary treatment under section 301(b)(1)(B).

(d) No modified permit shall be issued granting a section 301(h) modification unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.54. In the case of a permit issued to an applicant in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued modified permit; and

(2) Co-sign the modified permit, if the Director has indicated an intent to do so in the written concurrence.

(e) Appeals of determinations under section 301(h) shall be governed by Subpart F of this Part.

§ 124.67 Special procedures for decisions on thermal variances (section 316(a)).

(a) Except as provided in § 124.66 the only issues connected with issuance of a particular permit on which EPA will make a final agency decision before the final permit is issued under §§ 124.17 ands 124.60 are whether alternative effluent limitations would be justified under CWA section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their applications are filed under § 122.64. The Regional Administrator will then decide whether or not to grant it. If it is granted, both the early decision on CWA section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary hearing.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not an alternative effluent limitation under CWA section 316(a) should be granted to a source is not likely to be available by the time a decision on permit issuance must be made, the Regional Administrator may issue a permit under § 124.17 for a term of up to five years. This permit shall require that the point source achieve the effluent limitations initially proposed for the control of the thermal component of the discharge no later than the date otherwise required by applicable legal requirements. However, the permit shall also afford the permittee an opportunity to file a demonstration under CWA section 316(a) after conducting such studies as are required under 40 CFR Part 125, Subpart H.

[*Comment:* A New discharger may not commence operation in violation of the thermal effluent limitation which are initially proposed unless and until the CWA section 316(a) variance request is finally approved.]

(b) Any hearing scheduled under paragraph (a) shall be publicized as required by § 124.11 and shall be held enough in advance of the final compliance date specified in the permit to allow the permittee to take necessary measures to comply by that date in the event its request for modification of thermal limits is eventually denied after the hearing is concluded.

(c) Whenever the Regional Administrator defers the determination under CWA section 316(a), any determination under section 316(b) may be deferred.

Subpart E—Evidentiary Hearings for EPA Issued NPDES Permits

§ 124.71 Applicability.

The regulations in this Subpart govern all evidentiary hearings conducted by EPA under section 402 of CWA, except as otherwise provided in Subpart F. An evidentiary hearing is available to challenge any permit issued under § 124.17 except for a general permit. Persons affected by a general permit may not challenge the terms and conditions of a general permit; but may instead apply for a individual NPDES permit under § 122.64 as authorized in § 122.82 and then request an evidentiary hearing on the issuance or denial of an individual permit. In certain cases, evidentiary hearings may also be held on the terms of RCRA, UIC and PSD permits that are very closely linked with the terms of NPDES permits as to which a hearing has been granted. See § 124.74(b)(2).

§ 124.72 Definitions.

For the purpose of this Subpart, the following definitions are applicable:

(a) "Judicial Officer" means a permanent or temporary employee of the Agency appointed as a Judicial Officer by the Administrator under these regulations and subject to the following conditions:

(1) A Judicial Officer shall be a licensed attorney. A Judicial Officer shall not be employed in the Office of Enforcement or the Office of Water and Waste Management, and shall not participate in the consideration or decision of any case in which he or she performed investigative or prosecutorial functions.

(2) The Administrator may delegate any authority to act in an appeal of a given case under this Subpart to a Judicial Officer who, in addition, may perform other duties for EPA, provided that the delegation shall not preclude a Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer decides referral would be appropriate. The Administrator, in deciding a case, may

consult with and assign the drafting of preliminary findings of fact and conclusions and/or a preliminary decision to any Judicial Officer.

(b) "Party" means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under §§ 124.79 or 124.117 has been granted.

(c) "Presiding Officer" means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at the hearing.

(d) "Regional Hearing Clerk" means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents and other materials relating to hearings under this subpart.

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with the Agency under this Subpart shall be filed with the Regional Hearing Clerk, unless the regulations provide otherwise. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All such submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any such submissions shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding, except for State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other material which is generally available or of peripheral relevance, in which case the party relying on it shall file a written undertaking to make copies available as directed by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted and only the relevant data or information shall be submitted or the relevant portions shall be briefly indicated.

(4) The failure to comply with the requirements of this section or any other requirement in this Subpart may result in the exclusion from consideration of any portion of the submission which fails to comply. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this Subpart, the Regional Administrator or Presiding Officer shall direct the Hearing Clerk to return the submission with a copy of the applicable regulations indicating those provisions not complied with in the submission. The party proposing to submit any rejected materials shall have 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer determines that there is good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact means all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address and the representative capacity of the person making the submission. The signing shall comply with the signature and certification procedures of § 122.5.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's issuance of a final permit under § 124.17, any interested person may submit a request to the Regional Administrator under paragraph (b) for an evidentiary hearing to reconsider or contest the terms of that permit. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written document relied upon to support the request shall be submitted as required by § 124.73 unless it is already in the administrative record required by § 124.20.

[*Comment*: This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial, the Administrator is authorized by § 124.101(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Administrator even of purely legal issues involved in a permit decision to ensure that the Administrator will have an opportunity to review any permit before it will be final and subject to judicial review.]

(2) Persons requesting an evidentiary hearing on an NPDES permit under this section may also request an evidentiary hearing on a RCRA, UIC or PSD permit. Such a request is subject to all the requirements of paragraph (1) and in addition will only be granted if each of the following conditions is met:

(i) Processing of the RCRA, UIC or PSD permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.6(d);

(ii) The standards for granting a hearing on the NPDES permit are met; and

(iii) It is likely that the issues raised concerning the NPDES permit will be resolved in a way that makes modification of the RCRA or UIC permit appropriate.

(c) Such requests shall also contain:

(1) The name, mailing address and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party, or *sua sponte* by the Presiding Officer and without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit terms and conditions, as well as suggested revised or alternative permit terms and conditions (not excluding permit denial) which, in the judgment of the requester, would be

required to implement the purposes and policies of CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of CWA.

(7) Specific identification of each of the discharger's obligations which should be stayed if the request is granted. If the request contests more than one permit term or condition then each obligation which is proposed to be stayed must be referenced to the particular contested term warranting the stay.

(d) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

§ 124.75 Decision on request for a hearing.

(a) Following the expiration of the time allowed by § 124.74 for submitting a request for an evidentiary hearing, the Regional Administrator shall determine whether the request shall be granted, denied or granted in part and denied in part. The Regional Administrator shall grant a request either in whole or in part only if the request conforms to the requirements of § 124.74, and sets forth material issues of fact relevant to the issuance of the permit.

(b) If the Regional Administrator grants a request for an evidentiary hearing, in whole or in part, the Regional Administrator shall state and identify the permit terms and conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit terms and conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by or considered at, the evidentiary hearing. The Regional Administrator shall specify these terms and conditions in writing in accordance with § 124.60(e).

(c) If the Regional Administrator grants a request for an evidentiary hearing in whole or in part, in regard to a particular proposed permit, then any other request for an evidentiary hearing in regard to that permit shall be treated as a request to be a party and the Regional Administrator shall grant any such request which meets the requirements of paragraph (a).

(d) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is then subject to review by the Administrator under § 124.101.

§ 124.76 Obligation to raise issues and submit evidence before a final permit is issued.

No evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.20 as part of the formulation of and comment on a draft permit, unless good cause is shown for the failure to submit it. No issues, shall be raised by any such party that were not submitted to the administrative record required by § 124.20 as part of the formulation of and comment on a draft permit unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues, or introduce new information, shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.15.

§ 124.77 Notice of hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.58(c) and in addition by mailing a copy to all persons who commented on the draft permit or submitted a request for a hearing. Before the issuance of such notice the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body an *ex parte* communication relevant to the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an *ex parte* communication relevant to the merits of the proceedings.

(3) A member of the decision body who receives or who makes or knowingly causes to be made a communication prohibited by the Regional Hearing Clerk, for the public hearings, all such written communications or memoranda stating the substance of all such oral communications together with all written responses and memoranda stating the substance of all oral responses.

(b) Upon receipt by any members of the decision making body of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of CWA require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(c) The prohibitions of this section begins to apply upon issuance of the notice of the grant of a hearing under §§ 124.77 or 124.116. This prohibition terminates at the date of final Agency action.

(d) For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency under §§ 124.77 or 124.116 as available to investigate, litigate and present the evidence, arguments and position of the Agency in the evidentiary hearing or non-adversary initial licensing hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff) and any of their direct support staff participating in the decisional process. In the case of a nonadversary initial licensing proceeding, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) *"Ex parte* communication" means any communication written or oral relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff where such communication was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either

(A) Interested persons outside the Agency; or

(B) The Agency trial staff; *if* all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(4) "Interested person outside the Agency" includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and any other interested person not employed by the Agency at the time of the communications and the attorney of record for such persons.

§ 124.79 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant such requests as meet the requirements of §§ 124.74 and 124.76. Such request must specifically identify those issues already raised which the requester seeks to address at the hearing.

(b) After the expiration of the time prescribed in paragraph (a) any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.76 and set forth the grounds for the proposed intervention provided, however, that no factual or legal issues in addition to those raised by timely hearing requests may be proposed except for good cause. Any motion to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Regional Administrator, or the Presiding Officer if one has been assigned, shall grant such motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervener has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties, and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice of hearing is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall serve a copy of such submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgment of service by the person served or proof of service in the form of a statement of the date, place, time, and manner of service and the names of the persons served, certified by the person who made service.

[*Comment:* A signed statement that an attached list of persons were mailed the submission is sufficient to meet the requirements of this paragraph. Certified mail is not required.]

(d) The Regional Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address and telephone number of all parties and their attorneys or duly authorized representatives.

§ 124.81 Assignment of administrative law judge.

No later than the date of mailing, publication or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall make an assignment of an Administrative Law Judge to serve as Presiding Officer for the hearing.

§ 124.82 Consolidation and severance.

(a) The Administrator, Regional Administrator or Presiding Officer, has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this Subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full and fair hearing, any party or issues may be severed and heard separately.

§ 124.83 Prehearing conferences.

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c).

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer shall call a prehearing conference, to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a), the following matters may be considered:

(1) The necessity or desirability of simplification, clarification, amplification or limitation of the issues.

(2) The admission of facts and of the genuineness of documents, and the possibility of stipulations with respect to facts.

(3) The consideration of and ruling upon objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.20 shall be received in evidence subject to the provisions of § 124.85(d)(2). Notwithstanding the foregoing, at any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency or materiality.

(4) The identification of matters of which official notice may be taken.

(5) The establishment of a schedule which includes definite or tentative times for as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) The submission of narrative statements of position on each factual issue in controversy;

(ii) The submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports and any other type of written material) in support of such statements; or

(iii) The written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) The grouping of participants with substantially like interests for purposes of eliminating duplicative or repetitive

development of the evidence and making and arguing motions and objections.

(7) Such other matters as may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or within some reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of the expert and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.20, shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony and other evidence may be added or amended only upon a finding by the Presiding Officer that good cause existed for failure to introduce the additional or amended material within the time specified by the Presiding Officer. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16)).

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in his or her favor upon all or any part of the issues being adjudicated on the basis that there is not genuine issue of material fact for determination. Any such motion shall be filed at least 45 days before the date set for the hearing, unless upon good cause shown such motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a countermotion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer has the discretion to set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all issues of material fact are decided on a motion for summary determination, no hearing will be held and the Presiding Officer shall thereupon prepare an initial decision under § 124.89. If the motion for summary determination is denied or if only a partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

§ 124.85 Hearing procedure.

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged term or condition of a final permit.

[*Comment:* In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments should adequately discharge this burden.]

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular terms, conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different terms, conditions or requirements; or

(B) The deletion of such terms, conditions or requirements; or

(ii) That the denial or issuance of a permit is improper or invalid, shall have the burden of going forward to present an affirmative case.

(b) The Presiding Officer shall have the authority and duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of the proceedings, to maintain order and all powers necessary to these ends, including the power to:

(1) Arrange and issue notice of the date, time and place of hearings and conferences and;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated confidential business information in accordance with § 122.16 and 40 CFR Part 2.

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be permitted on questions of law or policy, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an NPDES

proceeding. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In determining whether cross-examination shall be permitted the Presiding Officer shall consider whether it is not likely to result in clarifying or resolving a disputed issue of fact material to the decision, and whether the issue can be more economically clarified in other ways. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the hearing issues. Written testimony shall be prepared in narrative form. To the extent that testimomy is to be submitted in writing, the Presiding Officer may set dates for the filing of such evidence with the Regional Hearing Clerk as follows:

(1) The participant with the burden of going forward to present an affirmative case upon an issue (as defined in § 124.85(a) of these regulations) shall file his direct testimony first.

(2) All participants other than participants specified in the preceding subsection shall file their direct testimony on said issue not later than twenty days after the date of the filing of the testimony under the preceding subsection.

(3) All rebuttal testimony shall be filed no later than thirty days after the date of the filing of the testimony under paragraph (c)(1).

(d)(1) The Presiding Officer shall admit all relevant, competent and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record required by § 124.20 shall be admitted and received in evidence. Any party may move that a sponsoring witness be provided for a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards for cross-examination of § 124.85(b)(3) have been met and that the administrative record taken as a whole indicates legitimate doubt about such portion of the record, shall grant such motion and direct the appropriate party to produce such witness. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight afforded the appropriate portion of the record as a factual statement accordingly.

[*Comment:* Receiving the administrative record into evidence automatically serves several purposes: (1) it documents the prior course of the proceeding; (2) it provides a record of the views of affected persons for consideration by the agency decision-maker; and (3) it provides factual material for use by the decision-maker. Subject to § 124.76, parties are free to contest the factual portions of the administrative record in the hearing, and to argue that portions of it should not be given weight unless sponsored by a witness who will be available for cross-examination.]

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof, which shall consist of a brief statement on the record describing the testimony excluded.

(4) Where two or more parties have substantially similar interest and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of such parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) Parties may at any time stipulate to relevant facts or to settlement. However, all settlements to which the Agency is a party must be approved by the Deputy Assistant Administrator for Water Enforcement in accordance with § 124.103.

§ 124.86 Motions.

(a) Any party may make a motion, (including a motion to dismiss a particular claim on a contested issue), to the Presiding Officer about any matter relating to the proceeding. All motions shall be filed and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any party to the proceeding may file a response to the motion. The time for response may be shortened to 3 days or extended for an additional ten days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.69, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory requirement issued or made available after the issuance of the permit under § 124.17. The Presiding Officer shall grant any motion to apply a new statutory requirement unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement where appropriate to carry out the purposes of CWA, and where no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the record of the hearing, and shall be available except as provided in § 122.16 to the public in the office of the Regional Hearing Clerk promptly upon receipt in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall file with the Regional Hearing Clerk:

(i) The original of the transcript; and

(ii) The exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk and upon payment of costs.

The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony.

Except in unusual cases, no more than thirty days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions and a brief in support thereof, each containing appropriate reference to the record. A copy of any such findings, conclusions and brief shall be contemporaneously served upon every other party and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the parties and any interlocutory decisions pursuant to § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become the final decision thirty (30) days after its service unless within such time.

(i) A party files a petition for review by the Administrator pursuant to § 124.101; or

(ii) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.101; or

(c) If a hearing has been granted on terms or conditions of a RCRA, UIC or PSD permit under the standards set forth in § 124.74(b)(2), the initial decision of the Presiding Officer to those terms and conditions shall be in the form of recommendations to the Regional Administrator for changes to the RCRA, UIC or PSD permit. The Regional Administrator shall modify the RCRA, UIC or PSD permit to the extent he or she considers appropriate, and explain his or her reasons for rejecting any recommendations of the Presiding Officer, within thirty days of receipt of the Presiding Officer's recommendations. The permit as modified may be appealed to the Administrator as provided in § 124.21.

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.101. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Administrator for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within ten days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Administrator if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion; and

(2) Either:

(i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the preceeding, or,

(ii) A review after the final order is issued will be inadequate or ineffective; and,

(3) Such an appeal is necessary to prevent exceptional delay, expense or prejudice to any party.

(c) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his or her approval.

(d) If the Administrator decides that certification was improperly granted, he or she shall decline to hear the appeal. The Administrator shall accept or decline all interlocutory appeals within 30 days of their submission; if the Administrator takes no action within that time, the appeal shall be considered dismissed. When the Presiding Officer declines to certify an order or ruling to the Administrator for an interlocutory appeal, it may be reviewed by the Administrator only upon appeal from the initial decision of the Presiding Officer, except when the Administrator determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within five days after receipt of notification that the Presiding Officer has refused to certify an order or ruling for interlocutory appeal to the Administrator. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Administrator may, however, allow briefs and oral argument.

(e) The Presiding Officer may stay the proceeding pending a decision by the Administrator upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer. Only in exceptional circumstances will proceedings be stayed.

(f) The failure to request an interlocutory appeal shall not foreclose a party from taking exception to an order or ruling in an appeal under § 124.101.

§ 124.101 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or the denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in such initial decision or denial, any adverse order or ruling to which the party objected during the hearing by filing with the Administrator notice of appeal and petition for review. Proof of service upon all parties shall accompany such filing. The petition shall include a statement of the supporting reasons for such exceptions and, where appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should, in his discretion, review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1), any other party to the hearing in question may file a responsive petition.

(3) Policy or legal conclusions made in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Administrator in an appeal under this section.

(b) Within 30 days of an initial decision or denial of an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within seven (7) days after the Administrator has decided under this section to review an initial decision or the denial of an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. When the Administrator grants a petition for review or determines under paragraph (b) to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) to review a decision, the Administrator may summarily affirm without opinion an initial decision or the denial of an evidentiary hearing.

(e) To the extent an appeal under this section involves issues of law, the Administrator shall refer those issues to the General Counsel for determination subject to his approval.

(f) A petition to the Administrator under paragraph (a) for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g)(1) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purpose of judicial review under section 509(b) of CWA, final Agency action on an issue occurs after EPA review procedures are exhausted and the Administrator's decision is issued as follows:

(i) If the Administrator denies review or summarily affirms without opinion as provided in § 124.101(d), then the initial decision or denial becomes the final Agency action and occurs upon the service or notice of such decision.

(ii) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's decision, shall be reissued and served upon all parties to such appeal in accordance with paragraph (2).

(iii) If the Administrator issues a decision remanding the proceeding then final Agency action occurs upon completion of the remanded proceeding, including any Administrator appeals therefrom.

(2) For purposes of judicial review under section 509(b) of CWA, final agency action occurs 10 days after a final permit is issued. After Agency review procedures are exhausted a final permit shall be prepared and issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties that review has been denied if review is denied;

(ii) When the Administrator issues a decision if review is not denied and the Administrator does not remand the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded unless the Administrator's remand order specifically provides that appeal of the remand decision will be required in order to extend administrative remedies.

(h) The petitioner may file a brief in support of the petition within 21 days after the Administrator has granted a petition for review. Any other party may file a responsive brief within 21 days of service of a brief in support of the petition. The petitioner may file a reply brief within 14 days of service of the responsive brief and any person may file an *amicus brief* for the consideration of the Administrator. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of an evidentiary hearing, the Administrator shall notify the parties of the briefing schedule.

(i) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to issues specified under paragraph (a) of this section, except after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

§ 124.102 Applicability of subpart E.

(a) All the provisions of this subpart except § 124.76, § 124.83(c)(3) and § 124.85(d)(1) concerning the automatic receipt of the administrative record into evidence shall apply to all hearings for which the notice of hearing under § 124.77 is issued after the effective date of these regulations, *provided* that the Presiding Officer at any such proceeding may vary or suspend any of the terms of these regulations during a six-month transitional period after their effective date to avoid inconvenience or injustice.

(b) Section 124.76 and the provisions of §§ 124.83(c)(3) and 124.85(d)(1) for automatic receipt of the administrative record into evidence shall apply to all hearings regarding a permit which was based on an administrative record under §§ 124.20 and 124.62.

§ 124.103 EPA headquarters approval of stipulation or consent agreement.

No evidentiary hearing under Subpart E may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent is approved and signed by the Deputy Assistant Administrator for Water Enforcement.

No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

Subpart F—Non-Adversary Procedures for NPDES Initial Licensing

§ 124.111 Applicability.

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to the complete exclusion of, Subparts A through E in the following cases:

(1) In all proceedings for the issuance of a modified permit under section 301(h) of the Clean Water Act, except that in such proceedings:

(i) The terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Regional Administrator"; and

(2) In any proceedings for the issuance of any other NPDES permit which constitutes "initial licensing" under the Administrative Procedure Act, where the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit. If an NPDES draft permit is processed under this Subpart, any other draft permits which have been consolidated with the NPDES draft permit under § 124.6(d) shall likewise be processed under this Subpart.

(3) The parties to an evidentiary hearing that would otherwise be held under Subpart E may agree to conduct that hearing in accordance with this Subpart. Any applicant for an NPDES permit which is not an initial license may request when requesting an evidentiary hearing under § 124.74 that its application be processed under the procedures of this Subpart. If the Regional Administrator agrees with this request, and if a hearing is granted the notice of the hearing issued under § 124.116 shall include a statement that the permit will be processed under the procedures set forth in this Subpart unless a written objection is received within 30 days stating the reasons. If no such objection is received, the application shall be processed in accordance with §§ 124.117–124.121 of this Subpart, except that any reference to a draft permit shall be taken as referring to the final permit. If an objection is received, Subpart E shall be applied instead.

(b) "Initial licensing" includes both the first grant of an NPDES permit to a discharger that has not previously held a NPDES permit and the first decision on any variance applied for by a discharger.

§ 124.112 Relation to other subparts.

The following provisions of Subparts A through E apply to procedures under this Subpart:

(a)(1) Sections 124.1 through 124.11.

(2) Section 124.18;

(3) Section 124.22.

(c)(1) Section 124.54 "Terms requested by the Corps of Engineers and other Government Agencies".

(2) Section 124.61 "Final environmental impact statement".

(3) Section 124.6e "Decision on variances and modifications".

(d)(1) Section 124.72 "Definitions".

(2) Section 124.73 "Filing".

(3) Section 124.78 "Ex parte communications".

(4) Section 124.80 "Filing and service".

(5) Section 124.85(a) (Burden of proof);

(6) Section 124.86 "Motions"; and

(7) Section 124.87 "Record of hearings".

(8) Section 124.90 "Interlocutory appeal".

§ 124.113 Public notice regarding draft permits and permit conditions.

Public notice of the formulation of a draft permit under this Subpart shall be given as provided in §§ 124.11 and 124.58. At the discretion of the Regional Administrator, the comment period specified in this notice may include an opportunity for a public hearing under § 124.12.

§ 124.114 Request for hearing; request to participate in a hearing.

(a) By the close of the comment period set forth in § 124.113, any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at such hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this Subpart is necessary or appropriate, the Regional Administrator shall serve written notice of the determination on each person requesting such hearing and the applicant, and shall provide public notice of the determination in accordance with § 124.58(e). If the Regional Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of such determination on all persons requesting the hearing.

(c) The Regional Administrator may also decide before a draft permit is issued that a hearing should be held under this Part. At the discretion of the Regional Administrator the notice may provide for a hearing under § 124.13 before a panel hearing is held, provided that no cross-examination under § 124.14 shall be permitted. When such a hearing is to be held, the notice of the formulation of the draft permit under § 124.113 shall so state.

§ 124.115 Effect of denial of, or absence of, request for hearing.

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the draft permit shall be treated procedurally as if it were a recommended decision issued under § 124.124 of this Subpart, except that for purposes of §§ 124.125 and 124.126 the term "hearing participant" or "person who participated in the hearing" shall be construed to mean the applicant and any person who submitted comments under § 124.58(d).

§ 124.116 Notice of hearing.

(a) Upon granting a request for a hearing under § 124.114 the Regional Administrator shall promptly publish a notice of the hearing as required under § 124.58(e). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the recommended decision.

§ 124.117 Request to participate in hearing.

(a) Each person desiring to participate in any hearing noticed under this section, shall file a motion to participate with the Regional Hearing Clerk by the deadline set forth in the notice of the grant of the hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) The requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a non-binding list of the persons to take part in the presentation.

As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that person. All comments shall include any affidavits, studies, data, tests or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They shall be restricted either to points that could not have been made in written comments, or to emphasize points which are made in the comments, but which the participant believes can be more effectively argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) for the filing of main comments, any party who has filed a request to participate in the hearing may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that such person will be prejudiced if required to submit such comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other participants under paragraph (a) at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding officer.

(a)(1) Upon the granting of a request for hearing the Regional Administrator shall, as soon as practicable, request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make such assignment.

(2) If all parties to the hearing waive in writing their statutory right to have the persons identified in paragraph (a) preside at the hearing, the Regional Administrator shall name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)—(15), § 124.83 (b) and (c), and;

(2) To receive relevant evidence, provided that all comments, under

§ 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.10 (or in the case of voluntary use of these procedures under § 124.111(a)(3), the administrative record for the final permit under § 124.20 and § 124.62) shall be received in evidence.

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this Subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more EPA temporary or permanent employees having special expertise in areas related to the hearing issue, at least two of whom shall not have taken part in preparing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership may change or may include persons not employed by the EPA.

(b) At the time of the hearing notice pursuant to § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the Regional Administrator shall file with the Regional Hearing Clerk the name, address and area of expertise of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. Such designated persons shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the hearing, the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that such cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions.

(e) At any time before the close of the hearing, any person may submit to the Presiding Officer written questions specifically directed to any person appearing or testifying in the hearing. The Presiding Office, after consultation with the panel may, at his sole discretion, ask the written question so submitted.

(f) Within ten days after the close of the hearing, any of the participants shall submit such additional written testimony, affidavits, information or material as such participant deems relevant or which the panel may request of such participant. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

§ 124.121 Opportunity for cross-examination.

(a) Any participant in a panel hearing may submit a written request to cross-examine on any issue of material fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact regarding which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in light of the record made up to that stage of the record, and the extent to which they are material to the decision on the application; and

(2) The person(s) a participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination will result in resolving the issue of material fact involved.

(b) After receipt of all motions for cross examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each such request. If any request for cross-examination is granted, the order shall be served on all hearing participants and shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place.

In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further. If said participants with the same or similar interests shall fail to designate such single representative, then the Presiding Officer shall divide the assigned time among the representatives of such participants or issue such other order as justice may require.

(c) The Presiding Officer and to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require alternative means of clarifying the record to be used whether or not a request to do so has been made under the immediately preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

(e) The provisions of § 124.85(d)(2) apply to proceedings under this Subpart.

§ 124.122 Record for final permit.

(a) The record on which the final permit shall be based in any proceeding under this Subpart (other than a proceeding by consent of the parties under § 124.111(a)(3)) consists of:

(1) The administrative record compiled under § 124.20;

(2) Any material submitted under § 124.78 relating to *ex parte* contracts.

(3) All notices issued under § 124.113;

(4) All requests for hearings, and rulings on those requests received or issued under § 124.114;

(5) Any notice of hearing issued under § 124.116;

(6) Any request to participate in the hearing received under § 124.117;

(7) All comments, submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113(b)(9);

(8) The full transcript and other material received into the record of the panel hearing under § 124.120;

(9) Any motions for, or rulings, on cross-examination filed or issued § 124.121;

(10) Any motions for, orders for and the results of, any alternatives to cross-examination under § 124.121;

(11) The full transcript of any cross-examination held; and

(b) In any proceedings under this Subpart involving a permit which is not an initial license and which are conducted under § 124.111(a)(3), the record for decision shall consist of:

(1) The administrative record under § 124.20 or § 124.62;

(2) All requests for hearing submitted under § 124.74, and all rulings on those requests; and

(3) The items specified in subparagraphs (a)(4) through (a)(11) of this section.

§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material issues of law, fact, or discretion; a proposed modified NPDES permit (if such person is urging that the draft permit should be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit. Oral argument may be held at the discretion of the Presiding Officer on Motion of any party or sua sponte.

§ 124.124 Recommended decision.

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respect the draft permit shall be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of such decision on each party and upon the Administrator.

§ 124.125 Appeal from or review of recommended decision.

(a)(1) Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer to which such party objected, and may appeal such exceptions to the Administrator as provided in § 124.101. Except that references to "initial decision" will mean recommended decision under § 124.124.

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Administrator shall issue a final decision. Such final decision shall include findings of fact; conclusions regarding material issues of law, fact, or discretion, as well as reasons therefor; and a modified NPDES permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may delegate some or all of the work of preparing this decision to a person or persons without substantial prior connection with the matter. The Administrator or his designee may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing the final decision. The Hearing and Record Clerk shall file a copy of the decision on all hearing participants.

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Administrator, and if the Administrator does not elect to review it, the recommended decision is deemed the final decision of the Agency upon the expiration of the time for filing any appeals.

§ 124.128 Delegation of authority; time limitations.

(a) The Administrator may delegate to a Judicial Officer any or all of his or her authority to act under this Subpart.

(b) The failure of the Administrator, Regional Administrator or Presiding Officer to do any act within the time periods specified herein shall not be construed as a waiver or in derogation of any rights, powers or authority of the United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified herein, the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant such party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

§ 124.129 EPA headquarters approval of stipulation or consent agreement.

No non-adversary initial licensing hearing under Subpart F may be resolved, settled or decided, in either whole or substantial part, by the stipulation or consent of the parties thereto, unless and until the stipulation or consent is approved and signed by the Deputy Assistant Administrator for Water Enforcement.

No stipulation or consent without such approval and signature shall bind EPA or have any force or effect or be filed in any proceeding.

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Thursday
June 14, 1979

Part III

Environmental Protection Agency

Draft Consolidated Permit Application Forms and Proposed National Pollutant Discharge Elimination System Regulations

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1233-8]

Draft Application Forms for EPA Programs

AGENCY: Environmental Protection Agency.

ACTION: Publication of draft application forms.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is proposing regulations to consolidate certain permit programs administered by the Agency. As part of this initiative, EPA is developing a single set of forms and instructions to be used for applying for permits issued under the consolidated permits program.

This notice solicits public comments on draft of several parts of the consolidated permit application form and accompaning instructions. When complete, the consolidated application form will consist of a general form asking for information common to all programs within the consolidated permits program (including an identification of the facility and a general description of the pathways by which pollutants are released to the environment), followed by specific forms tailored to the different programs.

The forms included today are: (1) A general form for applicants for EPA permits; (2) a form to apply for National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act for concentrated animal feeding operations and aquatic animal production facilities; (3) a form for existing industrial dischargers applying for NPDES permits under the Clean Water Act; and (4) a form for hazardous waste management facilities (HWM facilities) which require hazardous waste storage, treatment or disposal permits under the Resource Conservation and Recovery Act.

Additional forms will be published for public comment in the future to reflect the application requirements of other programs within the consolidated permits initiative.

DATES: Comments must be received on or before September 12, 1979 to be considered.

A pamphlet describing the proposed regulations and their relationship to the new NPDES application form has been prepared, titled "A Guide to the Consolidated Permit Application and Conforming NPDES Regulations" (C-7). This pamphlet, and six other pamphlets describing the final NPDES regulations, the proposed consolidated permit regulations and other proposed regulations pertaining to the consolidated permit programs are available from the Environmental Protection Agency, Public Information Center (PM-215), 401 M St., SW., Washington, D.C. 20460.

Meetings open to the public to discuss and receive comments on the consolidated application form are scheduled for four cities. These same meetings will also serve as a forum to receive comments on other aspects of the consolidated permits program, including the consolidated permit program regulations which are proposed elsewhere in today's **Federal Register**, and reproposed part 146 of the Underground Injection Control (UIC) regulations published on April 20, 1979 at 44 FR 23738. Both the RCRA and the NPDES portions of this consolidated application form will be discussed on the second and third day of each meeting.

These meetings will be held at the following places and dates:

July 16, 17*,18, 1979, Northpark Inn, 9300 North Central Expressway, Dallas, Texas.
July 23, 24*, 25, 1979 HEW Auditorium, 330 Independence Avenue SW., Washington, D.C.
July 26*, 27, 28, 1979, Water Tower Hyatt, 800 North Michigan Avenue, Chicago, Illinois.
July 30, 31*, August 1, 1979 EPA Region X, 1200 6th Avenue, Seattle, Washington.

At each public meeting, registration will be held from 8:30 to 9:00 a.m. and comments will be received from 9:00 a.m. until concluded, or no later than 5:00 p.m. In addition, an evening session will be held on the dates noted with an asterisk above, from 7:30 until concluded. Anyone wishing to make an oral statement at the meetings should notify the following person in writing, specifying the meeting dates and the city in which they are interested: Ms. Judith Shaffer, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

ADDRESSEE: Comments should be addressed to: Edward A. Kramer (A-1), Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 755-0750.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (A-1), Permits Division (EN-336), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 755-0750.

*Day and evening sessions.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the interest of regulatory reform, the Agency is presently consolidating its permit programs wherever feasible. The goal of this effort is to eliminate gaps and overlaps among the programs, to insure consistency of regulatory approaches of the various programs, and to provide the regulated community with uniform procedures. Although statutory constraints preclude complete uniformity, the Agency believes that the goal of consolidation should be pursued to the extent possible.

The Agency has already begun its consolidation efforts by proposing consolidated regulations elsewhere in today's **Federal Register** for five programs: The Hazardous Waste Permit Program under sections 3005 and 3006 of the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under sections 1421-1423 of the Safe Drinking Water Act (SDWA), the National Pollution Discharge Elimination System (NPDES) permit program under section 402 of the Clean Water Act (CWA), the permit program for dredged or fill material under section 404 of the CWA, and the prevention of significant deterioration (PSD) program under the Clean Air Act.

During the preparation of the consolidated regulations, many overlaps, gaps and inconsistencies in regulatory coverage were discovered and eliminated by the various EPA program offices responsible for each program. In addition, procedures for approving State programs, applying for permits, issuing permits, and other similar matters were made consistent to the extent permitted by law and sound policy.

EPA is now taking another major step in its consolidation effort by developing a single set of application forms and instructions for the following four programs:

(1) Hazardous waste;

(2) Underground injection control (UIC);

(3) Discharges to surface water (NPDES, with separate parts designed for existing industrial dischargers, new industrial sources and discharges, publicly owned treatment works, and concentrated animal feeding facilities); and

(4) Prevention of Significant Deterioration (PSD) for new sources under section 165 of the Clean Air Act.

The fifth program covered by the consolidated permit program regulations, the section 404 dredge or fill program, is not included in EPA's

consolidated application form project at this time since EPA does not issue these permits.

The family of forms for the consolidated permit program is as follows, including those parts that are reserved for addition in the future:

Form 1—General Information
Form 2—Discharges to Surface Water (NPDES Permits)
a. Publicly Owned Treatment Works [Reserved]
b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities.
c. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
Form 3—Hazardous Waste Information Summary (RCRA Permits)
Form 4–Underground Injection of Fluids (UIC Permits) [Reserved]
Form 5—Proposed Facilities (PSD new sources, NPDES new sources and new dischargers, and new injection wells)
a. Compliance with Other Environmental. Laws [Reserved]
b. Application for PSD and NPDES Permits [Reserved]
c. New Source Applicability Questionaire (PSD and NPDES) [Reserved].

Forms 1, 2b, 2c and 3 and associated instructions are included in today's public notice. The forms and instructions which are reserved in this package will be developed according to the following schedule:

	Federal Register Notice	Final form
Form 2a	December 1979	July 1980
Form 4	August 1980	April 1981
Form 5	December 1979	July 1980

The goals of the consolidated application form are to:

(1) Reduce paperwork burdens upon applicants and resource burdens upon EPA and State officials in the preparation and review of applications under more than one permit program.

(2) Insure consistency of application requirements.

(3) Insure that applicants consider and report, at a single time and in a uniform manner, all pathways by which they release pollutants to the environment. This will make clear to the applicant and to EPA (or an approved State) precisely which programs apply, resulting in proper regulation of all sources of pollution as required by the various statutes. It will also facilitate the development by permit writers of consistent permit conditions under the various programs.

The consolidation effort is an EPA initiative. States are encouraged, but not required, to consolidate their programs. EPA hopes that today's notice will set a positive example for States to follow.

EPA's consolidation effort is limited by the fact that in many cases some programs will be operated by EPA's Regional offices while others will be operated by States, sometimes by different offices in a State. Thus, for example, an applicant might be required to apply to EPA for an NPDES and UIC consolidated permit, to one State agency for a hazardous waste permit, and to another State agency for a PSD permit.

To minimize this problem, EPA intends to actively encourage further consolidation of programs. EPA also intends to notify applicants by letter as to which Federal and State offices operate which programs. In addition, permit program coordinators will be available in each EPA Regional office to assist permit applicants in this regard. Special coordinators for new sources have already been established in each EPA Region and are listed at 44 FR 23308 (April 19, 1978).

The Agency has determined that the best way to consolidate application forms is to combine common elements in a general part and leave program-unique elements to specific parts. The alternative of developing a single form encompassing all programs was rejected as being too unwieldy and potentially confusing.

To ensure that the forms are understandable, the questions and instructions are being drafted to be as concise and clear as possible and to require as brief a response as possible. Different colors will be used in the final forms for each program to help distinguish them.

In addition, the questions and instructions in the general form (Form 1) have been designed to enable an applicant to determine which additional forms are applicable. Further, once Form 5c is developed, applicants will be able to submit preliminary information to EPA and receive formal determinations of whether they are subject to the new source requirements of the PSD and NPDES programs. Of course, if an applicant remains unsure of which programs apply, he or she is encouraged to call, visit or write EPA's Regional representative for assistance.

Today's notice contains drafts of the general form, a RCRA form, two NPDES forms, and all associated instructions. After receipt of public comments, these will be altered if necessary. In addition, these forms must be approved by the Office of Management and Budget before EPA can use them. The forms which have not been included in today's notice will be published as drafts in future **Federal Register** notices, and incorporated into the consolidated permit application form when final.

II. General Form (Form 1)

This form requires submission of general identification information: name, address, phone number of the applicant (and of the facility, if different) the four Standard Industrial Classification (SIC) codes best describing the principal products of the facility, and the name and telephone number of the facility contact (e.g., plant manager). The type of ownership (Federal, State, private, etc.) must also be described.

In addition to identifying the facility, this form will be used as a guide to determine which specific forms must be completed by the applicant. The applicant is asked, by the use of brief questions requiring "yes" or "no" answers, whether it conducts certain activities, each of which requires a permit. In most cases, a "yes" answer will lead the applicant to the additional specific form necessary to obtain a permit for the activity. The applicant must also list any permits which it presently holds.

Finally, this form requires applicants to submit topographic maps of their facilities extending to at least one mile beyond property boundaries. The maps must show the location of each of the source's intake and discharge points, hazardous waste treatment, storage and disposal sites, and injection wells. These requirements will give an overview of the release of different wastes to the environment by each facility.

The Agency considered asking for other more detailed information in the general form. This could prove useful where more than one program solicits similar information. However, such information is generally not relevant to all of the programs. To avoid soliciting this information from applicants who need not submit it, the Agency decided to request it in the program-specific forms.

III. Hazardous Waste Form (Form 3)

Section 3001 of the Resource Conservation and Recovery act (RCRA) provides authority for determining whether a waste is hazardous and therefore whether it must be managed according to other provisions of RCRA. Regulations implementing this section of RCRA were proposed on December 18, 1978 (43 FR 58954).

Section 3010 of RCRA, requires any person who generates, transports, or owns or operates a facility that threats, stores or disposes of hazardous wastes to notify EPA of such activity within 90 days of promulgation of the section 3001

regulations. Regulations governing this notification were proposed at 43 FR 29908 (July 11, 1978), which require existing Hazardous Waste Management (HWM) facilities to provide the location and general description of their activities and wastes. Because this is a brief document which is not a part of an application for a permit, EPA decided to develop a separate form for notification.

Section 3004 of RCRA, and the implementing regulations which were proposed at 43 FR 58994 (December 18, 1978), address standards for owners and operators of hazardous waste treatment, storage and disposal facilities. These standards define the levels of proposed human health and environmental protection to be achieved by these facilities.

Section 3005 of RCRA requires permits for facilities which treat, store, or dispose of hazardous waste. Regulations to implement this permit program are proposed elsewhere in today's **Federal Register** as part of the consolidated permit program regulations. These regulations provide for three types of permits for HWM facilities: Regular permits, experimental special permits, and health care special permits.

A. *Regular Permits*

The proposed RCRA regulations establish information requirements for applications for regular permits. For administrative convenience, proposed §§ 122.23 (c) and (d) divide these information requirements into two parts (Part A and Part B). The Part A requirements of the regulations will be implemented by Form 1 and Form 3 of the consolidated permit application, while Part B requirements will be satisfied by direct submission of the required information to the permitting authority (no separate form will be developed). Table I describes the schedule for submission of information required to obtain a regular permit.

1. *Part A Requirements (Forms 1 and 3).* Form 1 is discussed in Part II of this preamble. The information required in Form 3 of the permit application focuses on the nature and quantity of hazardous waste handled at the facility, but also includes: (1) Data such as the zoning of the area in which the facility is located and the type of RCRA permit sought; (2) a detailed description of the facility, including available design and operation drawings and specifications for the facility, and its hazardous waste treatment, storage and disposal processes, techniques and equipment; (3) detailed and specific identification, description and quantification of the wastes to be handled at the facility; and (4) the processes or technologies to be applied for the treatment, storage or disposal of hazardous wastes at the facility. These date requirements reflect the intent and content of proposed §§122.23(c)(3–7).

2. *Part B Requirements (No Application Form). The date and information required by Part B information requirements is site and process specific. The Agency decided not to develop a specific form for Part B since the information required is not readily adaptable to a standard format.*

The specific requirements of Part B, which appear as § 122.23(d) in the proposed consolidated permit program regulations elsewhere in today's **Federal Register,** include administrative, hydrological, design and operational data on the facility. When sumitted by an applicant, the specific facility and site data required by Part B will be compared to the standards and criteria required by section 3004 of RCRA (40 CFR 250.40 through 250.46, proposed on December 18, 1978 at 43 FR 58994).

The date requirements of Part B include:

(a) Treatment, storage and disposal data: The facility's structures, operating and maintenance plans, emergency or contingency plans, leachate and other pollution control measures, planned life of operation, closure and post-closure maintenance and uses, programs for monitoring and visual inspections during and after use, plans for segregation of incompatible wastes, and plans for incinerator trial burns at appropriate facilities.

(b) Facility site data: The geology, climate, and hydrology [Within 290 m (100 ft) of the facility boundaries] are required in terms of their possible relation to air and water pollution.

(c) Facility staffing data: Information on expected performance and related training of persons responsible for operation of the HWM facility. This data will help EPA to assess operational and maintenance safety of the facility and the associated risks.

(d) Financial responsibility data: Data which supplies evidence of continued financial responsibility, such as performance bonds, insurance carriers/policies, trusts, escrow accounts or other instruments.

These data are usually needed to determine the human health, environmental and economic risk associated with the decision to issue or deny a permit. However, proposed §122.23(d)(7) allows that, on written request and justification from the applicant, any of the information requirements in Part B may be waived if the Director determines that this information is not needed to establish compliance with standards in proposed §§ 250.42–250.46.

B. *Experimental Special Permits*

Owners or operators of experimental facilities which are intended to advance the state of the art for hazardous waste treatment, storage or disposal may seek one-year experimental special permits. These permits may be extended up to one additional year.

Applicants must submit Part A requirements (Forms 1 and 3) and Part B requirements according to the schedule in Table 1. However, certain items may not be relevant. In these cases, certain Part B requirements may be waived.

C. *Health Care special Permits*

Owners or operators of health care facilities that treat or store hazardous waste may apply for health care special permits.

To qualify for this special permit, the following conditions must be met:

(1) The facility must be licensed under a State law that requires compliance with requirements for storage, sterilization, incineration, or treatment of all hazardous waste generated.

(2) The State law must provide for the enforcement of the requirements of the licensing program.

(3) If an incinerator is used, it must be operated under the terms and conditions of a license under applicable State law.

(4) The facility must submit a certification statement indicating compliance with an issued license signed by the appropriate State licensing official.

Applicants for these permits need not submit Part B information. They are also exempt from certain items in Form 3, as described in the instructions.

D. *Interim Status*

The preparation and review of permit applications are expected to take a substantial period of time. Therefore, HMM facilities which were in operation or under physical construction prior to the date of promlugation of section 3001 regulations are eligible for interim status. To qualify for this status, the facility must fulfill the notification reguirements of section 3010, and submit Forms 1 and 3 of the consolidated permit application no later than 180 days from the date of promulgation of section 3001 requlations.

Under interim status, the facilities will be treated as having been issued valid permits, thus allowing their continued operation until required to complete the application process by filing Part B information and a final permit is issued. Facilities granted interim status are subject to certain minimum criteria

under section 3004 of RCRA. See proposed 40 CFR 250.40 (43 FR 58946, December 18, 1978). Facilities which do not meet the above conditions (e.g., new facilities) must submit both Part A (Forms 1 and 3) and Part B information prior to permit issuance.

Table I summarizes the types of permits for which applications must be made, the type of forms to be used and the date by which application must be submitted.

Table I.—*Summary of RCRA § 3005 Application Requirements*

Permit for which application is submitted	Type of applicant	Deadline for submission of part A (forms 1 and 3)	Deadline for submission of part B (no form provided)
Regular RCRA Permit (Interim Status)	Owner/operator of Existing HWM Facility	A	B
Regular RCRA Permit	Owner/operator of New HWM Facility	C	C
Experimental Special Permit (Interim Status)	Owner/operator of Existing HWM Facility	A	B
Experimental Special Permit	Owner/operator of New HWM Facility	C	C
Health Care Special Permit (Interim Status)	Owner/operator of Existing HWM Facility	A	Not required.
Health Care Special Permit	Owner/operator of New HWM Facility	C	Not required.

A: No later than 180 days after final promulgation of regulations under section 3001 of RCRA.
B: As required by the Director (upon at least six months notice to the applicant).
C: No later than 180 days before physical construction is expected to begin.

E. *Impacts of RCRA Application Reporting Requirements.*—The requirement to obtain a RCRA permit is expected to place an economic and workload burden on approximately 30,000 owners or operators of regulated HWM facilities. The impact on applicants who must complete Form 3 is summarized in Table II. The estimates are considered to be overstated because several States already required submission of some of the same information in their State operated permit programs. In addition, some of the same information necessary for completion of the form may be available through such sources as the Department of Transportation shipping documents which depict the waste, and responsible companies that maintain daily operating logs.

Table II.—*Summary of Form 3 Impact*

	Storage	Treatment and disposal		Health care
		Onsite*	Offsite*	
Number of respondents	17,000	4,800	1,200	7,000
Frequency of response	Once	Once	Once	Once
Cost in work hours	2	27	5	1
Cost in dollars**	$44	$600	$110	$22

*Onsite means on the same or geographically contiguous property; offsite means *not* on the same property.
**Based on $22/hr.

The impacts of Part B requirements are addressed on page 95 of the Draft Subtitle C Economic Impact Analysis. Copies of this document can be obtained by writing Ed Cox, Solid Waste Information Office, Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 42560, telephone (513) 684–8491. In addition, copies of this document are available for review in the EPA Library Reading Room, 2404, Waterside Mall, 401 M St., SW., Washington, D.C. 20460, and in the EPA Regional office libraries.

IV. NPDES Forms (Forms 2b and 2c)

All applicants for EPA-issued NPDES permits must submit the general section (Form 1) plus the applicable specific section (Form 2a, 2b, 2c, or 5) of the consolidated application form. Applicants for State-issued permits must use State application forms, unless the State has adopted EPA's form without change.

Only the forms for existing industrial dischargers (Form 2c) and concentrated animal feeding operations and aquatic animal production facilities (Form 2b) are included in this notice. The Agency is also developing application forms for new sources and new dischargers (Form 5) and for publicy owned treatment workd (Form 2a). It is expected that many of the considerations addressed in developing the form for existing industrial sources will also be relevant to those forms.

State application forms are not required to be identical to the EPA form, but they are subject to EPA approval prior to use (see the definition of "application" in 40 CFR 122.3 and the requirement of EPA approval in 40 CFR 123.73). To ensure consistency of approach, EPA has today proposed elsewhere in the **Federal Register** (§ 122.64(d)) minimum requirements for applications for NPDES permits, which would apply even where States use forms other than the EPA form. Of course, States are welcome to use EPA's format, substituting the State's name, address and logo, for EPA's.

Applicants should continue to use existing permit NPDES application forms until revised forms are made available.

The Agency is proposing elsewhere in today's issue of the **Federal Register** a set of conforming regulations for the NPDES program which establish the framework for the control of pollutants in general and section 307(a) toxic pollutants in particular through a strategy of application reporting and permitting. These regulations are preceded by a detailed preamble which explains the entire strategy. Included in that preamble is a discussion of how the application reporting requirements fit into the overall strategy, including an anaylsis of the basis for each requirement. That discussion will not be repeated here. However, the permit application requirements for existing industrial dischargers may be summarized as follows:

1. Applicants must report discharge levels of pollutants which have traditionally been of concern in the NPDES permit program.

2. Applicants must also report discharge levels of the 129 toxic pollutants listed under section 307(a) of the Clean Water Act (this list is an elaboration upon, but contains no addition to, the list of 65 toxic pollutants contained in the *NRDC Consent Decree* and referred to in section 301(b)(2)(C) of the Clean Water Act). For process wastewater streams discharged by sources in 36 industries, this reporting must be based on analyses conducted by using gas chromatography/mass

spectrometry (GC/MS) analytical techniques for most of the 115 organic chemicals on the toxics list. This analysis will be performed upon composite samples of the applicant's waste stream which have been collected over a 72-hour period. For non-process wastewater streams and sources in other industries, estimates will be accepted.

3. Applicants must describe the variability of the levels of pollutants that may be expected to occur during the term of the permit. Examples include batch process discharges and predictable changes in raw materials usage (e.g., a change by a coal-fired steam electric generating plant from one source of coal to another).

4. At their option, applicants may submit information on expected discharges of hazardous substances as defined under section 311 of the Clean Water Act. As described in proposed 40 CFR 117.12(b) (44 FR 10271, February 16, 1979), applicants who state that they expect to discharge pollutants in certain quantities and concentrations and show that adequate treatment equipment or management practices are or will be in place to control those discharges are eligible for exemption of those discharges from the requirements and penalties of section 311.

It should be noted that the Agency has made efforts to minimize reporting burdens upon applicants. Of course, reporting burdens are increased in some areas as a result of the increased emphasis on toxics required by the 1977 amendments to the Clean Water Act (see the background discussion in the preamble to the proposed conforming NPDES regulations elsewhere in today's **Federal Register**). However, certain requirements imposed by the expiring NPDES application form have been deleted, including the following:

1. Certain pollutants no longer must be reported (e.g., specific conductance, potassium, and settleable matter).

2. Applicants are no longer required to sample and analyze pollutants in their intake water. However, they must do so if they intend to seek credit for pollutants in their intake as provide by 40 CFR 122.70(g).

3. Applicants are no longer required to provide information on the raw materials used and the types and quantities of products produced, unless an applicable effluent guideline employs limits based on production, raw materials, or some other measure of operation. Where such guideline limits apply, the total amount of product produced or raw material used must be reported in order for the permit writer to apply the guideline.

Applicants are reminded that all information contained in an application for an NPDES permit is available to the public as required by section 401(j) of the Clean Water Act. In order to minimize collection of data which could compromise trade secrets, the Agency is requesting only end-of-pipe effluent data. If a permit writer determines, after reviewing an application, that other waste stream information (such as sensitive data concerning upstream process discharges) is required in a particular case, he or she will generally do so under section 308 of the Clean Water Act or equivalent State authority. The rules governing claims of confidentiality are contained in 40 CFR Part 2.

The economic and reporting impacts of these NPDES forms are discussed elsewhere in this issue of the **Federal Register** as part of the preamble to the proposed NPDES regulations implementing these NPDES application forms.

Comments: Comments are solicited on the layout of each form and on the clarity of all questions and instructions. Comments are also requested on EPA's approach towards consolidating its permit application forms, and suggestions are invited on ways to further reduce duplicative reporting of information.

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

Consolidated Permit Application Form

Form 1—General Information
Form 2—Discharges to Surface Water (NPDES Permits)
a. Publicly Owned Treatment Works [Reserved]
b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities
c. Existing Manufacturing, Commercial, Mining, and Silvicultural Operations
Form 3—Hazardous Wastes Information Summary (RCRA Permits)
Form 4—Underground Injection of Fluids (UIC Permits) [Reserved]
Form 5—Proposed Facilities*
a. Compliance with Other Environmental Laws [Reserved]
b. Application for PSD and NPDES Permits [Reserved]
c. New Source Applicability Questionnaire (PSD and NPDES) [Reserved]

BILLING CODE 6560-01-M

* PSD new sources, NPDES new sources and new discharges, and new injection wells.

Please print or type *(with an ELITE typewriter)* in the shaded area only.

Form Approved OMB No. 158–R00XX

FORM 1 GENERAL

U.S. ENVIRONMENTAL PROTECTION AGENCY

GENERAL INFORMATION

Consolidated Permits Program

(Refer to instructions for legal authorizations.)

ITEMS
II. FACILITY I.D. NO
III. FACILITY NAME
V. MAILING ADDRESS
VI. FACILITY LOCATION
VII. SIC CODES

AFFIX LABEL BELOW

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PLEASE PLACE LABEL IN THIS SPACE

GENERAL: If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate shaded area below. Also, if any of the preprinted data is absent *(the area to the left of the label space lists the information that should appear)*, please provide it in the proper fill–in area below. If the label is complete and correct, you need not complete Items II, III, V, VI, and VII. Complete all items if no label has been provided.

I. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete questions A through J to determine whether you need to file any permit forms. If you answer no to every question, you are not required to submit any of these forms. If you answer yes to any of these questions, refer to the instructions before proceeding. Each of the terms in questions A through J printed in **bold face type** has a certain meaning; refer to the glossary in Section D of the instructions for definitions.

SPECIFIC QUESTIONS	MARK 'X' YES	MARK 'X' NO
A. Is the facility a **publicly owned treatment works** which results in a discharge to waters of the U.S.?	16	17
B. Does this facility *(either existing or proposed)* include a **concentrated animal feeding operation** or **aquatic animal production facility** which results in a discharge to waters of the U.S.?	18	19
C. Are there any operations now existing at the facility which result in a discharge to waters of the U.S. other than those described in A or B above?	20	21
D. Is this a proposed operation *(other than those described in A or B above)* which will result in a discharge to waters of the U.S.?	22	23
E. Do you own or operate a facility that treats, stores, or disposes of **hazardous wastes**?	24	25
F. Do you inject or propose to inject industrial, municipal or nuclear effluent below underground sources of drinking water?	26	27
G. Do you inject or propose to inject any fluids related to oil and gas production, such as enhanced recovery, salt water disposal, or hydrocarbon storage?	28	29
H. Do you inject or propose to inject fluids for special process operations such as solution mining of minerals, in situ gasification of oil, shale, coal, etc., or the recovery of geothermal energy?	30	31
I. Is the facility a proposed **stationary source** in one of the 28 industrial categories listed in the instructions to this question that will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act, and its emissions may affect or be located in an attainment area?	32	33
J. Is the facility a proposed **stationary source** which is NOT one of the 28 industrial categories listed in the instructions to this question, will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act, and its emissions may affect or be located in an attainment area?	34	35

ADDITIONAL FORMS: You can obtain additional forms by calling or writing your EPA's Regional office *(see Table 1 of the instructions)*.

II. FACILITY I.D. NUMBER

C1 F

III. NAME OF FACILITY

C1

IV. FACILITY CONTACT

A. NAME & TITLE *(last, first, & job title)*	B. PHONE *(area code & no.)*
C2	

V. FACILITY MAILING ADDRESS

A. STREET OR P.O. BOX	B. CITY OR TOWN	C. STATE	D. ZIP CODE
C3	C4		

VI. FACILITY LOCATION

A. STREET OR ROUTE NUMBER	B. CITY OR TOWN	C. STATE	D. ZIP CODE
C5	C6		

VII. SIC CODES *(4–digit, in order of priority)*

A. FIRST	C. THIRD
C7 (specify)	C7 (specify)
B. SECOND	D. FOURTH
C7 (specify)	C7 (specify)

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Continued from the front.

VIII. OWNER INFORMATION

A. NAME

B

B. TYPE OF OWNERSHIP (Enter the appropriate letter into the answer box; if 'Other', specify.)

F = FEDERAL
S = STATE
P = PRIVATE
M = PUBLIC (other than federal or state)
I = INDIAN LAND
O = OTHER (specify)

(specify)

C. PHONE (area code & no.)

A

D. STREET OR P.O. BOX

E. CITY OR TOWN

B

F. STATE

G. ZIP CODE

IX. EXISTING ENVIRONMENTAL PERMIT NUMBERS

A. NPDES (Discharges to Surface Water)

9 N

D. PSD (Air Emissions from Proposed Sources)

9 P

B. UIC (Underground Injection of Fluids)

9 U

E. OTHER (specify)

(specify)

9

C. RCRA (Hazardous Wastes)

9 R

F. OTHER (specify)

(specify)

9

X. MAP

Attach to this application a topographic map of the area extending to at least one mile beyond property bounderies. The map must show the outline of the facility, the location of each of your existing and proposed intake and discharge structures, each of your hazardous waste treatment, storage, or disposal facilities, and each well where you inject fluids underground. Include all springs, rivers, and all other surface water bodies in the map area. See the instructions for precise requirements.

XI. NATURE OF BUSINESS (provide a brief description)

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XII. CERTIFICATION (see instructions)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE (type or print)

B. SIGNATURE

C. DATE SIGNED

COMMENTS FOR OFFICIAL USE ONLY

C

FORM 2a - NPDES: PUBLICLY OWNED TREATMENT WORKS

[Reserved. Until a new form and accompanying instructions are developed all applicants should continue to use the existing form, OMB No. 158-R0100, standard Form A.]

Please print or type in the shaded area only.

Form Approved OMB No. 158–R00XX

FORM 2B NPDES

U.S. ENVIRONMENTAL PROTECTION AGENCY

APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER

CONCENTRATED ANIMAL FEEDING OPERATIONS AND AQUATIC ANIMAL PRODUCTION FACILITIES

Consolidated Permits Program

FACILITY I.D. NUMBER

I. GENERAL INFORMATION

A. TYPE OF BUSINESS	B. LEGAL DESCRIPTION OF FACILITY LOCATION		C. FACILITY OPERATING STATUS
☐ 1. CONCENTRATED ANIMAL FEEDING OPERATION *(complete questions B, C, and Item II)*	1. QUARTER	2. SECTION	☐ 1. EXISTING FACILITY
☐ 2. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY *(complete questions B, C, and Item III)*	3. TOWNSHIP	4. RANGE	☐ 2. PROPOSED FACILITY

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE & NUMBER OF ANIMALS IN OPEN CONFINEMENT & HOUSED UNDER ROOF			B. NO. OF ACRES FOR CONFINEMENT FEEDING & AVAILABLE FOR MANURE DISPOSAL
1. TYPE	2. NO. IN OPEN CONFINEMENT	3. NO. HOUSED UNDER ROOF	1. CONFINEMENT FEEDING
			2. MANURE DISPOSAL

C. If there is open confinement, has a runoff diversion and control system been constructed? ☐ YES *(complete questions 1, 2, & 3 below)* ☐ NO *(go to Item IV)*

1. What is the design basis for the control system?
   - ☐ a. 10 YEAR, 24-HOUR STORM — INCHES
   - ☐ b. 25 YEAR, 24-HOUR STORM — INCHES
   - ☐ c. OTHER, *(specify)* — INCHES

2. Report the number of acres of contributing drainage. — ACRES

3. Report the design safety factor. — SAFETY FACTOR

III. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY CHARACTERISTICS

A. For each outfall, give the maximum daily flow, maximum monthly flow, and average monthly flow.

1. OUTFALL NO.	2. FLOW *(gallons per day)*		
	a. MAXIMUM DAILY	b. MAXIMUM MONTHLY	c. AVERAGE YEARLY

B. Indicate the total number of ponds, raceways, and similar structures in your facility.

1. PONDS	2. RACEWAYS	3. OTHER

C. Provide the name of the receiving water and the source of water used by your facility.

1. RECEIVING WATER	2. WATER SOURCE

D. List the species of fish or aquatic animals held and fed at your facility. For each species, give the total weight produced by your facility per year in pounds of harvestable weight, and also give the maximum weight present at any one time.

1. COLD WATER SPECIES			2. WARM WATER SPECIES		
a. SPECIES	b. HARVESTABLE WEIGHT *(pounds)*		a. SPECIES	b. HARVESTABLE WEIGHT *(pounds)*	
	(1) TOTAL YEARLY	(2) MAXIMUM		(1) TOTAL YEARLY	(2) MAXIMUM

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E. Report the total pounds of food fed during the calendar month of maximum feeding.

1. MONTH	2. POUNDS OF FOOD

IV. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME *(print of type)*	B. SIGNATURE	C. DATE SIGNED

EPA Form 5678–X (Y–79)

Please print or type in the shaded area only.

FACILITY I.D. NUMBER

Form Approved
OMB No. 158–XXX

FORM 2C NPDES

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER
EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL OPERATIONS
Consolidated Permits Program

I. PRINCIPAL PRODUCTS PRODUCED

A. Does a production–based effluent guideline limitation promulgated by EPA under Section 304 of the Clean Water Act apply to your facility?

☐ YES *(go to Question I–B)* ☐ NO *(go to Question II)*

B. If you answered 'Yes' to Question I–A, list the average and maximum quantities of the principal products that you actually produce per operating day *(for industries where an applicable effluent guideline is expressed in terms of raw materials or some other measure of your operation, list the raw materials or other measure of production)*. The figures provided must reflect a reasonable measure of actual production or consumption which is representative of the levels of activity expected over the next five years.

1. PRODUCT OR MATERIAL	2. QUANTITY PER DAY		
	a. MAXIMUM	b. AVERAGE	c. UNITS

II. LINE DRAWING

Attach a line drawing showing the water flow through the facility. Indicate each source of intake water, each major process, operation or area of production contributing to each discharge, and each treatment unit in place. Construct a water balance on the line drawing by indicating average flows of each point of intake and discharge, and indicate water losses to process or to atmosphere.

III. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. For each outfall, indicate in mgd *(million gallons per day)* the average and maximum flow contributed by type of wastewater. Use your best estimate if no measurements are available. List all outfalls and attach additional sheets if necessary.

1. OUTFALL NUMBER *(list)*		2. FLOW *(in mgd)*				
		a. SANITARY WASTE	b. NONCONTACT COOLING WATER	c. STORM RUNOFF	d. PROCESS WASTE WATER	e. OTHER *(specify)*
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					
	AVG					
	MAX					

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Section III continued from the front.

B. Complete the following table for each source of toxic pollutants or hazardous substances which is or may be discharged to waters of the United States by any means except an outfall as a result of any of the following: (1) Plant site runoff; (2) spillage or leaks; (3) sludge or waste disposal; (4) materials storage and handling; or (5) loading and unloading areas.

1. SOURCE OF DISCHARGE (specify)	2. ESTIMATED FLOW (mgd)		3. RECEIVING WATER	4. TOXIC OR HAZARDOUS POLLUTANTS (list)	5. ESTIMATED CONCENTRATION		
	a. AVERAGE	b. MAXIMUM			a. AVERAGE	b. MAXIMUM	c. UNITS

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C. Attach a copy of your Best Management Practices Program for controlling the above discharges.

☐ COPY ATTACHED ☐ COPY NOT ATTACHED *(explain below)*

D. Except for storm runoff, are any of the discharges described in Questions III–A or III–B noncontinuous?

☐ YES *(complete the following table)* ☐ NO *(go to Question III–E)*

1. OUTFALL OR SOURCE OF DISCHARGE (specify)	2. NO. OF DAYS/WEEK DISCHARGE OCCURS (specify average)	3. MONTHS IN WHICH DISCHARGE OCCURS (list)	4. VOLUME/OCCURRENCE (millions of gallons)	
			a. AVERAGE	b. MAXIMUM

Continued from page 2.

FACILITY I D NUMBER

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E. For each outfall, describe which processes or operations contribute wastewater to the effluent and what treatment the resulting effluent receives. Attach additional sheets if necessary.

1. OUTFALL NO.	2. PROCESS OR OPERATION *(specify)*	3 TPEATMENT *(specify)*

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IV. IMPROVEMENTS

A. Are you now required by any Federal, State or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices? This includes, but is not limited to, permit conditions, administrative or enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

☐ YES *(complete the following table)* ☐ NO *(go to Question IV–B)*

1 IDENTIFICATION OF CONDITION, ORDER, AGREEMENT, ETC	2 OUTFALL OR NONPOINT SOURCE AFFECTED	3 BRIEF DESCRIPTION OF PROJECT	4 FINAL COMPLIANCE DATE	
			a. REQUIRED	b. PROJECTED

B. Attach additional sheets describing any additional water pollution control programs *(or other environmental projects which may affect your discharge)* you now have underway or which you plan. Indicate whether each program is now underway or planned, and indicate your actual or planned schedules for construction.

☐ Mark 'X' if description of additional control programs is attached.

V. INTAKE AND EFFLUENT CHARACTERISTICS

See instructions before proceeding – Complete one table for each outfall – Annotate the outfall number in the space provided. Except for Part V–C, pollutant levels reported in this question must be based upon actual analyses conducted in accordance with the methods specified in the instructions, and may not be based upon estimates or conjecture. Column (1) in each table must be completed only if you are requesting credit for pollutants present in your intake water *(see instructions)*. NOTE: Tables V–A, V–B, and V–C are included on a separate sheet *(oversized sheet)*.

Continued from the front.

VI. VARIABILITY

A. Are your operations such that your raw materials, processes, and/or products can reasonably be expected to vary so that future concentrations of pollutants from each outfall may exceed five times the average values reported in Question V?

☐ YES *(complete Questions VI–B & VI–C)* ☐ NO *(go to Question VII)*

B. If you answered 'Yes' to Question VI–A, describe the reasons that the concentrations of pollutants can be expected to significantly vary from the levels reported in Question V, for each outfall where you expect such variations to occur.

C. If you answered 'Yes' to Question VI–A, describe in detail the range of levels of pollutants which you anticipate will be discharged from each outfall over the next five years, to the best of your ability at this time. Attach additional sheets if necessary.

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VII. BIOMONITORING DATA

A. Do you have any knowledge or reason to believe that biological monitoring tests for acute and/or chronic toxicity have been made on any of your discharges or on a receiving water in relation to your discharge within the last five years?

☐ YES *(go to Question VII–B)* ☐ NO *(go to Question VIII)*

B. If 'Yes' to Question VII–A, please identify the test and describe the results, and specify at which outfall or receiving water the tests were conducted.

VIII. DATA ON POLLUTANTS NOT REPORTED ELSEWHERE ON THIS FORM

Do you know of any analytical data collected within the last five years on the presence or levels of pollutants in your effluents in addition to those pollutants reported in Questions III–B or V?

☐ YES *(briefly describe this information below)* ☐ NO *(go to Question IX)*

Continued from page 4.

FACILITY I D NUMBER

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IX. DISCHARGES OF HAZARDOUS SUBSTANCES *(OPTIONAL)*

NOTE: Discharges identified under this Question may be eligible for exemption from the requirements and penalties of Section 311 of the Clean Water Act. See instructions.

A. Identify and describe any hazardous substance listed under Section 311 of the Clean Water Act which you discharge or may discharge in the future.

1. POINT OF DISCHARGE	2. HAZARDOUS SUBSTANCE	3. ORIGIN OR CAUSE OF DISCHARGE	4. FREQUENCY OF OCCURRENCE	5. CONCENTRATION			6. AMOUNT	7. ANALYTICAL METHOD OR BASIS OF ESTIMATION
				a. AVERAGE	b. MAXIMUM	c. UNITS		

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CONTINUE ON REVERSE

Section IX continued from the front.

B. List any treatment methods or management practices which are or will be used to control each discharge listed in (A) on the reverse. Attach additional sheets if necessary.

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X. CONTRACT ANALYSIS INFORMATION

Were any of the analyses reported in this application performed by a contract laboratory or consulting firm?

☐ YES *(List the name, address, & telephone number of each laboratory or firm below.)* ☐ NO *(go to Question XI)*

A. NAME	B. ADDRESS	C. TELEPHONE

XI. CERTIFICATION *(see instructions)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME & OFFICIAL TITLE *(type or print)*	B. SIGNATURE	C. DATE SIGNED

Please print or type in the shaded area only.

Form Approved OMB No. 158-R00XX

FACILITY (NO. NUMBER) | OUTFALL NUMBER

V INTAKE AND EFFLUENT CHARACTERISTICS (Continued from page 3 of Form 2C)

PART A – This table must be completed by all applicants for each outfall. Please refer to the instructions.

PARAMETER AND CAS NUMBER (if available)	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	NO. OF ANALYSES (4)	SAMPLE TYPE (5)
FLOW	MGD					
BIOCHEMICAL OXYGEN DEMAND (BOD_5)	MG/L					
CHEMICAL OXYGEN DEMAND (COD)	MG/L					
pH	STANDARD UNITS	XXXXXX	XXXXXX	MIN. / MAX.		
TOTAL SUSPENDED SOLIDS (TSS)	MG/L					
TEMPERATURE (Winter)	C					

PARAMETER AND CAS NUMBER (if available)	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	NO. OF ANALYSES (4)	SAMPLE TYPE (5)
TEMPERATURE (Summer)	°C					
TOTAL KJELDAHL NITROGEN (TKN) AS N	MG/L					
TOTAL ORGANIC CARBON (TOC)	MG/L					
CYANIDE, TOTAL (57-12-5)	MG/L					
PHENOLS, TOTAL (4AAP)	MG/L					

PART B – This table must be completed by all applicants in Group I industries (see instructions) for all outfalls which contain process wastewater.

PARAMETER AND CAS NUMBER	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	NO. OF ANALYSES (4)	SAMPLE TYPE (5)
FLOW	MGD					
1. ACENAPHTHENE 83-32-9	µG/L					
2. ACROLEIN 107-02-8	µG/L					
3. ACRYLONITRILE 107-13-1	µG/L					
4. BENZENE 71-43-2	µG/L					
5. BENZIDENE 92-87-5	µG/L					
6. CARBON TETRACHLORIDE 56-23-5	µG/L					
7. CHLOROBENZENE 108-90-7	µG/L					
8. 1,2,4-TRICHLOROBENZENE 120-82-1	µG/L					
9. HEXACHLOROBENZENE 118-74-1	µG/L					
10. 1,2-DICHLOROETHANE 107-06-2	µG/L					
11. 1,1,1-TRICHLOROETHANE 71-55-6	µG/L					
12. HEXACHLOROETHANE 67-72-1	µG/L					
13. 1,1-DICHLOROETHANE 75-34-3	µG/L					
14. 1,1,2-TRICHLOROETHANE 79-00-5	µG/L					
15. 1,1,2,2-TETRACHLOROETHANE 79-34-5	µG/L					
16. CHLOROETHANE 75-00-3	µG/L					
17. BIS (CHLOROMETHYL) ETHER 542-88-1	µG/L					
18. BIS (2-CHLOROETHYL) ETHER 111-44-4	µG/L					
19. 2-CHLOROETHYL VINYL ETHER (110-75-8)	µG/L					
20. 2-CHLORONAPHTHALENE 91-58-7	µG/L					
21. 2,4,6-TRICHLOROPHENOL 88-06-2	µG/L					
22. PARA-CHLORO-META-CRESOL 59-50-7	µG/L					
23. CHLOROFORM 67-66-3	µG/L					
24. 2-CHLOROPHENOL 95-57-8	µG/L					
25. 1,2-DICHLOROBENZENE 95-50-	µG/L					
26. 1,3-DICHLOROBENZENE 541-73-	µG/L					
27. 1,4-DICHLOROBENZENE 106-46-7	µG/L					
28. 3,3-DICHLOROBENTIDINE 91-94-	µG/L					
29. 1,1-DICHLOROETHYLENE 75-35-4	µG/L					
30. 1,2-TRANS-DICHLOROETHYLENE 156-60-5	µG/L					
31. 2,4-DICHLOROPHENOL 120-83-2	µG/L					
32. 1,2-DICHLOROPROPANE 78-87-5	µG/L					
33. 1,3-DICHLOROPROPYLENE 542-75-	µG/L					
34. 2,4-DIMETHYLPHENOL 105-67-9	µG/L					
35. 2,4-DINITROTOLUENE 121-14-2	µG/L					
36. 2,6-DINITROTOLUENE 606-20-2	µG/L					

PARAMETER AND CAS NUMBER	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	NO. OF ANALYSES (4)	SAMPLE TYPE (5)
37. 1,2-DIPHENYLHYDRAZINE 122-66-7	µG/L					
38. ETHYLBENZENE 100-41-4	µG/L					
39. FLUORANTHENE 206-44-0	µG/L					
40. 4-CHLOROPHENYL PHENYL ETHER 7005-72-3	µG/L					
41. 4-BROMOPHENYL PHENYL ETHER 101-55-3	µG/L					
42. BIS (2-CHLOROISOPROPYL) ETHER 39638-32-9	µG/L					
43. BIS (2-CHLOROETHOXY) METHANE 111-91-1	µG/L					
44. METHYLENE CHLORIDE 75-09-2	µG/L					
45. METHYL CHLORIDE 74-87-3	µG/L					
46. METHYL BROMIDE 74-83-9	µG/L					
47. BROMOFORM 75-25-2	µG/L					
48. DICHLOROBROMOMETHANE 75-27-4	µG/L					
49. TRICHLOROFLUOROMETHANE 75-69-4	µG/L					
50. DICHLORODIFLUOROMETHANE 75-71-8	µG/L					
51. CHLORODIBROMOMETHANE 124-48-1	µG/L					
52. HEXACHLOROBUTADIENE 87-68-3	µG/L					
53. HEXACHLOROCYCLOPENTADIENE 77-47-4	µG/L					
54. ISOPHORONE 78-59-1	µG/L					
55. NAPTHALENE 91-20-3	µG/L					
56. NITROBENZENE 98-95-3	µG/L					
57. 2-NITROPHENOL 88-75-5	µG/L					
58. 4-NITROPHENOL 100-02-7	µG/L					
59. 2,4-DINITROPHENOL 51-28-5	µG/L					
60. 4,6-DINITRO-O-CRESOL 534-52-1	µG/L					
61. N-NITROSODIMETHYLAMINE 62-75-9	µG/L					
62. N-NITROSODIPHENYLAMINE 86-30-6	µG/L					
63. N-NITROSODI-N-PROPYLAMINE 621-64-7	µG/L					
64. PENTACHLOROPHENOL 87-86-5	µG/L					
65. PHENOL 108-95-2	µG/L					
66. BIS (2-ETHYLHEXYL) PHTHALATE 117-81-7	µG/L					
67. BUTYL BENZYL PHTHALATE 85-68-7	µG/L					
68. DI-N-BUTYL PHTHALATE 84-74-2	µG/L					
69. DI-N-OCTYL PHTHALATE 117-84-0	µG/L					
70. DIETHYL PHTHALATE 84-66-2	µG/L					
71. DIMETHYL PHTHALATE 131-11-3	µG/L					
72. BENZO(a) ANTHRACENE 56-55-3	µG/L					
73. BENZO(a) PYRENE 50-32-8	µG/L					

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PART B – Continued from the front.

PARAMETER AND CAS NUMBER	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	EFFLUENT: NO. OF ANALYSES (4)	EFFLUENT: SAMPLE TYPE (5)
74. 3,4-BENZO-FLUORANTHENE 205-99-2	µG/L					
75. BENZO(k) FLUORANTHENE 207-08-9	µG/L					
76. CHRYSENE 218-01-9	µG/L					
77. ACENAPHTHYLENE 208-96-8	µG/L					
78. ANTHRACENE 120-12-7	µG/L					
79. BENZO(g,h,i) PERYLENE 191-24-2	µG/L					
80. FLUORENE 86-73-7	µG/L					
81. PHENANTHRENE 85-01-8	µG/L					
82. DIBENZO(a,h) ANTHRACENE 53-70-3	µG/L					
83. INDENO (1,2,3-cd) PYRENE 193-39-5	µG/L					
84. PYRENE 129-00-0	µG/L					
85. TETRACHLORO-ETHYLENE 127-18-4	µG/L					
86. TOLUENE 108-88-3	µG/L					
87. TRICHLORO-ETHYLENE 79-01-6	µG/L					
88. VINYL CHLORIDE 75-01-4	µG/L					
89. ALDRIN 309-00-2	µG/L					
90. DIELDRIN 60-57-	µG/L					
91. CHLORDANE 57-74-3	µG/L					
92. 4,4'-DDT 50-29-3	µG/L					
93. 4,4'-DDE 72-55-9	µG/L					
94. 4,4'-DDD 72-54-8	µG/L					
95. α-ENDOSULFAN-ALPHA 115-29-7	µG/L					
96. β-ENDOSULFAN-BETA 115-29-7	µG/L					
97. ENDOSULFAN SULFATE 1031-07-8	µG/L					
98. ENDRIN 72-20-8	µG/L					
99. ENDRIN ALDEHYDE 7421-93-4	µG/L					

PARAMETER AND CAS NUMBER	UNITS	TREATED INTAKE: AVERAGE OBSERVED VALUE (1)	EFFLUENT: AVERAGE OBSERVED VALUE (2)	EFFLUENT: MAXIMUM OBSERVED VALUE (3)	EFFLUENT: NO. OF ANALYSES (4)	EFFLUENT: SAMPLE TYPE (5)
100. HEPTACHLOR 76-44-8	µG/L					
101. HEPTACHLOR EPOXIDE 1024-57-3	µG/L					
102. α-BHC-ALPHA 319-84-6	µG/L					
103. β-BHC-BETA 319-85-7	µG/L					
104. γ-BHC (lindane)-GAMMA 58-89-9	µG/L					
105. δ-BHC-DELTA 319-86-8	µG/L					
106. PCB-1242 (53469-21-9)	µG/L					
107. PCB-1254 (11097-69-1)	µG/L					
108. PCB-1221 (11104-28-2)	µG/L					
109. PCB-1232 (11141-16-5)	µG/L					
110. PCB-1248 (12672-29-6)	µG/L					
111. PCB-1260 (11096-82-5)	µG/L					
112. PCB-1016 (12674-11-2)	µG/L					
113. TOXAPHENE 8001-35-2	µG/L					
114. ANTIMONY (total) 7440-36-0	MG/L					
115. ARSENIC (total) 7440-38-2	MG/L					
116. BERYLLIUM (total) 7440-41-7	MG/L					
117. CADMIUM (total) 7440-43-9	MG/L					
118. CHROMIUM (total) 7440-47-3	MG/L					
119. COPPER (total) 7550-50-8	MG/L					
120. LEAD (total) 7439-92-1	MG/L					
121. MERCURY (total) 7439-97-6	MG/L					
122. NICKEL (total) 7440-02-0	MG/L					
123. SELENIUM (total) 7782-49-2	MG/L					
124. SILVER (total) 7440-22-4	MG/L					
125. THALLIUM (total) 7440-28-0	MG/L					
126. ZINC (total) 7440-66-6	MG/L					

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PART C – This table must be completed by all applicants for each outfall, based on either actual analysis or your best estimate. Fill out columns 1, 2, & 3 only if you mark "present" Please refer to the instructions.

PARAMETER AND CAS NUMBER (if available)	UNITS	MARK 'X': PRESENT	MARK 'X': ABSENT	MARK 'X': ANALYSIS	MARK 'X': ESTIMATE	TREATED INTAKE: AVERAGE VALUE (1)	EFFLUENT: AVERAGE VALUE (2)	EFFLUENT: MAXIMUM VALUE (3)
AMMONIA (as N) 7664-41-7	MG/L							
ASBESTOS 1332-21-4	FIBERS/LITER							
BROMIDE 24959-67-9	MG/L							
CHLORINE, TOTAL RESIDUAL	MG/L							
COLOR (specify units)								
FECAL COLIFORM	NO./100ML							
FLUORIDE 16984-48-8	MG/L							
NITRATE as N 14797-55-8	MG/L							
NITRITE (as N) 4797-65-0	MG/L							
OIL & GREASE	MG/L							
PHOSPHORUS (as P), TOTAL 7723-14-0	MG/L							
RADIOACTIVITY	pCi/L							
SULFATE (as SO4) 4808-79-8	MG/L							
SULFIDE (as S)	MG/L							
SULFITE (as SO3) 4265-45-3	MG/L							
SURFACTANTS	MG/L							
ALUMINUM, TOTAL 7429-90-5	MG/L							
BARIUM, TOTAL 7440-39-3	MG/L							
BORON, TOTAL 7440-42-8	MG/L							

PARAMETER AND CAS NUMBER (if available)	UNITS	MARK 'X': PRESENT	MARK 'X': ABSENT	MARK 'X': ANALYSIS	MARK 'X': ESTIMATE	TREATED INTAKE: AVERAGE VALUE (1)	EFFLUENT: AVERAGE VALUE (2)	EFFLUENT: MAXIMUM VALUE (3)
COBALT, TOTAL 7440-48-4	MG/L							
IRON, TOTAL 7439-89-6	MG/L							
MAGNESIUM, TOTAL 7439-95-4	MG/L							
MOLYBDENUM, TOTAL 7439-98-7	MG/L							
MANGANESE, TOTAL 7439-96-5	MG/L							
TIN, TOTAL 7440-31-5	MG/L							
TITANIUM, TOTAL 7440-32-6	MG/L							
2,3,7,8-TETRACHLORODIBENZO-P-DIOXIN (TCDD) 1746-01-6	µG/L							

OTHER POLLUTANTS (see instructions)	UNITS (specify)	MARK 'X': ANALYSIS	MARK 'X': ESTIMATE	TREATED INTAKE: AVERAGE VALUE (1)	EFFLUENT: AVERAGE VALUE	EFFLUENT: MAXIMUM VALUE (3)

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Please print or type with an FLITE typewriter in the shaded area only.

Form Approved
OMB No. 158–R00XX

FORM 3 RCRA

EPA

U S ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS WASTE INFORMATION SUMMARY

Consolidated Permits Program

(This information is required under Section 3005 of RCRA.)

I. FACILITY I.D. NUMBER

See instructions manual for guidance in completing this form.

FOR OFFICIAL USE ONLY

APPLICATION APPROVED	DATE RECEIVED (month, day, & year)	DATA REQUEST DATE	INDICATOR	PERMIT NUMBER
			☐ MAJOR ☐ MINOR	

LATITUDE (deg., min., & sec.)	LONGITUDE (deg., min., & sec.)	UTM ZONE	UTM COORDINATES

COMMENTS

II. APPLICANT 'FACILITY RELATIONSHIP (mark 'X')

☐ A. OWNED ☐ C. PRESENTLY RENTED OR LEASED, AGREEMENT EXPIRES– (mo., day, & yr.)

☐ B. TO BE PURCHASED ☐ D. TO BE RENTED OR LEASED FOR– (number of years)

III. FACILITY STATUS (mark 'X')

☐ A. EXISTING OPERATION ☐ B. TO BE MODIFIED ☐ C. PROPOSED OPERATION ☐ D. UNDER CONSTRUCTION

IV. TYPE OF PERMIT APPLICATION (mark 'X')

☐ A. REGULAR ☐ B. SPECIAL PERMIT – EXPERMENTAL ☐ C. SPECIAL PERMIT – HEALTH CARE FACILITY

V. ZONING

A. What is the present zoning of the site?

B. If a zoning change is needed, what should the new zoning be?

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VI. FACILITY DRAWINGS

Provide copies of all available drawings and specifications for the hazardous wastes management facility, its processes, and equipment.

VII. IF HEALTH CARE FACILITY

Owners/operators of HEALTH CARE facilities applying for special permit under Section 3005 of RCRA must provide the following

A. A certification signed by the appropriate state licensing authority specifying that the facility has an effective license and is in compliance with such license.

B. A list of hazardous wastes covered by this license.

VIII. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. NAME (type or print)	B. SIGNATURE	C. DATE SIGNED

EPA Form 3456–x (Y–79)

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GO TO CONTINUATION SHEET – ITEM IX

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U S ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS WASTE INFORMATION SUMMARY (continued)

Consolidated Permits Program

(This information is required under Section 3005 of RCRA.)

I. FACILITY I.D. NUMBER

IX. HAZARDOUS WASTES DESCRIPTION

INSTRUCTIONS

GENERAL: Each of the following instructions apply specifically to each part of Item IX. Before completing, photo copy as many copies as necessary of the reverse side, so that that you'll be able to list all your wastes.

A. WASTE NUMBER: Starting with '1', enter a number sequentially for each waste described.

B. HAZARDOUS WASTE NAME: Enter the common name of the waste described.

C. CONFIDENTIALITY CLAIM: If you wish to keep information about a specific waste confidential, mark 'X'.

D. WASTE DEFINITION CODE: Enter the appropriate code from Appendix C of the instructions manual.

E. HAZARD CLASS: Enter the appropriate EPA and DOT codes from the following lists.

1. DOT HAZARD CLASS CODES

EA = EXPLOSIVES A
EB = EXPLOSIVES B
EC = EXPLOSIVES C
FL = FLAMMABLE LIQUID
FS = FLAMMABLE SOLID
OX = OXIDIZER
NG = NONFLAMMABLE GAS
CL = CORROSIVE LIQUID
PA = POISON A
PB = POISON B
RM = RADIOACTIVE MATERIAL
OP = ORGANIC PEROXIDE
CH = CHLORINE
OL = OXYGEN, PRESSURIZED LIQUID
OR = OTHER REGULATED MATERIAL

2. EPA HAZARD CLASS CODES

B = BIOACCUMULATIVE
I = IGNITABLE
O = ORGANIC TOXICANT
C = CORROSIVE
R = REACTIVE
A = RADIOACTIVE
M = MUTAGENIC
N = INFECTIOUS
T = TOXIC

F. ACTION CODE: Enter the appropriate code(s) from the following list. S = STORE T = TREAT D = DISPOSE

G. AMOUNT: Enter the annual amount of waste handled to the nearest whole digit using any of units of measure described in 'H'. If the reported figure is greater than nine digits, enter '9' in every space.

H. UNITS OF MEASURE: Enter the appropriate code from the following list.

ENGLISH UNITS

P = POUNDS
T = TONS (short)
G = GALLONS
Y = CUBIC YARDS

METRIC UNITS

K = KILOGRAMS
M = TONNES (metric)
L = LITERS
C = CUBIC METERS

I. HANDLING CODE: Enter the appropriate code from the list provided in the instructions manual.

J. HANDLING TECHNIQUE: Briefly describe the technique used to handle the waste.

A. WASTE NO.	B. HAZARDOUS WASTE NAME	

C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT	UNIT OF MEASURE
26	17 – 24	25 26	27	30 – 32	33 – 41	42

I. HANDLING CODE	J. HANDLING TECHNIQUE
43 – 45	

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A. WASTE NO.	B. HAZARDOUS WASTE NAME	

C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT	UNIT OF MEASURE
26	17 – 24	25 26	27	30 – 32	33 – 41	42

I. HANDLING CODE	J. HANDLING TECHNIQUE
43 – 45	

A. WASTE NO.	B. HAZARDOUS WASTE NAME	

C. CLAIM OF CONFIDENTIALITY	D. WASTE DEFINITION CODE	E. HAZARD CLASS 1. DOT	E. HAZARD CLASS 2. EPA	F. ACTION CODE	G. AMOUNT	UNIT OF MEASURE
26	17 – 24	25 26	27	30 – 32	33 – 41	42

I. HANDLING CODE	J. HANDLING TECHNIQUE
43 – 45	

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I.D. NO. → S W 1 2 - 13 14 15

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A. WASTE NO.	B. HAZARDOUS WASTE NAME						
C. CLAIM OF CONFIDENTIALITY 16	D. WASTE DEFINITION CODE 17 - 26	E. HAZARD CLASS 1 DOT 27 28	E. HAZARD CLASS 2 EPA 29	F. ACTION CODE 30 - 32	G. AMOUNT 33 - 41	H. UNIT OF MEASURE 42	
I. HANDLING CODE 43 - 45	J. HANDLING TECHNIQUE						
A. WASTE NO.	B. HAZARDOUS WASTE NAME						
C. CLAIM OF CONFIDENTIALITY 16	D. WASTE DEFINITION CODE 17 - 26	E. HAZARD CLASS 1 DOT 27 28	E. HAZARD CLASS 2 EPA 29	F. ACTION CODE 30 - 32	G. AMOUNT 33 - 41	H. UNIT OF MEASURE 42	
I. HANDLING CODE 43 - 45	J. HANDLING TECHNIQUE						
A. WASTE NO.	B. HAZARDOUS WASTE NAE NAME						
C. CLAIM OF CONFIDENTIALITY 16	D. WASTE DEFINITION CODE 17 - 26	E. HAZARD CLASS 1 DOT 27 28	E. HAZARD CLASS 2 EPA 29	F. ACTION CODE 30 - 32	G. AMOUNT 33 - 41	H. UNIT OF MEASURE 42	
I. HANDLING CODE 43 - 45	J. HANDLING TECHNIQUE						
A. WASTE NO.	B. HAZARDOUS WASTE NAME						
C. CLAIM OF CONFIDENTIALITY 16	D. WASTE DEFINITION CODE 17 - 26	E. HAZARD CLASS 1 DOT 27 28	E. HAZARD CLASS 2 EPA 29	F. ACTION CODE 30 - 32	G. AMOUNT 33 - 41	H. UNIT OF MEASURE 42	
I. HANDLING CODE 43 - 45	J. HANDLING TECHNIQUE						
A. WASTE NO.	B. HAZARDOUS WASTE NAME						
C. CLAIM OF CONFIDENTIALITY 16	D. WASTE DEFINITION CODE 17 - 26	E. HAZARD CLASS 1 DOT 27 28	E. HAZARD CLASS 2 EPA 29	F. ACTION CODE 30 - 32	G. AMOUNT 33 - 41	H. UNIT OF MEASURE 42	
I. HANDLING CODE 43 - 45	J. HANDLING TECHNIQUE						

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EPA Form 2345–XA (Y–79) REVERSE

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Consolidated Permit Application Form

Form 4—UIC: Underground Injection of Fluids [Reserved]
Form 5—PSD: Proposed Facilities (PSD New Sources, NPDES New Sources and New Dischargers, and New Injection Wells) [Reserved]

Instructions for Consolidated Permit Application

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A. General Instructions
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Form 1—General Information
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a. Compliance with Other Environmental Laws [Reserved]
b. Application for PSD and NPDES Permits [Reserved]
c. New Source Applicability Questionnaire (PSD and NPDES) [Reserved]
C. Activities Which Do Not Require Permits
D. Glossary
E. NPDES Sampling and Analytical Methods

Instructions For Consolidated Permit Application

Section A. General Instructions

Who must apply?

With the exceptions described in the next section, Federal laws require you to apply for and receive a permit as follows:

• *NPDES* (National Pollutant Discharge Elimination System under the Clean Water Act, 33 U.S.C. 1251). You may not discharge pollutants into the waters of the United States without an NPDES permit.

• *RCRA* (Resource Conservation and Recovery Act, 42 U.S.C. 6901). You must have a permit to treat, store, or dispose of hazardous wastes.

• *UIC* (Underground Injection Control under the Safe Drinking Water Act, 42 U.S.C. 300f). You may not inject fluids underground by gravity flow or pumping without a UIC permit.

• *PSD* (Prevention of Significant Deterioration under the Clean Air Act, 72 U.S.C. 7401). Most new or modified sources of air pollution which are located in or near an area which has attained the National Ambient Air Quality Standards for one or more pollutants must have a PSD permit.

The U.S. Environmental Protection Agency (EPA) is consolidating the above permits into a single permit program, although approved States operate some programs in place of EPA. You must use this application form to apply for a permit for those programs administered by the EPA. For those programs administered by approved States, contact the State environmental agency for the proper forms.

Form 1 of the EPA consolidated form collects general information applying to all programs and must be filled out by all applicants, regardless of whether your operation or activity requiring a permit is new or existing. In addition, you must fill out a supplemental form for each permit needed under each of the above programs. Item I of Form 1 provides a guide to the additional forms you need for your activities.

You should note that certain activities do not require a permit. These exclusions are summarized below, and described in greater detail in section C of these instructions. If you are not required to have a permit under any of the programs above, then you do not need to complete and return any forms.

If you have any questions about whether you need a permit under any of the above programs, contact the appropriate Regional office of the U.S. Environmental Protection Agency as indicated in Table 1.

Copies of application forms are available from all U.S. Environmental Protection Agency Regional offices.

Who Need Not Apply

The above statues and EPA's regulations exclude certain activities from requirements to apply for and obtain a permit. These exclusions are summarized below. If you think you may not need a permit, refer to section C of these instructions, where the regulatory and statutory exclusions governing the exclusions are described in greater detail.

Table 1—Addresses of EPA Regional Offices and States Within Their Jurisdiction

Region I

Regional Administrator, John F. Kennedy Federal Building, Room 2203, Boston, Mass. 02203, 617–223–7210, FTS 223–7210, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II

Regional Administrator, 26 Federal Plaza, Room 1009, New York, New York 10007, 212–264–2525, FTS 264–2525, New Jersey, New York, Virgin Islands, Puerto Rico

Region III

Regional Administrator, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, 215–897–9814, FTS 597–9814, Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV

Regional Administrator, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404–881–4727, FTS 257–4727, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V

Regional Administrator, 230 South Dearborn Street, Chicago, Illinois 60604, 312–353–2000, FTS 353–2000, Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI

Regional Administrator, First International Building, 1201 Elm Street, Dallas, Texas 75270, 214–767–2600, FTS 767–2600, Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII

Regional Administrator, 324 East 11th Street, Kansas City, Missouri 64106, 816–374–5493, FTS 374–5493, Iowa, Kansas, Missouri, Nebraska

Region VIII

Regional Administrator, 1860 Lincoln Street, Denver, Colorado 80203, 303–837–3895, FTS 327–3895, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX

Regional Administrator, 215 Fremont Street, San Francisco, California 94105, 415–556–2320, FTS 556–2320, Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territories

Region X

Regional Administrator, 1200 6th Avenue, Seattle, Washington 98101, 206–442–1220, FTS 399–1220, Alaska, Idaho, Oregon, Washington

a. *Discharges to water.* You are not required to obtain an NPDES permit for the following types of discharges:

• Sewage discharged from vessels (e.g., ships);

• Water, gas and other materials injected into a well to facilitate production of oil or gas production and disposed of in a well, where authorized by the State in which the well is located;

• Dredged or fill material subject to a permit under section 404 of the Clean Water Act;

• Discharges from properly functioning marine engines;

• Discharges conveyed directly to a publicly or privately owned waste treatment facility (however, discharges originating from publicly or privately owned waste treatment facilities are not excluded);

• Some discharges from separate storm sewers (discharges from storm sewers which receive industrial, municipal, and/or agricultural wastes which are considered by the permitting authority to be significant contributors to pollution are not excluded); or

• Animal feeding operations and aquatic animal production facilities below certain sizes.

b. *Hazardous wastes.* With certain exceptions, you are not required to obtain a RCRA Subtitle C permit if you:

• Are a generator or transporter storing hazardous wastes for less than 90 days;

• Are disposing of less than 100 kg of hazardous wastes per month;

• Are a farmer or retailer; or

• Operate publicly owned treatment works (POTW) and ocean disposal barges or vessels that accept hazardous waste designated as special waste. You will be subject to a *permit by rule* and are *not* required to submit an RCRA permit application.

c. *Underground injection of fluids.* You are not required to obtain a permit under this program if you:

• Inject into existing wells used to enhance recovery of oil and gas or to store hydrocarbons (note, however, that these underground injections are regulated by Federal rules); or

• Inject into or above an underground source of drinking water. However, you must notify EPA of your injection and submit certain required information on forms supplied by the Agency, and your operation will be phased out (see regulations proposed on April 20, 1979, 44 FR 23738.)

d. *Air emissions.* The following types of activities do not require a PSD (Prevention of Significant Deterioration) permit under the Clean Air Act:

• All existing sources;

• Members of the 28 industries listed in Table 2 of the instructions to item I of Form 1 which do not emit or have the potential (prior to control) to emit more than 100 tons per years of any air pollutant;

• Any other sources which do not emit or have the potential (prior to controls) to emit more than 250 tons per year of any air pollutant;

• Any other sources which do not emit or have the potential (prior to controls) to emit more than 250 tons per year of any air pollutant; or

• Proposed nonprofit health or education institutions exempted by a State.

Again, please note that these exclusions are more carefully defined in section C of these instructions. Before determining that you do not need any permits, refer to section C of these instructions because the statute for each of the programs above provides that *you may be heavily penalized if you do not apply for a permit where a permit is required.*

Upon your request, and based upon information supplied by you, EPA will determine whether you are required to obtain a permit for a particular activity. Contact the appropriate EPA Regional office listed in Table 1.

Where to File

The original of the application form should be mailed to the EPA Regional office having jurisdication over the State in which the discharge is located (see Table 1).

If the State in which the facility is located has one or more Federally approved permit programs, you should contact the appropriate State agencies for the correct forms. You may obtain the addresses of the appropriate State agencies from your EPA Regional office (Table 1).

When to File

Because of statutory requirements, the deadlines for filing applications vary according to the type of facility you operate and the type of permit you need. In addition, if you need two or more permits, Federal regulations have been proposed which, if promulgated, may allow you to postpone filing one of them in order to consolidate your applications. [See 44 FR. (, 1979).]

A detailed guide to when you must file and whether you can postpone filing to consolidate applications appears in the instructions to item I of Form 1.

Fees

The U.S. EPA does not require a fee for applying for any permit under the consolidated permit program. However, some States are primarily responsible for administering certain permit programs, and these States may require a fee. You should check with the State administering the program to determine whether any fees are required.

Use of Information.

All information contained in this application will, upon request, be made available to the public for inspection and copying. A separate sheet entitled "Confidential Answers" must be used to set out information which is considered by the applicant to be methods and processes entitled to protection as trade secrets. The information must clearly indicate the item number to which it applies. Confidential treatment can be considered only for the information for which a specific written request of confidentiality has been made on the attached sheet.

However, the Clean Water Act requires that *all* information contained by the NPDES part of the application must be public information, and may not protected as confidential or privileged information, except in certain cases involving national security.

Completion of Forms

Unless otherwise specified in the following instructions, each item in each form submitted must be answered. To indicate that each item has been considered, enter "NA", for not applicable, where a particular item does not fit the circumstances or characteristics of your facility or activity.

If you have previously submitted information to the U.S. EPA or to an approved State agency which answers a question, either repeat the information in the space provided, or attach a copy of the previous submission. If you attach a copy of the previous submission, state that you are doing so in your answer to the question, and identify the attached information by the name of the facility, and the form and item number to which the submission refers.

If you have any questions on any item, contact your EPA Regional office.

Attachments and Supplemental Information

Some items in the form require narrative explanation. If more space is necessary to answer a question, attach a separate sheet entitled "Additional Information". Where a separate sheet is used or when other information is attached, identify it by the name of the facility, and the form and item number to which the explanation refers.

Financial Assistance for Pollution Control

There are a number of direct loans, loan guarantees, and grants available to eligible facilities for pollution control expenditures. These are provided by the Small Business Administration, the Economic Development Administration, and the Farmers Home Administration. Each U.S. EPA Regional office (Table 1) has a financial assistance coordinator who can provide you with additional information.

In addition, EPA's construction grants program under Title II of the Clean Water Act may be an additional source of assistance to publicly owned treatment works. Contact the

appropriate EPA Regional office for details.

Section B. Detailed Instructions

Form 1—General Information

This form must be completed by all applicants.

Item I. Answer each question to determine whether you need to fill out additional special forms for each permit program. Be sure to check the glossary in section D of these instructions for the legal definitions of the bold faced words.

Questions (I) and (J) refer to 28 industries which may be subject to prevention of significant deterioration (PSD) requirements under the Clean Air Act of 1977. These industries are listed in Table 2.

Table 2—The 28 Industrial Categories Subject to PSD Requirements under the Clean Air Act of 1977

Fossil fuel-fired steam generators of more than 250 million BTU per hour heat input
Coal cleaning plants (with thermal dryers)
Kraft pulp mills
Portland cement plants
Primary zinc smelters
Iron and steel mills plants
Primary alumimun ore reduction plants
Primary copper smelters
Municipal incinerators capable of charging more than 250 tons of refuse per day
Hydrofluoric acid plants
Nitric acid plants
Sulfuric acid plants
Petroleum refineries
Lime plants
Phosphate rock processing plants
Coke oven batteries
Sulfur recovery plants
Carbon black plants (furnace process)
Primary lead smelters
Fuel conversion plants
Sintering plants
Secondary metal production plants
Chemical process plants
Fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input
Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
Taconite ore processing plants
Glass fiber processing plants
Charcoal production plants.

If you checked "no" to every question, then you do not need a permit, and you do not need to complete and return any of these forms.

If you checked "yes" to a question, you should note that federal regulations may exclude your activity from requirements to apply for and obtain a permit. Those exclusions are summarized in the General Instructions, and the regulations governing the exclusions are described in detail in section C of the instructions.

Note that the Federal statute for each program provides for serious penalties if you do not apply for a permit where a permit is required. If you have any doubt about whether you need to apply for a permit under any program, contact the appropriate EPA Regional office listed in Table 1.

If you checked "yes" to any box, and you determined that you are required to have a permit, then complete and file additional forms in accordance with Table 3.

Table 3.—*Forms and Filing Dates for Permits*

If you checked yes in item:	Then you must file:	By this deadline:
A	EPA Standard Form A, OMB No. 158-120100.	180 days before your present permit expires.
B	Forms 1 and 2b	180 days before your present permit expires, or 180 days prior to startup.
C	Forms 1 and 2c	180 days before your present permit expires.
D	[Reserved. Check with EPA Regional office for forms].	180 days prior to startup.
E	Forms 1 and 3	Existing facility: 180 days following publication of final regulations. New facility: 180 days before commencing physical construction. (See Glossary for definition of terms.)
F, G, or H	[Reserved]	You are not now required to apply for a permit. Future regulations will set requirements.
I or J	[Reserved. Check with EPA Regional office for forms].	You must obtain a Prevention of Significant Deterioration (PSD) permit before you commence construction. See 43 FR 26380 (June 19, 1978).

Federal regulations require you to file in accordance with the above deadlines. Regulations have recently been proposed, however, which when promulgated may allow postponement of certain filing requirements in order to consolidate applications [see 44 FR (, 1979)]. Until these regulations are promulgated, however, the above deadlines apply and may not be postponed.

See the General Instructions to determine where to file your completed application.

If you don't have all the permit forms you need, you can obtain them by writing or phoning your nearest EPA Regional office.

Item II. Facility Identification Number. A common number for each business establishment will help the U.S. EPA and State environmental agencies to consolidate all environmental activities and requirements affecting the business establishment. In addition, common identification numbers will help EPA and State environmental agencies speed up the processing of all information submitted under Federal and State environmental regulations.

The facility identification number requested here for private, municipal, and State-owned facilities is the Data Universal Numbering System, or otherwise called the DUNS Number, developed by Dunn and Bradstreet, Inc. Most business establishments in the United States have already been assigned DUNS numbers, including all types and sizes of business establishments, branches, factories, distribution centers and purchasing units. State and municipal facilities, including publicly owned treatment works, have also been assigned DUNS numbers.

In some cases, EPA can provide you with your DUNS number. If so, you can find your DUNS number preprinted on the upper left hand corner of the label used to mail these forms to you. If EPA did not provide you with your number on your mailing label and you need to find out the DUNS number for your business, you can obtain this information free of charge by calling the nearest office of Dunn and Bradstreet, Inc.

For Federal facilities, the General Services Administration (GSA) real property number should be used. All Federal facilities have already been assigned a real property number by GSA. If you don't know your number, call the nearest local office of GSA.

Fill in the number as follows:

- *State code*—In the first two positions of the number insert the U.S. Postal Service State Code for the appropriate State or territory in which the facility is located, such as PA, MD, NJ, NY, or MA;
- *DUNS or GSA Identifier and Number*—In the remaining positions after the State code insert a "D" for a private, municipal, or State-owned facility followed by the 9 digit DUNS number; *OR* insert a "G" for a Federally

owned facility followed by the GSA number.

Examples

1. Private facility ——— PAD784621382 in Pennsylvania
2. Federal facility ——— NYG284370155 in New York
3. State facility ——— CAD 362429824 in California

Item III. The facility is the distinct activity or installation, under the responsibility of the applicant, which is subject to one or more of the permit programs detailed in item I of this form. Name the facility as it is officially or legally referred to in order to distinguish it from similar entities in the same geographical area. Do not use colloquial names as a substitute for the official name.

Item IV. Give the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application and can be contacted by reviewing offices if necessary.

Item V. Give the complete mailing address of the facility's main office, where correspondence should be sent. This often will not be the same address used to designate the location of the facility or activity.

Item VI. Give the address or location of the facility identified in Item III of this form.

Item VII. List the four most significant 4-digit standard industrial classification (SIC) codes describing the nature of your facility, in descending order of importance in terms of the principal products you produce. Also, specify each classification in words. These classifications may differ from the SIC codes describing the operation generating the discharge, air emissions, or hazardous wastes.

Standard industrial classification (SIC) code numbers are descriptions which may be found in the 1972 edition of the "Standard Industrial Classification Manual" prepared by the Executive Office of the President, Office of Management and Budget, which is available from the Government Printing Office, Washington, D.C. Do not use previous editions of the manual.

Item VIII–A. Give the name, as it is legally referred to, of the person, firm, public organization, or any other entity which owns or is directly responsible for the facility or activity described in this application. This may or may not be the same name as the facility or activity producing the discharge. Do not use colloquial names as a substitute for the official name.

Item VIII–B. Enter the appropriate letter to indicate the type of ownership. Indicate "public" for a facility solely owned by local government(s) such as a city, town, county, parish, etc.

Items VIII–C, D, E, F, and G. Enter the telephone number and address of the owner identified in item VIII–A.

Item IX. Give the number of each presently effective permit issued to the facility for each program, or if you have previously filed an application but have not yet received a permit, give the number of the application, if any. List any relevant environmental State or local permits or applications under "other".

Item X. Provide a topographic map or maps of the area extending at least to one mile beyond the property boundaries of the source which clearly show the following:

- The outline of the facility;
- The locaton and serial number of each of your existing and proposed intake and discharge structures;
- Each of the hazardous waste treatment, storage, or disposal facilities which you own or operate;
- Each well where you inject fluids underground; and
- All known wells, springs and surface water bodies in the area.

Where an intake or discharge structure, hazardous waste disposal site, or injection well associated with the facility is located more than one mile from the plant, include it on the map, if possible. If not, attach additional sheets describing the location of the structure, disposal site or well, and identify the U.S. Geological Survey map corresponding to your description.

On each map, include the map scale, a meridian arrow showing north, and latitude and longitude at the nearest whole second. On all maps of rivers, show the direction of the current, and in tidal waters, show the directions of the ebb and flow tides. The scale of the map shall have one inch equal to no more than 2000 feet. This corresponds to a 7½ minute series map published by the U.S. Geological Survey, which may be obtained through the U.S. Geological Survey Offices in Washington, D.C., Denver, Colorado, or Anchorage, Alaska. If a 7½ minute series map has not been published for your facility site, then you may use a 15 minute series map from the U.S. Geological Survey.

You may trace your map from a geological survey chart, or other map meeting the above specifications. If you do, your map should bear a note showing the number or title of the map or chart it was traced from. Include the names of nearby towns, water bodies, and other prominent points. An example of an acceptable location map is shown in Figure A of these instructions.

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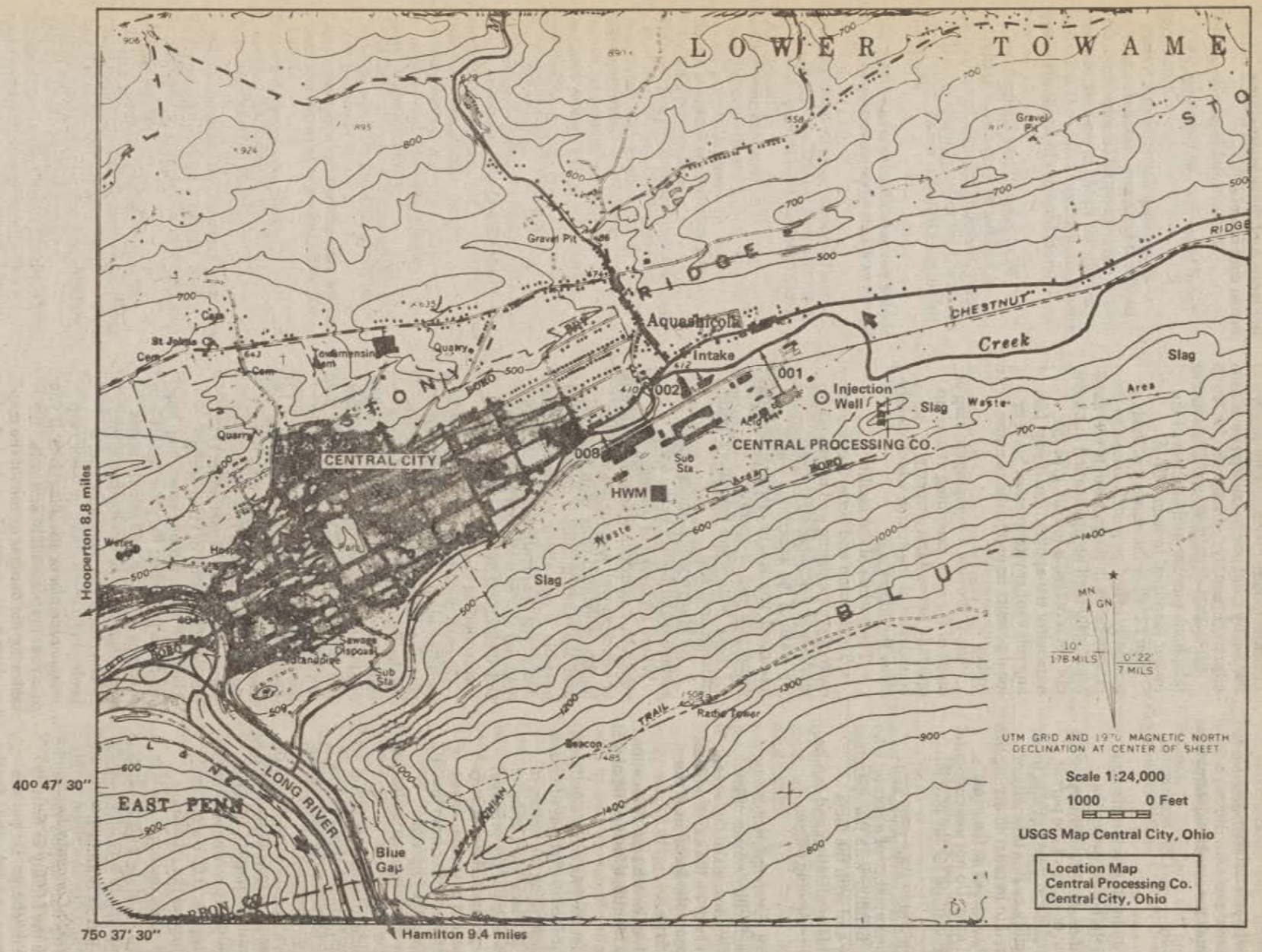


FIGURE A

BILLING CODE 6560-01-C

Note.—This map is provided for purposes of illustration only, and does not represent any actual facility.

Item XI. Self explanatory.

Item XII. Federal statutes provide for severe penalties for submitting false information on this application form.

18 U.S.C. section 1001 provides that "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisonment not more than five years, or both."

Section 309(c)(2) of the Clean Water Act and section 113(c)(2) of the Clean Air Act each provide that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine or no more than $10,000 or by imprisonment for not more than six months, or both."

In addition, section 3008(d)(3) of the Resource Conservation and Recovery Act provides for a fine up to $25,000 or imprisonment up to one year for a first conviction for making a false statement in any application under the Act, and for double these penalties upon subsequent convictions.

Federal Regulations Require This Application to be Signed as Follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

This application is not considered to be complete until it is signed by the appropriate official.

Form 2a—NPDES: Publicly Owned Treatment Works [Reserved. Until a new form and accompanying instructions are developed all applicants should continue to use the existing form, OMB No. 158–R0100, Standard Form A]

Form 2b—NPDES: Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities

This form must be completed by all persons who checked "yes" to item I–B in Form 1.

Note that not all animal feeding operations or fish farms are required to obtain NPDES permits. Exclusions are based on size and occurrence of discharge. See the description of these statutory and regulatory exclusions in section C of the instructions. In particular, for animal feeding operations, the size cutoffs are smaller for facilities where pollutants are discharged into water of the United States by a man-made device, or are discharged because waters of the United States make direct contact with the facility. Also, a facility for laying hens or boilers is not "concentrated" unless it has a liquid manure handling system or continuous overflow watering.

For aquatic animal production facilities, the size cutoffs are based on whether the species are warm water or cold water, on the production weight per year in harvestable pounds, and on the amount of feeding in pounds of food (for cold water species). Also, only facilities which discharge at least 30 days per year, or only during periods of excess runoff (for warm water fish) are "concentrated" and required to apply for an NPDES permit.

Item I–A. See note above and sections C and D to the instructions to be sure that your facility is "concentrated".

Item I–B. Supply the quarter, section, township and range of your facility location.

Item I–C. Check "proposed" if your facility is not now in operation, or not now "concentrated" under the statutory definition.

Item II. Supply all information in item II if you checked (1) in item I–A.

Item II–A. Give the maximum number of each type of animal in open confinement or housed under roof held at your facility for a total of 45 days or more in any 12 month period.

Use the following categories for type of animals:

Slaughter Cattle
Feeder Cattle
Mature Dairy Cattle (milked or dry)
Swine (each weighing over 55 pounds)
Horses
Sheep
Lambs
Turkeys
Laying Hens*
Broilers*
Ducks

*Application for permit is not required unless facility has a liquid manure handling system or continuous overflow watering.

Item II–B. (1) Give only the area used for the animal confinement or feeding facility. Do not include area used for growing or operating feed.

(2) Provide the number of acres of land that are owned or leased by the facility for manure disposal.

Item II–C. Check "yes" if any system for collection of runoff has been constructed. Supply the information under (1), (2), and (3) to the best of your knowledge.

Item III. Supply all information in item III if you checked (2) in item I–A.

Item III–A. Outfalls should be numbered to correspond with the map submitted as required by Form 1. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum flow occurring over a 24-hour period. The maximum monthly flow is the average daily flow in the consecutive 30-day period of highest flow. The average yearly flow is the average flow over a calendar year.

Item III–B. Give the total number of discrete ponds or raceways in your facility. Under "other", give a descriptive name of any structure which is not a pond or a raceway but which results in discharge to waters of the United States.

Item III–C. Use names corresponding to the map attached with Form 1.

Item III–D. The names for fish species should be proper, common, or scientific names as given in special Publication No. 6 of the American Fisheries Society, "A List of Common and Scientific Names of Fishes from the United States and Canada". The values given for total weight produced by your facility per year and the maximum weight present at any one time should be representative of your normal operation.

Item III–E. The value given for maximum monthly pounds of food should be representative of your normal operation.

Item IV. The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine or no more than $10,000 or by imprisonment for not more than six months, or both."

Federal Regulations Require This Application To Be Signed as Follows:

(1) For cooperation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

This application is not considered to be complete until it is signed by the appropriate official.

Form 2c—NPDES: Existing Manufacturing, Commercial, Mining and Silvicultural Operations

Public Availability of Submitted Information. Your application will not be considered complete unless you answer every question on this form. Where an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

Under Federal statutes and regulations, you may not withstand any information requested in this form as confidential (except in certain cases involving national security). Federal statutes also require that all information submitted on this form must be made available to the public.

Definitions. All significant terms used in these instructions and in the form are defined in the glossary found in section D of the instructions.

Item I–A. All effluent guidelines promulgated by EPA appear in the **Federal Register** and are codified yearly in 40 CFR Subchapter N. If you are unsure whether you are affected by a promulgated effluent guideline, check with your EPA Regional office (Table 1). You must check "yes" if an effluent guideline affecting you has been promulgated, even if the guideline limitations are being contested in court. If you believe that a promulgated effluent guideline has remanded for reconsideration by a court and does not apply to your operations, you may check "no", but you must identify the guideline in question in item I–B. In addition, you may check "no" here if an effluent guideline has been promulgated but the limits are not expressed in terms of production.

If you improperly check "no", and do not provide the production information required in item I–B, then this application will not be considered to be complete.

Item I–B. This item must be completed only if you checked "yes" to item I–A. The production information requested here is necessary to apply effluent guidelines promulgated by EPA under section 304 of the Clean Water Act, and *you may not withhold it as confidential.*

List the principal products produced (or if the effluent guideline is expressed in terms such as raw materials consumed or services provided, list the appropriate materials or services) and the average and maximum quantities produced or consumed per operating day at the facility. The production figures provided must reflect a reasonable measure of actual operation (such as the high month during the last twelve months, or the highest year of the last five years), which represents the level of activity expected over the next five years. Report quantities in the units of measurement normally used by your industry.

Where several similar articles are produced, use a broader term which will include all or most of the specific ones, e.g., use "costume jewelry" to designate the production of bracelets, earrings, and pins.

All terms used to describe production, etc, must correspond to the terms used in the applicable effluent guideline.

Item II. Self explanatory. An example of an acceptable line drawing appears in Figure B to these instructions.

Item III–A. Complete to the best of your ability, and base your answers on actual flow measurements whenever available. Where unavailable, you may use your best estimates. Each term is defined in the Glossary.

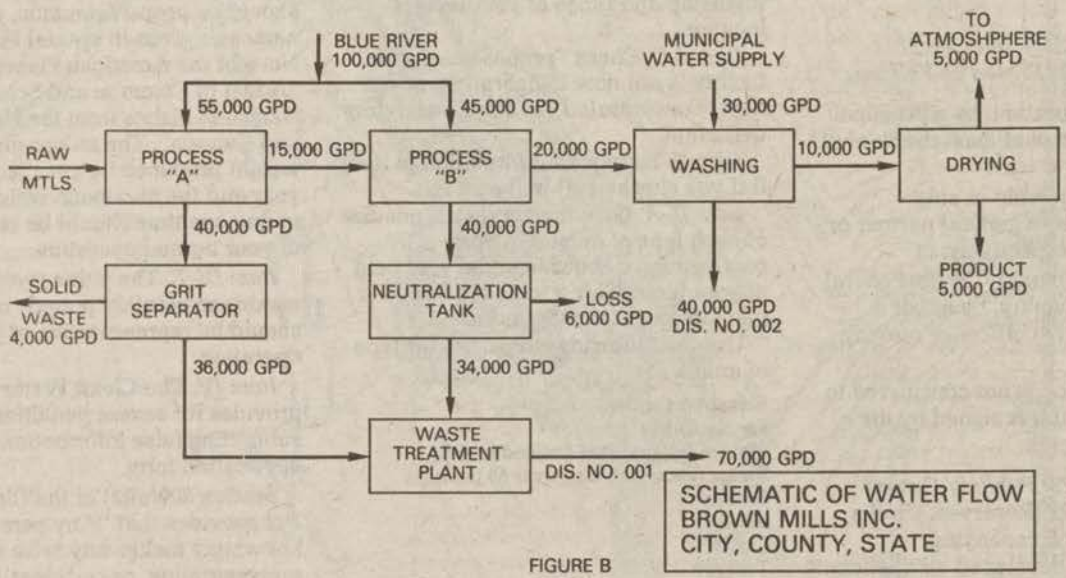


FIGURE B

For storm runoff, base your entry under "maximum flow" upon the 10-year 24-hour rainfall event. You may enter UNK (for unknown) for the average flow under this heading if no data on the average flow is available and you are unable to make an estimate.

In addition, specify any other source of wastewater discharged from any outfall.

Item III–B. You must complete this item to the best of your ability for discharges of toxic or hazardous pollutants to waters of the United States from ancillary industrial activities. Ancillary activities include:

(1) Plant site runoff.
(2) Spillage or leaks.
(3) Sludge or waste disposal.
(4) Materials storage and handling.
(5) Loading and unloading areas.

Describe the source of the discharge (e.g., drainage from truck loading stations, or runoff from Slag Dump #4), your estimate of the average and maximum total flow of the discharge, the frequency of the discharge (e.g. once per week or twice per month), the average and maximum concentration of the pollutant in the discharge (to the best of your knowledge), and the receiving water affected.

Where no measurements or historical data are available, use estimates.

As used in this question, toxic and hazardous pollutants are those pollutants listed under sections 307(a) and 311 of the Clean Water Act. The section 307(a) toxic pollutants include all pollutants listed in item V–B of this Form, plus cyanide, asbestos and 2,3,7,8 Tetrachlorodibenzo-p-dioxin (TCDD). The section 311 hazardous substances, which include many of the toxic pollutants, are listed at 43 FR 10474 (March 13, 1978) and 44 FR 10268 (February 16, 1979).

Under recent amendments to section 311 of the Clean Water Act, you may be eligible to be exempted from the requirements and liabilities of section 311 for the discharges of hazardous substances which you list here. If you desire such exemption, you must also complete item VIII of this Form.

Item III–C. 40 CFR 125.104 requires each person discharging toxic or hazardous pollutants to waters of the United States from ancillary industrial activities to prepare a Best Management Practices program. As required by the regulation, attach a copy of your BMP program to the application. The BMP program must address the discharges you described in item III–B, and meet the specifications below. A BMP program must include the following:

- Statement of Policy
- Spill (Incident) Control Committee
- Spill Reporting and Notification
- Materials Inventory
- Employee Training
- Visual Inspections
- Preventive Maintenance
- Housekeeping
- Materials Compatability
- Security.

In addition, at your option, the BMP program may include the following:

- Monitoring
- Non-destructive Testing
- Labeling
- Covering
- Vehicle Positioning
- Pneumatic and Vacuum Conveying
- Secondary Containment
- Flow Diversion Systems Vapor/Dust Control
- Sealing
- Mitigation/Cleanup Procedures
- Treatment of Spilled Material
- Ultimate Disposal Techniques.

Additional technical guidance on BMP programs is contained in the publication "NPDES Best Management Practices Guidance Document" available for review and copying at EPA Regional offices.

Item III–D. Federal regulations define a "continuance discharge" as a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility. As used in this question, a "noncontinuous discharge" is any discharge which is not a continuous discharge.

Exclude discharges resulting from storm runoff in your answer to this question.

Item III–E. Provide for each outfall a brief description of the processes contributing to the effluent and the pollution control technologies and practices currently in use, including in-plant recycle and reuse of wastewater streams. Indicate sizes, flow rates, and retention times for each treatment unit. If no treatment is provided, enter "none."

Example: Outfall 001. 1.5 mgd wastestream generated from blast furnace operations, furnaces #6 and #7. Treatment consists of primary sedimentation using one 24-foot clarifier (8-hour retention) followed by recycle over evaporative cooling tower. 0.1 mgd blowdown treated with high pressure filters. Clarifier underflow is treated by digestion and vacuum filtration. Final sludge disposal is by incineration.

Item IV–A. If you check "yes" to this question, complete all parts of the chart.

- Clearly identify the permit condition, administrative or enforcement order, enforcement compliance schedule letter, stipulation, court order, or grant or loan condition that requires you to meet an implementation schedule for installing, upgrading, or operating wastewater treatment equipment or practices or any other environmental programs which may affect your discharges.
- Identify each discharge within the scope of each condition, order, stipulation, or letter identified in the first column where you are now or will be required to complete a control program.
- For each discharge identified, describe the project required. Attach additional sheets if necessary.
- For each project described, list the date for final compliance as required by the condition, order, stipulation, or letter, and the date by which you now project that compliance will be achieved.

Item IV–B. Self explanatory. You are not required to submit a description of future water pollution control projects if none are planned.

Items V–A, B, and C. These items require you to submit information on the pollutant characteristics of wastewater discharged from each outfall. All parts of this question must be answered once for each outfall. You are not required to complete these items for discharges you identified in item III–B.

Your answers to parts (A) and (B) of this question must report the actual results from samples collected and analyzed in accordance with the methods specified in 40 CFR Part 136 (these methods are summarized in section E of these instructions). No estimates are acceptable for these two parts. While you may make estimates in your response to part (C) of this item, actual analyses are preferred. If you have analytical data on the levels of pollutants required by part (c), you must report it.

You Must Make an Entry Next to Each Pollutant to Show You Considered it. Where You do not Find a Pollutant to be Present, Insert in Column 3 "L.T." or "<" (Less Than) The Detection Limit of the Analytical Method. (An appropriate entry would be "L.T. 10 μg/1.")

As established by 40 CFR § 122.68(a)(2), the detection limit of the

analytical method is the least stringent of the following:

• Ten micrograms per liter;

• The detection limit (or lowest appropriate concentration) specified in the applicable analytical method promulgated under section 304(h) of the Clean Water Act (these detection limits are included in section E of these instructions); or

• The detection limit as determined by the permittee for the applicable analytical method. For this purpose, the detection limit is the lowest concentration giving a signal-to-noise ratio of five to one or less, in accordance with any generally accepted procedure for determining the level of background noise. This detection limit may be based on either a laboratory standard or an individual sample.

All values you report must be representative of your discharge during the twelve months of operation preceding the date you submit this form. Where actual analyses are required, choose a time for sampling that is representative of your normal operation. All operations and processes which contribute waste water should be operating normally, to the extent feasible. Also, your treatment system should be operating properly with no system upsets. Where you make estimates, estimate pollutant levels which reflect your normal operation, without upsets. The permitting authority, at its discretion, may require you to conduct additional sampling and analysis to further characterize your waste streams.

The three parts of this question must be completed as follows:

a. Part V–A must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. All values reported must be based on actual analyses conducted in accordance with section E of the instructions.

b. Part V–B must be completed only by all applicants in Group I industries (see Table 4), and only for those outfalls containing process wastewater (defined in the Glossary). If the information requested in this chart is available for other outfalls as well, you may use this part in lieu of "other" under Part V–C. All values reported must be based on actual analyses conducted in accordance with 40 CFR Part 136 (see section E of the instructions).

The Effluent Guidelines Division of EPA has collected and analyzed samples from some plants for the pollutants listed in Part V–B of this question in the course of its BAT development program. If your effluents were sampled and analyzed as part of this BAT development project in the last two years you may use this data to answer Part V–B of this Form: *Provided,* That the permitting authority approves, *And provided,* That no process change or change in raw materials or operating practices has occurred since the samples were taken that would make the analyses unrepresentative of your current discharge.

Table 4—The 36 Industrial Categories Classified as Group I for NPDES Application Form Requirements

1. Adhesives and Sealants
2. Aluminum Forming
3. Auto and Other Laundries
4. Battery Manufacturing
5. Coal Mining
6. Coil Coating
7. Copper Forming
8. Electric and Electronic Compounds
9. Electroplating
10. Explosives Manufacturing
11. Foundries
12. Gum and Wood Chemicals
13. Inorganic Chemicals Manufacturing
14. Iron and Steel Manufacturing
15. Leather Tanning and Finishing
16. Mechanical Products Manufacturing
17. Nonferrous Metals Manufacturing
18. Ore Mining
19. Organic Chemicals Manufacturing
20. Paint and Ink Formulation
21. Pesticides
22. Petroleum Refining
23. Pharmaceutical Preparations
24. Photographic Equipment and Supplies
25. Plastic and Synthetic Materials Manufacturing
26. Plastic Processing
27. Porcelain Enamelling
28. Printing and Publishing
29. Pulp and Paperboard Mills
30. Rubber Processing
31. Soap and Detergent Manufacturing
32. Steam Electric Power Plants
33. Textile Mills
34. Timber Products Processing
35. Asbestos Manufacturing
36. Ferroalloys

c. Part V–C must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. Your answers should be based on actual analyses conducted in accordance with 40 CFR Part 136 (section E of the instructions), but your best estimate will be acceptable in the absence of analyses.

For each pollutant in this part, check "present" or "absent" and indicate whether you base this assertion on actual analyses or upon your own best judgment. If you check "present", complete columns (1) through (3) in the manner described below.

In the space marked "other" at the end of this part, identify the following pollutants if present:

• Pollutants listed in Part V–B if you are in a Group I industry (see Table 4) and if the outfall does not contain any process waste water;

• Pollutants listed in Part V–B discharged from the outfall if you are not in a Group I industry (see Table 4);

• Any pesticide not listed elsewhere in item V for which an analytical method has been promulgated in 40 CFR Part 136.

The meaning of each column heading in each of the three parts to this question is as follows:

Column 1. *This column is optional.* It must be completed only if you desire credit for pollutants present in your intake water when permit limitations are calculated. Under 40 CFR 122.70(f), you are not eligible to receive credit unless you meet the following conditions:

• The intake water is drawn from the same body of water to which it is discharged;

• A promulgated effluent guideline affecting your facility provides that limitations shall be applied on a net basis, or the pollutants present in your intake water will not be entirely removed by your treatment systems;

• Each pollutant in your intake water for which you desire credit does not vary physically, chemically, or biologically from the pollutant as it appears in your outfall; and

• The concentrations of pollutants in the intake water does not increase significantly in the discharge even if the total amount of pollutants remains the same.

Under Federal regulations, credit for pollutants present in intake waters must be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water.

Complete this column in the same manner described for column (2) below.

Column 2. Specify the arithmetic average of the results of all analyses that you are reporting. These must be analyses performed during the twelve months preceding the date that this application is submitted.

If you are completing Part V–C of this item and are not basing your answers to that part on actual analyses, estimate the average value for the pollutant over a 24-hour period.

Column 3. Specify the highest of all the analyses you are reporting. If you are reporting only one analysis, enter N.A. for not applicable. If you are completing Part V–C of this item and are

not basing your answers to that part on actual analyses, estimate the maximum value expected for the pollutant over a 24-hour period.

Column 4 (Parts A and B only). Specify the number of analyses performed on your effluent during the last twelve months that form the basis of the values you reported in columns (2) and (3).

Column 5 (Parts A and B only). Specify the type of samples that were analyzed to form the basis of the values you reported in columns (1)–(3). Your entry must conform to the sample type specified in section E of the instructions, although where a choice is given, select the method that will most appropriately describe your waste stream.

Note that 40 CFR 122.68(a) establishes a limitation for each pollutant in your discharge based upon the average concentration value or detection limit you report in column (2) of this item, unless the pollutant is othewise limited in an NPDES permit. Where you do not identify a pollutant as being present, this limitation is based on the detection limit of the method (as specified in section E of the instructions or as described earlier in the instructions to this item).

Item VI–A. For this item, consider only those variations which may result in concentrations of pollutants in effluents which may exceed five times the values you reported in item V. These variations may be part of your routine operations, or part of your regular cleaning cycles.

Do Not Consider Variations Which Are the Result of Upsets or Bypasses.

Increased levels of pollutants which are discharged as a result of upsets or bypasses are regulated separately under 40 CFR 122.68(k), (l), and (m), and will not be considered here.

Item VI–B. Examples of the types of variations to be described here include:

- Changes in raw or intermediate materials;
- Changes in process equipment or materials;
- Changes in product lines;
- Chemical reactions between pollutants in waste streams, if significant;
- Variation in removal efficiencies of pollution control equipment, if significant; and
- Variation of concentrations of pollutants in intake water.

You may indicate other types of variations was well, except those which are the result of upsets or bypasses. After receipt of your application, the permitting authority may require you to further investigate or document variations you report here.

Item VI–C. Base your answer upon your knowledge of your processes, raw materials, past and projected product ranges, etc., or upon any testing conducted upon your effluents which indicates the range of variability that can be expected in your effluent over the next five years.

Example: Outfall 001 discharges water used to clean six 500-gallon tanks. These tanks are used for formulation of dispersions of synthetic resins in water (adhesives). Usage of toxic pollutants which can be expected in the next 5 years are:

1. Copper acetate inhibitor, ½ lb. per tank
2. Dibutyl phthalate, 50 lbs. per tank
3. Toluene, 5 lbs. per tank
4. Antimony oxide, 1 lb. per tank.

Based on normal cleaning, an average of 1% and a maximum of 3% of the contents of each tank is collected and discharged once every two weeks in the 150 gallons of water used for cleaning. Treatment (pH adjustment, flocculation, filtration) removes 85% of metals and 50% of organic compounds.

Items VII–A and B. Self explanatory.

Item VIII. This item asks for information concerning pollutants which are not specifically asked about elsewhere in this Form. If you or any other person has conducted examinations (including analyses) of your effluents within the last five years which resulted in data on the presence or levels of such pollutants in your waste stream, briefly describe those programs here. Use additional sheets of necessary.

Include the approximate dates the investigations were conducted, and estimate the volume of your material concerning pollutants not reported elsewhere in this application. Include brief descriptions of the following types of investigations:

- Identification or quantification of GC/MS or GC peaks not reported elsewhere in this application:
- Identification or quantification of other pollutants by other analytical methods; and
- Identification or quantification of other pollutants through formulation or by mass balances of raw or intermediate materials.

Item IX. This item is optional. You must, however, complete it if you wish to exclude certain discharges of hazardous substances from the liabilities and requirements of section 311 of the Clean Water Act (CWA). Section 311 of the CWA establishes reporting requirements, civil penalties and clean-up cost liabilities for spills of oil and hazardous substances.

The list of hazardous substances, which overlaps with the section 307(a) toxics list to some extent, presently includes 299 pollutants. They may be found at 43 FR 10474 (March 13, 1978) and 44 FR 10268 (February 16, 1979).

A number of these hazardous substances are compounds which dissociate in water. To obtain exclusions for these compounds, each ion resulting from the dissociation must be reported in this section of this Form.

Section 311(a)(2) of the Clean Water Act excludes the following from section 311 requirements: "(A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems."

For an in-depth discussion of these exclusions, refer to regulations proposed at 44 FR 10271 (February 16, 1979).

If you list and describe a hazardous substance in this question of the NPDES application form in order to avoid the penalties and requirements of section 311 of the CWA, then the discharge becomes subject to the NPDES requirements of the CWA. As a result, the permitting authority may set technology-based limitations in a permit under sections 301 and 304 of the CWA for the discharge of the pollutant; otherwise the application-based limitations specified in 40 CFR 122.68(a)(2) will apply.

In Order to be Excluded From § 311 Liability for Hazardous Substance Discharges, You Must Identify the Hazardous Substances in This Question and Complete all Parts of This Question.

Item. IX–A. For each outfall or nonpoint source where you desire a discharge of a hazardous substance to be excluded from section 311 of the CWA, identify the point at which the discharge enters or will enter navigable waters (this may include nonpoint sources as well as outfalls). For each point of discharge, identify the hazardous substances which are or will be discharged. If you previously identified the substance elsewhere in

this Form, you must also identify it here to obtain an exclusion.

In the third column, identify the origin or source of the discharge of each hazardous substance you identified. If the discharge is or may be the result of normal process operations, indicate the process that is or may be generating the discharge. If the discharge is or may be the result of other causes, such as washdown of leaks and spills from storage areas, runoff and leachate from materials storage areas, or discharges that could be caused by tank ruptures or chemical spills, then specify the cause in detail.

In the fourth column, indicate the frequency that the pollutant is or is projected to be discharged, e.g., continuously, once a day, or potentially 3 times per year.

For each substance, indicate the amount of the substance that is or which may be discharged, based on the concentration of the substance and the highest expected flow. Base all your concentrations and mass figures on actual analyses if possible, but if the discharge is only a potential one or if it cannot be measured, use your best estimate. In the last column, identify the analytical method or the basis of the estimate used to develop the concentration and amount figures reported in the proceeding two columns.

Item IX–B. For each outfall or nonpoint source you listed in item IX–A, describe your present or planned treatment system or management practice to treat or eliminate the discharge. If any part of the treatment system is or will be installed specifically to control discharges identified in this item, this should be specified in the description. (Examples of a management practice are holding ponds to contain materials discharged from ruptured tanks, followed by treatment or disposal, and diversion of wastes by ditching around storage areas to facilitate collection, followed by treatment and disposal.)

Item X. Self explanatory.

Item XI. The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine or no more than $10,000 or by imprisonment for not more than six months, or both."

FEDERAL REGULATIONS REQUIRE THIS APPLICATION TO BE SIGNED AS FOLLOWS:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public facility, by either a principal executive officer or ranking elected official.

This application is not considered to be complete until it is signed by the appropriate official.

FORM 3—RCRA: Hazardous Waste Management Facility Permit

Public availability of submitted information. Your answer to every question asked on this form is necessary to write a hazardous waste management (HWM) facility permit.

In general, all information contained in the HWM Facility Permit Application is considered to be open to the public. However, an applicant may claim confidential status for any information submitted to EPA pursuant to section 3005 of RCRA (proposed as 40 CFR Parts 122 and 124). Such claim must be made at the time of submission, by stamping the words "Confidential Business Information" on each page containing such material. If no claim is asserted, the information will be disclosed only in accordance with procedures established in Title 18 of the U.S. Code.

Definitions. Terms used in these instructions and in Form 3 are defined in the glossary found in section D of the instructions.

Applicants for special RCRA permits. Applicants for Health Care Facility Special Permits must complete *only* items I, II, III, IV, V, and VI on Form 1, and *only* items I, VII–A and VII–B on Form 3. Applicants for Experimental Facility Special Permits must complete all items in Form 1 and Form 3.

For additional definitions and procedures to use in applying for RCRA permits, refer to regulations pursuant to section 3005 of RCRA and proposed as 40 CFR Parts 122 and 124.

Item I. Enter the Facility Identification Number provided by EPA which can be found in the upper left hand corner of the label used to mail these forms to you. The Facility I.D. number for private, municipal, and State-owned facilities is the Data Universal Numbering System, or otherwise called the DUNS Number, developed by Dunn and Bradstreet, Inc.

In the event that EPA did not provide an I.D. number (DUNS Number) on your mailing label, one can be obtained by contacting your nearest office of Dunn and Bradstreet, Inc. or your EPA Regional office.

For Federal facilities, the General Services Administration (GSA) real property number is used in lieu of the DUNS Number. All Federal facilities have been assigned a real property number by GSA. In the event that EPA did not provide an I.D. number on your mailing label, one can be obtained by contacting the nearest local office of GSA.

Item II. Check the box that best describes the relationship of the applicant to the facility. Relevant definitions:

- Ownership—legal right to possession.
- Purchase—to acquire (property) legally by means other than inheritance.
- Rent—use of another's property in return for regular payments.
- Lease—a contract granting use or occupation of land or holdings during a specified period in exchange for rent.

In addition, modifications to RCRA permits are addressed in proposed § 122.9(e), which appears elsewhere in today's **Federal Register**. It should be noted that certain minor modifications listed under § 122.9(g) may not require public notice and opportunity for hearings.

Item III. Check the box that best describes the current status of the facility.

Item IV. Check the box that best describes the type of permit that is desired. The two types of permits that require applications are the following:

A. Regular Permits
B. Special Permits
- Experimental Facility
- Health Care Facility.

Note.—Permits by rule will be granted to facilities listed in § 122.26(a) of regulations pursuant to section 3005 of RCRA and proposed elsewhere in today's **Federal Register**. *No application* is required for permits by rule.

Item V. In the space provided, indicate:

A. The present zoing of the site.

B. What new zoning classification should be if a change is required.

Item VI. Only existing HWM facilities (see Glossary) are required to provide copies of all available drawings and specifications of the HWM facility, its processes, and equipment. Also indicate the *date* the HWM facility came into operation or under physical construction.

Item VII. Only owners/operators of health care facilities (HCF) that treat and/or store hazardous waste are

eligible for a special permit under section 3005 of RCRA. The following information must be provided:

A. A certification statement signed by appropriate State licensing authority indicating that the facility has an effective license as specified under § 122.25(a) of regulations pursuant to section 3005 of RCRA proposed elsewhere in today's Federal Register.

B. A list of hazardous wastes covered by the State license.

Item VIII. An authorized representative of the applicant should sign and date the permit application, thereby certifying to the validity of all responses and data submitted to EPA. Under section 3008(d) of RCRA, "Any person who knowingly makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this subtitle shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed 1 year, or both. If the conviction is for a violation committed after a first conviction of such a person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than 2 years, or by both."

Item IX. Each of the following instructions apply specifically to each part of item IX.

A. *Waste number.* Wastes must be numbered sequentially beginning with number (1).

B. *Hazardous waste name.* Provide the proper Department of Transportation (DOT) shipping name of each hazardous waste that is stored, treated, or disposed of at the facility. The DOT proper shipping names are listed in the Code of Federal Regulations, 49 CFR 172.101 (proposed at 43 FR 22631 (May 25, 1978)). If the proper shipping name is not included in the DOT list and the term "Not Otherwise Specified" (NOS) is indicated, the EPA hazardous waste name as listed in 40 CFR 250.14 must be used after the DOT proper shipping name. Both references may be obtained by contacting the appropriate EPA Regional office responsible for issuing the permit. If the waste cannot be located in either of these lists, and it is determined to be a hazardous waste under the procedures established by the section 3001 regulations, then use the common name or chemical name of the waste, and so indicate by placing as asterisk (*) before the name of the waste.

If all wastes cannot be specified on a single sheet, additional copies may be requested from the solid waste representative in the EPA Regional office which is responsible for issuing hazardous waste management facility permits in your State.

C. *Confidentiality claim.* If you wish to claim confidential status for this information, mark an X in this box (see item titled *"Public Availability of Submitted Information"*).

D. *Waste definition code (common code).* Enter the waste definition code associated with each "hazardous waste name" listed in item IX–B. A unique code number has been assigned to each EPA hazardous waste listed in 40 CFR 250.14 and to each DOT hazardous waste material listed in 49 CFR 127.101 (proposed at 43 FR 22631 (May 25, 1978)).

Note.—These codes are *not* included in this notice, but they will be made part of EPA's final instruction manual.

E. *Hazard class.* List the hazard class by its Department of Transportation (DOT) category name, as identified or listed in the Hazardous Waste Materials Table in the *Code of Federal Regulations,* 49 CFR 172.101 (proposed at 43 FR 22631 (May 25, 1978)). For the DOT hazard class "OTHER REGULATED MATERIAL" (ORM), use the EPA characteristics identified in § 250.14 of regulations pursuant to section 3001 of RCRA and proposed as 40 CFR Part 250 in 43 FR 58957, December 18, 1978. The hazard class is simply a systematic means of identifying substances with similar characteristics.

Enter the assigned code listed below corresponding to the appropriate classification.

The DOT hazard classes and assigned codes are:

EA—Explosives A
EB—Explosives B
EC—Explosives C
FL—Flammable liquid
FS—Flammable solid
OX—Oxidizer
CL—Corrosive liquid
NG—Nonflammable gas
PA—Poison A
PB—Poison B
RM—Radioactive material
OP—Organic peroxide
CH—Chlorine
OL—Oxygen pressurized liquid.

The EPA classification system and data input codes includes:

I—Ignitable waste
C—Corrosive waste
N—Infectious waste
R—Reactive waste
A—Radioactive waste
T—Toxic waste
O—Organic toxicant
M—Mutagenic
B—Bioaccumulative

F. *Action code.* Indicate the type of action(s) or function(s) employed at the facility in relation to each hazardous waste. The appropriate code(s) are listed below:

S—Store hazardous waste
T—Treat hazardous waste
D—Dispose of hazardous waste

G. *Amount.* For each hazardous waste that the facility stores, treats, and/or disposes, indicate the quantity handled on an annual basis. Use the units of measure shown in (H) below.

H. *Unit of measure.* For each amount indicated, the units are to be specified using the abbreviations of English or metric units shown below:

English Units	*Metric Units*
P—Pounds	K—Kilograms
T—Tons	M—Tonnes
G—Gallons	L—Liters
Y—Cubic Yard	C—Cubic Meters

I. *Handling code.* Enter the handling code(s) listed below that most closely represent the technique(s) used at the facility to store, treat, or dispose of hazardous waste. For each hazardous waste, and for each applicable action code (see F above) enter the most appropriate handling code listed below. This code is intended to supplement (J) below, which is the handling technique.

(1) Storage

S01 Tank truck/rail
S02 Missile silo
S03 Underground storage
S04 Concrete drum
S06 Other (specify)

(2) Treatment

(a) Thermal Treatment Process

T07 Modular incinerator
T08 Rotary kiln incinerator
T09 Fluidized bed incinerator
T10 Cement kiln incinerator
T11 Multiple hearth incinerator
T12 Electrical utility boiler
T13 Liquid injection incinerator
T14 Sludge incinerator
T15 Chemical waste incinerator
T16 Process heater
T17 Lime kiln
T18 Wood waste incinerator
T06 Other (specify)

(b) Chemical Treatment Process

T19 Cyanide destruction
T20 Chemical oxidation
T21 Chemical precipitation
T22 Chemical reduction
T23 Neutralization
T24 Pyrolysis
T25 Degradation
T26 Chlorination
T27 Chemical fixation
T28 Detoxification
T29 Absorption mound
T30 Absorption field
T31 Ion exchange
T06 Other (specify)

(c) Physical Treatment Process

1. Liquid-solids separation

T32 Centrifugation
T33 Clarification
T34 Filtration
T35 Flocculation
T36 Sedimentation
T37 Decanting
T38 Coagulation
T39 Flotation
T40 Foaming
T41 Thickening
T42 Open pit (seepage pit)*
T43 Concrete basin*
T44 Surface impoundment*
T45 Holding tank*
T06 Other (specify)

2. Removal of Specific Components

T46 Blending
T47 Catalysis
T48 Distillation
T49 Evaporation
T50 Solvent
T51 Stripping
T52 Absorption—molecular sieve (activated carbon)
T53 Crystallization
T54 Sand filter
T55 Dialysis
T56 Electrodialysis
T57 Leaching
T58 Reverse osmosis
T06 Other (specify)

(d) Biological Treatment

T59 Activated sludge
T60 Aerobic lagoons
T61 Anaerobic lagoons
T62 Spray irrigation
T63 Thickening filters
T64 Waste stabilization pond
T65 Septic tank*
T66 Aerobic tank*
T06 Other (specify)

(e) Other

T67 Electron irradiation
T68 Air stripping
T06 Other (specify)

(3) Disposal

D69 Chemical waste landfill
D70 Soil incorporation
D71 Ocean disposal
D72 Deep well injection
D73 Dilution/dispersion
D74 Open burning/burial
D75 Encapsulation
D76 Open pit
D77 Encasement (cement)
D78 Missile silo*
D79 Waste digestor
D80 Cave
D06 Other (specify).

*These techniques are considered *storage* if they are covered and there is no discharge to air or groundwater.

J. *Hazardous waste handling technique.* Briefly describe the technique used at the facility in storing, treating, or disposing of hazardous wastes. For each different material and action, identify the specific technique used. Example responses include the following:

- Sink-float separation; decant and evaporate.
- Shredding, rotary kiln incineration, dispose residuals in hazardous waste landfill.
- Evaporation, centrifuge and pyrolysis.
- Containerize in steel drums and cover with earth.
- Containerize and store in missile silo.
- Neutralize hazardous solution and reprocess.
- Use ion exchange resin; recover concentrates.

Form 4—UIC: Underground Injection of Fluids [Reserved]

Form 5—PSD: Proposed Facilities (PSD New Sources, NPDES New Sources and New Dischargers, and New Injection Wells) [Reserved]

Section C. Activities Which Do Not Require Permits

I. *National Pollutant Discharge Elimination System (NPDES) Permits under the Clean Water Act.* You are not required to obtain an NPDES permit if your discharge is in one of the following categories, as provided by the Clean Water Act (CWA) and by the NPDES regulations (40 CFR Parts 122–125, promulgated on June 7, 1979). However, under section 510 of the CWA, a discharge exempted from NPDES requirements may still be regulated by a State authority and so you should check with your State environmental agency to determine whether you need a State permit.

A. *Discharges from Vessels.* Discharges of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, and any other discharge incidental to the normal operation of a vessel do not require NPDES permits. However, discharges of rubbish, trash, garbage, or other such materials, discharged overboard do require permits, and so do other discharges when the vessel is operating in a capacity other than as a mean of transportation, such as when the vessel is being used as an energy of mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development.

B. *Dredged or Fill Material.* Discharges of dredged or fill material into waters of the United States do not need NPDES permits if the dredging or filling is regulated under section 404 of the CWA.

C. *Discharges into Publicly Owned Treatment Works (POTW).* The introduction of sewage, industrial wastes, or other pollutants into a POTW does not need an NPDES permit. You must comply with all applicable pretreatment standards promulgated under section 307(b) of the CWA, which may be included in the permit issued to the POTW. If you have a plan or an agreement to switch to a POTW in the future, this does not relieve you of the obligation to apply for and receive an NPDES permit until you have stopped discharging pollutants into waters of the United States. Also, you do need an NPDES permit for introduction of pollutants to privately owned treatment works which discharge into waters of the United States, and for other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

D. *Discharges from Agricultural and Silvicultural Activities.* Any indroduction of pollutants to waters of the United States from agricultural and silvicultural activities, except as described below, does not require an NPDES permit. This includes runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but does not include the exceptions described below.

(1) Discharges from Concentrated Animal Feeding Operations.

A lot or facility is an animal feeding operation if it meets the following conditions:

(i) Animals (other than acquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for disposal of wastes.

An animal feeding operation is required to have an NPDES permit if it is a "concentrated animal feeding operation", which means that it has been designated as a "concentrated animal feeding operation" under 40 CFR 122.76(c), or that it meets one of the criteria in (i) or (ii) below:

(i) More than the numbers of animal specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,
(B) 700 mature dairy cattle (whether milked or dry cows),
(C) 2,500 swine each weighing over 55 pounds,
(D) 500 horses,
(E) 10,000 sheep or lambs,
(F) 55,000 turkeys,
(G) 100,000 laying hens or broilers (if the facility has continuous overflow watering)
(H) 30,000 laying hens or broilers (if the facility has a liquid manure handling system),
(I) 5,000 ducks, or
(J) 1,000 animal units (see definition below); or

(ii) One of the following conditions are met: Pollutants are discharged into water of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; and more than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,
(B) 200 mature dairy cattle (whether milked or dry cows),
(C) 750 swine each weighing over 55 pounds,
(D) 150 horses,
(E) 3,000 sheep or lambs,
(F) 16,500 turkeys,
(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
(I) 1,500 ducks, or
(J) 300 animal units (see definition below).

No animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm.

The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: 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.

(2) Discharges from Concentrated Aquatic Animal Production Facilities.

An aquatic animal production facility is required to have an NPDES permit if it is a "concentrated aquatic animal production facility", as defined below or as designated under 40 CFR 122.77(c).

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

(a) Facilities which produce less than 20,000 harvest weight pounds of aquatic animals per year; and

(b) Facilities which feed less than 5,000 pounds of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(a) Closed ponds which discharge only during periods of excess runoff; or

(b) Facilities which produce less than 100,000 harvest weight pounds of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the *Ameiuridae, Centrarchidae,* and *Cyprinidae* families of fish, e.g., respectively catfish, sunfish and minnows.

(3) Discharges to Aquaculture Projects.

Discharges to aquaculture projects, as defined below, require NPDES permits.

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this part, and be harvested within a defined geographic area.

(4) Discharges from Silvicultural Point Sources.

Discharges from non-point source silvicultural activities do not require NPDES permits. These activities include nursery operations, site preparations, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff from precipitation. However, some of these activities, such as stream crossings for roads, may involve point source discharges of dredged or fill material which may require a section 404 permit. See 33 CFR 209.120.

Discharges from silvicultural point sources do require NPDES permits. A silvicultural point source is any discernable, confined, and discrete conveyance which discharges pollutants into waters of the United States and which is related to rock crushing and gravel washing facilities, or to log sorting and log storage facilities, as defined below, which are operated in connection with silvicultural activities.

"Rock crushing and gravel washing facilities" are facilities which process crushed and borken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines for these facilities).

"Log sorting and log storage facilities" are facilities whose discharges result from the holding of unprocessed wood, e.g., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines for these facilities.)

II. *Hazardous Waste Permits Under the Resource Conservation and Recovery Act (RCRA).* You are not required to obtain an RCRA Subtitle C permit, if you are in one of the following categories:

(1) Generators and transporters who store hazardous waste for less than 90 days.

(2) Persons who produce and dispose of less than 100 kilograms (approximaely 220 pounds) per month of hazardous waste. Persons are exempted provided they comply with the provisions of 40 CFR 250.29—Standards Applicable to Generators of Hazardous Waste (proposed at 43 FR 58979 on December 18, 1978). These provisions require that any hazardous waste generated, no matter how small the quantity, be disposed of either in (i) a solid waste facility which has been permitted or otherwise certified by the State as meeting the criteria of section 4004 of RCRA; or (ii) a treatment, storage, or disposal facility permitted by the Director under 40 CFR Parts 124 and 125, or permitted by an authorized State program under 40 CFR Part 123.

(3) Retailers who dispose of any quantity of hazardous waste other than waste oil. This exclusion only applies if the hazardous waste is disposed of in accordance with the provisions of 40 CFR 250.29 (described in (2) above). This exclusion does not extend to gasoline stations and companies that accumulate more than 100 kilograms of waste oil per month.

(4) Farmers who dispose of any quantity of hazardous waste: *Provided,* That they comply with the provisions of 40 CFR 240.29. These provisions require farmers to (i) dispose of all waste pesticide in accordance with instructions on the pesticide label or, in the absence of label instructions, dispose of the pesticide in accordance with the procedures and criteria specified in 40 CFR Parts 165 and 257; and (ii) triple rinse each pesticide container after it has been emptied and use the rinsate as make-up water in the tank mix or, at an application rate consistent with pesticide labeling, on crop lands: *Provided, however,* That the pesticide must be registered for the particular crops and such application must be consistent with criteria established in 40 CFR Part 257; and (iii) dispose of all other hazardous wastes in accordance with the provisions described in (2) above.

(5) Publicly owned treatment works (POTW), ocean disposal barges or vessels that receive manifested hazardous wastes and facilities that treat, store or dispose of hazardous wastes designated as special waste as defined in 40 CFR 240.46 shall be considered as having a permit if the requirements proposed in 40 CFR 122.26 are met. Therefore, the owners and operators of these facilities do not need to apply for an RCRA permit.

III. *Underground Injection Control Permits Under the Safe Drinking Water Act.* [Reserved]

IV. *Prevention of Significant Deterioration Permits Under the Clean Air Act.* [Reserved]

Section D. Glossary

Note.—This Glossary includes terms used in the instructions and in Forms 1, 2b, 2c, and 3. Additional terms will be included in the future when other forms are developed to reflect the requirements of other parts of the consolidated permit program.

"Aliquot" means a sample of specified volume used to make up a total composite sample.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: 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.

"Application" means the EPA standard national forms for applying for a permit, including any subsequent additions, revisions or modifications to the form; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

"Application, Part A" means that part of the consolidated permit application form which an RCRA permit applicant must complete to qualify for interim status under section 3005(e) of RCRA and for consideration for a permit. Part A consists of Form 1 (General Information) and Form 3 (Hazardous Waste Information Summary).

"Application, Part B", means that part of the application which an RCRA permit applicant must complete to be considered for a permit. EPA is not develolping a specific form for Part B of the permit application.

"Approved program" means a State program which meets the requirements of 40 CFR Part 123 and which has been submitted to and approved by EPA under the appropriate Act. An "approved State" is one administering an "approved program."

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding useable quantities of groundwater.

"Area of review" means the area surrounding an injection well which is described according to the criteria set forth in 40 CFR 146.06.

"Area permit" means a UIC permit applicable to a geographical area, rather than to a specified well, under 40 CFR 122.37.

"Attainment area" means for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) not to exceed any national air quality standard for such pollutant. Standards have been set for sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, ozone, lead and hydrocarbons.

"Authorization" means authorization, or approval by EPA of a State program which has met the applicable requirements of section 3006(b) of RCRA and 40 CFR Part 123, Subparts A & B.

"Batch" process or operation means a process or operation which occurs as a series of single, discrete operations.

"Best Management Practices" ("BMP") means methods, measures, or practices to prevent or reduce the contribution of pollutants to waters of the United States. For purposes of these forms and instructions, BMPs include treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs do not include actual plant process design, and related operating decisions. BMPs may be imposed in addition to or in the absence of effluent limitations, standards or prohibitions.

"Biological monitoring test" means any test which includes the use of aquatic algal, invertebrate, or vertebrate species to measure acute or chronic toxicity, and any biological and/or chemical measure of bioaccumulation.

"Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

"Composite sample" is a sample made up of a number of individual aliquots collected over a period of time.

"Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in (b)(2)(i), (ii) or (iii) below:

(i) More than the numbers of animal specified in any of the following categories are confined:

(A) 1,000 slaughter or feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 55 pounds,

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering)

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 55 pounds,

(D) 150 horses,

(E) 3,000 sheep or lambs,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: Pollutants are discharged into water of the United States through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, That no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event; or

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with 40 CFR 122.76(c).

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year but does not include:

(i) Facilities which produce less than 20,000 harvest weight pounds of aquatic animal per year; and

(ii) Facilities which feed less than 5,000 pounds of food during the calendar month of maximum feeding.

(2) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff; or

(ii) Facilities which produce less than 100,000 harvest weight pounds of aquatic animals per year.

"Contact cooling water" means water used to reduce temperature which comes into contact with a raw material, intermediate product, waste product, or finished product.

"Contiguous zone" means the entire zone established by the United States under article 24 of the convention of the Territorial Sea and the Contiguous Zone.

"Continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes or other similar activities throughout the operating hours of the facility.

"CWA" means the Clean Water Act (formerly referred to the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

"Detection limit" means the lowest concentration of a substance that has a signal-to-noise ratio of five-to-one or less.

"Direct discharge" means the discharge of pollutants as defined below.

"Director" means the Regional Administrator, or the State Director as defined in this section.

[Comment: Where there is an approved State program, the term "Director" normally refers to the State Director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program; e.g., where EPA issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval. See 40 CFR 123.71 and 123.91. In such cases, the term "Director" means the Regional Administrator and not the State Director.]

"Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

"Discharge of a pollutant" and "discharge of pollutants" each means:

(i) Any addition of any pollutant or combination of pollutants to navigable waters other than the territorial sea, from any point source, or

(ii) Any addition of any pollutant or combination of pollutants to the waters of the territorial sea, the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharges into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or hazardous waste or any constitutent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Disposal facility" means any Hazardous Waste Management facility which disposes of hazardous waste.

"Effective date of a UIC program" means the date that a State UIC program is approved or the date that a UIC program is established by the Administrator.

"Effluent limitation" means any restriction imposed by a State or the Administrator on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters or the waters of the continguous zone or the ocean.

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Existing HWM facility" means a Hazardous Waste Management facility which was in operation or under physical construction, on or before the date or promulgation of the regulations under § 3001 of RCRA, 40 CFR Part 250, Subpart A (proposed at 43 FR 58954 (December 18, 1978)).

"Existing source" means any source which is not a new source or a new discharger.

"Existing injection wells" means all injection wells other than new injection wells as defined in this Glossary.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering and design studies regarding the pollution treatment for the source.

"Facility or activity" means any activity or facility (including land or appurtenances thereto) this is subject to regulation under the RCRA, UIC, or NPDES programs.

"Farmer" means a person whose principal business is operating a farm,

which is a piece of land on which crops or animals are raised.

"Fluid" means material or substance which flows or moves whether semisolid, liquid, sludge or any other form or state.

"General information form" or "Form 1" means the consolidated permit application form containing general information which is common to several EPA permit programs.

"Generator" means any person or Federal agency whose act or process produces hazardous waste identified or listed under 40 CFR Part 250, §§ 250.13 and .14 (proposed at 43 FR 58955 (December 18, 1978)). Certain producers are specifically exempted from the § 3002 regulations. These are discussed in section C of the instructions and in 40 CFR Part 250, § 250.29 (proposed at 43 FR 58979 (December 18, 1978)).

"Grab composite sample" means a combination of grab samples collected over a specified sampling period.

"Grab sample" means an individual sample collected at a randomly—selected time over a period of time not exceeding 15 minutes.

"Group I industry" means any of the industries listed in Table 4 of the instructions as being in Group I.

"Group II industry" means any industry listed in Table 4 of the instructions as being in Group II.

"Gross limitation" means a limitation which is not adjusted to reflect credit for pollutants in a discharger's intake water.

"Ground water" means water in the saturated zone beneath the land surface.

"Hazardous substance" means any of the substances designated as hazardous in 40 CFR Part 116.

"Harzardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed; or as further defined and identified by 40 CFR Part 250, Subpart A, §§250.13 and .14 (proposed at 43 FR 58955 (December 18, 1978)).

"Hazardous waste management facility" ("HWM facility") means any facility, land and appurtenances thereto used for the treatment, storage, and/or disposal of hazardous wastes except that solid waste disposal facilities which receive hazardous wastes only from persons subject to 40 CFR 250.29 shall not be considered HWM facilities.

[*Comment:* Persons subject to 40 CFR 250.229 are those who produce and dispose of no more than 100 kilograms (approximately 220 pounds) of hazardous wastes in any one month, retailers who dispose of hazardous wastes other than waste oil, and farmers who dispose of pesticides which are hazardous and who follow certain specified operating procedures.]

"In operation" applies to Hazardous Waste Mangement facilities actively treating, storing or disposing of hazardous waste.

"Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works which introduction does not constitute a "discharge of pollutants."

"Injection" means the subsurface emplacement of fluids through a well.

"Injection well" means a well into which well injection occurs, including 21 types of injection wells covered by the UIC program which are divided into the classes in 40 CFR 123.34.

"Interim authorization" refers to authorization or approval by EPA of a State program which has met the applicable requirements of section 3006(c) of RCRA and 40 CFR Part 123, Subparts A and B.

"Listed State" means a State listed by the Administrator under section 1422 of the SDWA as needing a State UIC program.

"Man-made" means constructed by man and used for the purpose of transporting wastes.

"Mgd" means millions of gallons per day.

"Municipality" means a city, village, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisidicition over disposal of sewage, industrial wastes, or other waste, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA.

"Lease" means a contract granting use or occupation of land or holdings during a specified period in return for rent.

"National Pollutant Discharge Elimination System" ("NPDES") means the national program for issuing, conditioning, modifying, revoking, denying, monitoring, and enforcing permits for the discharge of pollutants from point sources into the waters of the United States under sections 402, 318, and 405 of the CWA. The term includes any State of inter-state program which has been approved by the Administrator under section 208 of the CWA.

"Navigable waters" means "waters of the United States, including the territorial seas." This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate water, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and wetlands, the use, degradation or destruction of which affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (1)–(5) of this section: *provided*, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[*Comment:* For purposes of clarity the term "waters of the United States" is primarily used throughout the form and instructions rather than "navigable waters."]

"Net" limitations are effluent limitations which are adjusted to reflect credit for pollutants in a discharger's intake water.

"New discharger" means any building, structure, facility or installation: (1) Which on October 18, 1972, had never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of "new source".

"New HWM facility" means a Hazardous Waste Management facility which does not meet the definition of an existing facility as defined in this Glossary.

"New injection wells" means those wells which begin injection after an applicable UIC program becomes effective in the State.

"New source" means any building, structure facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(i) After promulgation of standards of performance under section 306 of the Clean Water Act which are applicable to such source, or

(ii) After proposal of standards of performance under section 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment:* See 40 CFR 122.61 for the criteria and standards to be used in determining whether a source has begun construction within the measuring of this definition, for the types of construction activities which result in new sources or new discharges, and for the effect of a new source or new discharger determination.]

"Non-contact cooling water" means water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

"Nonpoint source" means any source of discharge to waters of the United States which is not a point source.

"Off-site" means any site that does not meet the definition of "on-site" as defined in this Glossary.

"On-site" means on the same or geographically contiguous property. Two or more pieces of property which are geographically contiguous and are divided by public or private right(s)-of-way are considered a single site.

"Outfall" means a point source as defined in this Glossary.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the RCRA, UIC or NPDES programs. Where a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

"Ownership" means the legal right to possession.

"Permit" means a permit or equivalent control document issued by EPA or an approved State. In 40 CFR Part 124, references to "permit" may include permit modification, revocation or denial.

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment of any other activity involving the actual preparation of the facility to treat, store or dispose of hazardous waste.

"Point source" means any discernible, confined conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rocks, and, cellar dirt, and industrial, municipal, and agriculture waste discharged into water. It does not mean:

(1) Sewage from vessels; or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposal of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

[*Comment:* The legislative history of the CWA indicates that "radioactive materials" as included within the definition of "pollutant" in section 502 of the CWA means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials defined by the Atomic Energy Act (AEA) of 1954, as amended, and regulated under the AEA. Examples of radioactive materials not covered by the AEA and, therefore, included within the term "pollutant" are radium and accelerator producted isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.* 426 U.S. 1 (1976).]

"Prevention of significant deterioration" (PSD) means the national permitting program under section 165 of the Clean Air Act (CAA) (42 U.S.C. 1857 et seq.), to prevent emissions of any pollutant regulated under the CAA from significantly deteriorating air quality in areas where the concentration of pollutant is lower than the applicable National Ambient Air Quality Standard.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

"Publicly owned treatment works" or "POTW" means a treatment works as defined in section 212 of the Clean Water Act (CWA), which is owned by a State or municipality (as defined by section 502(4) of the CWA). This definition includes any sewers that convey waste water to such a treatment works, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment.

"Purchase" means to acquire (property) legally by means other than inheritance.

"Retailer" means a person engaged wholly in the business of selling directly to a consumer.

"Rent" means use of another's property in return for regular payment.

"RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609).

"Sanitary Wastes" means human body wastes and wastes from toilets and other receptacles intended to receive or retain domestic wastes, including showers.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequences of actions, operations, or milestone events leading to compliance with the appropriate Act and regulations.

"SDWA" means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900).

"SDWA pollutant" means any pollutant for which a Primary Drinking Water Standard has been issued under 40 CFR Part 141.

"Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarly used for collecting and conveying storm water runoff and either:

(i) Located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(ii) Not located in an urbanized area as designed by the Bureau of Census according to the criteria in 39 FR 15202 May 1, 1974); or

The term "separate storm sewer" does not include any conveyance which discharges process water or storm water runoff contaminated by contact with wastes, raw materials, or pollutant contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provisions of 40 CFR 122.45.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated

under section 312 of the CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition "graywater" means galley, bath, and shower water.

"Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a publicly owned treatment works. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

"Site" means the land or water area upon which an activity is physically conducted or located, including but not limited to adjacent land used for utility systems, as repair, storage, shipping or processing areas or other areas incident to the control process or activity.

"Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"Source" means any building, structure, facility or installation from which there is or may be a discharge or emission of pollutants.

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), and the Northern Mariana Islands (except in the case of CWA).

"Stationary Source" means any building, structure, facility, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties, which is owned or operated by the same person (or by persons under common control) and which emits or may emit any air pollutant.

"Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

"Storage facility" means any Hazardous Waste Management facility which stores hazardous waste, except for generators who store their own wastes on-site for less than 90 days for subsequent transport off-site, in accordance with regulations in 40 CFR Part 250, § 250.20(c)92) (proposed at 43 FR 58976 (December 18, 1978)).

"Storm water runoff" means water discharged as a result of rain, snow, or other precipitation.

"Toxic pollutant" means any pollutant listed under section 307(a) of the CWA.

"Transporter" means a person or Federal Agency engaged in the transportation of hazardous waste by air, rail, highway or water.

"Treatment" when used in connection with treatment of hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"Treatment facility" means any hazardous waste management facility which treats hazardous waste.

"Underground injection" means the subsurface emplacement of fluids by well injection, as defined by this Glossary.

"Underground source of drinking water" or "USDW" means any underground aquifer not identified by the Director as a non-USDW in accordance with 40 CFR 146.4.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

"Waters of the United States" means navigable waters, as defined in this Glossary.

"Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension, whenever a principal function of the dug well is the subsurface emplacement of fluids.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

Section E. NPDES Sampling and Analytical Methods

I. *Sampling.* EPA has not yet promulgated many sampling methodologies under section 304(h) of the CWA. This section gives some general guidance on good sampling techniques; contact your EPA or State permitting authority for more detailed guidance or for answers to specific questions. Where the approved methods referenced in Table 5 include requirements on how samples should be collected and preserved, follow the requirements whenever you use those methods.

A. *General considerations.* 1. Choose a time for sampling that is representative of your normal operation. All operations and processes which contribute wastewater should be in normal operation, to the extent feasible. Also, your treatment system should be operating properly with no system upsets.

2. The sample should be collected where the wastewater is well mixed: near the center of the flow channel, where turbulence is at a maximum.

3. The location for sampling should be adequate for the collection of a representative sample; the site specified in the permit if there is one.

4. Sampling for ponds and lagoons should be by composite samples unless past studies have proved that the retention time is long enough that the discharge is homogeneous.

5. The volume of the collected sample should be sufficient to perform all required analyses, including quality control and split sampling. Consult the laboratory receiving the sample and the methods in Table 5 for specific volume requirements.

6. Sample containers must be made of appropriate materials and cleaned thoroughly to prevent any contamination or change in volume of the sample. See the methods in Table 5 for specific requirements.

7. All samples must be preserved by refrigeration at 4°C from the time of collection (and during collection for composite samples) until the time of analysis.

B. *Types of Samples.* 1. Grab—An individual sample collected at a randomly-selected time over a period of time not exceeding 15 minutes. The sample volume must be at least 100 ml, and adequate for all required analyses. Grab samples are analyzed separately, and the average is computed with flow-weighted values.

2. Grab composite—A series of grab samples collected over the sampling period, and composited prior to analysis. For volatile organic toxics, follow the compositing method in the appropriate methods in Table 5.

3. 24-hour composite—A composite of samples collected at periodic intervals, over a 24-hour period. The composite must be flow proportional, with either the time interval between aliquots or the volume of aliquots proportional to the stream flow at the time of sampling, or to the total stream flow since the last aliquot. The number of aliquots shall be no less than eight, and in all cases as specified by the methods in Table 5. The minimum volume of each aliquot is 100 ml. The sample collection may be done either by manually collecting the periodic aliquots or by uising an automatic sampler. More than eight aliquots will be required when the wastewater loading is highly variable.

For periods of flow less than 24 hours, collect flow proportional aliquots over the entire period of flow, with no less than eight aliquots.

4. 72-hour composite—May be collected in the following three ways:

a. A continuous composite, wth the same requirements as specified in (3) above for 24-hour composites, except that there shall be no less than 24 aliquots collected in the 72-hour period; or

b. Three consecutive 24-hour composites collected as specified in (3) above, combined prior to analysis in either equal volumes or flow proportional volumes; or

c. For non-volatile organic toxic pollutants, three consecutive 24-hour composites collected as specified in (3) above, each extracted with methylene chloride according to the methods in Table 5 at the conclusion of each 24-hour compositing period, with the three extracts combined for further sample preparation and analysis.

II. *Analytical Methods.* The following table represents the analytical methods promulgated under 40 CFR Part 136 as of May 1979. Revisions and additions to the methods will be proposed starting in Summer 1979 (see footnote 14), and when these changes are final, they will be incorporated into the table.

The following table has been included in these instructions for the convenience of permit applications, but it does not consititute the official listing of approved methods. Refer to 40 CFR Part 136 for the complete listing, which includes a brief description of each method, as well as some further details of analytical procedures in footnotes.

Alternate test procedures to those listed here and in 40 CFR Part 136 may be approved for use on an individual basis or for nationwide use. Refer to 40 CFR Part 136 for prodedures and requirements concerning application for approval of alternate test procedures.

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TABLE 5

PROMULGATED ANALYTICAL METHODS

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]*		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Biochemical Oxygen Demand (BOD_5) (mg/l)	24 hour composite	-	-	543	-	-	-	-	-	17[6]	-
Chemical Oxygen Demand (COD) (mg/l)	24 hour composite	20	5 mg/l	550	10 mg/l	472	-	124	-	610[7] 17[6]	5 mg/l -
pH (Standard Units)	Grab	239	-	460	-	178	-	129	-	606[7]	-
Total Suspended Solids (TSS) (mg/l)	24 hour composite	268	10 mg/l	94	-	-	-	-	-	-	-
Temperature (°C)	Grab	286	-	125	-	-	-	31[8]	-	-	-
Total Kjeldahl Nitrogen (as N) (TKN) (mg/l)	24 hour composite	165 175 182	0.03 mg/l 1 mg/l 0.05 mg/l	437	0.02 mg/l	-	-	122	-	612[7]	-
Total Organic Carbon (TOC) (mg/l)	24 hour composite	236	1 mg/l	532	1 mg/l	467	2 mg/l	4[9]	1 mg/l	-	-
Cyanide, Total (mg/l)	Grab	40 40	1 mg/l 0.02 mg/l	361 361	1 mg/l 0.02 mg/l	503 503	1 mg/l -	85	0.01 mg/l	22[6]	-
Phenols, Total (4AAP) (mg/l)	Grab	241	0.005 mg/l	582	0.007 mg/l	545	0.005 mg/l	-	-	-	-

*All footnotes are at the end of the table.

Parameter (units)	Sample type	Analytical Methods—References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Volatile toxic pollutants[13,14]	72 hour grab composite	-	-	-	-	-	-	-	-	-	-
Acid, base-neutral, pesticides organic toxic pollutants (13,14)	72 hour composite or 3 24-hour composites	-	-	-	-	-	-	-	-	-	-
Antimony, Total (mg/l)	24 hour composite	94	0.5 mg/l	-	-	-	-	-	-	-	-
Arsenic, Total (mg/l)	24 hour composite	9 95	0.01 mg/l 0.002 mg/l	283 159	0.03 mg/l 0.0025 mg/l	-	-	31[10] 37[10]	0.005mg/l 0.001mg/l	-	-
Beryllium, Total (mg/l)	24 hour composite	99	0.025 mg/l	152 177	0.03 mg/l 0.005 mg/l	-	-	53	0.01 mg/l	-	-
Cadmium, Total (mg/l)	24 hour composite	101	0.025 mg/l	148 182	0.025 mg/l 0.01 mg/l	345	0.05 mg/l	62	0.025 mg/l	619[7] 37[6]	0.1 mg/l -
Chromium, Total (mg/l)	24 hour composite	105	0.1 mg/l	148 192	0.1 mg/l -	345 286	0.2 mg/l -	78 77	-	619[7]	1 mg/l
Copper, Total (mg/l)	24 hour composite	108	0.1 mg/l	148 196	0.1 mg/l 0.03 mg/l	345 293	0.1 mg/l 0.05 mg/l	83	0.05 mg/l	619[7] 37[6]	0.1 mg/l -
Lead, Total (mg/l)	24 hour composite	112	0.5 mg/l	148 215	0.5 mg/l -	345	0.34 mg/l	105	0.001 mg/l	619[7]	1 mg/l
Mercury, Total (mg/l)	24 hour composite	118	0.0002 mg/l	156	-	338	0.0002 mg/l	51[10]	0.0001 mg/l	-	-
Nickel, Total (mg/l)	24 hour composite	141	0.15 mg/l	148	0.1 mg/l	345	0.08 mg/l	115	0.001 mg/l	-	-

Parameter (units)	Sample type	Analytical Methods--References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Selenium, Total (mg/l)	24 hour composite	145	0.002 mg/l	159	0.0025 mg/l	-	-	-	-	-	-
Silver, Total (mg/l)	24 hour composite	146	0.06 mg/l	148 243	0.06 mg/l -	-	-	142	0.001 mg/l	619[7] 37[6]	0.1 mg/l -
Thallium, Total (mg/l)	24 hour composite	149	0.05 mg/l	-	-	-	-	-	-	-	-
Zinc, Total (mg/l)	24 hour composite	155	0.02 mg/l	148 265	0.015 mg/l -	345	0.02 mg/l	159	0.01 mg/l	619[7] 37[6]	0.1 mg/l -
Ammonia (as N) (mg/l)	24 hour composite	158 159 165 168	0.05 mg/l 1 mg/l 0.03 mg/l 0.01 mg/l	410 412 416	- 0.02 mg/l 0.01 mg/l	237	-	116	-	614[7]	0.05 mg/l
Asbestos[14] (fibers/l)	24 hour composite	-	-	-	-	-	-	-	-	-	-
Bromide (mg/l)	24 hour composite	14	2 mg/l	-	-	323	50 mg/l	58	1 mg/l	-	-
Chlorine, Total Residual (mg/l)	Grab	35 55	- -	318 322 332 329	1 mg/l - - -	278	-	-	-	-	-
Color (platinum cobalt units)	24 hour composite	39 36	- 1 unit	66 64	- 1 unit	-	-	82	-	-	-

Parameter (units)	Sample type	Analytical Methods--References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Fecal Coliform (number per 100 ml)	Grab	-	-	922 937	2.2 per 100 ml -	-	-	45[5]	1 per 100 mg	-	-
Fluoride mg/l	24 hour composite	65 59 61	0.1 mg/l 0.1 mg/l 0.05 mg/l	389 391 393 614	- 0.2 mg/l 0.05 mg/l 0.1 mg/l	307 305	0.1 mg/l -	93	0.1 mg/l	-	-
Nitrate (as N) (mg/l)	24 hour composite	201 197 207	0.01 mg/l 0.1 mg/l 0.05 mg/l	427 620 423	0.1 mg/l 0.5 mg/l 0.002 mg/12	358	1 mg/l	119	-	614[7] 28[6]	0.1 mg/l 1 mg/l
Nitrite (as N) (mg/l)	24 hour composite	215	0.01 mg/l	434	0.001 mg/l	-	-	121	-	-	-
Oil and Grease (mg/l)	Grab or Grab composite	229	5 mg/l	515	-	-	-	-	-	-	-
Phosphorus, Total (as P) (mg/l)	24 hour composite	249 256	0.01 mg/l 0.001 mg/l	476 481 624	- 0.01 mg/l 0.001 mg/l	384	0.01 mg/l	130	-	621[7]	0.01 mg/l
Radioactivity Alpha-Total (pCi/l)	24 hour composite	-	-	648	-	591	500 pCi/l	75, 78 (10,11)	-	-	-
Alpha-Counting Error (pCi/l)	24 hour composite	-	-	648	-	594	-	79[10]	-	-	-
Beta-Total (pCi/l)	24 hour composite	-	-	648	-	601	500 pCi/l	75, 78 (10,11)	-	-	-
Beta-Counting Error (pCi/l)	24 hour composite	-	-	648	-	606	-	79[10]	-	-	-
(a) Radium-Total (pCi/l)	24 hour composite	-	-	661	-	661	1 pCi/l	-	-	-	-

Parameter (units)	Sample type	Analytical Methods--References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
(b) ^{226}Ra (pCi/l)	24 hour composite	-	-	667	-	-	-	81[10]		-	-
Sulfate (as SO_4)(mg/l)	24 hour composite	277 279	- 10 mg/l	493 496	10 mg/l 1 mg/l	424 425	20 mg/l 10 mg/l	-	-	624[7] 623[7]	- -
Sulfide (as S) (mg/l)	24 hour composite	284	1 mg/l	505 503	1 mg/l 0.1 mg/l	-	-	154	0.5 mg/l	-	-
Sulfite (as SO_3) (mg/l)	24 hour composite	285	2 mg/l	508	2 mg/l	435	3 mg/l	-	-	-	-
Surfactants (mg/l)	24 hour composite	157	0.025 mg/l	600	0.025 mg/l	494	-	11[9]	0.025 mg/l	-	-
Aluminum, Total (mg/l)	24 hour composite	92	1 mg/l	152 171	0.9 mg/l 0.006 mg/l	-	-	19[10]	0.01mg/l	-	-
Barium, Total (mg/l)	24 hour composite	97	0.4 mg/l	152	0.3 mg/l	-	-	52	0.1 mg/l	-	-
Boron, Total (mg/l)	24 hour composite	13	0.1 mg/l	287	0.1 mg/l	-	-	-	-	-	-
Cobalt, Total (mg/l)	24 hour composite	107	0.2 mg/l	148	0.15 mg/l	345	0.25 mg/l	80	-	37[6]	-
Iron, Total (mg/l)	24 hour composite	110	0.12 mg/l	148 208	0.1 mg/l 0.02 mg/l	345 326	0.1 mg/l 0.05 mg/l	102	0.1 mg/l	619[7]	0.1 mg/l
Magnesium, Total (mg/l)	24 hour composite	114	0.007 mg/l	148	0.007 mg/l	345	0.05 mg/l	109	0.05 mg/l	619[7]	0.01 mg/l
Molybdenum, Total (mg/l)	24 hour composite	139	0.3 mg/l	-	-	350	0.001 mg/l	-	-	-	-

Parameter (units)	Sample type	Analytical Methods--References									
		1974 EPA Methods[1]		14th ed., Standard Methods[2]		Pt. 31, 1975 ASTM[3]		USGS Methods[4]		Other Approved Methods	
		Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit	Page Number	Detection Limit
Manganese, Total (mg/l)	24 hour composite	116	0.05 mg/l	148 225 227	0.05 mg/l 0.3 mg/l 0.05 mg/l	345	0.04 mg/l	111	0.05 mg/l	619[7]	0.1 mg/l
Tin, Total (mg/l)	24 hour composite	150	4 mg/l	-	-	-	-	65[10]	0.05mg/l	-	-
Titanium, Total (mg/l)	24 hour composite	151	2 mg/l	-	-	-	-	-	-	-	-
Pesticides[12] (ug/l)	24 or 72 hour composite	-	-	555	(13)	529	(13)	30[9]	(13)	-	-
2,3,7,8 Tetrachloro dibenzo-p-dioxin (TCDD)[14] (ug/l)	72 hour composite or 3 24-hour composites	-	-	-	-	-	-	-	-	-	-

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Footnotes

(1) *Methods for Chemical Analysis of Water and Waste*, 1974.

(2) *Standard Methods for the Examination of Water and Waste Water*, 14th Edition, 1976.

(3) *Annual Book of Standards, Part 31, Water*, 1975, by American Society for Testing and Materials.

(4) Unless otherwise noted, Brown, E., Skougstad, M. W., and Fishman, M. J. "Methods for Collection and Analysis of Water Samples for Dissolved Minerals and Gases," U.S. Geological Survey Techniques of Water-Resources Inventory, book 5, Ch. A 1 (1970).

(5) Slack, K. V., and others, "Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples", U.S. Geological Survey Techniques of Water-Resources Inv., book 5, Ch A 4 (1973).

(6) American National Standards on Photographic Processing Effluents, April 2, 1975.

(7) "Official Methods of Analysis of the Association of Official Analytical Chemists" methods manual, 12th ed. (1975).

(8) Stevens, H. H., Ficke, J. F., and Smoot, G. F. "Water Temperature-Influential Factors, Field Measurement and Data Presentation", U.S. Geological Survey Techniques of Water Resources Inventory, book 1 (1975).

(9) Goerlitz, D., Brown, E. "Methods for Analysis of Organic Substances in Water", U.S. Geological Survey Techniques of Water-Resources Inv., book 5, Ch. A 3 (1972).

(10) Fishman, M. J., and Brown, Eugene "Selected Methods of the U.S. Geological Survey for Analysis of Wastewaters" (1976) open-file report 76–177.

(11) The method found on p. 75 measures the dissolved portion and the method on p. 78 measures suspended. Therefore, the two results must be added together to get "total".

(12) Methods available from the Environmental Monitoring and Support Laboratory, the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

(13) See referenced methods for detection limits of individual pesticides and organic toxic pollutants. In most cases, the 10 μg/l limit in 40 CFR § 122.68(a)(2)(ii)(A) will apply.

(14) Methods for the analysis of the 114 organic toxic pollutants and asbestos are being developed by the Agency's Office of Research and Development. The methods for analysis of organic pollutants will include:

(1) Gas chromatography/mass spectrometry (GC/MS) screening protocol for qualitative analysis for all 114 organic toxics. (An earlier version of this protocol has been used in the screening phase of developing national effluent guidelines.)

(2) Gas chromatography (GC) and liquid chromatography (LC) methods for twelve classes of the organic pollutants, which are being developed by EMSL, Cincinnati and by Effluent Guidelines Division contractors.

(3) Quantitative GC/MS, consisting of quality assurance procedures for use with the GC/MS screening protocol which will make it a quantitative method.

By early Summer 1979 the Agency expects to propose for comment the GC/MS screening protocol and the GC and LC methods developed by EMSL, Cincinnati. Shortly thereafter, the Agency will propose methods for sampling and preservation, and for determining the detection limit of an analytical method, and will update the references used in the existing methods. The other methods described above, as well as a new method for total metals using Inductively Coupled Argon Plasma (ICAP), and a method for asbestos analysis, will be proposed for comment about six months later.

The analysis for organic toxic pollutants required by item V–B of Form 2c will be satisfied by using either the proposed GC/MS screening protocol followed by quantification of those organic toxic pollutants identified as present using the proposed GC or LC methods; or by using the proposed quantitative GC/MS method.

[FR Doc. 79–18205 Filed 6–13–79; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 122, 123, 125]

[FRL-1233-7]

National Pollutant Discharge Elimination System; Revision of Existing Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Environmental Protection Agency is today proposing regulations under the Clean Water Act (CWA) for the National Pollutant Discharge Elimination System (NPDES). In addition, a revised NPDES application form is being published today in draft form in a public notice elsewhere in this **Federal Register.** The proposed regulations and the revised application form are intended to improve control of toxic pollutant discharges under the NPDES program.

To achieve proper control of toxic pollutant discharges, it is necessary to insure first, that dischargers are aware of the nature of their discharges and second, that they take all necessary actions to control their discharges. Today's proposed regulations implement this approach as follows:

1. Proposed § 122.64(d) establishes minimum requirements for applications to EPA for NPDES permits. The requirements are also made applicable to approved NPDES States by proposed § 123.73(a). These include requirements for certain applicants to analyze their process wastewater discharges for all toxic pollutants listed under section 307(a) of the CWA. In particular, certain applicants will be required for the first time to determine the levels or organic toxic pollutants in certain of their waste streams by analyzing 72-hour composite samples.

2. Proposed § 122.68(a)(2) provides that any pollutant which is reported or required to be reported in the application may not be discharged in excess of five times the average level reported in the application (or five times the detection limit of the analytical method if the pollutant is not detected) whenever the pollutant is not otherwise limited in the permit. This requirement is a modified version of the August 21, 1978 (43 FR 37078) proposal that pollutant discharges be limited to reported levels. (This regulation was originally proposed as § 122.14(a), but has been renumbered as § 122.68(a) in order to conform with the new numbering system of EPA's consolidated permit program regulations, which appear elsewhere in today's **Federal Register.**) Proposed § 122.68(a)(3) provides a mechanism for demonstrating that a multiple other than five is appropriate for the purposes of proposed § 122.68(a)(2).

3. The proposed regulations also contain a provision designed to implement the recent amendments to section 311(a)(2) of the CWA (Pub. L. 95-576, November 2, 1978). These provide that discharges of hazardous substances listed under section 311 are exempted from the penalties and requirements of section 311 if they are properly covered by the NPDES program. EPA proposed regulations on February 16, 1979 (44 FR 10271) which set forth in detail the requirements for exemptions. Proposed § 122.64(d)(19) provides permit applicants the opportunity to submit the necessary information for obtaining exemptions from the liabilities and requirements of section 311.

4. The proposed regulations also contain several other provisions which help implement the application, permit-writing, monitoring and reporting aspects of toxic pollutant control.

DATES: Comments must be received on or before September 12, 1979.

Meetings open to the public to discuss and receive comments on these proposed regulations and on the consolidated application form are scheduled for four cities. These same meetings will also serve as a forum to receive comments on two other aspects of the consolidated permits program, namely, the consolidated permit regulations which are proposed elsewhere in today's **Federal Register,** and reproposed Part 146 of the underground injection control (UIC) regulations published on April 20, 1979 at 44 FR 23738. The proposed conforming NPDES regulations will be discussed on the second and third day of each meeting.

These meetings will be held at the following places and dates:

July 16, 17,* 18, 1979, Dallas Texas.
July 23, 24,* 25, 1979, Washington, D.C.
July 26,* 27, 28, 1979, Chicago, Illinois.
July 30, 31,* August 1, 1979, Seattle, Washington.

ADDRESSES: Interested persons may participate in this proposed rulemaking by submitting comments to Edward A. Kramer (A-1), Permits Division (EN-336), Office of Water Enforcement, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Please indicate clearly which regulation is referred to in all comments.

A copy of all public comments will be available for inspection and copying at EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460. EPA's Public Information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

Four public hearings have been scheduled at the following locations:

July 16, 17,* 18, 1979, Northpark Inn, 9300 North Central Expressway, Dallas, Texas.
July 23, 24,* 25, 1979, HEW Auditorium, 330 Independence Avenue, SW., Washington, D.C.
July 26,* 27, 28, 1979, Water Tower Hyatt, 800 North Michigan Avenue, Chicago, Illinois.
July 30, 31,* August 1, 1979, EPA—Region X, 1200 6th Avenue, Seattle, Washington.

At each public meeting, registration will be held from 8:30-9:00 a.m. and comments will be received from 9:00 a.m. until concluded, but no later than 5:00 p.m. In addition, an evening session will be held on the dates noted with an asterisk above, from 7:30 p.m. until concluded. Anyone wishing to make an oral statement should notify the following in writing, specifying the city and the date on which they wish to speak:

Ms. Judith Shaffer, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

A pamphlet describing the proposed regulations and their relationship to the new NPDES application form has been prepared, titled "A Guide to the Consolidated Permit Application and Conforming NPDES Regulations" (C-7). This pamphlet, and six other pamphlets describing the final NPDES regulations, the proposed consolidated permit regulations and other proposed regulations pertaining to the consolidated permit programs are available from the Environmental Protection Agency, Public Information Center (PM-215), 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer (A-1), Office of Water Enforcement (EN-336), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

I. *Introduction*

II. *Background*

A. 1977 Amendments to the CWA: Revision of Permit Strategy.

B. 1978 Amendments to the CWA: Exemption of Hazardous Substance Discharges Covered by NPDES from the Requirements of Section 311 of the CWA.

III. *Permitting Strategy*

* Day and evening sessions.

* Day and evening sessions.

A. General Scheme: Interrelation of Guildelines, Standards and Case-by-Case Designation of Limits.
B. Outline of Permit-Writing Procedure.
1. General.
2. Proposed § 125.3(c)(4): Use of Toxicity Units as Technology-Based Limits.
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I. Introduction

On June 7, 1979 EPA promulgated regulations in 40 CFR Parts 122–125 for the National Pollutant Discharge Elimination System (NPDES) permit program established by the Clean Water Act (CWA). These regulations substantially revised the former NPDES regulations.

The revised NPDES regulations did not implement all of the provisions contained in the original proposal of August 21, 1978 (43 FR 37078). In particular, they did not implement proposed § 122.14(a) (renumbered here as § 122.68(a)), which proposed that the discharge of any pollutant which was required to be reported in an NPDES application would be limited to the reported level. Many commentors on that provision remarked that they could not properly analyze the impact of the proposal until the revised application form became available. EPA agreed with these comments and withdrew the proposed requirement from final promulgation. Section 122.14(a) was reserved for reproposal pending public notice of the application form, which is accomplished today.

Elsewhere in today's **Federal Register**, EPA is proposing a set of regulations to consolidate all of its permit programs. In addition to NPDES, the proposed consolidated permit program regulations cover the Hazardous Waste program under the Resources Conservation and Recovery Act and the Underground Injection Control program under the Safe Drinking Water Act. While the substance of the NPDES regulations is largely unaffected by their incorporation into the proposed consolidated permit program regulations, the various provisions of the NPDES regulations are reordered and renumbered. Today's proposal of conforming NPDES regulations follows the organization and numbering system of the proposed consolidated permit program regulations.

Today's proposal addresses the issues which were deferred by the reservation of § 122.14(a) in the final NPDES regulations (now § 122.68(a)) as follows:

1. Proposed § 122.64(d) establishes minimum application reporting requirements for existing industrial dischargers seeking NPDES permits from EPA, and proposed § 123.73(a) makes these requirements applicable to States which operate NPDES programs ("approved NPDES States"). These requirements are reflected in EPA's revised application form, a draft of which is published in a public notice elsewhere in today's **Federal Register**. Among other requirements, § 122.64(d) requires the identification and reporting of toxic pollutants [listed under section 307(a) of the CWA] in certain waste streams discharged by applicants in certain industries. As described below in the permitting strategy discussion (section III), this information will assist permit writers in setting permit limits.

Provision is also made in this section for applicants to report discharges of hazardous substances listed under section 311 of the CWA; however, such reporting is not mandatory. However, as discussed below, many applicants may want to report these pollutants to take advantage of recent amendments to section 311(a)(2) of the CWA which now allows exclusion of these discharges from all requirements of section 311 whenever they are adequately covered by the NPDES program.

2. Proposed § 122.68(a)(2) provides that the discharge of any pollutant which is reported or required to be reported in the application is limited to five times the reported average level (or five times the pollutant's detection limit if the pollutant is not detected or reported) whenever the pollutant is not otherwise limited in the permit. This proposal is a modification of the August 21, 1978 proposal (in § 122.14(a)) that pollutants be limited to reported levels. This modification, as discussed below in detail, is designed to account for normal waste stream variability which assuring that, in general, pollutant discharges will not rise above reported levels. Proposed § 122.68(a)(3) further provides that a applicant may apply for limits based upon a multiplier greater than five if the applicant demonstrates, through prescribed procedures, that the variability of a particular waste stream warrants a different factor.

Another significant provision included in today's proposal, proposed § 125.3(g), is designed to implement the Agency's strategy for controlling discharges of toxic pollutants. This provision is discussed in section III–D of this preamble.

Today's proposal does not complete the regulation of toxic pollutants under NPDES. New application forms and associated requirements for publicly owned treatment works (POTW's) and for new industrial sources are currently being developed and will be proposed in the near future. Many of the issues addressed in the development of the proposed application requirements for existing industrial dischargers will be relevant to these other dischargers. The Agency will strive for consistency of requirements wherever feasible.

II. Background

A. *1977 Amendments to CWA: Revision of Permit Strategy.*—The first round of five-year NPDES permits issued to industrial dischargers began in 1973–1974. The permit strategy focused on assuring permittees' compliance with the CWA's deadline of July 1, 1977 for achievement of best practicable control technology currently available (BPT) and of various water quality and other standards required by section 301(b)(1)(C) of the Clean Water Act. Effluent guidelines promulgated under section 304 of the CWA focused on BPT-level limitations of a set of pollutant parameters which had traditionally been of concern in the field of water pollution control.

In December 1977, Congress amended the Clean Water Act (Pub. L. 95–217) to require increased emphasis upon the control of toxic pollutants listed under section 307(a). The Clean Water Act of 1977 established an initial list of toxic pollutants which included 65 compounds and classes of compounds which reflected a list of pollutants contained in a consent decree in *Natural Resources Defense Council* v. *Train*, 8 ERC 2120 (D.D.C. 1976), amended on March 9, 1979. (The list of 65 compounds and classes of compounds potentially includes thousands of specific compounds, and the task of analyzing for all of these pollutants would be overwhelming for the Agency and for the regulated community. EPA has revised the list of the 129 specific toxic pollutants which are the most persistent, prevalent, and toxic.) By July 1, 1984 (with certain exceptions), discharges of toxic pollutants must be reduced to levels which reflect the best available technology economically achievable (BAT). In most cases, BAT will be a more stringent standard than BPT.

The 1977 amendments also established a category of "conventional pollutants" for which the "best pollution control technology" ("BCT") must be achieved. BCT determinations involve the use of a cost test (under section 304(b)(4)(B) of the CWA), which in some cases may result in less stringent requirements than BAT (but no less stringent than BPT). As required by the amendments, the Agency has listed pH, fecal coliform, total suspended solids (TSS) and biochemical oxygen demand (BOD) as conventional pollutants (43 FR 32857, July 28, 1978). At the same time, the Agency also proposed to list chemical oxygen demand (COD), phosphorus, and oil and grease as conventional pollutants. The final decision whether to list these as conventional pollutants will be announced in the **Federal Register**, in the near future.

All pollutants other than toxic pollutants and conventional pollutants are commonly referred to as "nonconventional pollutants". Nonconventional pollutants are subject to BAT by July 1, 1984 or within three years after limitations are established, whichever is later, but in no case later than July 1, 1987 (section 301(b)(2)(F) of the CWA). The Clean Water Act also provides that BAT limits for nonconventional pollutants may be modified (to no less stringent a limit than BPT) under section 301(c) or (g) if the discharger can make certain economic or environmental demonstrations. These modifications are not allowed by the CWA for toxic or conventional pollutants.

The 1977 Amendments' increased emphasis on the control of toxic pollutants requires a revision of Agency priorities for water pollution control efforts. This revision is being conducted in two complementary areas.

(1) The Agency is currently developing effluent guidelines which establish BAT levels for toxic pollutants in certain industrial subcategories. Guidelines are being developed first for a selected list of industrial categories, agreed on in the NRDC Consent Decree, which are believed to present the most serious threat of toxic pollutant discharges. The guidelines are scheduled to be promulgated in stages, with the last guidelines scheduled to be promulgated by May 1981.

(2) Where promulgated effluent guidelines do not address a particular class of discharges or a particular class or pollutants, section 402(a)(1) of the CWA authorizes the Agency to set permit limits on a case-by-case basis. In such cases, permit writers must use any available guidance and their own best judgment to apply the relevant factors listed in section 304(b) of the CWA to the case at hand. See 40 CFR 125.3. The new emphasis on toxic pollutants now requires the development of the ability to set such case-by-case permit limits on toxic metals plus 115 organic toxic pollutants when guidelines are not available. This presents a whole new range of technical issues, requiring revision of the permit writing strategy (including the application requirements).

Because the Agency has needed time to implement the 1977 amendments, it developed a "second-round" permit policy. The policy is set forth in detail in EPA's Policy and Guidance for Issuing the Second Round of NPDES Permits to Industrial Dischargers (July 1978), which may be obtained from the contact person above. The major feature of the policy is the issuance of short-term (less than five years) permits containing BPT limitations to sources in certain industries, with expiration dates scheduled for eighteen months after the original NRDC Consent Decree schedule for promulgation of effluent guidelines. The first of these short-term permits will expire in mid-1980, at which time the new application will be used and the new permitting strategy will be applied.

The Agency's increased emphasis on the control of toxic pollutants also requires the Agency to close a significant loophole in the NPDES program. Where a particular pollutant is not specifically limited in the permit, there is no regulatory mechanism in place to insure that its discharge will be limited. Consider the situation where an applicant receives a permit containing technology-based limitations on those pollutants reported at significant levels in an application form. If the applicant discloses a small amount of a pollutant in an application (and therefore a specific permit limit is not set for the pollutant), and the applicant is later found to be discharging large amounts of that pollutant, no specific permit limit would be violated. This situation has occurred in the past, and has resulted in large unregulated discharges of toxic pollutants. While the Agency continues to maintain its general policy that pollutants may not be discharged except as authorized by a permit, it has endeavored to specify this requirement for pollutants reported or required to be reported in the application by imposing "application-based limits" (proposed §122.68(a)(2)) on those pollutants.

B. *1978 Amendments to the CWA: Exemption of Hazardous Substance Discharges Covered by NPDES From the Requirements of Section 311 of the CWA*

On November 2, 1978, the President signed further amendments to the Clean Water Act (Pub. L. 95–576). Section 311(a)(2) was amended to provide that all discharges of hazardous substances which are adequately covered under the NPDES program are exempt from the requirements and penalties of section 311 of the CWA. (See discussion below in section IV–E. See also the proposed hazardous substance regulations at 44 FR 10271, February 16, 1979.) As a result of the amendment of section 311(a)(2), the Agency was required to revise its NPDES application requirements to allow applicants the opportunity to report discharges of hazardous substances. When pollutants are

exempted from section 311 requirements in this way, they become subject to NPDES requirements. Permit conditions for reported hazardous substances will be established in a similar manner as conditions for toxic pollutants (discussed immediately below).

III. Permitting Strategy

This section explains how the new permitting strategy for toxics will work. The nex section discusses the proposed application requirements and shows how they fit into this strategy.

A. *General Scheme: Interrelation of Guidelines, Standards and Case-by-Case Designations of Limits*

Under section 402(a)(1) of the CWA, each permit must contain conditions to assure that all discharges will meet all applicable requirements of the CWA. These requirements include the technology-based requirements such as BAT and BCT (sections 301(b)(2) and 307(a)) as well as requirements based upon water quality standards, pollutant load allocation and other standards (sections 301(b)(1)(C), 208(e) and 307(a) of the CWA). The permit must be consistent with the most stringent applicable requirements.

Each State is required to establish standards for certain pollutants in its various water quality basins. In addition, EPA has promulgated effluent standards and prohibitions in 40 CFR Part 129 for six of the section 307(a) toxic pollutants. Whenever a pollutant is covered by any such standard, the permit writer must set a permit limit consistent with the standard.

However, when BAT-level permits addressing section 307(a) toxic pollutants begin to be issued in mid-1980, many States will not yet have established numerical water quality standards for most of the toxic pollutants. Similarly, the Agency will not have promulgated effluent standards or prohibitions under section 307(a) for most of the toxic pollutants. Even when standards are available, the pemit writer must consider the Act's technology-based requirements as well. If a technology-based requirement is more stringent for a particular pollutant in a particular waste stream than the applicable water quality or toxicity standard, the technology-based requirement must be applied.

Because the 1977 amendments emphasize BAT control of section 307(a) toxic pollutants and because water quality standards have not yet been established for most of the toxics, the permitting strategy has focused upon insuring the installation of BAT technology to control the toxics. Of course, where water quality or other standards apply, they will be included in permits as well.

The Agency has developed a dual approach to setting technology-based limits as provided for in section 402(a)(1) of the CWA. The chief source of technology-based limits is the effluent limitations guidelines, which are promulgated under sections 301 and 304 of the CWA and made applicable to entire classes (generally industry subcategories) of dischargers. Where guidelines do not completely cover a particular waste stream or particular pollutants in the waste stream, the permit writer must use his or her best professional judgment to set appropriate limits. This case-by-case approach, authorized by section 402(a)(1), allows permit writers to assure that all significant pollutant parameters are limited, so that EPA may focus its guidelines development on the most severe toxic pollutant discharges.

Under the amended NRDC Consent Decree, the Agency is initially developing effluent guidelines, which focus upon toxic pollutants, for thirty-four industries. These are:

Adhesives and Sealants.
Aluminum Forming.
Auto and Other Laundries.
Battery Manufacturing.
Coal Mining.
Coil Coating.
Copper Forming.
Electric and Electronic Compounds.
Electroplating.
Explosives Manufacturing.
Foundries.
Gum and Wood Chemicals.
Inorganic Chemicals Manufacturing.
Iron and Steel Manufacturing.
Leather Tanning and Finishing.
Mechanical Products Manufacturing.
Nonferrous Metals Manufacturing.
Ore Minning.
Organic Chemicals Manufacturing.
Paint and Ink Formulation.
Pesticides.
Petroleum Refining.
Pharmaceutical Preparations.
Photographic Equipment and Supplies.
Plastics and Synthetic Materials Manufacturing.
Plastic Processing.
Porcelain Enamelling.
Printing and Publishing.
Pulp and Paperboard Mills.
Rubber Processing.
Soap and Detergent Manufacturing.
Steam Electric Power Plants.
Textile Mills.
Timber Products Processing.

New BAT guidelines for these industries will be developed and promulgated in stages. Several are scheduled for promulgation in 1979, and the last three will be promulgated by mid-1981. Thus, guidelines will be available in many cases to permit writers when short-term permits expire and permittees submit new applications.

However, as mentioned above, case-by-case determinations will be used to write permits for those discharges which are not covered by guidelines. These occur in several types of situations.

1. Where part or all of an applicant's operation is not in one of the 34 industrial categories listed in the NRDC Consent Decree, BAT guidelines for toxics will generally not have been promulgated. (In some cases, however, existing BAT guidelines may be adequate, such as where the only significant toxics in an industry are metals. In addition, effluent guidelines for some additional industries will be developed after the guidelines for the 34 industries covered by the Consent Decree are completed.)

2. Even within the 34 industrial categories, the NRDC Consent Decree gives EPA further authority to set priorities. Subparagraph 6(a) of the Decree allows EPA to exclude from guidelines development up to 5% of the sources within each subcategory. Further, subparagraph 8(a) allows EPA to exclude entire categories or subcategories where the amount and toxicity of each pollutant in the discharge does not justify developing national regulations in accordance with the Decree's schedule (even though some plants in the category or subcategory may pose a threat of toxic discharges). Similarly, a guideline for a particular subcategory may exclude particular pollutants if the frequency of their occurrence at toxic levels does not justify developing a national regulation for them (even though some individual plants may discharge significant quantities of these pollutants). Excluded industries will generally not be covered by adequate toxics BAT guidelines, although, as mentioned above, existing BAT guidelines may be sufficient in some instances.

3. The Decree was recently modified to extend the schedule for guidelines development. Thus, it is likely that certain short-term permits will expire prior to promulgation of applicable guidelines.

B. *Outline of Permit-Writing Procedure*

1. *General.* Upon receipt of a permit application, the permit writer will generally develop permit limits in the following manner:

a. The permit writer will first review the permit application. The reported SIC code and other relevant process or product related information (as

explained in section IV of this preamble) will be reviewed to determine the applicant's subcategory and to decide whether a guideline applies to the subcategory. The permit writer will next determine whether any of the plant's processes generating a discharge are not covered by the guideline. If the plant or a particular process does not appear to be covered by a guideline, it may be necessary to request further information from the applicant before setting limits.

b. Upon obtaining all necessary information, including file data and other sources of data on discharges for the facility, the permit writer will determine whether any pollutant not regulated by an applicable guideline is being discharged in a significant amount, requiring the development of specific permit limits (rather than relying upon the proposed § 122.68(a)(2) application-based limits provision) for the pollutant. The permit writer will thus have developed an informal list of pollutants for which additional control is required. These will include the section 307(a) toxic pollutants which have been reported in the application to be present at significant levels.

c. Permit limits must then be set to insure adequate reduction of these pollutants. Permit writers will use all available information to insure that permits reflect the appropriate technological standards. This information includes treatability studies currently being developed by EPA. These studies will demonstrate what levels are achievable for each toxic pollutant by use of certain types of treatment equipment (singly or in combination) for certain types of waste streams.

2. *Proposed 125.3(c)(4): Use of toxicity units as technology-based limits.* One drawback of the testing requirements for an NPDES application proposed in § 122.64(d)(16) is that the pollutants which are required to be tested constitute only a small portion of the total universe of pollutants. As a result, the effluent data reported in an application may show that no section 307(a) toxic pollutants are present, even though other pollutants are being discharged in toxic quantities.

Additional chemical testing beyond the pollutants listed in proposed § 122.64(d)(16) is not required because analytical methods for these additional pollutants have not yet been developed by the Agency. However, biomonitoring tests are a useful tool to determine whether a waste stream is significantly toxic, regardless of the pollutant(s) causing the toxicity.

While biomonitoring tests are not required as part of an NPDES application, permit writers have authority to require them under section 308 of the CWA or equivalent State authority. EPA believes it is appropriate to exercise this authority when there is a significant likelihood that a waste stream is toxic, based upon past biomonitoring tests, fish kills near the applicant's plant or similar plants elsewhere, the general character of the discharge as determined by chemical analysis, or other relevant factors. Permit writers are encouraged to use biomonitoring as a tool to supplement chemical analyses as part of the process of applying for an NPDES permit.

If a biomonitoring test is conducted and a significant level of toxicity is detected in a waste stream, the permit writer has several options. He or she can require the applicant to further analyze its waste stream to determine the cause of the toxicity and, if certain pollutants are thereby discovered which are believed to cause the toxicity, the permit writer may limit those pollutants directly. If treatability information is lacking for those pollutants, the permit writer may require the applicant to perform treatability studies under section 308 of the CWA or equivalent State authority.

If the permit writer is unable to trace the toxicity problem to specific pollutants, he or she may still require the applicant to conduct treatability studies, such as pilot plant studies, on the effectiveness of known treatment technologies in reducing the toxicity of the applicant's effluent. If a particular technology or series of technologies effectively reduces the toxicity, the permit writer may set limits reflecting that reduction. These may be toxicity-based limits such as LC_{50} numbers, provided that the toxicity-based limits reflect BAT.

(Note that toxicity-based limits, like other broad parameters such as BOD and COD, may be regulated in permits pursuant to sections 402 and 502(11) of the CWA, and may be necessary in some cases to achieve water quality standards.)

EPA intends to publish in the near future a biomonitoring protocol which explains more fully how biomonitoring may be used as part of the NPDES permitting strategy. This protocol will be a revised version of the May 1, 1978 draft which has been previously circulated to the public, and which may still be obtained from the contact person identified above.

C. *The Use of Limits on Indicators to Control Toxic Pollutants*

As in the past, permit writers may set limits on each pollutant which is discharged at significant levels. However, a new permitting strategy is required to reduce discharges of many of the organic toxic pollutants to BAT levels. The problem of setting specific permit limits upon specific organic pollutants is twofold:

1. Permit writers and industrial dischargers have not focused upon organic pollutants to any great extent in the past. The Agency has begun to develop treatability studies for all the organic toxic pollutants. These treatability studies will demonstrate which control equipment is effective in removing organic toxic pollutants. The Agency anticipates that the permit writer and the discharger will usually agree based upon these studies and other available information, that a certain piece or combination of treatment equipment will achieve BAT control for the toxic pollutants in the discharge. However, the lack of a historical data base will often preclude agreements upon precise numbers representing the levels of the toxic pollutants in effluents leaving the treatment equipment. This may result in protracted disputes over numerical limitations despite a general agreement upon appropriate technologies, and could cause serious delay in implementing the CWA's requirements.

2. Sampling and analysis for organic pollutants is much more expensive than it has been for pollutants traditionally regulated by the NPDES program. If organic pollutants are limited in the permit, the cost of periodic compliance monitoring can be very high and possibly unaffordable in some cases (see the detailed discussions of analytical methods and associated costs below in sections V–C and VII–A).

The Agency encourages the direct limitation of specific toxic pollutants wherever feasible, such as where only a few toxics are present in the waste stream and where sufficient data exists to allow agreement between the permit writer and applicant on achievable levels. In addition, direct limitation of a toxic pollutant will be necessary where the discharge of the pollutant is significant.

However, as described above, the Agency believes that it may not always be feasible to directly limit each toxic which is present in a waste stream. As a result, the Agency has developed an alternative approach to directly limiting toxic pollutants. This alternative approach centers upon setting limitations on certain more commonly regulated parameters whch can be

relatively easily agreed upon and which will not result in greatly increased compliance monitoring costs. This approach has been applied to a certain degree in the past (e.g., certain BPT guidelines which limit certain metals insure the installation of technology which also removes other metals). In developing new toxics-oriented BAT guidelines, this approach will be used even more than in the past. Similarly, permit writers may use this approach in setting case-by-case permit limits under section 402(a)(1).

The Agency uses the term "indicator" to denote a parameter which is limited in a permit based on treatment for removal of toxic pollutants, in lieu of specific limits on each toxic pollutant. Thus, once the appropriate BAT technology for reducing toxic pollutants has been identified, limits on properly selected indicators can be used to require permittees to attain the same degree of control over toxic pollutants as specific limits on toxic pollutants would require.

Indicators will generally be parameters or specific pollutants which are generally familiar. Some of the pollutant parameters which may be used as indicators are: Total suspended solids (TSS), biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total Kjeldahl nitrogen (TKN), total phosphorus, cyanide, certain metals and ammonia. Most of these have been frequently limited in permits in the past. Further, most of them may be analyzed by methods which cost substantially less than the methods used to measure many specific pollutants (especially organic toxic pollutants).

However, the Agency recognizes that the use of indicators is not appropriate in all cases. In some situations, EPA may not be able to identify an indicator. For example, current information indicates that chloroform is best treated by steam or air stripping. If a waste stream contains no pollutants in significant quantitites except for chloroform and several metals, it may not be possible to require chloroform control by the use of any indicator. In that case, it will be necessary to specify a limitation for chloroform.

Another situation where specific limitations on toxics are required is where any combination of indicator limits could also be met by installation of an alternate treatment technology which would not sufficiently treat the toxic pollutants. If appropriate limits on indicator pollutants would allow the installation of controls which will not remove toxic pollutants, then the toxic pollutant must be controlled directly, or other indicator pollutants must be selected.

One potential problem associated with the indicator approach is that a plant may change its process in a manner which reduces or eliminates the indicator without affecting the indicated toxics. This would allow toxics discharges to take place without being detected by monitoring the indicator.

Another deficiency of indicators is their relative lack of sensitivity to short-term fluctuations of specific toxic pollutants. This means that if many organic constituents of a waste stream are discharged at unusually low levels, a particular organic toxic pollutant could be discharged at an unusually high level without causing a violation of an indicator limit. However, the Agency believes that the risk of an unacceptably high discharge of a particular toxic pollutant is not great so long as proper treatment equipment is installed and is operated and maintained properly. In addition, application-based limits under proposed § 122.68(a)(2) remain as a basis of liability for significantly increased discharges of any individual pollutant. This provision may be supported by permit requirements of occasional monitoring for all or some organic toxics or of additional monitoring when indicator limits are violated. Furthermore, permits may require biomonitoring tests to provide additional safeguards against toxicity (see discussion below on monitoring in section VI).

As noted above, however, the use of indicators is not a required part of EPA's strategy for regulating toxic pollutants, but rather an additional mechanism to allow more rapid agreement on BAT controls and appropriate permit limits. This mechanism has the added benefit of minimizing compliance monitoring costs. Permit writers may still apply direct limits on toxic pollutants as the circumstances warrent, and are encouraged to do so whenever technically and economically feasible.

D. *Proposed § 125.3(g): Requirement That Indicators Used to Control Toxics Be Limited to BAT Levels*

The indicator strategy relies on the principle that limits on indicator parameters will insure the installation and operation of BAT-level equipment to achieve BAT-level reduction of other pollutants, especially of organic toxic pollutants. For the strategy to work, BAT limits must be set for indicators which are used to indirectly control toxic pollutants. This principle has also been expressed in prior Agency documents, including the **Federal Register** notice listing conventional pollutants (43 FR 32858 (July 28, 1978) and EPA's *Policy and Guidance for Issuing the Second Round of NPDES Permits to Industrial Dischargers (July, 1978)). Proposed § 125.3(g) establishes this principle in regulatory form.*

Therefore, proposed § 125.3(g) provides that conventional pollutants (such as BOD and TSS) which are used as indicators for toxics are subject to BAT and are not subject to BCT cost tests. Similarly, nonconventional pollutants (such as COD and TOC) which are used as indicators for toxics are also subject to BAT and are not eligible for modifications under sections 301(c) and 301(g) of the CWA.

A potential problem with the concept of indicators is that if it is abused, it could subvert Congressional intent to set BCT limits for conventional pollutants and to allow variances for nonconventional pollutants. To minimize any such abuse, the regulations set a number of tests linking indicators to toxics which must be satisfied before a conventional or nonconvention pollutant can be regulated as an indicator pollutant.

To use conventionals or nonconventionals as indicators to control toxics to BAT levels, permit writers must identify (in the permit and in the accompanying statement of basis or fact sheet required by §§ 124.8 and 124.9) which toxics are intended to be controlled by each indicator, unless the indicator is established by an applicable effluent guideline. In addition, permit writers must be able to justify indicator limits by demonstrating that the indicator limits will result in installation of treatment equipment which constitutes BAT for toxic pollutant discharges. This will insure that conventional and nonconventional pollutants are not limit to levels which are more stringent than is required to achieve BAT-level reduction of toxic pollutants. It should be noted that in many instances, conventional and nonconventional pollutants will be limited to BAT levels because of other requirements of the CWA, even if they are not use as indicators. This will occur where BCT for a conventional is the same as BAT or where a source fails to meet the section 301(c) or (g) criteria for modifications from BAT for a nonconventional pollutant.

Nonmodifiable BAT limits for conventionals and nonconventionals where they are used as toxic indicators will not result in the imposition of stricter controls than are authorized by the CWA. For example, where an

indicator is a conventional pollutant, the treatment installed to meet the indicators's BAT limit is the same treatment as would be installed to meet the BCT limit for the conventional plus the BAT limits for specific toxics covered by the indicator. While the conventional pollutant may be reduced to levels more stringent than required by BCT, this would occur in any event as the result of the required installation of BAT technology to control the toxics, if they were being regulated directly. The method used to require the installation of BAT technology (direct limitation of toxics or the use of indicators) will not affect ultimate level of pollution control.

Comments on all aspects of the indicator approach and suggestions on other alternatives are welcome.

IV. Proposed [6] 122.64(d): Minimum Requirements for Applying for NPDES Permits

A. General Considerations

Generally, the Agency believes that dischargers have a duty to be aware of any significant pollutant levels in their discharges. Under existing application requirements, applicants must examine their waste streams and processes in a manner that reflects existing considerations in water pollution control. Proposed §§ 122.64(d) and 123.73(a) (which makes § 122.64(d) applicable to States) increase the requirements to reflect the new emphasis on toxic pollutant discharges.

Specifically, the proposed application reporting requirements will serve two major functions:

1. Like the requirements of the existing application, they will generate the information which permit writers need to set permit limits which accurately reflect the achievable pollutant reductions for each discharger.

2. They will establish the basis for application-based limits under proposed § 122.68(a)(2): Any pollutant which is reported or required to be reported in the application and is not otherwise limited in the permit is limited to five times the reported level (or five times the pollutant's detection limit, if the pollutant was not detected).

As previously noted, EPA's NPDES application form (a draft of which is published in a public notice elsewhere in today's **Federal Register** will implement the new requirements where EPA operates the NPDES program. While States must also apply these requirements in developing their application forms, they need not use EPA's application format or language. Of course, they may and are encouraged to conform to EPA's approach.

It is important to note that any effluent data which is contained in a permit application must be made available to the public. This is explicitly required by section 402(j) of the CWA and is not subject to change be EPA. However, EPA has taken two steps to make certain that this requirement is administered reasonably. First, product information (e.g. the amount of product produced per year) must be reported only where the information is needed to apply a production-based effluent guideline limitation (as opposed to, e.g., the use of concentration-based guideling or the case-by-case development of individualized permit limits). Second, only end-of-pipe effluent data must be reported. If the permit writer needs additional information (e.g., process discharges upstream of a treatment system), he or she will generally request it under section 308 of the CWA (or equivalent State authority), which provides that proprietary information may be claimed as confidential in appropriate circumstances (which are set forth in 40 CFR Part 2).

Applicants will be required to report their pollutant discharges in several ways. (In addition, intake water data must be reported by those applicants who seek credit for pollutants in their intakes under 40 CFR 122.70(g).)

First, all applicants will submit effluent data for pollutants which have traditionally been of concern in the field of water pollution control: the conventional pollutants, certain nonconventional pollutants (including those which can function as indicators for toxic pollutants) and certain toxic pollutants (including cyanide, total phenols and certain metals). While some of this information may be based upon estimates, most of it must be based upon sampling and analyzing the discharge.

Second, certain applicants must analyze and submit effluent data for certain waste streams for the toxic pollutants. Estimates of toxic pollutant discharges must be submitted for all waste streams which are not analyzed.

Third, applicants will be required to identify pollutant discharges which may occur during the term of the permit at more than five times the average levels found in the analyzed waste stream. This may be based on knowledge or expectation that certain processes or raw materials will be used at some point during the life of the permit (e.g., batch processes, changed processes, raw materials substitutions and periodic discharges). This requirement appears only as a provision in EPA's application form which is public noticed elsewhere in today's **Federal Register** and is not established as a minimum application requirement in proposed § 122.64(d), since a similar requirement appears in proposed § 122.68(a)(3) (discussed in section V of this preamble).

Fourth, in accordance with recent amendments to section 311 of the CWA, each applicant will be given the opportunity, at its option, to anticipate discharges (including occasional spills) of hazardous substances (designated by the Administrator under section 311 of the CWA) which are not otherwise identified in the application.

The information discussed in the preceding paragraphs will help insure that (1) permit limits adequately address all pollutants which may be discharged by applicants (whether or not the pollutants are detected in the waste streams which the applicant has analyzed) and (2) applicants are exempted from section 311 requirements as provided by section 311(a)(2) of the CWA and proposed 40 CFR 117.12.

Applicants are also required to identify any other relevant information which they possess, such as biomonitoring data and analyses of discharge levels of pollutants not otherwise required to be reported in the application. The permit writer may then request any of the identified data which he or she believes will help to choose appropriate permit limits.

The Agency recognizes that the proposed list of pollutants for which effluent data must be provided is not exhaustive. For example, there are many section 311 hazardous pollutants (or ions of such pollutants) which are not listed as toxic pollutants under section 307(a). Similarly, three contaminants for which primary drinking water standards have been promulgated in 40 CFR Part 141 are not on the toxics list.

The omission of specific reporting requirements for these and most other nonconventionals has been required by constraints upon Agency resources. Consistent with the NRDC Consent Decree and the 1977 amendments, the Agency has concentrated its limited resources upon the worst problem, that is, the section 307(a) toxic pollutants. Thus, effluent guidelines as well as Agency development of both test methods and treatability studies are presently focusing upon the toxics. However, *the proposed list of pollutants to be reported should not be viewed as static.* The Agency intends to develop test methods and treatability studies on pollutants of concern which are not now on the toxics list. This development process has already begun, with initial

emphasis being placed upon section 311 hazardous substances. Reporting requirements will be expanded as additional test methods are developed and treatability studies are completed.

The general requirement that applicants identify information which they have in their possession but are not required to submit, plus the invitation that applicants submit information on hazardous substances, may lead to identification and control of significant discharges which are not specifically required to be reported. Furthermore, permit writers may require applicants to submit additional information where necessary. This may include additional testing, such as biomonitoring tests to assess the relative toxicity of a waste stream. See § 122.64(d)(20).

The Agency strongly recommends that permit writers require applicants to perform biomonitoring tests as part of the application process in appropriate situations. Such tests could include acute and chronic aquatic toxicity tests and tests for bioaccumulation. The Agency is also evaluating the use of specific screening tests for carcinogenicity, mutagenicity and teratogenicity. Factors relevant to requiring biomonitoring include past history of fish kills, previous biomonitoring results indicating toxicity, the nature of the applicant's process, and the applicant's industrial category. This information is useful for setting permit limits where reported effluent data for the toxics is insufficient (see discussion in section III–B(2) above) and for establishing priorities for permit issuance.

Finally, it should be noted that even without direct permit controls on many pollutants, their levels will often be reduced incidentally by the treatment equipment installed to reduce toxic pollutants to BAT levels.

B. *Detailed Discussion of the Proposed Reporting Requirements*

The new emphasis on toxic pollutants has caused the proposed addition of a number of organic compounds to the list of pollutants required to be reported by the expiring form. (For the sake of simplicity in this discussion, compounds such as cyanide and the perchlorinated hydrocarbons will be grouped with the organics.) In addition, certain changes are proposed in the reporting requirements for asbestos, metals (13 of which are now classified as toxic pollutants) and various other pollutants. These changes include both additions to and deletions from the list as well as changes in the nature of reporting requirements for certain pollutants retained on the list.

Additions and deletions were made for various reasons. Some parameters were deleted (e.g., specific conductance and settleable matter) because they are not sufficiently sensitive or because they overlapped other more useful parameters. Others such as chloride, calcium, potassium, and sodium, were deleted because they are relatively nontoxic and the levels and amounts found in industrial discharges are generally not of concern. Algicides and chlorinated organic compounds were deleted since the test methods for these general parameters specify analyses for specific toxic pollutants listed under section 307(a), which are now required to be reported individually.

Additions include the organic toxic pollutants, as well as total Kjeldahl nitrogen (TKN) and total organic carbon (TOC), which are expected to be particularly useful as indicator pollutants.

The requirements of the existing application form include quantitative reporting for certain pollutants, qualitative (presence or absence) for others, and qualitative followed by quantitative reporting (if the pollutant is present) for still others. In the existing form, qualitative reporting may always be based upon estimates.

The new requirements follow this pattern to some extent. However, most pollutants must now be reported quantitatively. Other pollutants which are not found in most waste streams or which are less significant may be reported qualitatively, and, if present, quantitatively.

Analyses are required for pollutants which are expected to be useful as indicator pollutants and (with two exceptions noted below) for toxic pollutants which are likely to be found in a waste stream. For other pollutants, which are either not of overriding importance environmentally or which do not frequently appear in significant concentrations, estimates are permitted. However, applicants are expected to use analyses whenever they are unable to make reliable estimates.

Two pollutants on the toxics list may be reported in all cases on the basis of estimates. These are asbestos and 2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD). Asbestos is excluded from testing requirements because its analytical method is both very expensive and highly controversial. TCDD is excluded because it is so highly toxic that it would be against the public interest to promote the routine shipping of analytical standards of TCDD, which are necessary for quantitative analysis. Instead, EPA is investigating other approaches to determine where this particular pollutant can be expected to be found.

The pollutant reporting requirements are summarized in the following three tables:

Table I—Pollutants Reportable Under Existing Requirements but Deleted in Proposed Requirements.

Algicides.
Calcium
Chloride.
Chlorinated Organic Compounds.
Organic Nitrogen.
Potassium.
Settleable Matter.
Sodium.
Specific Conductance.

Table II—Pollutants not Reportable Under Existing Requirements But Added in Proposed Requirements

Pollutant	Proposed reporting requirement
Asbestos	Qualitative/Quantitative.*
Dioxin	Qualitative/Quantitative.*
Toxic organics (except asbestos, cyanide and dioxin)	Quantitative for Group I** for process wastewater discharges. Qualitative/Quantitative for Group II and non-process waste-water discharges from Group I.
TKN	Quantitative.
TOC	Quantitative.

*Qualitative/Quantitative means a qualitative determination of whether the pollutant is present based on estimates or analyses, followed by quantification only if the pollutant is present.

**Group I industries are the 34 industries covered by the NRDC consent agreement (listed in section III—A of this preamble), plus asbestos manufacturing and ferroalloys. All other applicants are in Group II. The basis for the groupings is discussed below in the discussion of organic toxic pollutants.

Pollutants Retained From Existing Form

Pollutant	Existing requirement	Proposed requirement
Aluminum, Total	*	*
Ammonia	*	*
Antimony	Qualitative	**
Arsenic	*	**
Barium, Total	Qualitative	*
Beryllium, Total	*	**
BOD_5	Quantitative	Quantitaive.
Boron, Total	Qualitative	*
Bromide	Qualitative	*
Cadmium, Total	*	**
Chromium, Total	*	**
Cobalt, Total	Qualitative	*
COD	Quantitative	Quantitative.
Color	Qualitative	*
Copper, Total	*	**
Cyanide, Total	*	Quantitative.
Fecal Coliform	Qualitative	*
Fluoride	Qualitative	*
Iron, Total	Qualitative	*
Lead, Total	*	**
Magnesium, Total	Qualitative	*
Manganese, Total	Qualitative	*
Mercury, Total	*	**
Molybdenum, Total	Qualitative	*
Nickel, Total	*	**
Nitrate	Qualitative	*
Nitrite	Qualitative	*
Oil and grease	*	Quantitative.
Pesticides	Qualitative	*
pH	Quantitative	Quantitative.
Phenols, Total	Qualitative	*

Pollutants Retained From Existing Form—Continued

Pollutant	Existing requirement	Proposed requirement
Radioactivity	Qualitative	*
Residual Chlorine	*	*
Selenium, Total	*	**
Silver, Total	Qualitative	**
Sulfate	Qualitative	*
Sulfide	Qualitative	*
Surfactants	Qualitative	*
Temperature	Quantitative	Quantitative.
Thallium, Total	Qualitative	**
Total Phenols	*	Quantitative.
Tin	Qualitative	*
Titanium	Qualitative	*
TSS	Qualitative	Qualitative.
Zinc	*	**

*Qualitative/Quantitative. This means a qualitative determination of whether the pollutant is present based on estimates or analyses, followed by quantification only if the pollutant is present.

**Group I process wastewater discharges: Quantitative. All other discharges: Qualitative/Quantitative.

C. *Organic Toxic Pollutants.*

1. *The Problem.* Organic toxic pollutants have not traditionally been of concern in the field of water pollution control. However, under the 1977 amendments, they have become the focus of the agency's water pollution control efforts (they comprise 115 of the 129 toxics listed under section 307(a)). Their control requires consideration for the first time of various technical and economic issues. The issues and their proposed resolutions are discussed below.

There are several features associated with the analytical methods for organic chemicals that make these chemicals more difficult and expensive to analyze than other pollutants. Many of the comments on the August 21, 1978 proposal of the NPDES regulations emphasized these aspects, which are summarized below.

(a) Methods of sampling and analyzing for most organics are in their relative infancy compared to those used for other pollutants. (However, 40 CFR Part 136 test methods have already been promulgated for several organics on the toxic pollutants list under section 304(h) of the CWA. These are cyandide, total phenols, pentachlorophenol, some pesticides and several chlorinated organics). The American Society of Testing Materials does not yet have standardized methods for many such pollutants, and achievability of a high degree of precision and accuracy for such analyses is not universally acknowledged. The Agency has not yet promulgated test methods for most of the organic toxics although it intends to propose such methods for incorporation into 40 CFR Part 136 by early Summer 1979. However, EPA has had a draft screening protocol since 1977, which has been used extensively in developing information for effluent guidelines. Copies of the draft protocol may be obtained by contacting the Analytical Methods Coordinator, Effluent Guidelines Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(b) In many industries, the level of any particular toxic pollutant in a waste stream may fluctuate widely even within short periods of time. This is caused by a number of factors, including varying feedstocks, variations in the process, variations in the efficiencies of the treatment systems, chemical reactions of pollutants in the waste stream, the periodic use of different cleaning fluids (often of a composition known only to the manufacturer), and other causes which prevent a steady state. These factors make it difficult to report pollutant discharge levels which are representative of the waste stream.

(c) The costs of sampling and analyzing for the 115 organic toxic pollutants are high when compared to costs for measuring the more traditional pollutants. A typical cost for sampling and analyzing an outfall may be expected to be in the vicintiy of $4,500 as explained more fully in the discussion of costs in section VII below. The total cost of sampling and analysis for plants with many outfalls will be much higher. Further, if frequent waste characterizations are required subsequent to permit issuance, compliance monitoring costs could in some cases become unaffordable. While the indicator approach will greatly reduce monitoring costs, permit writers may require occasional monitoring of specific organic toxics or additional monitoring when indicator limits are violated (see discussion below in section VI).

In designing both the application requirements and the permitting strategy, the Agency focused its efforts on accounting for waste stream variability and on minimizing dischargers' costs without sacrificing the goals of the CWA.

2. *Development of Test Methods for Organic Toxic Pollutants.* The Agency intends to propose sampling and analytical methods for all of the organic toxic pollutants under section 304(h) of the CWA in the Summer of 1979 and to promulgate them by the time applicants begin to use the revised application form. (As noted previously, test methods have already been promulgated for several organic toxics.) Two alternative analytical methods will be provided. One method is quantitative GC/MS (gas chromatography/mass spectrometry). The alternate provides for identification or "screening" (presence/absence) of organic toxics by GC/MS followed by GC (or liquid chromatography—LC—in certain cases) quantification of those pollutants which have been identified.

Applicants will be given the choice of using either analytical method. Quantitative GC/MS is the less expensive method for waste streams containing many of the organic toxic pollutants. It also overcomes pollutant interferences that can in some instances make GC or LC analysis difficult to use reliably.

The Agency has not promulgated approved methods for sampling; however, some general guidance is provided in section E of the instructions to the consolidated application form (the instructions appear along with the consolidated application form as a public notice elsewhere in this Federal Register). Certain aspects of sampling methodology may be proposed for inclusion in 40 CFR Part 136 in the near future. However, it is not possible to specify sampling methods which cover every specific situation in detail. Good sampling techniques depend largely on the qualification and experience of the person conducting or providing on-site supervision of the applicant's sampling. The Agency therefore encourages, and has assumed in its costs analysis (section VII below), that each applicant will employ at least one experienced independent contractor to perform its sampling activities.

3. *Waste Stream Variability.* Waste stream variability consists of both short-term and long-term variations. The latter, which applies to metals and other inorganic pollutants as well as to organics, is addressed in the next section. This dissussion focuses on the short-term aspects of variability.

Short-term fluctuations in levels of a pollutant are generally smaller in BPT-treated waste streams than in untreated waste streams. Since the Clean Water Act required dischargers to install BPT treatment by July 1, 1977, most applicants have installed BPT equipment; thus the variability problems associated with raw waste streams have been somewhat mitigated. Some sources that have not installed BPT equipment as required by the CWA may argue that they may be forced to incur additional expenses in trying to accurately characterize their raw or inadequately treated waste streams. In such situations, any additional expense will be the result of their own failure to install BPT equipment.

Even where BPT has been installed, some short term variability may be expected. The Agency is addressing this

problem for organic toxics by requiring a single flow proportional composite sample taken over a 72-hour period (for certain pollutants, such as volatile organics, periodic grab samples of the discharge taken over the 72-hour period will be necessary). This procedure, which the Agency has used in collecting samples in its effluent guidelines development, helps minimize the effect of short-term fluctuations upon the measured value, and will contribute greatly to a more accurate representation of the discharger's waste stream.

Seventy-two hour composites will not provide a perfectly representative picture of the applicant's waste stream. However, experience in developing effluent guidelines shows that 72-hour composites are adequate to the purposes of the permitting strategy: setting permit limits for pollutants which are present at significant levels, and imposing application-based limits.

The decision to use a single 72-hour composite sample resulted from the Agency's judgment that the incremental benefits of requiring further sampling and obtaining a slightly better picture of the range of potential variability do not justify the imposition of the significantly greater costs which would result from either (1) extending the length of time for sampling, or (2) increasing the required number of samples (e.g., consecutive or nonconsecutive 24-hour composites). Similarily, the Agency believes that a 72-hour composite yields a significantly better picture of the waste stream than a single 24-hour composite, thereby justifying the resulting increase in sampling costs. Comments and data are invited on the Agency's choice of the single 72-hour composite sample for use in analyzing organic toxic pollutants, and on what techniques are necessary to preserve such samples.

The Agency recognizes that certain dischargers may wish to go beyond the requirement of a 72-hour composite sample. For example, they may analyze two or more composite samples, in which case they must report the arithmetic average as well as the maximum level of the analyses. The application-based liability provision of proposed § 122.68(a)(2) will apply to the arithmetic average of the reported levels.

4. *Cost Considerations.* Costs are minimized by exempting certain applicants (based on industry category) from analyzing for organic toxic pollutants and by exempting all applicants from conducting such analyses for non-process wastewater outfalls.

(a) *Exemption of Certain Industries from the Requirement to Analyze for Toxic Pollutants.* Industries are required to test for toxic pollutants on the assumption that such pollutants are likely to be present in their waste streams. The Agency's sampling of the 34 NRDC Consent Decree industries has generally revealed toxic pollutants in their discharges. In certain plants, the Agency did not discover significant levels of toxic pollutants. However, the Agency only sampled a few plants per subcategory in most cases, and the Agency does not feel that its sampling was sufficient to exclude all plants within any of the 34 categories or their subcategories from requirements to test for toxic pollutants as part of an application for a permit.

As a result, all plants within the 34 industries will be required to test for toxic pollutants, with exceptions of TCDD and asbestos for reasons explained in section IV–B. To avoid needless duplication, however, where EPA's Effluent Guidelines Division or its contractors analyzed the waste stream of a plant as part of EPA's project to develop new BAT guidelines for toxic pollutants, then the new application form provides that the plant may submit that data (where the data is acceptable) in lieu of testing again. Such data may be submitted only where conditions at the plant have not changed to the extent that the Effluent Guidelines Division's data no longer represent the discharge of the plant.

The Agency has not yet begun to develop BAT guidelines to regulate discharges of toxic pollutants in industries beyond the 34 included in the NRDC Consent Decree. Moreover, existing BPT and BAT guidelines development for these industries did not focus upon organic toxics. As a result, the Agency's sampling for such pollutants in preparation of those guidelines has been limited. However, the sampling data collected to date reveals that, in addition to the 34 NRDC industries, at least the following industries are likely to discharge organic toxic pollutants:

Ferrolloys. Effluent testing has revealed the presence of at least phenols and cyanide. See pages 59–118 of EPA's Development Document for this industry (EPA 440/1–73/008, August 1975). Effluents from blast furnaces may also contain polynuclear aromatic hydrocarbons.

Asbestos Manufacturing. Effluents may contain at least phenols, cyanide and asbestos. In addition, high levels of COD and TOC (Development Document 440/1–74/035, August 1974) may reflect the presence of other toxic pollutants. It should be noted, however, that since most sources in this category have already achieved zero discharge of process wastewater, the analytical requirements for this category will have minimal impact. See pages 47–55 of the Development Document (EPA 440/1–73/017, October 1973).

Applicants from these two industries must also sample and analyze for all the toxic pollutants in all discharges which contain process wastewater.

Applicants who are required to analyze for the toxic pollutants discharged from outfalls containing process wastewater (sources in the 34 NRDC industries, plus the asbestos and ferroalloys industries) are referred to as Group I applicants. All other applicants, referred to as Group II applicants, are generally exempt from analyzing for the organic toxic pollutants. However, they must analyze for any such pollutants which they know or have reason to believe may be present in their waste streams, and of course, permit writers have authority under section 308 of the CWA or similar State statutes to require such analyses on a case-by-case basis.

The list of Group I industries as set forth above is not final. As noted above, the Agency's information on organic toxics outside of the 34 industrial categories is presently limited. Further investigation may reveal that presently exempted industries or waste streams should not be exempted. (The industrial categories being considered for possible inclusion in Group I include Fertilizer, Concrete Products and Cement.) As information is developed, certain industries may be added to the Group I list, and applicants from those industries would then be required to analyze for the organic toxics when they apply for a new permit. It is also possible that some applicants who are now required to analyze for organics may be exempted in the future as more complete data becomes available.

When promulgated, § 122.64(d)(16) and the final revised application form may contain a different list of Group I and II industries from today's proposed list. Comments are solicited on inclusions and exclusions of all industries, no matter how they are classified in this proposal.

Several commenters upon the August 21, 1978 proposed NPDES regulations suggested that, in certain industries, only certain organic toxic pollutants should be required to be analyzed and reported. The Agency has considered

this approach but has not accepted it for two reasons.

First, Agency sampling of plants to date reveals considerable plant-to-plant variations of toxic pollutant in waste streams, even within industrial subcategories. In addition, this sampling has demonstrated that waste streams often contain pollutants which are not easily predicted by analyzing raw materials or production processes. As a result, it is not possible, based upon existing data, to predict with a high degree of confidence that any Group I discharger need not analyze for all the organic toxics.

Second, the commenters' suggested approach would probably not result in significant cost savings over the proposed requirements. The cost of collecting a sample would remain approximately the same no matter how many toxic pollutants were excluded. As for savings in analytical costs, if only a few pollutants need to be analyzed for, GC analysis without prior GC/MS screening might be used. However, even then, the savings realized by eliminating GC/MS screening would be partially offset by increased GC costs over those incurred when GC is preceded by GC/MS screening. Even if quantitative GC/MS is used, only a minor cost reduction could be achieved, and only in those cases where entire fractions (classes into which the organic toxics are divided for purposes of conducting GC/MS analysis) are excluded.

The Agency believes that the burden of determining the nature of pollutants discharged lies with the discharger, not with the Agency. While Agency experience analyzing waste steams as part of its BAT development project indicates that not all of the toxic pollutants will be found in every waste stream, this same experience leads the Agency to conclude that it is impossible at this time to determine which pollutants will be present in which waste stream, and most importantly, which pollutants will never be present. As a result, all indistries with a demonstrated potential for discharging toxic pollutants are required to analyze their waste streams containing process wastewater for all of the toxic pollutants.

However, the Agency is aware that in some waste streams in some industries, there may be a low likelihood that certain toxic pollutants will be present. The Agency invites comments and supporting data indicating which industries can omit analysis of which pollutants and demonstrating what the cost savings would be. In addition, the Agency solicits comments on the suggestion by one trade organization that it and other groups perform representative sampling for an industry to demonstrate that no toxics are present in particular classes of discharges within the industry. These comments should address how much investigation is necessary and what type of results would justify exclusion of the industry (or of a subcategory) from testing requirements for certain toxic pollutants. The Agency is particularly interested in this information as it pertains to relieving the testing burdens on small businesses.

It should be noted that although Group II applicants are not required by these regulations to analyze for the organic toxics, they may be required to do so by permit writers in particular situations under the authority of section 308 of the CWA, or equivalent state authority. For example, a Group II applicant may be required to conduct boimonitoring tests to determine the toxicity of its effluent. If the results reveal some evidence of toxicity, the applicant may then be required by the permit writer to analyze for the organic toxics. Such requirements are within the discretion of EPA and State permit writers, as set forth in proposed § 122.64(d)(20).

(b) *Exemption of Non-Process Wastewater Discharges from Toxic Pollutant Analyses.* All applicants are not required to sample and analyze non-process wastewater discharges for the toxic pollutants, provided that those discharges are not combined with process wastewater discharges. The exemption applies to discharges such as non-contact cooling water, surface runoff and sanitary wastes. The decision to exempt such discharges from testing requirements was based upon the facts that they are usually (although not always) nontoxic and that even when they contain toxic pollutants, those pollutants are often so diluted by large quantities of discharge water as to be analytically undetectable. However, these waste streams must be analyzed for parameters such as COD, BOD, and TOC, which will provide some information concerning discharges of organics. In addition, further information will be submitted as described in section IV–E below.

While these waste streams are not required to be tested for the toxic pollutants, all applicants are required to estimate any amounts which may be present. In addition, permit writers may require additional testing under section 309 of the CWA, or equivalent state authority.

D. *Pollutant Discharges Which Were Not Identified in the Sampled Waste Stream*

Applicants for EPA-issued permits will be required to supplement the required effluent data reporting by identifying pollutant discharges at levels which were not revealed by the required waste stream analysis and which may exceed five times the reported levels. The purpose of this requirement is to help the permit writer account for long-term waste stream variability.

Many waste stream fluctuations can be predicted to some degree. A coal-fired steam electric generating plant which obtains its coal from several different sources can often predict within a range that its effluent will at times contain pollutants (such as toxic metals) which are present in the various types of coal. Similarly, a plant which operates various batch processes can often predict the range and the types of pollutants that can be expected to be discharged as a result of those processes.

Not all waste stream variability is predictable. For example, changes in production methods several years after permit issuance may not have been predictable at the time of application. In such cases, § 122.11(c) of the consolidated permit program regulations provides that the permittee must notify the Director when it knows or has reason to believe that such changes have occurred or will occur. Where these changes result in a permit violation (including exceedance of the application-based limit), the permit may be modified under §§ 122.9(e) and 122.73.

Applicants are also required to identify any relevant analytical data or other information which they know to be available concerning pollutants which are not required to be reported by proposed § 122.64(d). The permit writer may request submission of any identified information which may be of assistance in writing the permit.

E. *Identification of Substances Identified as Hazardous Under Section 311 of the CWA*

Section 311 of the CWA contains strict penalties, reporting requirements and other provisions to prevent discharges (including spills) of oil and hazardous substances. In 40 CFR Part 116, the Agency has identified 299 substances as hazardous (some of these substances are on the section 307(a) toxics list as well). See 43 FR 10474 (March 13, 1978) and 44 FR 10268 (February 16, 1979).

Until recently, the section 311 provisions unnecessarily overlapped with section 402. It was possible that a discharge or spill of a hazardous substance through an outfall which was either in compliance with a permit or reviewed by the permit issuing authority but not controlled by the permit at all would constitute a discharge of "harmful quantities" of the substance under section 311, resulting in section 311 penalties.

To eliminate the overlap between sections 311 and 402, Congress amended section 311 in late 1978 to exempt discharges covered under the NPDES program. The amendments also deleted the standard of " harmful quantities" referred to above and introduced in its place the concepts of "reportable quantities" and "quantities which may be harmful."

Exemptions from the requirements and penalties of section 311 were provided for in three situations:

"(A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems." Section 311(a)(2) of the CWA, as amended in November 1978.

The Agency proposed regulations on February 16, 1979 which clarify the exemption, 40 CFR 117.12 (44 FR 10271). The proposal is explained in a detailed preamble to those regulations, which will not be repeated here. However, the exemption strategy may be summarized as follows:

1. Discharges of hazardous substances which may be predicted to result from normal operating procedures should be regulated through the NPDES system. This includes typical discharges such as process wastewater or non-contact cooling water. It may also include tank ruptures or other atypical events which may be controlled through the requirements of the NPDES program.

2. Spills of hazardous substances which either cannot be or have not been identified by the discharger in advance and controlled properly (either through new permit requirements or through already existing operating or treatment systems) remain subject to the requirements and penalties of section 311.

3. Dischargers should be given the opportunity to obtain section 311 exemptions by expressly seeking NPDES coverage. This is done by allowing applicants for NPDES permits to identify all discharges or potential discharges which may occur and to demonstrate the adequacy of treatment systems (or management practices such as spill diversion or containment) to control such discharges.

Proposed § 122.64(d)(19) and EPA's draft revised application form provide the applicant the option of identifying present and anticipated discharges of hazardous substances. The instructions which accompany the application form describe in detail the nature of the information to be submitted.

V. Proposed [6] 122.68(a): Application-Based Limits

Proposed § 122.68(a) is a reproposal of § 122.14(a) (proposed on August 21, 1978, 43 FR 37078). Proposed § 122.68(a) states that permittees are bound by two sets of limits: (1) For pollutants specifically limited in a permit, the technology-based, water quality-based or other limit set forth in the permit; and (2) for all pollutants which are reported or required to be reported in the application but which are not specifically limited in a permit, a limit which is a multiple of the reported average level (or a multiple of the detection limit of the method if the pollutant is not detected). Proposed § 122.68(a)(2) sets the multiple at five for most cases, but proposed § 122.68(a)(3) provides a mechanism for applying for a multiple other than five for particular effluents. Permittees who exceed the application-based limits established by § 122.68(a)(2) are subject to the same consequences (e.g., enforcement or permit modification) as any other type of permit violation.

No explicit limits are set for pollutants which are not required to be reported in the application. However, as noted above, the list of reportable pollutants may be expanded in the future, and BAT control equipment for the toxic pollutants will also serve to control many non-reported pollutants in the interim. Furthermore, the permitting authority may always modify a permit for cause, including the situation where biomonitoring tests identify a discharge as significantly toxic despite the installation of BAT equipment designed to control the reported pollutants. See §§ 122.9(e) and 122.73 of the proposed consolidated permit program regulations.

The factor of five for reportable pollutants was developed as a general measure of the magnitude of variation of pollutant levels normally found in waste streams. In recognition of the fact that the levels of pollutants in some waste streams may vary by a factor of more than five, § 122.68(a) includes a provision allowing permittees to demonstrate through testing that another multiplier is appropriate.

When a pollutant is not detected in a waste stream or is not reported as required in an application, the application-based limits under § 122.68(a)(2) are established as a multiple of the detection limit of the analytical method. Detection limits are usually included in the test methods promulgated under 40 CFR Part 136 (these limits are summarized in section E of the instructions to the consolidated application form, which appears as a public notice elsewhere in today's **Federal Register**). Where an approved method does not specify a detection limit, the detection limit may be determined by the applicant using standard analytical practices.

The proposed regulations also specify a detection limit of 10 μg/l (10 ppb) as the lowest level of detection that will be applied. In many cases, the actual detection limit is lower than 10 μg/l if a highly sensitive detector is used (e.g., electron capture), but for the purposes of the application-based limit, the detection limit is set to reflect the use of the least sensitive approved method.

The concept of an application-based limit was originally raised in the August 21, 1978 proposal of § 122.14(a), which provided that "[t]he permittee shall not discharge any pollutants for which information was requested in the application except as expressly authorized by the permit" and explained further in a comment that "the permit may specify that discharge levels for [the reported] pollutant are not to exceed the levels reported in the application." Today's proposal, which is less strict to account for normal variability of pollutant levels in waste streams, continues the philosophy that dischargers are responsible for their discharges and should not be permitted to significantly increase pollutant discharges above reported levels.

The reason for introducing a multiplier in today's proposal is not to allow permittees to increase their discharges, but to provide a sensible ceiling in acknowledgment of normal waste stream variability. The Agency believes that the multiple of five will ensure that pollutant discharges do not significantly increase from reported levels, without burdening permittees with technologically unreasonable limits. As

stated above, where the multiple of five does not adequately reflect the innate variability of pollutant levels in a waste stream, the proposed regulation affords the discharger the opportunity to demonstrate through testing that another multiplier is appropriate.

The application-based limit is clearly authorized by the Clean Water Act. Section 101(a)(1) of the CWA declares "the national goal [is] that the discharge of pollutants into the navigable waters be eliminated by 1985." Allowing dischargers to increase their pollutant discharges would contravene that goal. The application-based limit is also consistent with the technology-based requirements of section 301(b) of the CWA. Clearly, any level of pollution control which the applicant is already attaining is achievable through BAT or BCT.

The multiplier approach to establishing limitations for pollutants reported in an application form but which are not specifically limited in a permit was developed after extensive consideration of alternative approaches. The principal alternatives are:

1. Limit discharges to the levels reported in an application (as in the August 21, 1978 proposal of § 122.14(a));

2. Set pollutant-specific limits which would apply to all dischargers, e.g., no discharger shall discharge pollutant Y at concentrations greater than Z mg/l;

3. Allow applicants to choose a limit for each pollutant to which they would be willing to be held;

4. Limit applicants to reported levels of certain indicator pollutants only; or

5. Establish a biomonitoring-based overall toxicity limit.

All of these alternatives have certain advantages and certain disadvantages.

The first alternative would provide maximum environmental protection by minimizing allowable discharges. However, as mentioned previously, normal waste stream variability precludes the strict approach of limiting pollutants to reported levels.

The second alternative has the virtue of simplicity and clarity. Unfortunately, this approach cannot be supported by existing effluent data. Therefore, this option was rejected, at least for the present.

The third alternative also holds a certain attraction for its simplicity. Its deficiency lies in its leniency. It would be an ideal method for dischargers willing to accept reasonably low limits. However, for those dischargers who wished to circumvent liability by selecting inordinately high limits, protracted disputes would be unavoidable. This option is analogous to allowing applicants to select their own permit limits and, in the opinion of the Agency, would not lead to effective control of toxic pollutants.

The fourth alternative would serve to restrict excessive discharges of certain toxic pollutants in some instances. However, its utility is limited. While indicators are valuable in certain cases in helping to regulate the installation of BAT equipment to control specific toxics which have been identified in some waste streams, they cannot be applied effectively in all situations to ensure that discharges of the 129 toxic pollutants will not increase significantly from reported levels. As a result, this option was rejected.

The last major alternative considered was to set an overall toxicity limit on each waster stream based upon biomonitoring tests required of each applicant. While biomonitoring has certain uses, tests on complex waste streams to determine characteristics other than acute toxicity, such as chronic toxicity, carcinogenicity, and mutagenicity, are not well established. Further, biomonitoring for acute toxicity is not effective in detecting or limiting large discharges of pollutants which occur at low concentrations, such as in waste streams which are diluted after treatment by large volumes of noncontact cooling water. Further, the cost of conducting biomonitoring tests to determine chronic toxicity, carcinogenicity, and mutagenicity would be much higher than the costs of pollutant analyses required by proposed § 122.64(d). As s result,this alternative was also rejected. As explained in section III–B(2) of this preamble, however, biomonitoring tests are very useful in many instances. They will therefore play an important role in the Agency's strategy for implementing BAT–level control of toxic discharges.

After considering the other alternatives and finding them inadequate, the Agency selected the mulitplier approach. The principal remaining issue is the selection of a multiplier which is justifiable both analytically (accounts for variability) and environmentally (protects against significant increases in discharges of toxic pollutants).

Several commenters on the NPDES proposal of August 21, 1978 recommended the multiplier approach and suggested appropriate multipliers despite the fact that the Agency did not specifically raise this issue in the proposal. The suggestions were as follows:

1. A major industrial discharger expressed its support of proposed § 122.14(a) (renumbered in today's proposal as § 122.68(a)) and the accompanying comment, but suggested that permits contain the following language:

"For all pollutant(s) for which discharge is not limited or authorized in this permit by explict numerical effluent limitations, the permittee shall limit discharges to the amount declared at the time of permit application plus the additional amount or margin otherwise prescribed by the paragraph. If in the permit application the quantity of discharge was declared as a true measurement of discharge or was not otherwise identified, the permittee shall limit the discharge of such pollutant to an amount no more than fifty (50) percent greater than the average amount declared in the application. If in the permit application the presence of such pollutant was declared but the quantity of discharge was only estimated, the permittee shall limit the discharge of such pollutant to a level no more than one hundred (100) percent greater than, or twice the average amount estimated in the application." (Emphasis in the original).

2. Another commenter suggested that permittees be allowed to discharge pollutants which are not otherwise limited "so long as the levels of the pollutants in the discharge are within an order of magnitude (i.e., a factor of ten) of the levels set forth in the application."

3. Another commenter did not suggest a specific multiplier but stated that "variability factors should be comparable to those applied to annual averages used in effluent limitation guideline development for several industries."

A fourth commenter suggested that the application-based limit should simply reflect the "margin of error of both flow and analytical techniques."

In developing the multiplier used in this proposal, the Agency recognized that developing a single all-encompassing factor to describe the upper limit of pollutant variability in all kinds of industrial waste streams would be extremely difficult, if not impossible. A large factor, e.g., several orders of magnitude, could be used, but at the expense of abandoning the original purpose of the regulations, to protect against significant increases in discharges of pollutants not specifically limited in permits.

The Agency then decided to take the more practical approach of selecting a multiplier high enough to account for the variability of pollutants in waste streams that has been observed for the general case, and to provide an opportunity for each discharger with an unusually high range of variability to demonstrate its case and to qualify for a different factor.

Variability in the levels of pollutants found in waste streams is largely a result of the following:

1. The degree to which the sample taken from the waste stream is representative of the waste stream;

2. The accuracy and precision of the analytical method;

3. Fluctuations of pollutants in waste streams due to varying amounts of the substance in the raw material or as the result of the process; variations in the use of cleaners, algicides, solvents, etc.; effects of chemical reactions taking place in waste streams; and other factors.

With good sampling and analytical practices, the maximum margin of error resulting from the first two sources of variation above should be no more than ±100%. Since all of the Agency's studies of variability to date are based on actual samples, this margin of error is largely subsumed within the variability factors described below.

The Agency has analyzed in depth the long and short term variability of pollutant levels in the discharges of each of four plants in the pesticides industry. Table IV presents the variability factors developed in this study demonstrating the relationship between the daily maximum and the long-term average values for several pollutants. The number of observations is in parentheses.

Table IV.—Variability Factors in the Pesticides Industry

[Relationships between daily maximum and long-term average values]

	BOD	COD	TSS	Pesticide chemicals
Plant:				
3				9.4 (244)
21	7.7(354)		5.4 (360)	5.0 (341)
28		1.8 (92)		12.2 (92)
41	2.6 (95)	1.5 (121)	2.5 (122)	
Weighted average	6.6 (449)	1.6 (213)	4.7 (482)	7.6 (677)

The samples used to develop the above data were collected on a 24-hour basis. The test requirements for determining limits for organic pollutants for the purpose of § 122.68(a) will be a 72-hour Composite sample (or 3 consecutive 24-hour samples), which should have a substantial mitigating effect upon the variability factors for pesticides described above.

An analysis of the discharges of the same plants to determine the relationship between the long-term average and the 30-day average yielded variability factors of 1.1 to 1.5 for BOD, COD, and TSS and of 1.3 to 1.6 for the pesticides.

The Agency has frequently used multipliers in the past to describe plant-to-plant variations in developing effluent guidelines. Typically, effluent guidelines contain daily maximum limits which are several times the mean of the results of samples collected and analyzed from several plants in the subcategory. These multipliers are selected so that the discharge on any particular day may be predicted with a high degree of confidence to be below the daily maximum limits.

Multipliers in most of the guidelines promulgated to date have been in the range of 1½ to 3, which generally have been used to set daily maximum limits for traditionally regulated pollutants. Specific organic pollutants are often subject to the wider ranges of variability. Therefore, the multipliers of 1½ to 3 are almost certainly too low for purposes of proposed § 122.68(a)(2).

It should be noted, however, that the function of a multiplier in effluent guidelines is slightly different than its function in proposed § 122.68(a)(2). On the one hand, guidelines are based upon analyses of several samples, allowing a smaller multiplier to be used than is justified by the minimum requirement of one single sample used by an applicant. On the other hand, guideline multipliers must account for variability between plants so that a single limit may be made uniformly applicable throughout a subcategory, while proposed § 122.68(a)(2) need only account for the variability of a pollutant in a single waste stream. Overall, this latter difference implies the use of a smaller multiplier in proposed § 122.68(a)(2) than is used in developing effluent guidelines.

After considering the above, and after consultation with industrial groups, environmental groups, and with Federal and State permit writers, the Agency determined that a multiplier of five is appropriate to describe the normal variation of pollutants in most waste streams.

While the Agency has selected the multiplier of five based upon the best available data for the purpose of this proposal, it recognizes that its data base is incomplete. The Agency solicits comments and data on waste stream variability in various industries and on the question of whether different multipliers should be applied to different industries. Comments are also solicited on the question of whether different multipliers should be applied depending upon the reported levels (e.g., a higher multiplier when pollutants are reported at low concentrations and a lower multiplier when pollutants are reported at high concentrations).

In any case, the Agency recognizes that certain waste streams may be so variable that the reported levels may be exceeded by more than the finally promulgated multiplier. If the applicant believes that this may be the case, §122.68(a)(3) of today's proposal provides an opportunity to demonstrate through testing and statistical analysis that a higher multiplier is appropriate.

In developing an alternative multiplier, proposed § 122.68(a)(3) requires the submission of ten data points (24-hour samples analyzed for the pollutant of concern), and a statistical analysis to develop a limit representing an upper 99% confidence bound for the pollutant. Based on the ten data points, an acceptable computation of the upper confidence bound is:

$L = \exp(Y + 2.96S)$,

where

$$L = \exp(\bar{Y} + 2.96S),$$

where

$$\bar{Y} = \frac{1}{10} \sum_{i=1}^{10} \ln X_i;$$

$$S^2 = \frac{1}{9} \sum_{i=1}^{10} (\bar{Y} - \ln X_i)^2;$$

L is the upper 99% confidence bound;

L is the upper 99% confidence bound;
X is the pollutant concentration of each data point;
ln is the natural logarithm; and
exp( ) is the antilogarithm.

The statistical interpretation of L is that a future concentration measurement of the particular pollutant will not exceed L with a confidence of 99%.

The equation described above is based on the classic two-sample statistical confidence region where the underlining distribution is lognormal and the first sample has size ten and the second has size one. The result of the equation is a confidence region with expectation being 99%. This general approach has been the basis of many effluent limitations guidelines and many limitations in negotiated permits (i.e.,

those for which no effluent guidelines existed) for the past five years. Over this period of time, the two major assumptions most closely examined in this methodology have been: (1) The assumption of lognormality; and (2) the size of the confidence associated with the region.

The Agency's experience in analyzing the data for each of the effluent guidelines it has promulgated has shown that in all cases the plant effluent data was lognormal or that the lognormal distribution overestimated the variability of actual plant effluent data. Thus, even where the data was not lognormal, the assumption of lognormality benefited the permittee.

Historically, the 99% level has been shown to be conservative enough to act as a control of the permittee's treatment system and liberal enough to allow normal operating variability without the risk of violation, except in the most severe cases. In addition, the risk to the permittee has been further reduced by the recent promulgation of a new "upset" provision in the NPDES regulations (§ 122.14(1) of the NPDES regulations, renumbered as § 122.68(c) in the proposed consolidated permit regulations which appear elsewhere in today's **Federal Register**). This provision provides permittees with an affirmative defense to enforcement actions brought for noncompliance with permit limits, based on factors beyond the control of the permittee. Thus the risk of being held liable for violations due to normal variations in effluents has been reduced to well beneath one per cent.

The Agency is also considering other procedures for demonstrating an alternative multiplier. We request comments on the methodology described here, and invite suggestions on other mechanisms to minimize the number of samples required and to make the most efficient use of this data to accomplish the goals of proposed § 122.68(a).

VI. Monitoring and Reporting

A. *Typical Monitoring Scheme*

Specific monitoring requirements are not contained in the NPDES program regulations promulgated on June 7, 1979. These regulations require in § 122.22 (renumbered as § 122.14 in the proposed consolidated regulations) that monitoring requirements be established in permits, but leave the permit writer the discretion to establish the type and frequency of monitoring requirements which are most appropriate to the particular discharger (although it should be noted that future effluent guidelines may specify monitoring requirements). Similarly, today's proposal, while clarifying in proposed § 122.71(a)(1) that monitoring requirements may be set for pollutants controlled by application-based limits, does not set specific monitoring requirements. However, for the purpose of demonstrating the range of choices available to permit writers under the new permitting strategy, a typical monitoring scheme (assuming the absence of a monitoring requirement specified by an effluent guideline) is presented below.

Typically, permittees will be required to monitor all pollutants which are specifically limited in the permit on a periodic basis to insure compliance with the permit limits. This conforms to existing practices. Monitoring costs will thus be substantially the same as at present except in those situations where a permit contains limits for specific organic toxics which require GC or GC/MS analysis.

Where the indicator approach is used, the permittee may be required to occasionally analyze for some or all of the toxic pollutants to insure that the treatment equipment is being operated and maintained properly and is adequately removing the toxics, and to help insure compliance with the application-based limit of § 122.68(a)(2). This monitoring will usually (but not always) be required only for those pollutants reported as present at significant levels in the application. Monitoring for the organic toxics might be based upon 24-hour composite samples for this purpose, resulting in lower costs than the 72-hour application sampling requirement imposes.

Permits might also make waste characterization requirements contingent upon other events. For example, as discussed in the next section of this preamble, a violation of a certain permit limit may be used to trigger a requirement to monitor for some or all toxic pollutants.

Another type of monitoring which may be required of permittees is biological monitoring, such as acute aquatic toxicity LC_{50} tests (appropriate test methods are contained in EPA's *Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms*, EPA–600/4–78–012). These acute toxicity tests are generally less expensive than waste characterizations for organic pollutants. Therefore, some permit writers may require waste characterizations only sparingly but require acute toxicity tests on a more frequent basis. If the results of such tests indicate that a discharge is acutely toxic, the Director may then require the permittee to conduct a full waste characterization or take some other necessary action to detect the source of the toxicity. This authority is provided by section 308 of the CWA or similar State authority (see the Decision of EPA's General Counsel, January 11, 1979).

B. *Additional Monitoring When Indicator Limits are Violated*

One of the problems with using limits on indicator pollutants to control discharges of toxics is that a violation of a limitation on one or more indicator pollutants is not necessarily linked to an increased discharge of toxic pollutants. The response of the permitting authority and the discharger to any permit violation depends on the seriousness of the violation, which is not immediately apparent when a limitation on an indicator is violated. A violation that is accompanied by an increased discharge of toxics will require corrective action much greater in speed and extent than a violation of the indicator pollutant alone.

The Agency is considering addressing this problem by establishing a general regulation requiring permittees to conduct additional monitoring when they violate permit limitations on indicator pollutants. Under this requirement, each permit would contain a clause which would trigger a monitoring progam when certain permit limits are violated. This program would include monitoring appropriate for each site to determine the cause of the violation, necessary corrective measures, and the extent to which the violation resulted in discharges of toxic pollutants. Monitoring requirements might include an analysis for specific toxic pollutants, an effluent scan, or biological monitoring tests for acute toxicity. Under this scheme, each violation of an indicator limit would be evaluated on a case-by-case basis by the permitting authority to determine whether or not the additional monitoring program is necessary.

The authority to require additional monitoring is already available under section 308 of the CWA or similar State authority. However, the scheme outlined above would establish a monitoring program for each permittee at the time the permit is issued, rather than at the time the violation occurs. Because the monitoring program is clearly laid out and agreed to in advance, the permittee will be prepared to put it into effect as soon as the permitting authority determines that it is necessary.

The information generated by the monitoring program will allow an in-depth assessment of the seriousness of

the violation. A large discharge of toxic pollutants might cause a relatively small violation of a limit for an indicator pollutant, while a much greater violation might be accompanied by no increase in toxic pollutants. Information on the toxicity of the effluent will enable the permitting authority to decide the extent of further action needed to mitigate the effects of the violation and to determine whether additional permit limits are necessary to prevent future violations.

A regulation establishing this monitoring requirement has not been proposed in today's Federal Register (although a similar provision will appear in the proposed effluent limitations guidelines for the leather tanning industry), because the Agency has not yet developed a detailed scheme for implementing this provision. The Agency intends to determine precisely which monitoring techniques will be required and what criteria permitting authorities will use to determine whether a violation should trigger the monitoring. During this process, the Agency will consider how the information will be used and what the costs will be.

The Agency requests comments on the potential value of the scheme outlined above, and asks for suggestions on the most practical way to implement such a scheme.

VII. Economic and Resource Impacts of Application Reporting Requirements

A. *Unit Costs of Sampling and Analysis*

The incremental costs imposed by the new sampling and analysis requirements consist of the following two elements: (1) Costs imposed by the new requirement that certain applicants sample and analyze certain wasted streams for 115 organic toxic pollutants, and (2) costs imposed by the revision of existing reporting requirements for pollutants other than the organic toxics, including additions to and deletions from the current list of pollutants which must be reported and changes in the nature of reporting for certain pollutants retained on the list.

1. *Sampling and analysis of 115 organic toxics.* Sampling consists of 72-hour composites (and a series of grab samples for volatile organics). Analysis consists of either GC/MS screening (identification) followed by GC (or in the case of polynuclear aromatic hydrocarbons, LC) quantification, or GC/MS quantification alone.

Cost data was developed from a variety of sources, which yielded figures over a relatively large range. The rapidly declining trend of these costs, resulting from laboratories' increased usage of and familiarity with the analytical methods, suggests that the costs estimated in this proposal will decrease by the time the revised application requirements become effective. However, the Agency's costs estimates are based upon present-day unit prices, as of Spring 1979. The discussion below provides a brief review of available data followed by the Agency's estimates.

(a) *Sampling Costs.* Sampling costs will vary significantly, depending upon the choice of personnel involved in the operation. While some applicants will have in-house sampling capability (or at least partial capability), others may have to rely completely on the use of more expensive independent contractors.

The analysis below assumes that sampling will be performed manually rather than by automation. Manual sampling is more labor-intensive and costlier than automated sampling, but it is necessary in certain situations where automated equipment cannot be used (e.g., where flammable or explosive vapors may be present or where very large samples are required). Since automated sampling can be used in many cases, the total cost of sampling is overestimated here.

Using current prices, the approximate sampling cost breakdown in the case of complete reliance upon independent contractors (assuming the use of a 4-person sampling team for a 4-day sampling trip) is as follows:

Technicians @$80/day, × 3 sampling shifts = $240 × 4	$960
Supervisor @$120/day = 120 × 4	480
Reports (1 person-day, supervisor)	120
Overhead on contract salaries (150%)	2340
Equipment set up on site, 2 man-days	160
Disposable equipment, sample container preparation	130
Sample air transport	100
Subtotal, less personnel air fares, local travel and per diem	4290
Personnel air fare (estimnated average) = $200/ea.	800
Personnel per diem/local travel = $50/day/person	800
Total	5890

Costs in a number of these categories, such as salaries, overhead rates and travel distances may vary significantly. However, the Agency believes that $5890 is a reasonable estimate of the discharger's cost to have an independent 4-man team to undertake a 4-day sampling trip.

The situation described above is the most expensive case. By using an experienced constract supervisor (and possibly contract sampling equipment) together with in-house technicians, sampling costs may be reduced by approximately $2650 because of reduced overhead, travel, and per diem expenses. (The presence of the supervisor will insure that the sampling results are sufficiently reliable for purpose of the application, offsetting a potential lack of experience by house technicians in this type of sampling.) This leaves a net sampling cost of approximately $3200 per 72-hour manual composite sample.

A sampling team can sample at least two (and possibly three) outfalls (or an intake plus one or two outfalls) simultaneously, depending on their proximity and on the sampling techniques required for each. While equipment costs must be duplicated, personnel-related costs need not be. Thus, the estimated cost per sample for two outfalls is $1800. If three outfalls can be sampled simultaneously, sampling costs per outfall decline further. For the purpose of computing the total incremental cost of complying with the proposed application requirements (section VII–C below), an average sampling cost of $2500 per sample will be assumed.

(b) *Cost of Analysis of GC/MS Screening Followed by GC Quantification.* For the purpose of determining GC/MS screening and GC quantification costs, it is assumed that applicants will forward their samples to independent laboratories for analysis.

The Agency has received data on GC/MS screening costs from several sources. Unit costs for over 2,000 analyses conducted as part of the effluent guidelines development have been decreasing steadily and presently start at a large-volume price of approximately $700. Industry estimates range widely ($400 to $4,000) due to differing assumptions concerning the "average" complex effluent, the degree of quality control which they anticipated might be required by the application requirements, standardization procedures and other factors. Independent laboratories have most frequently cited figures in the range of $1,000 to $2,000. Manufacturers of GC/MS equipment contend that recent improvements in technology, such as reductions of the time required to perform an analysis, have reduced the cost to as low as $400 per sample.

The above data, together with the fact that increased volume and improved technology have been steadily reducing costs, indicate that $750 may be a reasonable estimate of GC/MS screening costs. However, the Agency is assuming, for purposes of assessing the impact of its reporting requirements, that the cost will be $1,000.

Unlike GC/MS screening, which has a relatively fixed cost regardless of the number of pollutants analyzed (although

moderate cost reduction is obtainable by eliminating entire classes of pollutants from the analysis), GC or LC quantification costs are roughly proportional to the numbers of pollutants to be analyzed, as described below.

Ten to fifteen different CG or LC procedures may be needed to analyze for all 115 organic toxic pollutants. It is not possible to predict in advance how many of these organic pollutants will be found in a given effluent and how many of these could be analyzed by the same procedure.

The plant surveys which EPA has conducted as part of its project to develop new BAT effluent guidelines for toxic pollutants in 34 industries indicate that the number of organic toxic pollutans found in a given effluent varies widely (0–50), averaging about 5 organic toxic compounds per waste stream. Information is insufficent to allow assumption as to how many of these might in a particular situation be analyzed by using the same GC or LC procedures. It is therefore assumed that each of five pollutants would have to be determined by a different procedure at a cost ranging from $50 to $100 each (based upon sources of information similar to those used to generate GC/MS cost data). The Agency has assumed $75 per pollutant. Thus, for example, if five organic toxics have been identified by the GC/MS screening, about $375 must be expended to quantify those pollutants using GC and LC methods.

(c) *Cost of Analysis by GC/MS Quantification.* GC/MS Quantification may be approximately twice as expensive as GC/MS screening due to a need to repeat certain portions of the analysis using reference standards. The Agency assumes that the method used will require duplicate analyses and thus estimates the cost of GC/MS quantification as $2,000 (double the qualitative cost).

GC/MS screening followed by GC or LC quantification is less expensive than GC/MS quantification whenever the applicant's waste stream contains relatively few organic toxic pollutants. based on the above GC or LC estimate of $75 per pollutant, whenever GC/MS screening identifies more than 13 organic toxic pollutants, then GC/MS quantification becomes more cost-effective than GC or LC quantification. For example, treated discharges will, in most instances, be less expensive to analyze than those which are untreated or inadequately treated. The method of quantification selected by the applicant may depend on its assessment of how complex its waste stream is.

For purposes of computing the total incremental cost of complying with the proposed application requirements (section VII–C below), it will be assumed that all applicants will use quantitative GC/MS at $2,000 per analysis. Adding $2,000 for analysis to the assumed average sampling cost of $2,500, the average cost of sampling and analyzing the toxic organics will be assumed to be $4,500 per outfall.

2. *Sampling and analysis of pollutants other than the organic toxic pollutants.* The methods for analyzing for most of the pollutants other than the organic toxics (e.g., metals, ammonia, and other inorganic pollutants) are well established. Cost data for these pollutants is therefore more certain than the cost data for organic pollutants.

For sampling, today's proposal will result in little or no incremental cost for the inorganic pollutants over the cost of existing application requirements. Although certain pollutants formerly reported on a qualitative basis will now be required to be reported quantitatively, sampling techniques and their associated costs will remain substantially the same. Further, sampling for both the organic toxic pollutants and the other reported pollutants will usually be done at the same time and involve similar methods of collection (although a shorter interval and different preservation methods will be used for the inorganic pollutants). Therefore, any differences in sampling costs for the pollutants other than the organic toxics will be easily accounted for within the range of variability associated with the more expensive sampling costs for the organic toxic pollutants.

For analysis, the cost will increase somewhat from present requirements for the inorganic pollutants. These result from requirements that applicants analyze for certain pollutants (BOD, COD, TSS, total cyanide, and total phenols), whereas the old application allowed submission of estimates (although it should be noted that for these parameters, applicants usually submitted analytical data). In addition, new analytical costs will be incurred from a requirement to test for two pollutants not required to be reported by the present application, TOC And TKN. This increase in cost will be more than offset by the deletion of reporting requirements for certain other pollutants (algicides, calcium, chloride, chlorinated organic compounds, organic nitrogen, potassium, settleable matter, sodium, and specific conductance), and by the use of estimates instead of actual testing for certain other pollutants which presently are required to be tested.

The Agency estimates that incremental sampling and analysis costs for pollutants other than the organic toxics will range from $180 to $400. For purposes of computing the total incremental economic impacts in section VII–C below, an incremental cost of $300 is assumed.

B. *Unit Reporting Costs*

The preparation of the information which is required by proposed § 122.64(d) will require staff time, resulting in costs in addition to the analytical testing costs. These reporting costs include data development, collection and compilation by various levels of the applicant's staff (clerical, administrative and professional) and review by legal advisors, professional supervisors and managers.

The unit reporting costs will vary, depending on the nature and extent of the applicant's relevant activities and on the applicability of various reporting requirements to the applicant.

The chief factors are:

1. Group I dischargers will expend greater effort to study waste stream variability (including an examination of processes and raw materials) than Group II dischargers. Many Group I dischargers will also carefully study their waste streams and sites for potential discharges, leaks or spills of toxic pollutants in order to obtain exclusions from section 311 liabilities and requirements. Group II applicants, who are not generally expected to have significant pollutant discharges beyond the more traditional parameters, will be relatively unconcerned by these considerations.

2. Major dischargers will generally have more complex operations than minor dischargers. For major dischargers, large numbers of different processes may create complex waste streams which are then discharged through several outfalls. These considerations will require major dischargers to expend significantly more resources than minor dischargers.

The unit reporting costs of the new application form are summarized in Table V.

Table V.—*Unit Reporting Costs of New Application Form*

[Hours/source]

Type of question	Group I discharger		Group II discharger	
	Major	Minor	Major	Minor
General information	3	2	3	2
Environmental engineering data	22	8	16	6
Analysis of effluents	34	26	21	6
Graphics	4	4	4	4
Discharges not from outfalls	13	7	9	2
Variability analysis	26	14	4	2
Section 311 discharges	26	10	4	3
Total	128	71	61	25

In order to assess the incremental reporting impact of the new form over the old form, the total unit reporting costs of the old form were also assessed. It should be noted that the reporting cost assessments performed for Office of Management and Budget on the original NPDES application form indicated an unusually low unit cost of completing that form. This low original baseline cost is attributable to the fact that a large portion of the NPDES application requirements would be fulfilled in many cases by submitting applications completed under the old Refuse Act Permit Program (RAPP) administered by the U.S. Army Corps of Engineers. When the NPDES program came into being, these RAPP applications were often accepted as NPDES applications, so that the reporting costs of the original form were reported as incremental costs. For this reason, the total cost of the old form was recalculated.

These recalculated unit reporting costs are summarized in Table VI.

Table VI.—*Unit Reporting Cost of Old Application Form*

[Hours/source]

Type of question	Group I discharger		Group II discharger	
	Major	Minor	Major	Minor
General information	3	2	3	2
Environmental engineering data	44	18	36	18
Analysis of effluents	17	7	14	4
Graphics	4	4	4	4
Discharges not from outfalls	0	0	0	0
Variability analysis	0	0	0	0
Section 311 discharges	0	0	0	0
Total	68	31	57	28

The reporting burdens imposed by the proposed application requirements are comparable to those imposed by the expiring form. A number of unnecessary and burdensome requirements in the expiring application form have been deleted, but these deletions are largely offset by expanded requirements in some cases (such as projections of the variability of waste streams), and by new requirements in others (such as the optional requirement for reporting hazardous substances to gain exemptions from section 311).

Table VII.—*Incremental Unit Costs of New Application Form*

	Group I discharger		Group II discharger	
	Major	Minor	Major	Minor
Old form cost	$1,855	$765	$1,520	$665
New form cost	3,690	1,990	1,625	560
Incremental cost	1,835	1,224	105	105

The hourly reporting costs shown in Tables V and VI were translated into dollars by determining the time spent answering each type of question shown in those tables by three levels of personnel: Clerical (assumed to be $10/hour), mid-level business and technical ($25/hour), and professional, legal and managerial ($50/hour).

Based on the above, the incremental unit reporting cost of the new form is presented in Table VII.

Table VII illustrates that while the unit reporting cost of the new form is generally greater than the cost for the old form, the new form focuses reporting requirements on those industries with the greatest potential for toxic discharges (Group I). Note, however, that the incremental cost savings shown above for Group II minor dischargers is probably overstated since many of these dischargers completed a special "short form" rather than the complete NPDES application form analyzed above.

C. *Total Incremental Costs of Complying With the Proposed Application Requirements*

This section discusses the total additional costs imposed by the application requirements of proposed § 122.64(d) over those imposed by existing requirements. Section VIII of this preamble will also discuss other reporting costs which are not imposed by the proposed application requirements, including (1) the extra costs incurred by applicants who choose to analyze for section 311 hazardous substances, and (2) new monitoring costs (after permit issuance) which permit writers might be expected to impose, on a case-by-case basis, as a result of the new emphasis on the control of toxic pollutants.

The Agency has computed the total incremental costs of its new requirements by multiplying the unit costs derived in sections VII–A and VII–B above by the number of applicants or activities which are expected to incur those costs. The facts, estimates and assumptions used to compute the total incremental costs of the form are summarized in Table VIII.

Table VIII.—*Basis For Calculating Incremental Costs*

	Group I discharger		Group II discharger		Total
	Major	Minor	Major	Minor	
Number of dischargers	2,767	11,900	1,145	27,053	42,865
Number of intakes tested	1,383	5,950	573	13,526	26,432
Number of process wastewater outfalls	4,150	5,950	1,718	13,526	25,344
Number of process wastewater outfalls	5,534	11,900	2,290	27,053	46,777

1. *Number of applicants.* The number of existing industrial dischargers who will use the new application form is based upon the Agency's records of dischargers who presently have permits and may be expected to reapply upon permit expiration.

It should be noted that some dischargers will have had their effluents tested by EPA as part of EPA's effluent guidelines development program. Where such testing was consistent with the proposed application requirements, those test results may be reported and the applicants need not perform the analyses on its own. However, the analysis below assumes all applicants will do their own testing so that the estimated total cost is probably overestimated.

2. *Number of outfalls per applicant.* The Agency has estimated the average number of outfalls per discharger, based upon information received from EPA's Regional offices and from State offices. Major dischargers have, on the average, two nonprocess wastewater outfalls and one and a half process wastewater outfalls (i.e., 50% of major dischargers have one process wastewater outfall, and the remainder have two). On the average, minor dischargers have one nonprocess wastewater outfall and one half of a process wastewater outfall each. These are averages used for computation of total impacts; particularly plants may differ significantly. For example, certain major dischargers have as many as 20 process wastewater outfalls.

3. *Number of intakes to be tested by applicants.* In addition to sampling and analyzing outfalls, some applicants will be examining their intakes to obtain credit for pollutants in their intakes under § 122.70(g) of the consolidated permit program regulations. This credit is available only under certain circumstances, e.g., where the intake source is the same body of surface water (as opposed to a well, piped-in supply or other source) that receives the discharge for which the credit is sought. Another factor tending to reduce the total number of influent analyses is that plants with many outfalls generally have only one source of surface water influent (e.g., a single adjacent stream or lake). In light of the above considerations, the Agency has estimated that one half of all applicants will sample and analyze one intake point.

Based on the number of dischargers, tested intakes, process wastewater outfalls and nonprocess wastewater outfalls summarized above, Table IX sets forth subtotals and totals of all the costs imposed by the regulations over the next five years.

Table IX.—*Total Incremental Costs of Proposed Application*

	Group I dischargers		Group II dischargers		Total
	Major	Minor	Major	Minor	
Cost of sampling and analyzing for organic toxics	$24,899,000	$53,550,000	0	0	$78,449,000
Incremental cost of sampling and analyzing for pollutants other than organic toxics	3,000,000	7,140,000	$1,374,000	$16,232,000	27,746,000
Incremental reporting cost					16,934,000
Total incremental cost					123,129,000

The total incremental cost of complying with the proposed application requirements is approximately $123 million. The annualized cost (spreading the application costs over the five year duration of NPDES permits) is approximately $24.6 million per year.

While most small businesses subject to the NPDES program will be minor dischargers sustaining minimal reporting burdens, some will have highly toxic, variable or complex discharges which will increase the difficulty of preparing applications. While the Agency has concluded that these application requirements will not force closures (see section VII–D below), certain small businesses may find the proposed requirements burdensome. As described in section IV of this preamble, the Agency has sought to minimize burdens consistent with the requirements of the CWA (particularly the 1977 amendments). Comments are solicited on how reporting requirements for small businesses may be reduced without sacrificing the objectives and requirements of the CWA.

D. *Economic Impacts Upon Selected Industries*

The Agency conducted an analysis of the economic impact of the revised application reporting requirements upon Group I dischargers with process wastewater discharges (upon whom the chief burden of the new requirements fall). The analysis focused primarily on those facilities which will be most affected: Marginal, small volume facilities in Group I industries. The analysis was conducted for five industries—leather tanning, wood preserving, electroplating, foundries, and iron and steel. The first four industries were selected because many of the plants are small and thus more sensitive to newly imposed cost burdens than other industries. The iron and steel industry was selected to examine the analytical costs of a typical plant which contains a large number of process wastewater outfalls, resulting in correspondingly large analytical costs. No industry was discovered which consisted predominantly of small firms with more than one process wastewater outfall.

Costs vary significantly from plant to plant depending on the number of outfalls at a particular plant. The combined analytical and reporting costs for a plant with one process wastewater outfall will be small, on the order of $5,000, while the cost to a steelmaking facility with 10 process wastewater outfalls may be as high as $25,000.

The impact on prices, profits, and plant closures should be small for most industries although impacts may be significant in individual cases. The key economic indicators that were examined to estimate economic impacts are the ratios of testing costs to sales, to profits, and to total pollution control investment. The ratio of testing cost to sales indicates impact on price increases while the ratio of testing cost

to profit provides a rough indication of impact on profits and even closures. Table X summarizes the results for average small plants in each industry analyzed during the year that the permit application is submitted.

Table X.—*Economic Impacts of Testing Costs*

(figures in percentages)

Industry	Ratio of testing costs to—		
	Sales	Profits	Pollution control cost
Small tanneries	0.11	6	1.4
Wood preservers	3	N/A	0.7
Electroplaters (1–4 person job shops)	5.6	70	N/A
Foundries (10 person shops)	2	40	N/A
Iron and Steel	N/A	N/A	1–2

The economic data for the leather tanning, wood preserving, and foundry industries were obtained from economic impact analyses which have been or which are being prepared in support of forthcoming BAT effluent guidelines. Data for the steel and electroplating industries were taken from an earlier estimate developed when BPT guidelines and secondary treatment guidelines respectively were promulgated. The data is the best which the Agency currently has at its disposal.

One shortcoming of the Agency's data and analysis is the inability to separate direct dischargers from indirect dischargers in most of the industries. Since our data base includes direct dischargers and the data indicates a possible impact on some small dischargers, the Agency decided to use this data in its analysis. Economic impacts will be overstated since many small facilities are not direct dischargers, and thus are not subject to NPDES requirements. In addition, many small facilities do not discharge process wastewater, and thus are not affected by these application requirements. The Agency requests additional information of economic impacts on small facilities, and on alternatives for minimizing these impacts.

1. *Leather Tanning Industry.* In 1977, the leather tanning industry consisted of 400 plants, of which 188 had effluent discharges. Of these, only 18 were direct dischargers; 170 were indirect dischargers. All but a few of these dischargers have only one process wastewater outfall. The average value of sales per establishment was about $3.5 million in 1977. The pretax return on sales has varied between 4.5 and 6.5 percent over the last several years. The direct dischargers are considerably larger than the average plant in the industry. For example, a small cattle-hide chrome tannery has sales of $5 million. Although the new BAT guidelines have not yet been promulgated, it appears that BAT investment costs for this plant will be between $350,000 and $450,000. In this context, the application cost is small when viewed against either sales (0.11%) or BAT investment costs (1.4%). These percentages decrease significantly for larger facilities with sales of $16 million and BAT investment costs of about $675,000.

The effect on profits will be more noticeable. After-tax profits will be reduced by about 6 percent for a small tannery during the year that the permit application is submitted. Larger tanneries will be affected much less, with a profit reduction of about 1.5 %, although profit reductions are smaller by a factor of five if the application costs are spread over a five-year period. In all cases, the costs of waste stream testing will not affect the Agency's preliminary analysis for its forthcoming effluent guidelines that all existing direct discharges for the leather tanning industry are financially viable and should not close as a result of environmentally related expenditures.

2. *Wood Preserving Industry.* The wood preserving sector of the timber products processing industry contains only one direct discharger; thus the impact of the new requirements on this sector is slight. However, the Agency has developed considerably more economic data on this industry than for other similarly sensitive industries. Therefore, the Agency has studied the impact which the new reporting requirements would have upon wood preservers if they were direct dischargers. This analysis will serve with the foundry and electroplater analyses as an indication of the impact of the testing requirements upon small direct dischargers in other industries for which economic data bases are not as fully developed by the Agency.

The wood preserving industry also provides a good example of the impact of the testing requirements on a potential closure candidate. The industry has one highly vulnerable plant, based on a survey conducted in preparation of the Agency's BAT effluent guidelines. The testing costs for that plant are about 30% of sales and actually exceed expected profits. However, the testing costs are about 0.7% of the cost of pollution control investment. Thus, the dominant investment decision is whether to install the pollution control equipment, not whether to test the waste stream for toxic pollutants. On the other hand, these decisions are somewhat independent because the testing costs must be incurred at an earlier time and because business loans are less likely to be available to finance testing costs.

3. *Electroplating Industry.* The electroplating industry has a large number of small facilities. The average value of sales was $650,000 per establishment in 1977. According to a job shop survey which the Agency performed in 1977, 40% of the 3,000 job shops covered by Agency regulations were facilities with one to four employees. 90% of these discharge to POTW's. Since we were not able to separate indirect from direct dischargers, the assumption was made that direct dischargers are distributed among the different size groups in similar proportions to indirect dischargers. Based on a limited survey, it was concluded that average sales of facilities with one to four employees are about $89,000 while average profits are about $7,000. The application cost is thus about 5.6% of sales and 70% of profits for these small shops during the year that the permit application is submitted. Larger electroplaters will be affected much less, although there may also be significant impacts on sales and profits of some of the large facilities.

4. *Foundry Industry.* An analysis of the foundry industry also indicates that some smaller facilities may have difficulty absorbing the application cost. The Agency's financial dats is only preliminary, but what is available shows that facilities with 10 or fewer employees (about 20% of the industry) have average sales of $250,000 and average profits of $12,400. The foundry industry is similar to the electroplating industry in that a large proportion (about 50%) of foundries discharge to POTW's, so that no application costs will be incurred for these facilities. Further, foundries with fewer than 10 employees rarely discharge process waste water, so that most facilities will not be required to test for toxic pollutants. Because of this, impacts are overstated, but for some of these smaller facilities, the application costs are about 2% of sales and 40% of profits during the year that the permit application is submitted.

5. *Steel Industry.* The Agency also examined the impact of the application form on the steel industry since some plants in the industry have a large number of process wastewater outfalls which must each be tested. Waste stream testing costs appear to be between 1 and 2% of BAT pollution control investment for a steel making

facility with 20 process waste water outfalls. Note that this is a worst case assumption; almost all steel facilities have less than ten process waste water outfalls, and most have three or less. Waste stream testing costs relative to pollution control should not be a significant factor in either plant closings or price increases in the industry, but the cost of waste stream testing could place a burden on small marginal facilities with numerous process wastewater outfalls.

The Agency is actively seeking information to more accurately characterize the overall sales, profits, pollution control investments, and typical numbers of process wastewater outfalls at plants in order to more accurately project impacts for the industries examined above. We also seek additional information on availability of loans to businesses to help finance testing costs, and on the aiblity of applicants to pass through these costs.

The Agency also invites comments and data on the impacts of the testing requirements on industries other than those discussed above.

E. *Impact of Reporting Requirements Upon Independent Laboratory Capability*

Several commenters upon the August 21, 1978 proposed NPDES regulations suggested that the analytical requirements to implement the NPDES strategy would exceed laboratory capacity. The comments referred specifically to capacity to perform GC/MS analysis, since GC/MS is a fairly recent technological development. The Agency has investigated this matter and concluded that laboratory GC/MS capacity be sufficient to meet expected demand. However, current supply appears to be tight, and some delays in obtaining analytical services from laboratories may occur.

The application will require analysis by either quantitative GC/MS (for which we are assuming two runs through the machine), or by qualitative GC/MS (one run) followed by quantitative GC. Since the number of process wastewater outfalls and intakes to be tested for the Group I applicants is estimated to be 17,433, the number of GC/MS runs should be somewhere between 17,000 and 35,000. Analysis of the permit expiration dates for the Group I applicants indicates that the majority of GC/MS tests will be performed between October 1979 and December 1980. The average demand rate for GC/MS tests is projected to be between 1200 and 2300 analyses per month over this period.

Current laboratory experience indicates that a GC/MS instrument can perform at least 20 sample analyses per month on single shifts and 40 per month on double shifts. A recent manufacturer's survey of available laboratories identified 98 GC/MS systems in 55 laboratories which are capable of performing the required analyses. Current laboratory capacity potential thus appears to be about 2,000 analyses per month on a single shift basis and 4,000 analyses per month on a double shift basis. This capacity is in addition to the in-house GC/MS capacity which many industries and universities have for research and other purposes.

Thus, existing capacity exceeds expected demand. Further, some growth can be anticipated; GC/MS capability in service laboratories has doubled over the past two years. This swift increase is also a reflection of how easily additional laboratory capacity can become available to meet demand.

Thus, sufficient capacity appears to exist, especially if the existing equipment is used on a double shift basis. The Agency solicits comments on the current availability of laboratories with GC/MS capability and on the level of capacity growth which may occur over the next few years.

VIII. Miscellaneous Cost Estimates for Reporting Which is Not Required By Proposed Requirements

A. Optional Application Reporting of Hazardous Substance Discharges

Reporting of section 311 hazardous substances is optional; only those seeking exemptions from the requirements and penalties of section 311 will analyze or estimate levels of discharges of these substances. Although such reporting is not required by the proposed application requirements, the Agency has considered the associated costs to provide applicants with an estimate of what such optional reporting will cost.

The Agency has designated 299 hazardous substances (40 CFR Part 117, published at 43 FR 10474, March 13, 1978 and at 44 FR 10628, February 16, 1979). Many of these are also listed under section 307(a) as toxic pollutants. Since proposed § 122.64(d)(16) will require toxic pollutants to be analyzed and reported by all applicants who are likely to have such pollutants in their waste streams, it is assumed for this analysis that no incremental costs from the section 311 exemption option will result with respect to hazardous substances on the toxic pollutants list.

The remaining hazardous substances include many substances which dissociate into ions in water. Of these ions, all but about thirty will be required to be reported by proposed § 122.64(d)(16). If an applicant sought an exemption for all of the remaining thirty ions, the incremental cost for sampling and analysis would be approximately $150.

Seventy-four hazardous substances are not on the toxics list and do not dissociate. Virtually all of these are organics and may be analyzed by GC and GC/MS techniques. For the purpose of analytical cost estimation, the Agency assumes that these substances will be present at significant levels only in the process wastewater discharges from Group I industries.

Thirty-six of the 74 hazardous substances may be analyzed by straightforward extension of the GC/MS protocol which will be proposed in the near future. Significant modifications (e.g. chromatographic column changes or extraction solvent changes) might be required in order to analyze the remaining 38 compounds by the GC/MS method.

Also, 45 of the 74 compounds may be effectively decomposed during conventional secondary biological treatment and 7 more compounds are likely to be effectively removed from the effluent during secondary treatment by adsorption onto other materials. (Only 13 of the compounds which are not decomposed or adsorbed during secondary treatment cannot be detected by the GC/MS method.) A large percentage of industrial dischargers met BPT by installation of some form of conventional biological treatment, so the prospects that these substances will appear in an effluent meeting BPT permit limits due to unanticipated, but routine, low-level sources appear to be low. The Agency is therefore assuming that most applicants will not analyze for all hazardous substances, especially since estimates are acceptable for these substances in the application form. Rather, the discharger most likely will analyze for a few materials known to be involved in some phase of its operations plus an even smaller number of suspected low-level contaminants.

By rough analogy to the average of 5 toxic pollutants found in process wastewater outfalls from primary industries (although the number found has ranged up to 50 in some cases), the Agency is assuming that an industrial discharger may suspect that an average of 3 of the non-dissociated hazardous substances and 4 of the dissociated ions may be present in a given effluent and

elect to analyze for them in order to seek an exemption from section 311 liabilities.

The discharger may analyze for the non-dissociated pollutants by using either GC or GC/MS techniques. The use of quantitative GC methods for 3 pollutants at a cost of $75 per pollutant leads to an overall cost of $225. If the suspected pollutants are among those analyzable by the GC/MS method, the added cost should be no more than 10% greater than that for the organic toxic pollutants because the additional analysis can be done at the same time. The total projected analytical cost for the organic toxics required to be analyzed by the application form plus the additional non-dissociated hazardous substances is about $2,200 per sample, using quantitative GC/MS. The incremental cost of analyzing for the hazardous substances (including ions) is about $300.

Since sampling for the hazardous substances will also usually be conducted in conjunction with sampling for the organic toxic pollutants, the Agency projects little or no incremental sampling cost for the hazardous substances.

If it is assumed that one half of Group I dischargers test their process waste water outfalls for hazardous substances and that one half of these also test their intakes in order to obtain credit under § 122.70(g), the optional reporting of hazardous substances will result in a total incremental analytical cost of $3,715,000.

Some additional reporting costs will also be incurred by these applicants, which have been included in section VII–B above.

The Agency has begun to examine the incremental treatment costs for those seeking to comply with section 402 and avoid section 311 liability. Preliminary investigation indicates that, in the majority of cases, the same treatment used to control the toxic pollutants in a particular discharge will also be capable of controlling the hazardous pollutants in that discharge. In such cases, the incremental treatment costs for the hazardous substance would be insignificant. When the hazardous substance regulations which were proposed on February 16, 1979 are finally promulgated, they will contain an expanded discussion of these incremental treatment costs.

B. *Compliance Monitoring Costs*

As mentioned in the discussion on monitoring (section VI above), no specific compliance monitoring requirements are set forth in either the NPDES program regulations promulgated on June 7, 1979 or in the regulations proposed today. However, it is anticipated that the new emphasis on toxics will result in new permit requirements to periodically monitor for certain toxic pollutants. Even where indicator pollutants are used to regulate toxic pollutants, occasional waste characterizations will generally be useful to insure the proper control of toxic pollutants and to support the application-based limit of § 122.68(a)(2).

It is not possible to predict the extent to which permit writers will require monitoring of toxics in permits. This monitoring will be required on a case-by-case basis and will depend largely on the nature of the permittee's waste stream (especially as revealed by the data reported in the application).

If it is assumed that all Group I majors are issued permits requiring annual organic toxics monitoring as described above and that one-half of these permittees monitor one intake each in order to obtain credit under § 122.70(g), then the total incremental annual monitoring cost will be $24,898,5000 ($4500 times 4150 process wastewater outfalls and 1383 intakes).

Note.—Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107 require the preparation of economic impact statements for major regulations, defined as those with incremental annual impacts exceeding one hundred million dollars. As demonstrated in this preamble, the Environmental Protection Agency has examined costs and economic impacts as part of its decision-making process. It has determined, based on this analysis, that this document does not constitute a major regulation requiring the preparation of a separate economic impact statement. However, it believes that the detailed analysis contained in section VII of this preamble complies with the spirit and purpose of the executive orders and OMB circular.

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

PART 122—THERMAL DISCHARGES

§ 122.64 [Amended].

1. Section 122.64 is amended by renumbering paragraphs (d), (e), (f), and (g) as (e), (f), (g), and (h), respectively, and by adding a new paragraph (d) as follows:

* * * * *

(d) Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits shall provide the following information to the Director, using the application form provided by the Director:

[*Comment*—Permit application requirements for POTW's, new sources and new dischargers will be developed and proposed for addition to this paragraph at a future date.]

(1) Name, address, and telephone number of the applicant and the facility for which the application is submitted, if different.

(2) Identity and telephone number of applicant's authorized agent for the facility.

(3) Type of facility ownership (e.g. State, Federal, private).

(4)Up to four SIC codes which best reflect the principal products or services provided by the facility.

(5) A brief description of the nature of the business.

(6) A listing of all permits or construction approvals received or applied for under any of the following permit programs:

(i) NPDES permit program.

(ii) Underground injection control (UIC) permit program.

(iii) Hazardous waste permit program.

(iv) Prevention of significant deterioration (PSD) permit program.

(v) Air new source—nonattainment permit program.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval.

(vii) Ocean dumping permits.

(viii) Other relevant environmental permits, including State permits.

(7) A topographic map depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities, each well where fluids from the facility are injected underground, and all known wells, springs, and surface water bodies in the area. The topographic map shall extend to at least one mile beyond the property boundaries of the source.

(8) The average and maximum daily rate of production or material used where applicable effluent guideline limitations promulgated under section 304 of the CWA are based on products, raw materials, or some other measure of operation. The units reported must be consistent with the units used in the applicable effluent guideline, and the data reported must reflect the actual operation of the plant as required by § 122.70(a)(2).

(9) A line drawing of the water flow through the facility indicating each source of intake water, each process, operation, or production area contributing to each discharge, and each treatment unit in place. A water balance must be indicated on the line drawing, showing intake and discharge flows, and

losses to process, atmosphere, or elsewhere.

(10) A listing of the average and maximum flows contributed by each type of waste stream to each outfall (including, but not limited to, sewage, noncontact cooling water, process wastewater, and storm runoff).

(11) A description of discharges which do not occur from an outfall and which contain toxic pollutants listed under section 307(a) or hazardous substances listed under section 311 which are or may be discharged as a result of unchannelled plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. The description of such discharges shall include the source of the discharge, the estimated flow of the discharge, the receiving water, an identification of the toxic or hazardous pollutants, and estimated concentrations of each such pollutant.

(12) If the discharges described in subparagraphs (d) (10) and (11) are not continuous as defined in § 122.70(c), a description of the volume and frequency of each discharge occurrence (except for storm runoff and spillage or leaks).

(13) A copy of the applicant's Best Management Practices Plan, as required by § 125.104(c).

(14) For each outfall, a description of each process, operation, or production area which contributes to the effluent and a description of the treatment the resulting effluent receives.

(15) A description of any compliance schedules to which the facility is subject for construction, upgrading or operation of waste treatment equipment, including identification of abatement schedules, a description of each project, and a description of the present status of compliance with the schedule.

(16) A description of pollutant characteristics of the effluent discharged from outfalls (and the intake water where credit is desired under § 122.70(g) for pollutants present in the intake) as follows:

(i) for every applicant, quantitative data collected in accordance with analytical methods specified in 40 CFR Part 136 for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD_5).
Temperature (both winter and summer)
Chemical Oxygen Demand
Total Organic Carbon
pH
Total Suspended Solids
Total Cyanide
Total Phenols (4AAP)
Total Kjeldahl Nitrogen (as N)(TKN).

(ii) In addition, for all applicants in all industrial categories listed in Appendix A to this part and for all applicants in the asbestos industry (SIC 3292 and 3293) and in the ferroalloys industry (SIC 3313), quantitative data collected in accordance with analytical methods specified in 40 CFR Part 136 for all outfalls containing process wastewater for all pollutants on the section 307(a) list of toxic pollutants, except for cyanide, asbestos, and 2,3,7,8, Tetrachlorodibenzo-p-dioxin (TCDD).

(iii) In addition, for every applicant, data collected in accordance with analytical methods specified in 40 CFR Part 136 or on the basis of the applicant's best estimate for every outfall for the following pollutants:

Ammonia (as N), Asbestos, Barium, Total, Boron, Total, Bromide, Chlorine, Total Residual, Color, Fecal Coliform, Fluoride, Nitrate (as N), Nitrite (as N), Oil and Grease, Phosphorus (as P), total, Radioactivity, Sulfate (as SO_4), Sulfide (as S), Sulfite (as SO_3), Surfactants, Aluminum, Total, Cobalt, Total, Iron, Total, Magnesium, Total, Molybdenum, Total, Manganese, Total, Tin, Total, Titanium, Total.

2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)

Any pollutant specified in paragraph (d)(16)(ii) of this section for all waste streams not required to be tested by that subparagraph. Any pesticide not required to be tested elsewhere by this paragraph for which an analytical method is specified in 40 CFR Part 136.

(iv) The name, address, and telephone number of each contract laboratory or consulting firm which performed any of the analyses required by this subparagraph.

(17) A description and a summary of results of biological monitoring tests, if any, which have been conducted within the last five years upon the discharge or upon the receiving water in relation to the facility.

(18) A description of any additional data of which the permittee is aware concerning the presence or levels in its discharges of any pollutants which are in addition to those pollutants reported under paragraphs (d)(11) and (d)(16) of this section.

(19) At the applicant's option, information required by 40 CFR 117.12(b)(2)(i) to obtain exclusions from the requirements and penalties of section 311 of the CWA.

(20) Such other information as the Director may require to assess the discharges of the facility and to determine whether to issue an NPDES permit.

[*Comment.*—Such additional information may include biomonitoring tests to assess the relative toxicity of discharges to fish and other aquatic life, and requirements to determine the cause of such toxicity].

* * * * *

§ 122.68 [Amended].

2. Section 122.68 is amended by deleting the comment following paragraph (a) and by revising paragraph (a) to read as follows:

(a) (1) No permittee shall discharge any pollutant at a level which exceeds any specific permit limitation for that pollutant.

(2) Except as provided in § 122.68(a)(3), if a permittee has reported or has been required to report the level of any pollutant concentration in its application and the permit does not specifically limit that pollutant, discharges of that pollutant shall be limited to:

(i) Five times the average value reported in the application; or

(ii) If the pollutant was not detected or not reported as required, five times the highest of the following concentrations:

(A) Ten micrograms per liter;

(B) The detection limit (or lowest appropriate concentration) specified in the applicable analytical method specified in 40 CFR Part 136; or

(C) A detection limit for the applicable analytical method as determined by the permittee. For the purposes of this paragraph, the detection limit shall be the lowest concentration with a signal-to-noise ratio of five to one or less, in accordance with any generally accepted procedure for determining the level of background noise. The determination of this detection limit may be based on either a laboratory standard or an individual sample.

[*Comment.*—The level of background noise is measured as the net difference in instrument response between the highest and lowest peaks in the baseline response of the instrument. The instrument's baseline is found where there is nothing causing an overall increase or decrease in instrument response. The level of signal is measured as the net response above the median baseline level.]

(3)(i) For the purposes of § 122.68(a)(2), an applicant may apply to the Director for application-based limitations reflecting a factor other than five. Each such application shall include the following:

(A) Ten 24-hour composite samples analyzed for the pollutant in accordance with methods specified in 40 CFR Part 136;

(B) An appropriate statistical analysis providing an upper 99% confidence bound for the concentration of each pollutant of concern; and

(C) such other data as may be required to determine the variability of the pollutant in an effluent.

(ii) Each such demonstration shall be submitted within 180 days following the date of submission of an NPDES application form. Prior to the Director's approval of any factor other than five, the requirements of § 122.68(a)(2) shall apply.

* * * * *

§ 122.70 [Amended].

3. Section 122.70 is amended by revising paragraph (c)(1) to read follows:

* * * * *

(c) * * *

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works (although limitations established under § 122.68(a) (2) and (3) shall apply only as a maximum daily discharge limitation; and

* * * * *

§ 122.70 [Amended].

4. Section 122.70 is amended by revising paragraph (d) by replacing the period at the end of paragraph (d)(2) with "; or", and by adding a new paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) Limitations established by §§ 122.68(a) (2) and (3), which shall be applied on the basis of concentration.

* * * * *

§ 122.71 [Amended].

5. Section 122.71 is amended by revising paragraph (a)(1) to read as follows:

(a) * * *

(1) The amount, concentration, or other measurement specified in § 122.70 for each pollutant specified in the permit, including, where additional monitoring is specified in the permit, pollutants limited under § 122.68(a)(2);

* * * * *

PART 123—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

§ 123.73 [Amended].

6. Section 123.73 is amended by revising paragraph (a) to read as follows:

* * * * *

(a) Section 122.64 (d), (f), (g)—(Applications for permits and variances);

* * * * *

PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

§ 125.3 [Amended].

7. Section 125.3 is amended by adding new paragraphs (c)(4) and (g) to read as follows:

* * * * *

(c) * * *

(4) Limitations developed under paragraph (c)(2) of this section may be expressed, where appropriate, in terms of toxicity (e.g. "Permittee's LC_{50} shall not be less than X": *Provided* That it is shown that the limits reflect the application of the appropriate technological or other standard as required by section 301(b) of the CWA.

* * * * *

(g) The Director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollutant control technology (BCT), or a limit for a nonconventional pollutant, which limit shall not be subject to modification under section 301 (c) or (g) of the CWA where:

(1) Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant; or

(2)(i) The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(ii) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(iii) The statement of basis or fact sheet required by § 124.8 or § 124.9 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in subparagraph (2) of this paragraph and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

[*Comments.*—Toxic pollutants identified under this subparagraph remain subject to the application-based limits of § 122.68(a)(2). The authority of this paragraph is in addition to that established by sections 208(e), 301(b)(1)(C), 302, 401, and 510 of the CWA.]

[FR Doc. 79-18206 Filed 6-13-79; 8:45 am]

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federal register

Thursday
June 14, 1979

Part IV

National Transportation Safety Board

Transportation Accidents; Investigations, Hearings and Reports

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 831 and 845

Investigations, Hearings and Reports on Transportation Accidents/Incidents

AGENCY: National Transportation Safety Board.

ACTION: Final Rule.

SUMMARY: Part 831 of the Board's Rules of Practice is revised to limit its scope to aircraft accident/incident investigation procedures. In order to accomplish that change, Subparts C, D and E of Part 831 have been removed from that Part and relocated in Subparts B, C, and D of Part 845. As revised, Part 845 contains a common set of rules for accident/incident hearings and reports applicable to both aircraft and surface accidents/incidents.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Fritz L. Puls, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594, 202–472–6033.

SUPPLEMENTARY INFORMATION: Part 831 presently contains the Board's rules applicable to aircraft accident investigations, including the field investigation, public hearings, and Board reports. Part 845 contains the Board's rules for surface transportation accident hearings. The Board has concluded that it should have one set of rules for all of its accident hearings and reports. To this end, the provisions of Subparts C, D, and E of Part 831 have been combined with Part 845 in revised Part 845.

Nearly all of the changes in existing language are made for the purpose of clarification. The current provisions of Subpart B of Part 831, Field Investigation, will be retained with minor modifications and be the single subject of revised Part 831. The regulation will be applicable to both the investigation of accidents and incidents. Revised § 831.9, Parties to the field investigation, now makes it clear that designations, if made, are limited to those types of organizations listed therein. By the insertion of a note, it is emphasized that passengers and insurers (in air transportation) are not eligible to be parties to a field investigation. In time, when surface field investigation procedures become more standardized, it is anticipated that Part 831 will be amended to include references to the other modes of transportation.

The only new provision included in revised Part 845 is found in Subsection D, namely, § 845.23 concerning prehearing conferences. The Board recognizes that surface accidents may on occasion require expedited hearings. In such situations, all the requirements concerning availability of exhibits, witness lists, and areas of questioning may not be available at the time of the prehearing conference. Authority is therefore granted the Chairman of the Board of Inquiry for an expedited hearing to modify, as appropriate, such requirements.

Because these amendments relate solely to corrections and minor procedural matters, the Board has found that notice and public procedure thereon are unnecessary.

Accordingly, Parts 831 and 845 of Title 49 of the Code of Federal Regulations are amended, effective June 14, 1979, as follows:

1. By revising Part 831 to read as follows:

PART 831—AIRCRAFT ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

Sec.

831.1 Applicability of part.
831.2 Responsibility of Board.
831.3 Authority of Director.
831.4 Nature of investigation.
831.5 Request to withold information.
831.6 Right of representation.
831.7 Investigator-in-charge.
831.8 Authority of Board representatitves.
831.9 Parties to the field investigation.
831.10 Access to and release of aircraft wreckage, records, mail, and cargo.
831.11 Flow and dissemination of accident information.
831.12 Recommendations.

Authority: Title VII, Federal Aviation Act of 1978, as amended, 72 Stat. 781, as amended by 76 Stat. 921 (49 U.S.C. 1441 et seq); and the Independent Safety Board Act of 1974, Pub. L. 93–633, 88 Stat. 2166 et seq. (49 U.S.C. 1901 et seq.).

§ 831.1 Applicability of part.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all aircraft accident or incident investigations, conducted under the authority of Title VII of the Federal Aviation Act of 1958, as amended, and the Independent Safety Board Act of 1974. Rules applicable to aircraft accident hearings and reports are set forth in Part 845.

§ 831.2 Responsibility of Board.

(a) The Board is responsible for the organization, conduct and control of all accident investigations involving civil aircraft, or civil and military aircraft, within the United States, its territories and possessions. It is also responsible for investigation of accidents which occur outside the United States, and which involve U.S. civil aircraft or civil and military aircraft, at locations determined to be not in the territory of another state (i.e., in international waters).

(b) Certain field investigations are conducted by the Federal Aviation Administration (FAA), pursuant to a request to the Secretary of the Department of Transportation, effective February 10, 1977 (see appendix to Part 800 of this chapter),[1] but the Board determines the probable cause of such accidents. Under no circumstances shall investigations conducted by the Board be considered joint investigations in the sense of sharing responsibility. However, in the case of an accident or incident involving civil aircraft of U.S. registry or manufacture in a foreign state which is a signator to Annex 13 to the Chicago Convention of the International Civil Aviation Organization, the state of occurrence is responsible for the investigation. If it occurs in a foreign state which is not bound by the provisions of Annex 13 to the Chicago Convention, the conduct of the investigation shall be in consonance with any agreement entered into between the United States and the foreign state.

§ 831.3 Authority of Director.

The Director, Bureau of Accident Investigation, subject to the provisions of § 831.2, may order an investigation into any accident or incident involving a civil aircraft.

§ 831.4 Nature of investigation.

Aircraft accident or incident investigations are conducted by the Board in order to determine the facts, conditions, and circumstances relating to each accident or incident and the probable cause thereof and to ascertain measures which will best tend to prevent similar accidents or incidents in the future. The investigation includes the field investigation, report preparation, and, where ordered, the public hearing.

§ 831.5 Request to withhold information.

Any person may make written objection to the public disclosure of information contained in any report or document filed, or of information obtained by the Board, stating the grounds for such objection. The Board,

[1] The authority of a representative of the Federal Aviation Administration during such field investigations shall be the same as that of a Board investigator under this part.

on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information can be withheld under the provisions of an exemption to the Freedom of Information Act (Pub. L. 93–502, amending 5 U.S.C. 552) and its release is not found to be in the public interest (see Part 801).

§ 831.6 Right of representation.

Any person interrogated by an authorized representative of the Board during the field investigation shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 831.7 Investigator-in-charge.

The designated investigator-in-charge organizes, conducts, and controls the field phase of investigation. He shall assume responsibility for the supervision and coordination of all resources and of the activities of all personnel, both Board and non-Board, involved in the onsite investigation.

§ 831.8 Authority of Board representatives.

Upon demand of an authorized representative of the Board and presentation of credentials issued to such representative, any Government agency, air carrier, airman, or person engaged in air commerce or in any phase of aeronautics, and any other person having possession or control of any aircraft, aircraft engine, propeller, appliance, air navigation facility, equipment or any pertinent records and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an aircraft accident, overdue aircraft, study, or investigation pertaining to safety in air navigation or the prevention of accidents. Authorized representatives of the Board may interrogate any person having knowledge relevant to an aircraft accident/incident, overdue aircraft, study, or special investigation.

§ 831.9 Parties to the field investigation.

(a) The investigator-in-charge may, on behalf of the Director, Bureau of Accident Investigation, designate parties to participate in the field investigation. Parties to the field investigation shall be limited to those persons, Government agencies, companies, and associations whose employees, functions, activities, or products were involved in the accident or incident and who can provide suitable qualified technical personnel to actively assist in the field investigation.

(b) Participants in the field investigation shall be responsive to the direction of the appropriate Board representative and may be relieved from participation if they do not comply with their assigned duties or if they conduct themselves in a manner prejudicial to the investigation.

(c) No party to the field investigation designated under § 831.9(a) shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

(d) Section 701(g) of the Federal Aviation Act of 1958, as amended, provides for the appropriate participation of the Administrator in Board investigations. Thus, the FAA will normally be a party to field investigations and will have the same rights and privileges and be subject to the same limitations as other parties.

§ 831.10 Access to and release of aircraft wreckage, records, mail, and cargo.

(a) Only the Board's accident investigation personnel and persons authorized by the investigator-in-charge or the Director, Bureau of Accident Investigation, to participate in any particular investigation, examination or testing shall be permitted access to aircraft wreckage, records, mail, or cargo which is in the Board's custody.

(b) Aircraft wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records.

§ 831.11 Flow and dissemination of accident information.

(a) Release of information during the field investigation, particularly at the accident scene, shall be limited to factual developments, and shall be made only through the Board Member present at the accident scene, the representative of the Board's Office of Public Affairs, or the investigator-in-charge.

(b) All information concerning the accident or incident obtained by any personnel participating in the field investigation shall be passed to the investigator-in-charge, through appropriate channels. Upon approval of the investigator-in-charge, parties to the investigation may relay to their respective organization information which is necessary for purposes of prevention or remedial action. Under no circumstances shall accident information be released to, or discussed with, unauthorized persons whose knowledge thereof might adversely affect the investigation.

§ 831.12 Recommendations.

Any person, Government agency, company, or association whose employees, functions, activities, or products were involved in an accident under investigation may submit to the Board, prior to its determination of probable cause, recommendations as to the proper conclusions to be drawn from the evidence produced during the course of the accident investigation.

2. By revising Part 845 to read as follows:

PART 845—RULES OF PRACTICE IN TRANSPORTATION; ACCIDENT/INCIDENT HEARINGS AND REPORTS

Sec.

845.1 Applicability.
845.2 Nature of hearing.
845.3. Sessions open to the public.

Subpart A—Initial Procedure

845.10 Determination to hold hearing.
845.11 Board of inquiry.
845.12 Notice of hearing.
845.13 Designation of parties.

Subpart B—Conduct of Hearing

845.20 Powers of chairman of board of inquiry.
845.21 Hearing officer.
845.22 Technical panel.
845.23 Prehearing conference.
845.24 Right of representation.
845.25 Examination of witnesses.
845.26 Evidence.
845.27 Recommendations by parties.
845.28 Stenographic transcript.
845.29 Payment of witnesses.

Subpart C—Board Reports

845.40 Accident report.
845.41 Requests for reconsideration and modification.

Subpart D—Public Record

845.50 Public docket.
845.51 Investigation to remain open.

Authority: Sec. 304(b) of the Independent Safety Board Act of 1974. Pub. L. 93–633, 88 Stat. 2169 (49 U.S.C. 1903(b)).

§ 845.1 Applicability.

Unless otherwise specifically ordered by the National Transportation Safety Board (Board), the provisions of this part shall govern all transportation accident investigation hearings conducted under the authority of section 304(b) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(b)) and accident reports issued by the Board.

§ 845.2 Nature of hearing.

Transportation accident hearings are convened to assist the Board in determining cause or probable cause of an accident, in reporting the facts, conditions, and circumstances of the accident, and in ascertaining measures which will tend to prevent accidents and promote transportation safety. Such hearings are factfinding proceedings with no formal issues and not adverse parties and are not subject to the provisions of the Administrative Procedure Act (Pub. L. 89–554, 80 Stat. 384 (5 U.S.C. 554)).

§ 845.3 Sessions open to public.

(a) All hearings shall normally be open to the public (subject to the provision that any person present shall not be allowed at any time to interfere with the proper and orderly functioning of the board of inquiry).

(b) Sessions shall not be open to the public when evidence of a classified nature or which affects national security is to be received.

Subpart A—Initial Procedure

§ 845.10 Determination to hold hearing.

The Board may order a public hearing as part of an accident investigation whenever such hearing is deemed necessary in the public interest: *Provided* that if a quorum of the Board is not immediately available in the event of a catastrophic accident, the determination to hold a public hearing may be made by the Chairman of the Board.

§ 845.11 Board of inquiry.

The board of inquiry shall consist of a member of the Board who shall be chairman of the board of inquiry, a hearing officer, the Director of the Bureau of Accident Investigation, or his designee, and, where appropriate, the General Counsel or his designee. Assignment of a member to serve as the chairman of each board of inquiry shall be determined by the Board. The board of inquiry shall examine witnesses and secure, in the form of a public record, all known facts pertaining to the accident or incident and surrounding circumstances and conditions from which cause or probable cause may be determined and recommendations for corrective action may be formulated.

§ 845.12 Notice of hearing.

The chairman of the board of inquiry shall designate a time and place for the hearing which meets the needs of the Board. Notice to all known interested persons shall be given.

§ 845.13 Designation of parties.

(a) The chairman of the board of inquiry shall designate as parties to the hearing those persons, agencies, companies, and associations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence.

(b) No party shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

Subpart B—Conduct of Hearing

§ 845.20 Powers of chairman of board of inquiry.

The chairman of the board of inquiry, or his designee, shall have the following powers:

(a) To designate parties to the hearing and revoke such designations;

(b) To open, continue, or adjourn the hearing;

(c) To detemine the admissibility of and to receive evidence and to regulate the course of the hearing;

(d) To dispose of procedural requests or similar matters; and

(e) To take any other action necessary or incident to the orderly conduct of the hearing.

§ 845.21 Hearing officer.

The hearing officer, upon designation by the Chairman of the Board, shall have the following powers:

(a) To give notice concerning the time and place of hearing;

(b) To administer oaths and affirmations to witnesses; and

(c) To issue subpenas requiring the attendance and testimony of witnesses and production of documents.

§ 845.22 Technical panel.

The Director, Bureau of Accident Investigation, shall designate members of the Board's technical staff to participate in the hearing and initially develop the testimony of witnesses.

§ 845.23 Prehearing conference.

(a) Except as provided in paragraph (d) of this section for expedited hearings, the chairman of the board of inquiry shall hold a prehearing conference with the parties to the hearing at a convenient time and place prior to the hearing. At such prehearing conference, the parties shall be advised of the witnesses to be called at the hearing, the areas in which they will be examined, and the exhibits which will be offered in evidence.

(b) Parties shall submit at the prehearing conference copies of any additional documentary exhibits they desire to offer. (Copies of all exhibits proposed for admission by the board of inquiry and the parties shall be furnished to the board of inquiry and to all parties, insofar as available at that time.)

(c) A party who, at the time of the prehearing conference, fails to advise the chairman of the board of inquiry of additional exhibits he intends to submit, or additional witnesses he desires to examine, shall be precluded from introducing such evidence unless the chairman of the board of inquiry determines for good cause shown that such evidence should be admitted.

(d) *Expedited hearings.* When time permits, the chairman of the board of inquiry may hold a prehearing conference. In the event that an expedited hearing is held, the requirements in paragraphs (b) and (c) of this section concerning the identification of witnesses, exhibits or other evidence may be waived by the chairman of the board of inquiry.

§ 845.24 Right of representation.

Any person who appears to testify at a public hearing shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 845.25 Examination of witnesses.

(a) Witnesses shall be initially examined by the board of inquiry or its technical panel. Following such examination, parties to the hearing shall be given the opportunity to examine such witnesses.

(b) Materiality, relevancy, and competency of witness testimony, exhibits, or physical evidence shall not be the subject of objections in the legal sense by a party to the hearing or any other person. Such matters shall be controlled by rulings of the chairman of the board of inquiry on his own motion. If the examination of a witness by a party is interrupted by a ruling of the chairman of the board of inquiry, opportunity shall be given to show materiality, relevancy, or competency of the testimony or evidence sought to be elicited from the witness.

§ 845.26 Evidence.

The chairman of the board of inquiry shall receive all testimony and evidence which may be of aid in determining the cause of accident. He may exclude any testimony or exhibits which are not pertinent to the investigation or are merely cumulative.

§ 845.27 Recommendations by parties.

Any party may submit proposed conclusions and recommendations to be drawn from the testimony and exhibits submitted at the hearing. Such recommendations shall be submitted within the time specified by the presiding officer at the close of the hearing, and shall be made a part of the public file. Parties to the hearing shall serve copies of such recommendations on all other parties to the hearing.

§ 845.28 Stenographic transcript.

A verbatim report of the hearing shall be taken. Copies of the transcript may be obtained by any interested person from the Board or from the court reporting firm preparing the transcript upon payment of the fees fixed therefor. (See Part 801, Appendix—Fee Schedule.)

§ 845.29 Payment of witnesses.

Any witness subpenaed to attend the hearing under this part shall be paid such fees for his travel and attendance as shall be certified by the hearing officer.

Subpart C—Board Reports

§ 845.40 Accident report.

(a) The Board will issue a detailed narrative accident report in connection with the investigation into those accidents which the Board determines to warrant such a report. The report will set forth the facts, conditions and circumstances relating to the accident and the probable cause thereof, along with any appropriate recommendations formulated on the basis of the investigation.

(b) The probable cause and facts, conditions, and circumstances of all other accidents will be reported in a manner and form prescribed by the Board.

§ 845.41 Requests for reconsideration or modification.

(a) Requests for reconsideration or modification of the Board's findings and determination of probable cause by parties to an investigation or hearing or other persons having a direct interest in the accident investigation will be entertained only if based on the discovery of new evidence or on a showing that the Board's findings, as to the facts, conditions, and circumstances of the accident, are erroneous. Such requests shall be in writing. Requests which are repetitious of recommendations made pursuant to § 845.27, or of positions previously advanced, and requests by parties to the hearing who fail to submit recommendations pursuant to § 845.27 will not be entertained. Any such requests based on the discovery of new matter shall: identify the new matter; shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and shall state why such new matter was not available prior to Board's adoption of its findings. Requests based on the claim of erroneous findings shall set forth in detail the grounds relied upon.

(b) If a request for reconsideration or modification is filed by a party to a hearing, designated under § 845.27, copies of such request and any supporting documentation shall be served on all other parties similarly designated.

Subpart D—Public Record

§ 845.50 Public docket.

(a) The public docket shall include all factual information concerning the accident. Recommendations submitted pursuant to § 845.27 by interested persons, and requests for reconsideration and modification submitted pursuant to § 845.41 and the Board's rulings thereon, shall also be placed in the public docket.

(b) The docket shall be established as soon as practicable following the accident, and material shall be added thereto as it becomes available. Where a hearing is held, the exhibits will be introduced into the record at the hearing.

(c) A copy of the docket shall be made available to any person for review at the Washington office of the Board. Copies of the material in the docket may be obtained, upon payment of the cost of reproduction, from the Public Inquiries Section, Bureau of Administration, National Transportation Safety Board, Washington, D.C. 20594.

§ 845.51 Investigation to remain open.

Accident investigations are never officially closed but are kept open for the submission of new and pertinent evidence by any interested person. If the Board finds that such evidence is relevant and probative, it shall be made a part of the docket and, where appropriate, parties will be given an opportunity to examine such evidence and to comment thereon.

Approved by the National Transportation Safety Board on June 5, 1979.

James B. King,

Chairman.

[FR Doc. 79-18577 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-58-M

NATIONAL TRANSPORTATION SAFETY BOARD

[49 CFR Part 830]

Proposed Limitation of Accident Reporting Requirements

AGENCY: National Transportation Safety Board.

ACTION: Extension of comment period.

SUMMARY: This action extends the time for filing comments on proposed amendments to Part 830 that would revise the Board's requirements for reporting aircraft accidents and incidents and certain other occurrences in the operation of aircraft, when they involve civil aircraft of United States registry. The extension is from the current July 2, 1979, deadline to August 3, 1979.

DATE: Comments must be received on or before August 3, 1979.

ADDRESS: Written comments may be submitted to the General Counsel, National Transportation Safety Board, 800 Independence Ave., S.W., Washington, D.C. 20594.

FOR FURTHER INFORMATION CONTACT: Fritz L. Puls, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594. 202–472–6034.

SUPPLEMENTARY INFORMATION: On May 3, 1979, the Safety Board issued a notice of proposed rulemaking, 44 FR 25889, proposing to revise Part 830 of its rules pertaining to the notification and reporting of aircraft accidents or incidents and overdue aircraft. Proposed amendments to Part 830 included a change in the definition of the term "fatal injury," the inclusion of a definition of the term "incident," and the addition of five types of incidents for which the Board must receive notifications.

On May 11, 1979, the editor of *Business and Commercial Aviation*, a publication that serves the general aviation community, requested an extension of the comment period to August 3 in order to provide readers of the publication with information on the NPRM that would enable them to submit informed and meaningful comments. The editor pointed out that the copy lead time on many monthly publications is 30 days.

The Safety Board believes that a substantive interest in increasing the amount of informed public participation in this rulemaking effort has been shown and that the comment period should be extended to August 3 in order to benefit from that interest. The Board also believes that an extension of the comment period is consistent with the public interest.

Therefore, the period for submission of comments in response to the proposals at 44 FR 25889 is extended to August 3, 1979.

Approved by the National Transportation safety Board on June 5, 1979.

James B. King,

Chairman.

[FR Doc. 79–18576 Filed 6–13–79; 8:45 am]

BILLING CODE 4910–58–M

federal register

Thursday
June 14, 1979

Part V

Department of Energy

Procurement; Research and Development, Construction and Other Products and Services

DEPARTMENT OF ENERGY

41 CFR Ch. 9

Procurement of Research and Development, Construction and Other Products and Services.

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy establishes the Department of Energy Procurement Regulation (DOE–PR) as a final rule with this notice. The DOE–PR is a comprehensive body of regulations governing the Department's procurement of Research and Development, Construction and other products and services. The DOE–PR follows the Federal Procurement Regulations, implementing and supplementing them as necessary to accomplish the Department's mission. The DOE–PR applies as prescribed in § 9–1.004, thereof, except for those procurement actions in progress and too far along to permit implementation of these regulations.

This notice sets forth a summary of revisions to the DOE–PR as proposed on April 14, 1978 and announces the availability of the final DOE–PR. A copy of the DOE–PR has been filed with the Office of the Federal Register, and the full text will soon be published in *the Code of Federal Regulations* (CFR).

EFFECTIVE DATE: June 30, 1979.

ADDRESS: Please address requests for copies of the DOE–PR to Thomas Ruppert, Procurement Policy Branch (PR–211), Procurement and Contracts Management Directorate, Room 308 RB, 400 1st Street NW., Washington, D.C. 20585. Please mark "Request for DOE–PR," on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Thomas Ruppert, Procurement Policy Branch (PR–211), Policy and Procedures Division, Procurement and Contracts Management Directorate, Department of Energy, 400 1st Street NW., Washington, D.C. 20585, Room 308 RB, Telephone 202–376–1759.

Robert Forst, Office of General Counsel, AGC for Procurement, Germantown, Maryland, Department of Energy, Washington, D.C. 20545, Telephone 301–353–4394.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Statutory and Regulatory Requirements.
III. Availability of the Procurement Regulation.
IV. Summary, by Major Category, of the Public Comments Received and Responses Thereto.
V. Summary of Revisions to the DOE–PR As Proposed on April 14, 1978.

I. Background

Under Section 644 of the Department of Energy Organization Act (hereinafter referred to as the Act) (Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. Additionally, public notice of such rules and regulations is required by the Act (42 U.S.C. 7191) in accordance with the Administrative Procedure Act, as amended (5 U.S.C. 551, et. seq.).

On April 14, 1978, the Department published in the **Federal Register** (43 FR 15853) the proposed Procurement Regulations in their entirety.

II. Statutory and Regulatory Requirements

Pursuant to Section 501 of the Department of Energy Organization Act (42 U.S.C. 7191) relating to the opportunity for oral presentations on proposed regulations, the Department has determined that no substantial issues of fact or law exists and that this procurement regulation is unlikely to have a substantial impact on the nation's economy, or large numbers of individuals or businesses, such as would warrant the oral presentation of views. This is so because the DOE–PR primarily follows the Energy Research and Development Administration Procurement Regulations (ERDA–PA), which were made effective in September 1977. The ERDA–PR has been the primary procurement regulation since the Department of Energy's activation on October 1, 1977 due to the fact that most of DOE's procurement activities are carried out to perform functions transferred from ERDA. One significant change is Subpart 9–1.54 of the DOE–PR entitled "Organizational Conflict of Interest," which has been revised in its entirety to conform to the Organizational Conflict of Interest final rule, published on Janurary 11, 1979 (44 FR 2556).

Approximately 130 public comments were received from nineteen organizations and/or individuals. Of these, only one requested an oral exchange of views. We believe that little purpose would be served by an oral exchange and that adequate public participation has been assured through the consideration of written comments.

Note.—The Department has determined that this regulation does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821, as amended, and OMB Circular A–107. The Department has also determined that the regulation will not affect the quality of the environment and that the requirements of section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, does not apply.

The DOE–PR is not a significant regulation likely to have a major impact within the meaning of Department of Energy Order 2030, 12/18/78, paragraph 9, because, among other things, the regulation, modified as described herein, has essentially been in effect as the ERDA–PR to govern ERDA procurement functions transferred to DOE since activation of DOE on October 1, 1977. A major purpose of the DOE–PR is to extend regulatory coverage to the comparatively less extensive procurement activities transferred to DOE from agencies other than ERDA.

III. Availability of the Procurement Regulation

The Department of Energy will offer free distribution of the DOE–PR to all subcribers to the **Federal Register** who make application within 45 days of the date of publication of the notice in the **Federal Register** and to the general public at nominal cost. **Federal Register** subscribers should furnish their **Federal Register** mailing label along with their requests. Please address requests for copies of the DOE–PR to Thomas Ruppert, Procurement Policy Branch (PR–211), Procurement and Contracts Management Directorate, Room 308 RB, 400 1st Street NW., Washington, D.C. 20585. Please mark "Request for DOE–PR," on the outside of the envelope.

The Department of Energy has filed a full text copy of the DOE–PR with the Office of the **Federal Register** where it may be inspected or copied.

IV. Summary, by Major Category, of the Public Comments Received, and Responses Thereto

Approximately 130 comments were received on the proposed rulemaking from trade associations, industry, universities and other interested members of the general public. All comments received were categorized, reviewed and analyzed relative to their applicability and appropriateness for adoption. The distribution of the comments were generally as follows:

40% of the comments received were related to Part 9–50 and 9–15.50 "Operating and On-Site Service Contracts," and "Contract Cost Principles and Procedures."

35% of the comments received were related to Part 9–9 "Patents, Data and Copyrights."

The remaining 25% of the comments were spread over several parts.

The following is a summary of the major comments received in each of these categories and their disposition:

Part 9–50 and 9–15.50 "Operating and On-Site Service Contracts" and "Contract Cost Principles and Procedures":

Comment: 9–50.104(g) would require Government owned laboratories and other on-site contractors, to publicize proposed procurement actions of $100,000 and above in the Commerce Business Daily. The cost-effectiveness of this requirement is questioned, if applied in every case.

Response: 9–50.104(g) has been reserved pending review of the OFPP implementation of Pub. L. 95–507, Amending the Small Business Act and the Small Business Investment Act of 1958.

Comment: It is not appropriate to mandate use of GSA supply sources by DOE cost-type contractors.

Response: Not adopted. 9–50.505 and 9–5.902 require that contractors meet their requirements from Government sources when it is economically advantageous. This is a mandate only when economically advantageous and is considered to provide appropriate flexibility.

Comment: Under 9–50.704–2(a), delete the requirement for submission of a safety and health management implementation plan. Universities are already subject to OSHA and Federal radiation protection standards.

Response: Not adopted. The specific reporting requirements are not duplicative and are designed to assure the protection of personnel in the performance of specific projects, which involve potentially hazardous situations.

Comment: Several comments were received concerning the applicability of the cost principles and procedures published as Subpart 9–15.50 in the April 14, 1978 Federal Register.

Response: To clarify this point the cost principles and procedures were transferred to 9–50.15 and are applicable only to operating and on-site service contracts. The coverage now contained in Subpart 9–15.50 contains cost principles and procedures to be used as guidance by Government contracting personnel in the negotiation and administration of contracts. The basic cost principles for commerical contractors and educational institutions are contained in applicable parts of FPR 1–15.2 and FPR 1–15.3 as supplemented and modified by DOE–PR 9–15.2 and DOE–PR 9–15.3. A new paragraph was added as DOE–PR 9–15.205–60 which provides that Facilities Capital Cost of Money (CAS–414) is not an allowable cost under DOE contracts, since DOE has elected not to change its previous pricing policies for CAS–414 as authorized by FPR Temporary Regulation #40.

Comment: Several comments were received concerning the definition of an operating contract, which includes Government-owned laboratories and facilities located on University-owned sites, and operated by the University. The comments recommended that the definition be clarified to clearly exclude those contracts which provide for the operation of, what Universities identify as, an Organized Research Unit.

Response: Further clarification is not considered necessary, as DOE–PR 9–50.001 is considered quite clear as to what an operating contract is, and when the provisions of DOE–PR 9–50 are applicable.

Comment: Several comments received recommended that contracts with educational institutions use the cost principles contained in OMB Circular A–21, in lieu of the coverage in DOE–PR 9–50 for the operation of Government-owned laboratories and facilities by educational institutions.

Response: Not adopted. These laboratories and facilities are, normally, not units which are an integral part of a campus, but rather are autonomous units which stand alone. Since the Government is, normally, reimbursing the total allowable cost of the operation, special cost treatment is considered necessary, as set forth in DOE–PR 9–50.

Comment: Few Universities have the capability to audit subcontractors, as required in DOE–PR 9–50.704–9.

Response: It is pointed out that this clause also provides that the prime contractor may arrange, through the contracting officer, to have the Government provide such audit services, if the circumstances warrant. Therefore, no change has been made in this clause.

Comment: Some educational institutions commented that bid and proposal costs should not be considered as unallowable costs, as set forth in DOE–PR clause 9–50.704–13(e)(3).

Response: Under an operating contract, the workload of the facility is controlled by the Government, and the operating contractor is not required to search out work to be performed. The cost of preparing any proposals required by the contract, are considered as an allowable cost to the contract.

Comment: The Government should not have the right to direct the contractor to commence legal action or take over any suits affecting the contractor, as provided for in 9–50.704–31.

Response: This contract provision covers operating contracts which are normally on a cost reimbursement basis, where the Government is paying the total cost. This particular clause concerns claims filed against the contractor or which the contractor may have against others and, therefore, is a matter for appropriate cognizance of the contracting officer.

Comment: A comment was received to the effect that is was not considered feasible to establish a separate and distinct financial system to administer a single contract per DOE–PR 9–50.704–9.

Response: This clause does not intend that a separate "system" be established, but only that a "separate and distinct set of accounts, records and documents" be maintained to identify the costs under a contract. The system, employed by the contractor, must be satisfactory to DOE, and be in accordance with generally accepted accounting principles and consistently applied.

Comment: Comments were received covering DOE–PR 9–50.704–39, Limitation of Price and Contractor Performance (multi-year contracts), and DOE–PR 9–50.704–40 cancellation (multi-year contracts), recommending further clarifications of the provisions.

Response: After review of these two clauses it was determined, that the clauses be dropped from the regulation, therefore, no clarification is required.

Part 9–9 "Patents, Data and Copyrights":

Comments on Part 9–9, "Patents, Data and Copyrights," were directed to both substantive and procedural aspects. In general, the comments regarding substance were similar in subject matter to those received in response to ERDA proposed regulations on "Patents, Data and Copyrights," issued on October 15, 1975, 40 FR 48363. Those comments were published in ERDA Report 76–16, January 1976 (available from the Superintendent of Documents, Government Printing Office, price $4.00). About 40% of the comments, then as now, suggested changes which cannot be accommodated because they conflict with the statutory provisions which govern DOE patent policy, § 152 of the Atomic Energy Act of 1954, as amended, and § 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Nonnuclear Act), and because they conflict with the patent provisions of the Federal Procurement Regulations (FPR) which DOE is required to follow to an extent not inconsistent with those statutes.

Another 40%, or so, of the comments both then and now, relate to substantive matters such as licensing of background patents and proprietary data, and the extent of the contractor's minimum license rights. The comments pertaining to those matters were carefully considered in connection with the issuance of the final regulations on "Patents, Data and Copyrights" on July 13, 1977, 42 FR 36120. Those final regulations adopted or accommodated a number of substantive and procedural suggestions from the public.

The final regulations on "Patents, Data and Copyrights" issued on July 13, 1977 by ERDA, were republished verbatim in the proposed DOE–PR issued on April 14, 1978. This elicited the comments on substance duplicative of earlier comments referred to above, and in addition, brought forth comments on procedural aspects. Some of the procedural comments have been adopted or accommodated in the regulations being issued in the final rule. For example, the suggestion to permit university contractors having DOE-approved technology transfer programs and written procedures for reviewing papers to prescreen such papers for patentable subject matter, was implemented in DOE Procurement Letter 79–5 of February 28, 1979, and are incorporated in § 9–9.109–6(h)(6). Also, the suggestion to delay submittal of confirmatory licenses or assignments until waivers are acted upon has been adopted. See § 9–9.109–6(i)(5)(ii)(c).

Editorial changes have been made to clarify the language. For example, in § 9–9.109–6(d)(1) a waiver determination is now stated to be initiated when the written request provides the detailed information set forth in § 9–9.109–6(e). The language in § 9–9.109–6(d)(2) has been clarified to provide that a new waiver request covering a contract modification or extension will be required in those contracts where, through the modification or extension, the purpose, scope, cost, or other factors upon which the original waiver was granted have been substantially changed.

Other changes include § 9–9.107–4(a)(7)—clarification to reflect the practice that provisions of the type used in access permits (10 CFR Part 725) may be applicable to contractors as well as other persons requiring restricted data in their contracts, business, trade or profession; § 9–9.202–3(e)(2)(f)—deletion of language referring to optional paragraph (g) to clarify that proprietary data withheld under paragraph (e) of the "Rights in Technical Data" (long form) clause may be inspected, even though proprietary data was either not furnished or required to be furnished under optional paragraph (g) of the "Rights in Technical Data" (long form) clause.

Comments on other parts:

Comment: A university objected to numerous provisions, related to operating contracts, of the proposed rulemaking on the basis that they provide for unilateral Government direction or control (e.g. 9–50.704–2—stop work for safety and health and 9–50.801—termination for default). In view of the university, such provisions are inconsistent with the desired Government-University partnership in the conduct of work statement missions.

Response: It is considered appropriate to employ the referenced provisions which provide for unilateral Government direction particularly in operating contracts where Government is responsible for all of the costs.

Comment: To avoid misinterpretation, replace § 9–4.5106 with the following sentence:

"Compensation for personal services of professional staff, must be in accordance with the Office of Management and Budget Circular A–21, revised."

Response: Adopted.

Comment: To be consistent with Part 25 CFR, Title 31 (42 FR 62927), change the minimum amount of annual support necessary to justify a letter of credit from $250,000 to $120,000.

Response: Adopted.

Comment: Section 9–4.52 "Federal Contract Research Centers," inappropriately distinguishes between Federally Funded Research and Development Centers (FFRDC's) and Federal Contract Research Centers (FCRC's).

Response: Section 9–4.52 was deleted in its entirety.

Comment: It was recommended that a special set of clauses be developed, specifically, for research and development cost-reimbursement contracts with educational institutions.

Response: Not adopted. Universities must compete with the private sector for such contracts. There is considered to be no appropriate basis for special treatment in terms of contract clauses.

Comment: Two commentators expressed concern over DOE cost-sharing provisions as set forth in 9–4.59, "Cost Participation." In one case, the concern was cost sharing requirements in various stages of multi-phase projects. In the second case, the concept of cost sharing was objected to in its entirety.

Response: Not adopted. The present coverage, in 9–4.59, provides adequate flexibility to address varying cost sharing arrangements in multi-phase projects. DOE believes that cost sharing is entirely appropriate where the principal purpose of research, development and demonstration efforts is ultimate commercialization or industrial utilization, and when there are reasonable expectations that the performer will receive present or future economic benefit beyond the instant contract.

Comment: In 9–10.250 "Corporate Co-Sureties," eliminate the bar to Reinsurance Agreements in connection with construction contracts.

Response: Adopted.

Comment: Revise Subpart 9–23, "Subcontracting Policies and Procedures" to provide for mutual agreement on changes in subcontract approval levels under cost type contracts.

Response: Not adopted. The approval of a contractor's purchasing system is a Government prerogative where Government money is essentially being spent. It is essential that the contracting officer have the authority to adjust subcontract approval levels, as necessary, to assure proper expenditure of public funds. There were some comments received that were not considered appropriate for adoption because they are of a non-substantive nature, and pertain to subject matter which is considered to be: (i) Adequately covered in the DOE–PR as drafted, or in the Federal Procurement Regulations; (ii) not in consonance with the established policies of DOE, other Federal agencies or the legislation governing DOE's predecessor organizations; or (iii) a procedural matter which would be more appropriately reflected in DOE Handbooks or other issuances.

A summary of revisions to the DOE–PR as proposed on April 14, 1978 follows:

Summary of Revisions to the DOE–PR as Proposed on April 14, 1978

Part Affected, and Summary of Revisions

9–1.003—Cites the Headquarters officials with whom coordination is affected in more general terms by deleting the specific reference to the "Controller, and interested program personnel" and replacing it with "* * * and any other appropriate Headquarters Officers'.

9–1.004—Clarifies applicability of the regulation by specifically excluding "real property". Also excluded are the DOE "assistance programs" which are

governed by the DOE Assistance Regulations, 10 CFR Part 600 and procurements made with non-appropriated funds. In case of procurements which obligate non-appropriated funds the FPR & DOEPR are used for guidance. The subsection has been revised by the addition of a new paragraph which defines DOE assistance instruments.

9–1.005(a)—Cites cross reference to FPR 1–1.005(a) as a basis for exclusion of subject matter which bears a security classification from the requirements of certain DOE policies and procedures.

9–1.008(a)—Parenthetical reference to "counsel", "controller" and "interested program personnel" has been deleted to expand the meaning of the phrase "other officials".

9–1.009–2—Limits the HPA's deviation authority to deviations which do not involve the cost principles contained in Parts 9–15, 9–50.15 and 9–50.704. Deviations which involve cost principles require approval of the Senior Procurement Official, Headquarters. The requirement for mandatory coordination with the "controller" has been deleted and text has been clarified to require request for deviations to be submitted "by letter".

9–1.051—The subparagraph has been amended to reflect change made in 9–1.003.

9–1.051—The term "Procurement Letters" has been replaced; the term "Acquisition Policy Letters" and a subparagraph has been added to indicate the type of guidance set forth in such letters. Change in the designation has been made to prevent confusion of the abbreviation for Procurement Letters, PL with the abbreviation of Public Law. The subsection has also been revised to reflect the change in coordination requirements addressed in 9–1.003 above. The requirement to distribute Procurement Handbooks to all recipients of the DOE-PR has been deleted to permit distribution on an as needed basis.

9–1.205—The listing of DOE organizational elements designated as "procuring activities" and their corresponding HPAs has been deleted. Internal documents will be issued to identify the various HPAs. The subsection has been revised to reflect this change by deleting all text following the first sentence.

9–1.206—Subparagraph (c) revised by deleting "and grant officers" to reflect the exclusion of financial assistance matters from the DOE-PR.

9–1.302–3—Adds a new section which establishes the DOE approval procedures which must be complied with prior to entering into a contract with Government employees or business concerns substantially owned or controlled by Government employees.

9–1.313—This subsection has been revised to indicate that information relative to essential contract file documents is contained in the current Acquisition Policy Letters. The subsection as revised requires file documents to contain the information and supporting data identified in the Acquisition Policy Letters.

9–1.317—Paragraph has been added to set forth the agency (DOE) procedures for processing suspected cases of collusive bidding or false certification as contemplated by FPR 1–1.317(f).

9–1.354(a)—Subsection has been revised to delete the reference to close-out requirements for "grants" and "cooperative agreements" to reflect the exclusion of financial assistance matters from the DOE-PR.

9–1.404–1—Subsection has been revised by deletion of subparagraphs (a) through (c) and revision of the last sentence in the introductory paragraph to indicate that the appointment of Contracting Officers will be in accordance with the requirements of current Acquisition Policy Letters.

9–1.404–2—Subsection has been deleted. Information relative to Contracting Officer designation is now covered in current Acquisition Policy Letters.

9–1.405—Subparagraph (a) has been revised to clarify that the Government is not generally bound by commitments made to "contractors" as well as prospective contractors by persons to whom procurement authority has not been delegated.

9–1.452—The reference set forth in this subsection has been corrected to read 10 CFR Part 1010.

9–1.602—The phrase "suspended, or declared ineligible" has been inserted in the first sentence of the subparagraph to more clearly indicate the requirements for establishment and maintenance of the DOE Consolidated List of Debarred, Ineligible, and Suspended Contractors.

9–1.606–53—Procedural guidance has been added which more succinctly sets forth the information which must be included in a "notice of proposed debarment".

9–1.606–54—The citation referenced in this subsection has been changed to 10 CFR 703.117, "Hearings" to more closely align the reference to the subject matter of the subsection. Also the term "agency" has been inserted between the words "final" and "authority."

9–1.7—This Subpart has been reserved to permit review of the recently issued Office of Federal Procurement Policy implementation of PL 95–507.

9–1.8—The Subpart on Labor Surplus Areas has been expanded to set forth the basic DOE policy with regard to awards of contracts to LSA concerns.

9–1.807—Reporting requirements applicable to awards to LSA concerns have been clarified by making specific reference to the DOE reporting forms, and describing their application. The subsection has been revised to specifically indicate that Department offices shall maintain records of awards made to labor surplus area concerns.

9–1.901—The phrase "and shall be applied to cost-type contractor procurement" has been deleted because it is covered in the remaining text.

9–1.1003—Adds a subsection which makes specific reference to the synopses requirements stipulated in FPR 1–1.1003–2.

9–1.1004—Adds a requirement for synopses of awards of classified contracts where such contract awards can be described with sufficient information of an unclassified nature to be of advantage to industry or to the Government.

9–1.1204—The cross reference to "9–1.313(b)(6)" has been eliminated and the phrase "the contract file shall" has been inserted in lieu thereof to conform to the change made in 9–1.313.

9–1.13—The subpart has been reserved for the same reasons as stated under 9–1.7.

9–1.50—This subpart has been deleted; the subject matter contained therein is planned for inclusion in a Department Handbook.

9–1.51—The title of this subpart has been changed to read "Consideration in Selecting Award Instruments-Procurement Contract, Grant or Cooperative Agreement" and the text has been completely modified to reflect the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95–224) and to incorporate the DOE policies on Financial Assistance as set forth in the DOE Assistance Regulations (10 CFR 2–600 et. seq.).

9–1.5300—A cross reference to subpart 9–18 has been added for clarification.

9–1.54—This subpart has been completely revised to incorporate the DOE policies on Organizational Conflicts which was published as a final rule on January 11, 1979 (44 FR 2556).

9–2.1—A new Subpart entitled "Use of Formal Advertising" has been added.

9–2.106—Adds a new subsection which vests responsibility for the establishment and maintenance of a procurement management assistance review program with the Director, Procurement and Contracts Management Directorate.

9–2.201—The suggested language for an option provision has been deleted from this subsection and the percentage guidelines formerly set forth have been replaced with a statement that the option quantity should bear a reasonable relationship to the initial firm quantity. A cross reference has been added which refers to the option coverage in 9–1.5303.

9–2.202–50—Deleted—FPR is considered to contain sufficient guidance.

9–2.203–3—Subsection title has been changed to more clearly reflect the subject matter set forth therein. "Trade Journals" has been added as a category requiring written authority prior to inserting paid advertising therein.

9–2.406–3—Second sentence has been revised to make specific reference to alleged mistakes in bids and to indicate the authority of Senior Procurement Official to redelegate his authority in this area.

9–2.5—New subpart added to establish the HPA as the approval authority for the use of the two-step formal advertising method of procurement.

9–3.150–1—The subparagraph has been revised to provide "unsolicited proposals" the same level of protection which is provided to other proposals.

9–3.150–2a—Provides instructions on procedures proposers are to follow to ensure the protection of confidential proposal information.

9–3.150–2(b)—Subparagraph has been revised to delete the definition of "Proprietary data." The definition is set forth in 9–9.201(b).

9–3.150–4(b)—Approval levels changed for the determination to use outside agencies to assist with proposal evaluations.

9–3.150–5—Subsection title has been changed to more clearly reflect the subject matter set forth therein. Provides for debriefings to be normally held after announcement of the selection decision and prior to award of the contract.

9–3.204—Incorporates a cross reference to the negotiation procedures applicable to architect-engineer services.

9–3.212—Subsection has been deleted.

9–3.215—Subpart has been clarified with respect to the use of the authority of Section 162 of the Atomic Energy Act of 1954, as amended.

9–3.303—Approval authority for the execution of determinations and findings pursuant to section 30d(c)(11) (FPR 1–3.211) has been changed to Senior Procurement Official, Headquarters.

9–3.404–50—A new subparagraph (a) has been added to designate the Senior Procurement Official, Headquarters as the approval official for Lump Sum A–E contracts which provide for reimbursement of certain costs. Subsequent paragraphs have been redesignated "b" through "h" vs "a" through "g." A cross reference has also been added to the end of this subsection which refers to 9–3.808–2.

9–3.405—A section heading has been added to indicate subject matter of the subsections.

9–3.405–5(b)—Exemptions to the statutory fee limitations available to DOE are limited to former AEC type functions and those of the Bonneville Power Administration.

9–3.405–50(a)—The reference to "negative" fees has been deleted from subparagraph (1) and the need to seek contractor comments on evaluation findings has been eliminated.

9–3.405–50(c)—Subparagraph has been revised to make specific reference to the fee "schedules" set forth in the Procurement Handbook. FPR 1–3.407–2 is referenced for fee limitations. The use of Weighted Guidelines (WGL) is authorized for contracts performed in commercial facilities.

9–3.405–50(g)—Subparagraph reworded to state that the contractor should be given an opportunity to present matters to the board or fee determination official on its own behalf. The requirement for agreement by the parties on a specific number of days constituting reasonable notice has been deleted.

9–3.408—The first sentence of paragraph (b) of the subsection was reworded to delete the statement pertaining to definitization of letter contracts within 120 days. DOE policies relative to letter contract definitization are set forth in paragraph (c) of the subsection.

9–3.600—The scope of the Subpart on small purchases procedures has been revised to reflect the requirements of Public Law 95–507. Subsection 9–3.603–1 and 9–3.603–2 have been reserved for the reasons set forth in 9–1.7. A new subsection 9–3.601 is added reserving procurements under $10,000 for small business except in certain circumstances. Subsection 9–3.603–3 has been redesignated as 9–3.604–3.

9–3.604—A new subsection heading is set forth for proper identification.

9–3.605—A new subsection heading is set forth for proper identification.

9–3.805—Subparagraphs (c), (d) and (e) of this subsection have been substantially revised to be consistent with current selection procedures specified in internal directives.

9–3.805–50—Subparagraph (a)(1) has been revised to clearly indicate that dollar thresholds for Source Selection procedures will be based upon the anticipated total sum of all awards, all phases or options, an all cost shares regardless of derivation. The terms "grants" and "cooperative agreements" have been deleted for the reasons stated in 9–1.354(a).

Subparagraph (b) has been revised to clarify the use and applicability of SEB procedures on contracts which are expected to exceed $5 million.

Subparagraph (f) has been revised to permit the use of consultants, and contractors as selection advisors when deemed appropriate.

9–3.805–51—Subparagraph (b) has been revised to be consistent with FPR and to recognize the separate justification procedures provided for certain recompetitions or extensions, unsolicited proposals and Special Research Contracts (SRCs). Also recognized is the fact that Program Opportunity Notices and Program Research and Development Announcements are competitive solicitations.

Subparagraph (c)(1) has been modified to state that small purchase procedures should be used in the case of justification for non-competitive procurement for small purchases.

In subparagraph (d) coordination and approval requirements for the justification to enter into noncompetitive procurements have been streamlined by deletion of the requirement that the controller concur in such determinations when the estimated value of the proposed procurement is in excess of $500.

In addition, approval levels under (d)(1) C and D have been changed.

9–3.807–1—This subparagraph authorizing HPAs to approve the findings required by FPR 1–3.807–1 (b)(1), has been deleted.

9–3.807–3—The certification requirements for current cost or pricing data have been clarified relative to on-site services contractors and educational institution contracts covered by OMB Circular A–21 or FPR 1–1.53.

9–3.808–2—Cross references have been added to identify the parts of the FPR and DOE–PR which set forth statutory limitations on fees applicable to cost-type contracts and architect-engineer contracts. The applicability of the "fee curve" to on-site contractors for performance of support reviews has also been clarified.

9–3.814–1—The requirements that the Head of the Procuring Activity obtain the coordination of appropriate Headquarters officials prior to authorizing a waiver to FPR 1–3.814 on transactions involving foreign governments or agencies thereof has been deleted.

9–3.901 The last sentence of paragraph (c) of the subsection has been revised to more clearly indicate that the provisions of the subsection apply only to those functions being performed by DOE which were formerly performed by AEC.

9–3.1210—Subsection has been added to require the submission of a consolidated Cost Accounting Standards Board report.

9–4.4—Adds a new subpart to part 9–4 which provides guidance on the procurement of utility services for GOCO facilities. The subject matter of this new subpart was formerly covered in subpart 9–50, subsection 9–50.401. The subpart has been modified to except telecommunications from utility services covered, and specifies that proposed contracts for utility services which meet certain criteria are to be submitted to the utility element in the Directorate of Administration for Headquarters' review and approval.

The approval threshold for utility services agreements which require Headquarters review has been increased from $5,000 to $10,000.

Subparagraph 9–4.411–3(a) has been reserved, pending determination of authority with respect to all elements of DOE.

9–4.901—Deletes in its entirety since adequately covered in the FPR.

9–4.902—Adds the term "unique" to make consistent with the FPRs.

9–4.904—Deletes definition of "Unsolicited Proposals" and type of information not considered to constitute unsolicited proposals, i.e. advertising material, commercial product offerings, commercial service offerings, contributions, technical correspondence, and capability statements. The purpose for the deletions is to conform the definition of unsolicited proposals to the FPR. There is no change from the April 14, 1978 version of the DOE-PR regarding the treatment of unsolicited proposals falling under the provisions of Subpart 9–4.51, Special Research Contracts with Educational Institutions.

9–4.905—Deletes in its entirety since adequately covered in the FPR.

9–4.906—Deletes in its entirety since adequately covered in the FPR.

9–4.908—Adds a paragraph (b) to indicate the mailing address to which unsolicited proposals should be sent.

9–4.909—Adds "Receipt" to Title to make consistent with FPR. The section has been revised to delete information pertaining to receipt, review, evaluation factors, and evaluation of unsolicited proposals which is adequately covered in FPR 1–4.909. Revises the designation of the activity which must approve decisions to support unsolicited proposals which involve support services. Paragraph 9–4.909(g) (1) (ii) has been revised to delete the requirement for controller concurrence with justification for acceptance of an usolicited proposal since funds availability is determined based upon the "FUNTS" system. Paragraph 9–4.909(i) is expanded to add "absent any specific delegation" to the beginning of the second sentence to indicate that there may be circumstances where such authority is vested in the field through the delegation process.

9–4.952—Title expanded to include data and copyright as well.

9–4.1000—Deletes statement that this subpart does not apply to the procurement of professional architect-engineer services by DOE contractors since the intention is that they will, in fact, so apply.

9–4.1004–1—Adds to general policies and procedures for selection as contained in the FPR, policies concerning selection of contractors by board process as contained in internal DOE Directives. The purpose is to provide awareness of the FPR implementation process within DOE.

9–4.1004–3(a)—Deletes 9–4.1004–3(a)(7) "adequacy of firms accounting system" § 9–4.1004–3(a)(9) "willingness to grant the Government principals or exclusive rights in resulting inventions" since they are considered either inappropriate or too restrictive to be included among the general qualification criteria.

9–4.1004–52—The phrase "and management data" was added to the type of information which may be requested from A-Es during initial discussions which lead toward A-E selection.

9–4.1004–53—The title of the section was revised to read "Use of requests for supplemental information" in order to more clearly reflect the subject matter of the section. Also the first paragraph was revised to indicate that supplemental information may be solicited as a means of initiating the discussion phase of the A-E selection process.

9–4.1004–54—A requirement has been added that the selection official provide complete documentation of the selection decision in the event a firm other than the highest ranked firm is selected. Provision has also been included for the discarding of SF 255s received from firms with which written or oral discussions were not held 90 days after award.

9–4.1004–55—The title of the subsection has been revised to read "Late submission of qualification and performance data." Also the term "submission" has been substituted for the word "proposal" in the first line of the paragraph. This is to recognize that the procedures governing late proposals do not apply to the selection process governing architect-engineer services.

9–4.1005–50—The last sentence of the paragraph has been revised to more clearly indicate that the waiver from the six percent A–E fee limitation is granted only for those DOE functions which were formerly performed by AEC or BPA.

9–4.51—Subpart title has been changed to "Special Research Contracts with Educational Institutions" vs "Special Research Agreements with Educational Institutions," and the terms "agreements" and "support agreements" have been changed to the term "contract" where appropriate. These modifications reflect the requirements of Public Law 95–224.

9–4.5100—Dollar ceiling has been changed from $500,000 to $1,000,000 and procedural guidance has been added relative to the use of grants or cooperative agreements under Public Law 95–224.

9–4.5106–2(a)—Subparagraphs (a) (1) and (a) (2) have been revised to delete the reference to "support." The terms "funded" and "funding" have been used instead.

9–4.5106–3—Cross reference to 9–3.150–4 has been added to subparagraph (a)

and a new subparagraph (d) has been included to make specific reference to the policies for avoidance of organizational conflicts when reviews are conducted by nongovernment employees.

9–4.5106–4—This section has been revised in its entirety. Guidelines for calculation of compensation for professional employees have been deleted and OMB Circular A–21, as amended, has been referenced in lieu thereof.

9–4.5106–5—The reference to "support" has been replaced with the terms "fund" or "funding" wherever appropriate.

9–4.5106–6—The reference to "support" has been replaced with the terms "fund" or "funding" wherever appropriate. Also paragraph (c) has been revised to delete the requirement that contracts transferred between field offices be renumbered in accordance with 9–52.100, since Part 9–52 has been reserved.

9–4.5107–1—The dollar ceiling has been changed from $500,000 to $1,000,000. The term "support" is deleted throughout the text and replaced by "funding", "fund" or "Government" as appropriate.

9–4.5108—The procedures for transfer of title to equipment to nonprofit educational or research institutions have been revised to reflect the changes promulgated by Public Law 95–224.

9–4.5108–3—A new subsection has been added to delineate the requirements for the reporting of excess Government property.

9–4.5109–1—The reference to "support" has been replaced with the term "funding".

9–4.5109–2—Procedures for reporting of Energy R&D projects have been revised to reflect a change in the form used to make such reports and report distribution requirements. The title of the paragraph has been redesignated as "Notice of Energy R&D Projects."

9–4.5109–5—A sentence has been added which requires consideration of the relative value of special reports vs the anticipated cost of such reports. The section has been clarified to indicate that special reports must be requested through the Contracting Officer.

9–4.5109–7(a)—The submission due date for the final report has been redefined as "three months after completion of the work" vs "when the contract is completed." In addition the number of copies to be distributed has been changed.

9–4.5111—The title of the section has been changed to "Extension of Contracts" vs "Extension of Agreement".

9–4.5111–1—Submission requirements for renewal proposals have been revised. Renewal proposals are to be transmitted to the DOE field office which has jurisdiction over the contract rather than to the Senior Procurement Officer, Headquarters. The restriction against DOE personnel requesting or informally stimulating renewal requests has been deleted. Renewal proposals are to be submitted not later than "4 months" before the date of contract expiration rather than "3 months." If a renewal proposal has not been received 4 months prior to the contract expiration date, the Contracting Officer is to determine status and take appropriate action. The term "cumulative DOE support ceiling" has been replaced by the term "cumulative Government ceiling."

9–4.5111–3—The references to "support" have been replaced by the terms "funding" and "Government", as appropriate.

9–4.5112–2—Paragraph (d) of this subsection has been revised to update references by incorporation of a reference to Public Law 95–224.

9–4.5112–3—The dollar threshold for the use of letter of credit procedures has been reduced from $250,000 to $120,000. The reference to the Treasury Fiscal Requirements Manual has also been corrected.

9–4.5112–4—Subparagraph (a)(4) has been clarified to exclude the purchase of general-purpose equipment with a cost of less than $500.00 from the notification requirements.

9–4.5112–5(a)—Responsibilities for the conduct of audits has been clarified by revising the first sentence of the subparagraph as follows: ". . . auditing of participating contractors shall be initiated by the Contracting Officer administering the contract."

9–4.52—Deletes the Subpart on Federal Contract Research Centers (FCRCs) in its entirety since adequate policy guidance is considered available without creating a separate Subpart for this category of contractors.

9–4.5402(c)—Deletes reference to the Senior Procurement Official, Headquarters since this authority has been delegated to the head of the procuring activity.

9–4.5505—The instructions for use of price escalation provisions with multiyear contracts have been clarified by indicating that such provisions "may" be used when "unreasonable" contingencies are likely to be included for labor and material cost.

9–4.5700—This section has been revised to clarify the applicability of the Subpart. The phrase "of competitive concept proposals" has been deleted and the phrase "for award or support of proposal" added to provide the flexibility for using either a procurement contract or assistance instrument, i.e. grant or cooperative agreement depending on its purpose as defined in Public Law 95–224.

9–4.5701—The reference to "not-for-profit or nonprofit organizations" has been deleted since there is no distinction for purposes of this Subpart. The term "pilot plants" has also been deleted since its definition is already encompassed in the term "Demonstration Projects". The last sentence of this section has been revised to exclude nuclear energy resources from the applicability of this subpart since this subpart is restricted to non-nuclear energy sources.

9–4.5702–1—The need to give special attention in synopsis notices to small business and minority business concerns is highlighted by the addition of the phrase ". . . and socially and economically disadvantaged concerns". This treatment is in consonance with Public Law 95–224 as implemented by the Office of Federal Procurement Policy in the April 20, 1979 **Federal Register.**

9–4.5702–3—Subparagraph (f) has been deleted since financial capabilities of the potential participants are not considered an appropriate Federal support criteria. The subsequent subparagraphs (g) through (i) have been redesignated as (f) through (h).

9–4.5702–5—A new subparagraph (d) has been added to include submission of applicable "representations and certifications" with proposals. The former subparagraph (d) was redesignated as subparagraph (e).

9–4.5702–6—A new paragraph has been added to provide for the use of "Alternate procedures for consideration of late proposals," as set forth in FPR 1–3.802–2. The late proposal provision permits consideration of late proposals if among other things the proposal offers a significant cost or technical advantage to the Government.

9–4.5703–1(a)(7)—The subsection on cooperative agreement has been expanded to describe the various types of instruments, i.e. procurement contracts, grants or cooperative agreements that may be awarded and/or supported depending on the

intended relationship and the purpose to be accomplished. This is in accordance with Public Law 95–224. The subsection describes the appropriate regulations to be followed depending on the specific circumstances involved.

9–4.5704(b)(1)—Adds "aggregate of expected award values, plus costs shared by the contractor and/or other parties" and deletes "when an individual proposal" to reflect the realistic value of the proposed award and/or support and to subject it to the appropriate selection procedures commensurate with its anticipated value.

9–4.5704(b)(2)—Adds the requirement to utilize the SEB Handbook procedures under certain circumstances when anticipated award and/or support is not expected to exceed the SEB dollar threshold for the purpose of insuring impartial, equitable and thorough evaluation of each proposal.

9–4.5704(c)—Adds a criterion for cost realism and probable cost to the Government.

9–4.5704(e)—Deletes the paragraph concerning selection official and refers to the provisions of 9–3.805–50 which details who the selection official will be depending on dollar threshold of the anticipated award and/or support.

9–4.5800—Adds a paragraph (b) to describe the various types of instruments, e.g., procurement contracts, grants or cooperative agreements that may be awarded and/or supported depending on the intended relationship and the purpose to be accomplished. This is in accordance with Pub. L. 95–224. The subsection describes the appropriate regulations to be followed depending on the specific circumstances involved.

9–4.5802–4(a)(11)—Deletes "commit" in second line and adds "obligate" to emphasize the role required of the signatory authority.

9–4.5803 and 9–4.5803–1—Deletes entire section regarding "forms of assistance and participation", since restated and amplified in new Section 9–4.5800(b).

9–4.5803–2—Renumbered as 9–4.5803.

9–4.5804(a)(2)—Expands this subsection to emphasize the availability for use of alternate late proposal procedures as provided for in FPR 1–3.802–2 when large number of awards are anticipated. This is in recognition of the fact that many small concerns may not be totally familiar with Government regulations in the area of submission of proposals and may be precluded from consideration for award even though they have an advantageous proposal unless this procedure is utilized.

9–4.5804(b)—"Selection panel" replaces "evaluation criteria" as 9–4.5804(b) and "evaluation criteria" becomes new 9–4.5804(c). Adds reference to the required approvals and procedures contained in Sections 9–3.150–4 and 9–3.805–50(f), when engaging prime management or operating contractor personnel in the selection process. This reemphasizes confidentiality of their involvement in the process and further, forbids the use of this information for improper purposes.

9–4.5804(c)—Adds several new illustrations of evaluation elements that may be considered as evaluation criteria, e.g., cost realism and probable cost to the government to assure that potential proposors have performed adequate analysis and review in their proposal preparation.

9–4.5804(d)—"Program policy factors" is renumbered from 9–4.5804(c) to 9–4.5804(d) and couched in more positive terms, e.g., that factors will be predetermined in the notice to accomplish greater clarity in the intent of this subsection.

9–4.5804(e)—Deletes subsection on "Selection Official" and refers to DOE–PR 9–3.805–50. As herein, selection officials are designated based on dollar threshold.

9–4.5804(f)(1)—Revises this section by deleting "receiving office" and adding "selection panel" in its place to reflect the use of panels in this process.

9–4.5804(f)(2)—Adds this subsection to prescribe procedures to be employed if a proposal does not meet predetermined requirements.

9–4.5901—Deletes 9–4.5901(a) since 9–4.5901(b) adequately describes the types of situations in which cost participation may be required.

9–4.5901(e)—Deletes the term "pilot plant" since the terminology is adequately defined under "demonstration" technologies programs, etc.

9–5.902—A cross reference has been added to the appropriate provisions of the DOE PMR. Also a provision has been added which states that the authority for authorization to use GSA sources of supply may be redelegated to the level of Contracting Officer.

9–5.1001(a)—Part 101–14 of the Federal Property Management Regulations has been reentitled as "National Stockpile" vs "Strategic Critical and Other Materials" to reflect the change made in the referenced document.

9–5.3—This subpart has been added and states the policy pertaining to the use of excess personal property is contained in referenced FPR provisions.

9–5.5106–1—The following sentence was added to clarify the applicable provisions of the Economy Act. "Such work on services will be performed by other government agencies unless it can be shown that it can be performed more conveniently or more cheaply by private industry, in which case it would be performed by competitive solicitation."

9–5.5106–5—The previously cited temporary Comptroller General Decision reference has been replaced with the permanent citation. Also, reference to a modifying Comp Gen decision has been added.

9–5.5201–2—Subparagraph has been revised to update references to standards and Public Law. Cross references have been added to FPMR 101–38.9 and DOE PMR 109–38.51.

9–5.5201–2(a)—Reference to applicable provisions of the DOE PMR has been added. Under paragraph (b) of this citation, the last sentence has been revised to enumerate the specific types of Vehicles covered and the previously cited temporary regulation, G–28, has been replaced with the citation Pub. L. 94–163. Under paragraph (c) of this citation the following has been added: "Requisition for sedans, station wagons and certain types of light trucks shall be submitted through Headquarters as outlined in 9–5.5201–6. Requisitions for all other types of vehicles may be submitted directly to GSA." In paragraph (d), a reference to DOE PMR 109–38.9 has been added.

9–5.5201–3—The individual identified to receive a copy of the waiver request has been changed. The procedures for direct purchase of vehicles has been clarified by the addition of a new penultimate sentence which indicates that the head of the procurement agency may authorize direct purchase of general purpose trucks by DOE contractors. Also the term "clearance" has been replaced with the word "waiver" throughout the subsection. A reference to DOE PMR 109–38.51 was also added.

9–5.5201–5—Authority to make arrangements for obtaining forfeited or abandoned vehicles from GSA has been assigned to the Chief, Property and Equipment Management Branch, Headquarters vs. the Senior Procurement Official, Headquarters.

9–5.5201–6—Various revisions were made to update and improve clarity. A cross reference to DOE PMR was added. Subparagraph establishes

requisite procedural guidance for acquisition of fuel-efficient vehicles and identifies the responsibilities of the Chief, Property Management Branch, Headquarters. A Requirement for submission of forecast of needed vehicles by October 15th of each year was added.

9–5.5202–3—A cross reference to the DOE PMR was added. The reference to DOE EM 0260 was updated to read DOE Order 1340.

9–5.5206–5(b)—Cross reference to DOE PMR 109–25.302.2 has been added to the penultimate sentence.

9–5.5206–5(a)—Same as 9–5.5206–5(b) above.

9–5.5206–9—New subparagraph (d) has been added which makes cross reference to DOE PMR 109–38.3 and 109–38.6.

9–5.5206–11—Subparagraph (c) of the subsection has been revised to reflect a change in the mailing address of the Hq. U.S. Army Materiel Development and Readiness Command.

9–5.5206–15—A cross reference to the DOE PMR has been added.

9–5.5207–1—The phrase "for a given program" has been added to clarify the authority of the "Senior Program Official or designee."

9–6.1—The paragraph reference numbers have been changed to correspond with those contained in the FPR.

9–7.102–50—The phrase "whether incorporated by reference or otherwise" has been inserted after the phrase "or other provisions of the contract," and the phrase beginning with "contractor's technical proposal" has been identified as subpart "(e)" of the clause.

9–7.102–52—The word "appropriate" has been inserted between the phrase "Insert the" and the "clause set forth." Also the reference to section "9–9.103–1" has been revised to read "section 9–9.103."

9–7.102–53—The contract clause entitled "Notice and assistance regarding patent and copyright infringement" has been deleted from the required clauses and has been re-established as a clause to be used when applicable under 9–7.103–4.

9–7.103—The intent of the introductory paragraph to the "clauses to be used when applicable" has been clarified by indicating that the clauses listed thereunder shall be used when applicable in addition to "or in place of counterpart clauses in FPR 1–7.103."

9–7.103–4—See note pertaining to 9–7.102–53 above.

9–7.103–54—The clause entitled "Organizational conflicts of interest" has been deleted in favor of the clauses set forth in the new section 9–1.54. This change was made throughout this subpart 9–7.

9–7.103–56—The clauses entitled "Preservation of individual occupational radiation exposure records," as set forth under 9–50.704–41, has been added as a clause to be used when applicable.

9–7.104–50—The applicability of the "Priorities, Allocations, and Allotments" clause has been clarified.

9–7.2 through 9–7.8—The order in which the clauses appear in these subsections has been changed to make their order consistent with the arrangement of the clauses in the other sections of this subpart 9–7.

9–7.202–4—Provides instructions for modification of paragraph (a)(1)(i) the clause entitled "Allowable cost, fee and payment" by insertion of the phrase "as supplemented or modified by 9–15.2 (41 CFR 9–15.2) after the reference (41 CFR 1–15.2). "Cross references have also been made to the DOE or FPR sections which pertain to on-site service contracts, contracts with educational institutions and on-site construction and architect-engineer contracts.

9–7.202–59—The "Stop work order" clause has been included as one of the required clauses to be used in cost reimbursable cost-type contracts.

9–7.203–57—See comment pertaining to 9–7.103–56 above.

9–7.303–56—See comment pertaining to 9–7.103–56 above.

9–7.403–74—See comment pertaining to 9–7.103–56 above.

9–7.603–57—See comment pertaining to 9–7.103–56 above.

9–7.603–58—The clause entitled "Safety and Health," as set forth in 9–50.704–2, has been added as a clause to be used when applicable.

9–7.603–59—Instructions have been added to insert the clause entitled "Privacy Act" (FPR 1–1.327–5) when appropriate.

9–7.604–52—A clause entitled "Wage Determinations" has been added. The clause may be added to the SF19 when applicable.

9–7.704–50—The "limitation of price and contractor performance (multi-year contract)" clause has been added. Clause is patterned after the clause in the DAR.

9–7.704–51—The clause entitled "Cancellation (multi-year contracts)" has been added. As in the case above, the clause is patterned after the DAR.

9–7.704–53—See comment pertaining to 9–7.103–56 above.

9–7.704–54—See comment pertaining to 9–7.603–58 above.

9–7.802–18—The clause entitled "Payment of interest on architect-engineer claims" has been redesignated as 9–7.802–14 and the paragraph number has been reserved.

9–7.802–19—The clause entitled "Utilization of minority business enterprises" has been deleted and the paragraph number has been reserved for the reason set forth in 9–1.7.

9–7.803–5—The clause entitled "Small business subcontracting program" has been deleted and the paragraph number has been reserved for the reason set forth in 9–1.7.

9–7.803–6—The clause entitled "Minority business enterprises subcontracting program" has been deleted and the paragraph number reserved for the reason set forth in 9–1.7.

9–7.803–54—See comment at 9–7.103.56 above.

9–7.803–55—See comment at 9–7.603–58 above.

9–7.804–3.—A new subparagraph has been added to set forth administrative data which is to be included as part of Item 6 of the Standard Form 252. The information depicted under this new subparagraph is procedural in nature.

9–7.804–51—See comment at 9–7.603–59 above.

9–8—Subsection titles have been added to paragraphs 9–8.211, 9–8.212, 9–8.307, 9–8.404, 9–8.501, 9–8.503 and 9–8.504. The subsection titles correspond to those set forth in the FPR.

9–8.206—A new heading was added: "Fraud and Other Criminal Conduct." Paragraph has been added to advise government personnel that "any evidence of fraud or other criminal conduct in connection with the settlement of a terminated contract" must be reported in accordance with 9–1.605–50.

9–8.404—Provision added which addresses Procedures after invoices or vouchers are discounted.

9–8.501–2—The approval authority to authorize sale of termination inventory to DOE has been raised to the level of the HPA.

9–8.601—A cross reference has been added to FPR 1–8.601.

9–8.700–2(a)—Cross references have been added to 9–7.802–4 and 9–8.751.

9–8.751—The term "contractor" has been changed to the term "architect-engineer" where applicable in the clause entitled "Termination article for cost-plus-a-fixed-fee architect-engineer contracts." Also the first

sentence of paragraph (b) has been revised through the addition of the phrase "and does not cure such failure within a period of 10 days (or such larger period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure."

9–8.751(d)(4)—The last sentence has been revised to read as follows: If performance of the work under the contract is terminated for the default of the architect-engineer, no further payment beyond that amount due on completed work with appropriate fee payment shall accrue on account of the fixed-price.

9–9.107–4(a)—Subparagraph (7) has been clarified to reflect the practice that provisions of the type used in access permits (10 CFR 725) may be applicable to contractors as well as other persons requiring restricted data in their contracts, business, trade or profession.

9–9.107–5—The definition of "subject inventions" has been modified to conform with the definition of that term as set forth in FPR 1–9.107–5(a). Subparagraph 9–7.107–5(d)(2)(i) has been clarified by the insertion of the phrase "patent application" between the phrase "after the filing" and "or within 2 months after submission," and the requirement for preparation of a written decision with respect to first use of an invention or its reduction to practice has been revised.

9–9.107–6—Subparagraph (g) of the Patent Rights clause, short-form, has been amended to stipulate a period of time by which DOE Patent Counsel must respond and rule on a request for publication. The maximum delay which is authorized is 160 days unless a longer period is mutually agreed to. The change reflects policies expressed in Procurement Letter 78–11, dated June 30, 1978.

9–9.109–6(d)(1)—The first sentence of the paragraph has been clarified by making specific reference to the information set forth in paragraph 9–9.109–6(e). A waiver determination is now stated to be initiated when the written request provides the detailed information set forth in 9–9.109–6(e).

9–9.109–6(d)(2)—The language has been clarified to provide that a new waiver request covering a contract modification or extension will be required in those contracts where, through the modification or extension, the purpose, scope, cost or other factors upon which the original waiver was granted have been substantially changed.

9–9.109–6(h)—A new paragraph 9–9.109–6(h)(6) has been added to permit university contractors having DOE-approved technology transfer programs and written procedures for reviewing papers, to prescreen such papers for patentable subject matter. The procedure stipulated in this new paragraph was implemented by DOE Procurement Policy Letter 79–5 dated February 28, 1979.

9–9.109–6(i)(5)(ii)(C)—Language has been added to this paragraph which permits delay of a submittal of confirmatory licenses or assignments until a pending waiver request has been acted upon.

9–9.202–3(e)(2)(f)—The language which referred to optional paragraph (g) has been deleted to clarify that proprietary data withheld under paragraph (e) of the "Rights in Technical Data" (Long Form) clause may be inspected even though proprietary data was either not furnished or required to be furnished under optional paragraph (g) of the "Rights in Technical Data" (Long Form) clause.

9–10.109—The requirement for a legal sufficiency review as to the acceptability of the surety and adequacy of the bond has been clarified. Also paragraph (b) has been revised to require receipt of bonds prior to award of contract.

9–10.5012—Subsection has been added to provide procedural guidance for the use of service type insurance policies.

9–12.100—Editorial changes have been made to this subsection by deletion of the phrase "in appropriate circumstances" from the first sentence and deletion of the phrase "and which may be applied pursuant to the provisions of such contracts" from the last sentence of the subsection.

9–12.102—Subsection has been added to provide procedural guidance for the approval of overtime, extra pay shifts and multishift work, and to more clearly indicate that the policies expressed in FPR1–12.102 are applicable to all DOE contracts including construction and procurements by operating and other on-site contractors.

9–12.604—Subsection has been added to indicate that challenges to the Contracting Officers determination relative to eligibility under the Walsh-Healey Act will be processed in accordance with agency protest against award procedures except that, depending upon the size of the business, the matter shall be submitted to the Department of Labor or the Small Business Administration for final resolution.

9–12.800—The subsection has been revised to indicate that the scope of subpart 9–12.8 also applies to DOE subcontracts and that it may be adapted to programs involving Federal assistance.

9–12.805–1—This subsection has been revised to reflect the transfer of responsibility for monitorship of labor compliance. In accordance with Executive Order 12086, dated Oct. 5, 1978, the Director of Federal Contract Compliance, DOL, has been designated the responsibility for carrying out the requirements of Executive Order 11246, as amended, and as implemented by 41 CFR Chapter 60.

9–12.805–51—Procedures for requesting pre-award compliance checks have been updated to reflect the change in monitorship responsibilities discussed above. Also the applicability of the requirement for conduct of pre-award labor clearance checks has been clarified by making specific reference to "modifications of existing contracts which constitute a new effort," "basic ordering agreements," "indefinite delivery contracts," and "letter contracts."

9–15—The Subpart has been revised by deleting the contract cost principles and procedures applicable to Operating and On-Site Services Contracts from this subpart. Contract cost principles and procedures as they relate to Operating and On-Site Services Contracts are now covered under § 9–50.15. This change was made in recognition of the fact that the cost principles related to the operation of DOE plants or laboratories differs considerably from the cost principles applicable to DOE's other contracts. The subsections deleted from this part and transferred to 9–50.15 are: 9–15.5004 through 9–15.5005–5, 9–15.5007–1 through 9–15.5007–3, 9–15.5008 through 9–15.5009–5, 9–15.5010–1 through 9–15.5010–4, 9–15.5010–7, 9–15.5012–13 and 9–15.5012–14. Subsections for which guidance is included under both § 9–15 and § 9–50.15 are 9–15.5006, 9–15.5007, 9–15.5010, 9–15.5010–5, 9–15.5010–6, 9–15.5010–8 through 9–15.5010–11 and 9–15.5010–14 through 9–15.5010–20. The subsection reference numbers have been changed as follows:

Former reference No.	New reference No.	New reference No.
	§ 9-15	§ 9-50.15
§ 9-15.5004		9-50.1504
9-15.5005		9-50.1505
9-15.5005-1		9-50.1505-1
9-15.5005-2		9-50.1505-2
9-15.5005-3		9-50.1505-3
9-15.5005-4		9-50.1505-4
9-15.5005-5		9-50.1505-5
9-15.5006	9-15.5004	9-50.1506
9-15.5007	9-15.5005	9-50.1507
9-15.5007-1		9-50.1507-1
9-15.5007-2		9-50.1507-2
9-15.5007-3		9-50.1507-3
9-15.5008		9-50.1508
9-15.5008-1		9-50.1508-1
9-15.5008-2		9-50.1508-2
9-15.5008-3		9-50.1508-3
9-15.5009		9-50.1509
9-15.5009-1		9-50.1509-1
9-15.5009-2		9-50.1509-2
9-15.5009-3		9-50.1509-3
9-15.5009-4		9-50.1509-4
9-15.5009-5		9-50.1509-5
9-15.5010	9-15.5006	9-50.1510
9-15.5010-1		9-50.1510-1
9-15.5010-2		9-50.1510-2
9-15.5010-3		9-50.1510-3
9-15.5010-4		9-50.1510-4
9-15.5010-5	9-15.5006-1	9-50.1510-5
9-15.5010-6	9-15.5006-2	9-50.1510-6
9-15.5010-7		9-50.1510-7
9-15.5010-8	9-15.5006-3	9-50.1510-8
9-15.5010-9	9-15.5006-4	9-50.1510-9
9-15.5010-10	9-15.5006-5	9-50.1510-10
9-15.5010-11	9-15.5006-6	9-50.1510-11
9-15.5010-12		9-50.1510-12
9-15.5010-13		9-50.1510-13
9-15.5010-14	9-15.5006-7	9-50.1510-14
9-15.5010-15	9-15.5006-8	9-50.1510-15
9-15.5010-16	9-15.5006-9	9-50.1510-16
9-15.5010-17	9-15.5006-10	9-50.1510-17
9-15.5010-18	9-15.5006-11	9-50.1510-18
9-15.5010-19	9-15.5006-12	9-50.1510-19
9-15.5010-20	9-15.5006-13	9-50.1510-20

Part Affected, and Summary of Revisions

9-15.000—The subsection has been redrafted to clarify the scope of the Subpart and to reflect the changes enumerated above.

9-15.101—Added to clarify applicability of DOE-PR 9-15 and FPR 1-15.

9-15.103—Retitled and revised to clarify what cost principles cover operating contracts with educational institutions. The guidance pertaining to the determination of overhead rate (subparagraphs 9-15.103 (b) and (c) has been transferred to 9-15.307.

9-15.205-60—A subsection has been added to indicate that DOE does not consider Facilities Capital Cost of Money as an allowable cost, i.e., DOE has selected Option 1 under the FPR Temporary Regulation #40.

9-15.307—Adds paragraph which includes prior language of 9-15.103 on overhead for educational institutions as well as adds reference to OMB Circular A-21.

9-15.50—As indicated in the introductory summary to § 9-15, the coverage of cost principles and procedures as they relate to Operating On-Site service contracts has been transferred to 9-50.15. The title of the subpart has been changed to "Contract Cost Principles and Procedures."

9-15.5000—The subsection has been revised to reflect the changes made to the section with respect to the deletion of cost principles as they relate to operating and on-site services contractors.

9-15.5001—The definition for "operating contract" and "on-site architect-engineer contract" have been deleted from the subsection, also the definition of "research and development contracts" has been clarified.

9-15.5002—The "Senior Procurement Official, Headquarters" has been assigned the responsibility for developing and revising the policy and procedure for the determination of allowable costs.

9-15.5003—The consultation and coordination requirements for approval of deviations from the subpart have been revised to reflect the authority of the Senior Procurement Official verus that of the Controller. Consultation with the Controller is no longer mandatory.

9-15.5004—The subject matter formerly set forth under § 9-15.5006 has been inserted under this subsection number.

9-15.5005—The subsection has been re-entitled "Direct and Indirect Costs" and establishes a cross reference to FPR 1-15.202 and 203. Information formerly set forth under the subsection has been relocated as indicated above.

9-15.5006—As indicated in the introductory summary to Subpart 9-15 this subsection now contains the information formerly set forth under 9-15.5010. Such information, to the extent that it is applicable to non operating and on-site service contracts has been transferred without change. Editorial corrections have been made to delete the references and cross references to operating and on-site service contracts.

9-16.804-4—A subsection has been added to identify the processing requirement for Small Business/Labor Surplus Set-Aside Review Form, DOE Form PR-415.

9-16.808—Relocates the Certificate of Appointment for Contracting Officers to the end of Part 16.

9-16.5000—The applicability of the subsection has been clarified by making specific reference to "contracts." The word "support" has been deleted throughout the subpart and replaced with the words "fund", "funding" or "Government" as appropriate. This has been done for consistency with Pub. L. 95-224.

9-16.5002-1—The title of the subsection has been changed to read "Special research contracts (SRC) with educational institutions" and the term "agreement" has been replaced with the term "contract" wherever it appeared through the subsection.

9-16.5002-1—Article I(a): The phrase "to the best of its ability" has been deleted from the first sentence.

9-16.5002-1—Article AII(a): Raises threshold for classifying an item as equipment from $200 to $300.

9-16.5002-1—Articles B-II and B-XXIX: Adds reference to FPR 1-15.3 for clarification.

9-16.5002-1—Article B-XVIII: Revises second sentence for clarification.

9-16.5002-1—Articles B-XXV and B-XXVI: The Articles have been reserved for future use.

9-16.5002-1—Article B-XXIX: A cross reference to FPR 1—15.3 has been added to footnote 2 of paragraph (a).

9-16.5002-1—Article B-XXX: Adds to the definition of "general-purpose equipment" the qualification that the item cost $500 or more.

9-16.5002-1—Article B-XXXVII: The clause entitled "Preservation of Individual Occupational Radiation Exposure Records" as set forth in 9-50.704-41 is to be inserted when appropriate.

9-16.5002-2—Paragraph 3(d) of outline: The coverage on insurance has been clarified by indicating that the contractor shall waive any right of action against the Government for loss covered by insurance.

9-16.5002-3—Article III Paragraph (d): The coverage on insurance has been clarified by indicating that the lessor shall waive any right of action against the contractor or the Government for loss covered by insurance.

9-16.5002-3—Adds Article XIV on equal opportunity and cross references to FPR 1-12.803-2.

9-17.101(b)(2)—DOE management currently has under consideration the extent of the delegation to be given to the Board of Contract Appeals under Public Law 85-804. Until a management decision is made, Board jurisdiction shall be limited to cases in this area arising out of former ERDA programs. This limitation preserves the present jurisdiction without extending it to other programs.

9-17.102 through 9-17.207-2—The term "Department" has been substituted for the word "agency" wherever the latter word appeared.

9–17.208–50—The reference to "10 CFR Part 703" has been deleted since the cite does not apply to DOE. Also the phrase "otherwise provides" has been added to the second sentence of paragraph (a) to more clearly indicate the type of hearing to which parties directly affected by the Act are entitled.

9–17.208–51—The reference to the "Board of Contract Appeals and Adjustments" has been changed to read "Contract Adjustments Board."

9–18.111—Subsection has been deleted.

9–18.112—The cross reference to Subpart 9–1.54 has been changed to assure compatibility with the revisions made to the organizational conflict of interest coverage.

9–18.203–1—The maximum charge for reproducing invitations, plans and specifications has been raised from $25 to $100; and a solicitation provision has been added for use when fees are non-refundable.

9–18.306–50(a)—The introductory sentence to the subsection has been revised to more clearly indicate the need for Government estimates.

9–18.701–51(a)(6)—The exception to the Davis-Bacon and Copeland Acts as it relates to demolition has been clarified.

9–18.701–51(a)(7)—Adds reference to FPR 1–18.703–2 for clarification and deletes the parenthetical reference to subcontracts.

9–18.701–52(a)(3)—The reference to work or services of a typical or recurring nature has been deleted and the subsequent paragraphs have been renumbered to fill the gap.

9–18.701–52(a)(4)—The subparagraph has been revised to clarify exemptions from the provisions of the Davis-Bacon Act.

9–18.701–52(a)(6)—Revised to more clearly show the work excluded from the "emergency work" category.

9–18.702–50—The subsection pertaining to Department of Labor approval has been deleted in its entirety, and Subsection 9–18.702 has been reserved.

9–18.704–3—The addressee for receiving wage determination requests has been changed from the regional officer of the Employments Standards Division, DOL to the Wage and Hour Division, Employment Standards Administration, DOL, Washington, D.C.

9–18.750–2(b)—The paragraph has been revised to exclude recurring maintenance such as patching surfaces.

9–18.750–2(e)—Revised for clarification of rehabilitation of facilities.

9–18.750–2(f)—Revised to more clearly indicate applicability of the Act to Printing.

9–18.750–2(g)(4)—The subsection has been retitled and revised to limit the example to telephone and utility systems.

9–18.750–2(h)(1)—The subsection has been revised to more specifically indicate that the erection of structures which are public works are covered even if such work is part of set-ups of device and/or processes.

9–18.51—A Subpart has been added to set forth DOE's policies relative to inspection services performed by A–E's. The subpart implements and supplements FPR 1–14 and establishes a requirement for providing written instructions to contractors who are delegated inspection authority.

9–23.104(b)—The criteria for initiation of a Contractor's Procurement System Review (CPSR) has been revised to indicate that such reviews will be initiated if it is expected that the contractor will during a 12-month period issue over $5,000,000 in subcontracts, utilizing Government funds, on a basis other than fixed-price, competitively awarded contracts.

9–23.104(c)—The approval authority for waiving CPSR has been changed to the Director, Office of Procurement Management.

9–23.104(e)—The reference to the DOE Handbook for Conduct of Contractor Procurement System Reviews has been deleted and the phrase "appropriate agency directives and guides" has been inserted.

9–23.104(f)—The addressee for receipt of "outlines of proposed CPSR reviews has been changed to the Director, Office of Procurement Management.

9–23.106(a)—The reference to the DOE Guide for Performance of CPSR has been changed to "appropriate DOE directives and guides."

9–23.107—Requirements for review of CPSR reports have been changed and the approval level for such reports has been changed to the Director, Office of Procurement Management. Also, the number of copies to be submitted has been changed to two and additional information pertaining to subcontract approval thresholds has been added.

9–23.108(b)—Subparagraph (5) has been redesignated as § 9–23.108(a) and (6) through (8) have been redesignated as (5) through (7), and the former paragraphs (c) through (f) have been redesignated as (d) through (g).

9–23.108(d)(i)—Deletes "notwithstanding 9–3.901."

9–23.108(e)—Information set forth in 9–23.109(b) has been transferred to explain procedures for safeguarding and distributing reports of Contract Procurement System Reviews.

9–23.109(b)—Information transferred to 9–23.108(e).

9–30.000—The phrase "for functions transferred to DOE from the agencies referred to in the FPR" has been deleted from the subsection.

9–30.102(c)(2)—Clarifies a policy governing exercise of the DOE loan guarantee authority by including "other DOE programs" as part of the criteria to be considered in authorizing loan guarantees.

9–30.501—Added to address authorizing progress payments based on percentage or stage of completion.

9–30.505—Added to address processing procedures for unusual progress payments.

9–30.517—Revised to show that the Senior Procurement Official, Headquarters, now approves contract financing office clearances.

9–30.701 (a) and (b)—Deletes reference to "defense" and "interest of national defense financing," respectively.

9–50.001(a)(1)(iii)—The subparagraph has been redrafted to enhance definition of "operating contracts" by deleting reference to construction contractor.

9–50.001(a)(2)—A parenthetical statement has been added to indicate that contracts for "management support reviews," "technical evaluations," etc., would not normally be considered as "on-site service contracts."

9–50.104—The subsection has been deleted.

9–50.108—The subsection has been revised to set forth DOE's policies with regard to Labor Surplus Area Concerns as it pertains to operating and on-site service contracts.

9–50.201(b)(4)—Revises correction of mistake procedure for clarification.

9–50.302–3(e)—The subsection has been deleted, since the subject is adequately covered in other sections of the DOE-PR. Subparagraphs (f) through (j) have been redesignated as (e) through (i).

9–50.302–3(i)—This subsection has been deleted.

9–50.302–5(a)(5)—The approval level for authorizing subcontract threshholds higher than $100,000 has been transferred to the Director, Office of Procurement Management.

9–50.303(a)—New paragraph (a) added to establish applicability. Existing paragraphs are redesignated (b) and (c).

9–50.304(a)—New paragraph (a) added to establish that the provisions of 9–50.303(a) apply. Existing paragraphs are redesignated (b) (c) and (d).

9–50.402—The Subpart has been retitled "Nuclear Material Transfers," and the reference to "source and special" has been deleted from subparagraph (a) of the subsection.

9–50.504(a)—The title of FPMR Part 101–14 has been corrected to read "National Stockpile."

9–50.506–3—Updates the reference to read "DOE Order 1340."

9–50.506–6(m)(1)—The reference to the FPMR has been corrected.

9–50.703–2—The subsection has been deleted and the Subsection number has been reserved. The revised Disputes clause is set forth in the FPR.

9–50.703–3—The former Subsection has been deleted and is now reserved.

9–50.704–2—Revised clause on "Safety and Health." Contracting Officer must notify the contractor of any noncompliance in writing.

9–50.704–2(b)—A requirement has been added for contractors to submit a management program and implementation plan to the contracting officer.

9–50.704–6(d)(3)(iii)—The period of time for which a waiver shall be in effect has been increased to a maximum of 20 years.

9–50.704–6(h)—The subparagraph of the clause has been revised to indicate that the obligations of DOE with respect to nuclear hazards indemnity will be unaffected by completion, termination, or expiration of the contract.

9–50.704–8(c)—Subparagraph has been restructured for clarification.

9–50.704–9—Provides new alternative for auditing subcontractors' records. May now arrange for an audit by the cognizant government audit agency.

9–50.704–12(b)—The term "work has been substituted for the term "contract" in the last sentence of this paragraph.

9–50.704–13(d)(8)—Expanded to explain the purpose of the personnel appendix and the modification procedures thereto. The dollar amount of employee conpensation which requires Contracting Officer approval (§ 9–50.2002) has been raised to a maximum of $40,000.

9–50.704–14—Modifies title to focus on on-site service contracts. Also, as in 9–50.704–13, the dollar amount has been increased to $40,000. (§ 9–50.2002)

9–50.704–15—Deletes in its entirety and reserves.

9–50.704–16(d)(S)—Expanded to explain the purpose of the personnel appendix and the modification procedures thereto. The dollar amount requiring Contracting Officer approval has been raised to a maximum of $40,000 (§ 9–50.2002)

9–50.704–16(d)(19) & (20)—Deletes in their entirety and reserves.

9–50.704–16(e)(25)—Revised to read "Bidding expenses and costs of proposals" are unallowable costs.

9–50.704–17—The title of the clause has been revised by deletion of the parenthetical phrase.

9–50.704–18(b)—Clarifies treatment of accrued pension costs.

9–50.704.21—A new subparagraph (i) has been added to the Property clause which makes specific reference to the requirements of the DOE Property Management Regulations. The paragraph has been added to highlight the applicability of DOE's existing property management requirements.

9–50.704–22(b)—The reference to 9–3.850 has been changed to 9–50.704–24.

9–50.704–26—Expands requirements for nuclear safety. Includes a requirement for periodic training and qualification of personnel, coverage on operating and decommissioning facilities, a requirement for a comprehensive safety review and a requirement to submit plans for disposing of a facility and any associated nuclear/hazardous materials.

9–50.704–27(b)—The restriction on performing consulting services for more than one DOE contractor have been expanded by deletion of the word "atomic" and substituting the phrase "same or related" in its stead.

9–50.704–32—The clause entitled "Required bonds and insurance—exclusive of Government property" (cost-type contracts) has redrafted to make specific reference to the "Insurance Liability to Third Persons" clause and to delete the requirement that bonds and insurance policies be submitted to the Contracting Officer for approval. The clause now states that "the terms and conditions of any such bonds and insurance shall conform to the directions of the Contracting Officer".

9–50.704–41—Adds a clause on "Preservation of individual occupational radiation exposure records."

9–50.704–42—Adds a clause on "Key personnel."

9–50.704–48—The clause entitled "Small Business Subcontracting Program Reporting" has been added to reflect the DOE procedures for reporting contracts awarded to Small Business.

9–50.1200—Expands scope of "Labor Relations" to include subcontractors.

9–50.1205–1—Updates coverage to include current policy and organizational responsibilities for equal opportunity in employment.

9–50.1205–2—Revises to reflect change in 41 CFR Chapter 60.

9–50.1205–2(b)—Requires Contracting Officers to add solicitation notice in 41 CFR 60–4.2(d) and 4.3.

9–50.1207—Clarifies circumstances when subcontracts are applicable to the Service Contract Act of 1965.

9–50.1210–8—Revised to reflect correct title of the Office.

9–50.1212–1—The phrase "DOE contractors managing, operating, maintaining or constructing Government-owned facilities" has been replaced with the phrase "DOE on-site service and operating contractors."

9–50.1500—Coverage of cost principles and procedures relocated from 9–15.50. This change recognizes that the operation of a DOE plant or laboratory is significantly different from the normal educational institution research and development contract.

9–50.1503—Deletes consultation with the Controller on deviation actions.

9–50.1505–1(d)—Deletes the fourth sentence concerning "indirect cost" to ensure consistency with CAS 401.

9–50.1505–3—Adds a definition for allowable and reasonable costs (subparagraph (b)) and redesignates subsequent subparagraphs; also the parenthetical phrase in subparagraph 3(d) has been deleted and adds a subparagraph 3(f), "Cost accounting standards, if applicable."

9–50.1505–4(b)—Deletes reference to "DOE cost principles."

9–50.1506(i)—Revised to indicate the purpose of the personnel appendix.

9–50.1507–2—The title of the subsection has been revised. Examples of indirect costs have been deleted.

9–50.15—The conditions under which severance pay should not be offered have been clarified by stipulating that payments should not be made in the event an employee is offered employment with a replacement contractor where continuity of employment, with credit for length of service is preserved. Also subparagraph (e) has been deleted since the reference to educational institutions is no longer necessary.

9–50.1510–14(b)—Expanded to clarify the use of a personnel appendix and the allowability of compensation for personal services. The dollar amount of employee compensation which

requires Contracting Officer approval has been increased to $40,000.

9–50.1801.3—Deleted in its entirety.

9–50.1804–1—Deletes the previous subpart and adds a statement on "Contract clauses."

9–51.101(a) (1) & (2)—Revised to indicate communications will be "through" certain offices en route to the Senior Procurement Official, Headquarters.

9–51.101(b)—Revised to clarify the DOE review process for contract actions.

9–51.102 (a) & (b)—Revised to further explain contract actions requiring advance Headquarter's review and approval.

9–51.103 (1) & (2)—Modifies the instructions for obtaining Headquarters advance approval by pointing to compliance with current Headquarters directives.

9–51.103–5—Modified for clarification.

9–51.301—Deletes the guidance pertaining to basic research lump sum contracts with foreign educational institutions.

9–51.602–2—Deletes previous coverage on justification of reported contracts.

9–52—Deleted in its entirety and reserved pending issuance of updated coverage on "Business Instrument Numbers and Procurement Request Numbers."

9–53—Deleted in its entirety and reserved pending issuance of updated coverage on "Contract Reporting."

Accordingly, the title of Chapter 9 in Title 41 CFR is revised to read, "Department of Energy".

In 41 CFR Chapter 9, the procurement regulations are adopted.

For the Department of Energy.

Dated: May 18, 1979.

M. J. Tashjian,

Director, Procurement and Contracts Management Directorate.

[FR Doc. 79–18574 Filed 6–13–79; 8:45 am]

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Thursday
June 14, 1979

Part VI

Department of Transportation

Coast Guard

New and Existing Tank Barges; Proposals for Prevention of Oil Pollution

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 30, 32, and 35]

[CGD 75-083]

Proposed Design Standards for Tank Barges to Prevent Oil Pollution

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule; withdrawal of prior proposed rule.

SUMMARY: the Coast Guard proposes to amend the tank vessel regulations to require double hull construction for all new tank barges designed to carry oil in bulk on the navigable waters of the United States and to prohibit these barges from carrying oil in the void spaces of their double hulls. A study sponsored by the Coast Guard shows that approximately 80 percent of the oil pollution caused by tank barges could have been prevented if these barges had double hull construction. Double hull construction on new tank barges will reduce the number of accidental discharges of oil due to hull damage.

DATES: 1. Written comments must be received on or before September 30, 1979. 2. The public hearings will be held on August 2, 1979, August 15, 1979, August 23, 1979, and September 7, 1979.

ADDRESSES: Written comments should be submitted to Commandant (G-CMC/81) (CGD 75-083), U.S. Coast Guard, Washington, D.C. 20590.

Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Studies referred to in this document are appendixes to the Regulatory Analysis and Environmental Impact Statement (Regulatory Analysis) summarized in this document. Copies of the Regulatory Analysis are available for examination at this address.

The Coast Guard will hold 4 public hearings concerning this proposal in conjunction with the public hearings on the advance notice of proposed rule making appearing elsewhere in this issue of the **Federal Register** (See table of contents for page number). The first will be held on August 2, 1979, beginning at 9:00 a.m., in Room 2230, 400 7th Street, SW., Washington, DC 20590. The second will be held on August 15, 1979, beginning at 9:00 a.m., in the Olympic Hotel, Williamsburg Room, Fourth and Seneca Streets, Seattle, WA 98111. The third will be held on August 23, 1979, beginning at 9:00 a.m., in the Holiday Inn Superdome Downtown, Russel B. Long Room, 1111 Gravier Street, New Orleans, LA 70122. The Fourth will be held on September 7, 1979, beginning at 9:00 a.m., in the Stouffers Riverfront Towers, Jefferson A and B Rooms, 200 South Fourth Street, St. Louis, MO 63102.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Eugene K. Johnson, Merchant Marine Technical Division (G-MMT-1/82), U.S. Coast Guard, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-4431).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 75-083), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. Interested persons are invited to attend the hearings and present oral or written statements on this proposal. It is requested that anyone desiring to make an oral statement notify Captain Philip J. Danahy, at the address listed under ADDRESSES, at least 10 days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. Oral statements at the public hearing will normally be scheduled to be heard in the order that requests are received. It is urged that a written summary or copy of the oral statement be included with that request.

Drafting Information

The principal persons involved in drafting this proposed rule are Lieutenant Commander Eugene K. Johnson, Project Manager, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of Chief Counsel.

Discussion

Background and Withdrawal of Prior Proposed Rule

In the December 24, 1971 issue of the **Federal Register** (36 FR 24960), the Coast Guard published a notice of proposed rule making which, along with many other proposals, contained design standards to prevent pollution from tank barges on inland routes. One of these proposals called for double walls on the sides and ends of tank barges but not for double bottoms. The inland barge industry entered strong objection to the proposed requirement for double wall construction. The basis of the objection was that the Coast Guard had not adequately investigated the cost nor had it established a case that double walls would significantly reduce oil pollution. Due to these comments, the proposed requirement for double walls on inland tank barges was not included in the final rules published on December 21, 1972 (37 FR 28250) and this document withdraws that proposal (proposed § 155.305).

The Coast Guard, in cooperation with the Maritime Administration, entered into a study of costs and alternatives available to reduce oil pollution caused by tank barge hull damage. The joint Maritime Administration/U.S. Coast Guard "TANK BARGE STUDY," NTIS # COM-75-10284/AS, was completed in October 1974. As a basis for this study, a survey of tank barges damaged in a one year period was conducted and a fleet profile of the sizes and types of construction used for existing barges was developed. Data from the Pollution Incident Reporting System, established by the Coast Guard in December 1971 to implement Section 311 of the Federal Water Pollution Control Act, was used to determine the amount of oil spilled by tank barges in the inland waters.

Various alternative designs for preventing oil pollution from tank barges were developed by the Coast Guard for several size categories. These alternatives were evaluated for both new tank barges and retrofitting of existing tank barges.

The effectiveness of the various alternatives was evaluated by two methods. As the first method, the damage survey from the study was compared against each alternative to determine if pollution would be prevented by that alternative. The conclusion reached by this method was that double hulls with a 24 inch separation of the inner and outer hulls would be 96 percent effective in preventing pollution due to hull damage. As the second method, field reports for tank barges in the Coast Guard Merchant Vessel Casualty File were analyzed for the same time period used in the first method. Only reports of damage with ensuing pollution were used. The conclusion reached by this method was that double hulls would be 95% effective in preventing pollution due to hull damage. The second method also showed that bottom damage is

important and has to be considered for effective design.

As a part of the 1974 Tank Barge Study, the life-cycle costs of the various alternatives were investigated by an outside contractor under a contract to the Maritime Administration. The Maritime Administration has updated these costs to 1978 levels and has calculated the additional costs for double hulls on ocean and coastwise tank barges.

Much of the information used in the joint study was supplied by the barge industry. Ample opportunity for comment on the results of the study was given by presenting most of the information in a paper, "Alternative Inland Tank Barge Designs for Pollution Avoidance", presented at the spring meeting of the Society of Naval Architects and Marine Engineers in May 1974 at Chicago, Illinois before the report was finished. Criticism of the study was that it used only a 1 year data base and that the pollution data was not good. The Pollution Incident Reporting System had been in operation only about 2 years at the time of the study. As with any new data system, problems occurred during implementation of the reporting procedures and early data in this system ranged from "not good" to "inadequate."

To identify the magnitude of oil pollution from tank barges and to determine the causes of that pollution, a contract was awarded by the Coast Guard to Automation Industries, Inc. on July 13, 1977. The final report, CG–M–2–78 "Tank Barge Oil Pollution Study," was submitted to the Coast Guard in February 1978. The following Coast Guard maintained data and file systems were used in the study: the Pollution Incident Reporting System (PIRS), Commercial Vessel Casualty Reporting System, Inspected Barge File, and District Penalty Files, for the years 1974 through 1976. The PIRS data was verified by sampling penalty files maintained in Coast Guard field offices and was found to be adequate, probably due to the maturity of the Pollution Incident Reporting System and the increased emphasis placed on pollution prevention in recent years.

For this 3 year period, the volume of oil spilled from tank barges was 173,971 barrels. This compares to a total of 288,704 barrels of oil spilled from tankships for the same period of which 178,571 barrels were spilled in a single incident, the ARGO MERCHANT. The oil spilled by tank barges occurred in the inland waters, harbors and near coastal waters of the U.S. These waters are ecologically very sensitive to oil pollution and are highly visible to the public.

Of the oil spilled by barges, approximately 85% of the total volume was spilled in a relatively small number of incidents which occurred during the barge transport of oil and usually involved hull damage. Based on the 1974 study, approximately 80% of the volume of tank barge oil pollution can be eliminated by a double hull construction standard with a 24 inch separation of hulls. The analysis discussed in the following paragraph established that the effectiveness of double hulls may be as high as 89% in reducing the volume of oil pollution from tank barges.

For the years 1973 through 1977, an analysis of the Pollution Incident Reporting System data and the Commercial Vessel Casualty Reporting System data has been performed by the Coast Guard. Of 164 hull damage incidents having spills of 500 gallons or greater which have a total volume of 178,500 barrels, 94% of the total volume for the period, 91 casualty reports were identified. These reports were analyzed to determine if the routes for which tank barges are certificated has an impact on the pollution potential of tank barges, and the analysis disclosed that the route for which a tank barge is certificated does not appear to influence the pollution potential.

Proposed Regulations

The regulations proposed in this document would be codified in 46 CFR Subchapter D (Tank Vessels) in a new Subpart 32.64. While the proposed regulations are intended to prevent pollution and could have been placed in 33 CFR Part 157, the regulations are design standards and should be in Subchapter D. The proposed regulations would only apply to tank barges that carry oil. The definitions of oil and crude oil are included in the proposal for facilitation in applying the regulations, since these definitions are not now contained in Subchapter D.

The proposed regulations would apply to new tank barges, which are defined as those constructed or converted under a contract awarded after December 31, 1979, or in the absence of a contract, where the actual construction or conversion of the barge begins after December 31, 1979. The December 31, 1979, proposed date was selected by the Coast Guard based on the time frame anticipated for publishing this notice, holding hearings and receiving written comments, evaluating all the comments and publishing final rules. This date will be changed if substantial delays are encountered.

Since the analyses performed indicate that double hulls are necessary for all barges regardless of the route they are certificated for, the proposed regulations would apply to inland and seagoing barges. However, it is proposed to limit the application of the requirements to product carriers of less than 30,000 DWT and crude oil carriers of less than 20,000 DWT. Since the pollution prevention regulations for tank vessels (33 CFR Part 157) apply to both tank ships and tank barges, they are considered sufficient to meet the environmental mandate of Congress for any tank ships and tank barges larger than the proposed tonnage limits. Tank barges of this size are limited to the same areas of operation as tankships due to their size.

The proposed regulations would require that cargo tanks be located a minimum of 24 inches from the hull of the barge. This separation was chosen based on the expected effectiveness of this separation developed in the 1974 Tank Barge Study and the Coast Guard's opinion that this is the minimum separation that would permit inspection of the spaces between the cargo tanks and the hull. A review of representative plans for existing double hull barges has shown that most of these barges are now built with cargo tanks located 24 to 30 inches from the hull even though present regulations would allow 15 inches. However, the 15 inch minimum now allowed for double bottoms was originally established for independent cylindrical tanks and not for a full double bottom.

In the void spaces between the hull and cargo tanks the internal structures would have to be arranged so that the spaces can be inspected. Sounding devices to detect leakage into the spaces and a means of pumping out the spaces would be required. An access to enter the space would also be required. If vents are installed, even though not required under § 32.55–45(b), the proposed regulations would require flame screens in the vents. This is considered necessary for safety reasons because of the possibility of cargo leakage into the spaces.

The proposed regulations would require that the double hull tank barges meet a minimum stability standard. If the space between the cargo tanks and the hull is not subdivided properly, a barge could sink or capsize with only minor damage to the hull. The proposed standard would require that the subdivision of the space be arranged so that the barge will remain afloat and not capsize after holing the hull anywhere except on a transverse watertight bulkhead. 33 CFR Part 157 (Subpart B)

also contains stability requirements for certain seagoing tank barges.

The proposed regulations would prohibit the carriage of oil in the spaces between the cargo tanks and the hull of the barge. However, for larger barges where ballast may be needed in the unloaded condition, these spaces could be used for ballast water. This prohibition would only apply to new tank barges if this becomes a rule but a similar prohibition for existing tank barges is being considered in the advance notice appearing elsewhere in this separate Part VI in today's **Federal Register** (see table of contents for page number).

Section 30.01–5 of Subchapter D would be revised to require foreign tank barges operating on the navigable waters of the United States to meet the requirements of Subpart 32.64. There does not appear to be any significant trade at this time that would be affected should this become a rule. The change is considered necessary to prevent the development of a new trade to avoid these proposed regulations.

In addition to the proposal in this document, an Advance Notice of Proposed Rulemaking, appearing in this issue of the **Federal Register**, solicits ideas on how the existing single hull tank barges may be regulated to (1) reduce oil pollution due to hull damage while these barges are in service; and (2) hasten the retirement of single hull tank barges from the fleet so that transition to a double hull tank barge fleet can be accomplished in a timely manner.

This proposal has been reviewed under Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A Draft Evaluation has been prepared, and is included in the public docket.

Economic Impact

The major economic impact of a requirement for double hulls on new tank barges is the increase in cost for double hull construction over single hull construction. The costs have been calculated for inland and seagoing tank barges. A trend to double hull construction for inland tank barges exists; therefore, the total additional cost for double hull construction for inland tank barges that might otherwise have been single hull construction is approximately 2.3 million dollars for the period 1979 to 1983 in 1978 present value dollars. By 1983 it is assumed from current trends that all inland tank barges would have been built double hull regardless of these regulations.

Seagoing tank barges would not have been built to double hull standards without these regulations. The cost per barge for a double hull ocean barge is considerably greater than for an inland tank barge. It is estimated that 7 single hull seagoing tank barges will be built in 1979. The estimated additional cost for double hulls on these 7 barges is about 7.1 million dollars. The total 1978 present value additional cost for double hulls on seagoing tank barges, to replace all existing single hull seagoing tank barges by 1999 is approximately 144.0 million dollars.

A detailed discussion of the costs is included as Chapter 4 of the Regulatory Analysis. The effects of the proposed regulations on the transport of oil and the reduction of oil pollution are also evaluated.

Summary of Regulatory Analysis

A single draft Regulatory Analysis and Environmental Impact Statement has been prepared for this notice of proposed rulemaking and the advance notice of proposed rulemaking for existing tank barges. This was done so that the scope of the Coast Guard's regulatory action to prevent oil pollution from barges is clearly presented and all applicable information is available to the public in a single document. All the major background studies are included as appendixes to the Regulatory Analysis.

The Regulatory Analysis establishes the need for regulations by carefully analyzing pollution and casualty data. The double hull design was selected based on effectiveness for preventing pollution due to hull damage which was established in the 1974 Tank Barge Study. The alternatives to double hull design are discussed and the reasons for the Coast Guard rejecting these alternatives are presented. Alternatives considered were:

(a) Publish no additional standards. (No action)

(b) Publish less stringent regulations than those proposed which included heavier scantlings either in selected areas or overall, double sides and ends, or tank size limits.

(c) Publish regulations more stringent than those proposed by requiring the carriage of oil in Type I or Type II barge hulls as currently defined in Coast Guard regulations.

(d) Reduce oil consumption or reduce the amount of oil transported by tank barges.

(e) Use a different mode of transportation for the movement of oil.

In consideration of the foregoing, it is proposed to amend Subchapter D of Title 46, Code of Federal Regulations, as follows:

PART 30—GENERAL PROVISIONS

1. By revising § 30.01–5(e) to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(e) This subchapter applies to each foreign flag vessel that carries combustible or flammable liquid cargoes on the navigable waters of the United States, except if the vessel has on board a current and valid Safety Equipment Certificate, issued under its Government that is signatory to the International Convention for the Safety of Life at Sea, 1960 (16 UST 185, TIAS 5780), or a current and valid certificate of inspection, issued under its Government having reciprocal vessel inspection arrangements with the United States and vessel inspection laws similar to the inspection laws of the United States, the vessel must only meet the following:

(1) Subpart 32.64.

(2) Sections 35.01–1 and 35.01–60.

(3) If the vessel is involved in a marine casualty or accident when on the navigable waters of the United States, Subpart 35.15.

(4) Subpart 35.30, except § 35.30–15.

(5) Subpart 35.35.

* * * * *

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

2. By adding a new Subpart 32.64 to follow Subpart 32.63 and to read as follows:

Subpart 32.64—Hulls for New Tank Barges—B/ALL

Sec.

32.64–3 Definitions.
32.64–5 Applicability.
32.64–10 Hull structure.
32.64–15 Subdivision and stability.

Authority: R.S. 4417a (46 USC 391a, as amended by Pub. L. 95–474, Port and Tanker Safety Act of 1978); 49 CFR 1.46(n)(4)

§ 32.64–3 Definitions.

As used in this Subpart:

"New tank barge" means a non-self-propelled vessel that carries oil in bulk and that is—

(a) Constructed or undergoes a major conversion under a contract awarded after December 31, 1979; or

(b) In the absence of a contract—

(i) Has the keel laid or is at a similar stage of construction after December 31, 1979; or

(ii) Major conversion is begun after December 31, 1979.

"Oil" includes oil of any kind or in any form, including, but not limited to,

petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"Major conversion" means a conversion of an existing vessel which substantially alters the dimensions or carrying capacity of the vessel; or changes the type of vessel; or substantially prolongs its life; or which otherwise so alters the vessel that it is essentially a new vessel.

"Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

§ 32.64-5 Applicability.

This subpart applies to new tank barges of less than 30,000 DWT except new tank barges of 20,000 DWT or more that carry only crude oil.

§ 32.64-10 Hull structure.

Each tank barge to which this subpart applies must be designed and constructed having—

(a) The outer boundary of each cargo tank at least 60 cm (24 inches) from the inner surface of the side, bottom, and fore and aft end hull plating; and

(b) In the spaces between the cargo tanks and the hull of the barge—

(1) Sufficient clearance between the internal structures to allow a person of average height and weight to inspect the hull;

(2) Sounding devices meeting § 56.50-90 of this chapter;

(3) Bilge pumps meeting § 56.50-55 of this chapter;

(4) An access of at least 38 cm. by 46 cm. (15" by 18") that may not be on a cargo tank boundary; and

(5) If vents are installed, flame screens, as defined in § 30.10-25 of this subchapter.

§ 32.64-15 Subdivision and stability.

The hull of each new tank barge under this subpart must be designed to retain, under any condition of loading, positive buoyancy and stability, 51 mm (2 inches) of positive metacentric height, after the bottom or side shell plating of the outer hull is holed anywhere on its girth except in way of a transverse watertight bulkhead.

Note.—There are additional requirements for seagoing tank barges in 33 CFR Part 157 (Subpart B).

PART 35—OPERATIONS

3. By adding a new § 35.01-60 to follow § 35.01-50 and to read as follows:

§ 35.01-60 Oil in void spaces of new tank barges—B/ALL.

A new tank barge under Subpart 32.64 of this subchapter may not carry oil as cargo in the void spaces between the hull and the cargo tanks.

(R. S. 4417a [46 USC 391a, as amended by Pub. L. 95-474, Port and Tanker Safety Act of 1978); 49 CFR 1.46(n)(4))

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

June 11, 1979.

[FR Doc. 79-18585 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

[46 CFR Chapter I, Subchapter D and O]

[CGD 75-083a]

Proposal for Existing Tank Barges To Prevent Oil Pollution

AGENCY: Coast Guard, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing to accelerate the normal attrition of certain single hull tank barges certificated to carry oil and to reduce the number of oil pollution incidents resulting from hull damage to these barges while they continue in operation. A study sponsored by the Coast Guard has shown that approximately 80 percent of the oil pollution caused by tank barges could have been prevented if these barges had complete double hull construction. Analysis of the tank barge fleet profile indicates that normal attrition of single hull tank barges from the operating fleet would delay the total realization of this dramatic reduction in oil pollution until some time beyond the year 2020. This advance notice is intended to complement proposed design standards for new tank barges to reduce oil pollution in the navigable waters of the United States.

DATES: 1. Written comments must be received on or before September 30, 1979.

2. The public hearings will be held on August 2, 1979, August 15, 1979, August 23, 1979 and September 7, 1979.

ADDRESSES: Written comments should be submitted to Commandant (G-CMC/81), (CG 75-083a), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Studies referred to in this document are appendices to the Regulatory Analysis and Environmental Impact Statement (Regulatory Analysis) summarized in this document. Copies of the Regulatory Analysis are available for examination at this address.

The Coast Guard will hold four public hearings on this advance notice of proposed rulemaking in conjunction with the public hearings on the notice of proposed rulemaking appearing elsewhere in this issue of the **Federal Register**. The first will be held on August 2, 1979 beginning at 9:00 AM, in Room 2230, 400 Seventh St., S.W., Washington, D.C. 20590. The second will be held on August 15, 1979 beginning at 9:00 AM, in the Olympic Hotel, Williamsburg Room, Fourth and Seneca Sts., Seattle, WA 98111. The third will be held on August 23, 1979 beginning at 9:00 AM, in the Holiday Inn Superdome Downtown, Russel B. Long Room, 1111 Gravier Street, New Orleans, LA 70122. The fourth will be held on September 7, 1979 beginning at 9:00 AM, in the Stouffers Riverfront Towers, Jefferson A and B Rooms, 200 South Fourth Street, St. Louis, MO 63102.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kenneth A. Rock, Merchant Vessel Inspection Division (G-MVI-2/83), U.S. Coast Guard, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-2190.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 75-083a), identify the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. All comments received before expiration of the comment period will be considered before further action is taken on this proposal. Interested persons are invited to attend the hearings and present oral or written statements on this proposal. It is requested that anyone desiring to make an oral statement notify Captain Philip J. Danahy at the address listed under ADDRESSES at least ten days before the scheduled date of the public hearing and specify the approximate length of time needed for the presentation. Oral statements at the

public hearing will normally be scheduled to be heard in the order that requests are received. It is urged that a written summary or copy of the presentation be included with the request.

Draft Information

The principal persons involved in drafting this advanced notice are: Lieutenant Commander Theodore J. Sampson, Lieutenant Commander Kenneth A. Rock, Project Managers, Office of Merchant Marine Safety, and Mr. Stanley M. Colby, Project Attorney, Office of the Chief Counsel.

Background

Tank barges exist in a variety of configurations. Some are little more than compartmentized boxes having only a single layer of steel at any point on their hull. Others have end voids, full or partial double sides or bottoms, independent cargo tanks, or various combinations of these features. For the purpose of this advance notice, only a tank barge that has at least a complete double hull, including the end voids and double walls and bottoms, (but without a double deck) is considered a "double hull barge." All others are referred to as "single hull barges."

The current profile of the tank barge fleet shows that approximately 2130 single hull tank barges exist. Some are newly constructed while others were built in the early 1900's. Normal attrition of these tank barges from the fleet would find more than 50 percent still active in 1988, 25 percent still active in 2000, with total replacement not likely until after 2020. If the double hull tank barge construction requirements for new barges, proposed elsewhere in this issue of the **Federal Register** are to have a timely, appreciable effect on reducing the current volume of oil spilled by barges, it is clear that single hull tank barges will have to be removed from service at an accelerated pace.

In a notice of proposed rulemaking issued December 24, 1971, (36 FR 24960) this same problem was discussed. The accelerated phaseout of existing single hull barges would have been provided by a preclusion of the "rebuilding" of these vessels to original conditions, but allowing individual plate renewal or repair of damaged areas. As an alternate approach, the possibility of specifying a termination date for the use of single hull barges was proposed.

Numerous comments on the proposed approach and its alternatives were received. Comments from representatives of the barge operators, while supporting the intent of the regulations to prevent pollution, decried effecting the phaseout by proscribing the "rebuilding" of single hull barges. The alternate approach of a termination date found equal opposition. It was argued that existing single hull vessels should be allowed to continue in operation until no longer serviceable due to the economic effects upon individual companies and the inability to move the required amount of petroleum products without a tank barge fleet of adequate size.

Two commenters suggested that a joint committee of local Coast Guard and industry representatives be established in each port to act as judges of when a vessel was to be considered no longer serviceable. Such a committee is not a viable approach in that it would not provide equitable treatment nationwide for the various operators involved. Further, such a committee would be dilution of the responsibility vested by the Port and Tanker Safety Act of 1978 (92 Stat. 14800, 46 U.S.C. 391a) in the Secretary of Transportation and subsequently delegated to the Coast Guard.

Unfortunately no comments were received which offered alternate approaches to the accelerated retirement of single hull barges.

The methods of handling single hull barges which were published in that notice of proposed rulemaking were not without support. The new construction standards and "rebuild" phaseout mechanism were regarded by numerous private citizens and commenters representing environmental organizations as long overdue. The input received from Coast Guard field offices unanimously supported the phaseout of single hull barges, preferring the use of a termination date.

The suppositions of the commenters that accelerated attrition of existing tank barges could not be effected without severe economic impact on the industry and its ability to transport the nation's oil had to be examined. Both of these questions have been addressed in the Regulatory Analysis.

Since that proposed rule was published in 1971, many studies have been conducted that addressed the problem of oil pollution from tank barges. These studies have clearly shown a need to accelerate the normal attrition of single hull tank barges to achieve a timely realization of the potential reduction in oil pollution that a double hull tank barge fleet would provide. These studies have also shown that the considerable amount of oil pollution resulting from minor hull damage incidents requires mitigating action while awaiting the removal of single hull barges from service.

Discussion of the Proposals

This advance notice contains a comprehensive proposal affecting existing single hull tank barges. The Coast Guard is committed to reducing, in a timely fashion, the amount of oil pollution resulting from tank barges. However, the Coast Guard has made no firm commitment to the proposals advanced in this document. These proposals represent an initial effort to find a means to more rapidly realize the environmental benefits which will result from a double hull tank barge fleet, while not creating an undue burden upon the tank barge industry. Many assumptions and projections had to be made to evaluate the efficacy of this approach.

It is possible that some alternatives have been overlooked or that some assumptions are not valid. If these can be pointed out, this approach will then provide the starting point for improvement or refinement. If the comments received can identify an alternate method to achieve a total double hull tank barge fleet at an acceptable pace, and provide an equivalent reduction in oil pollution incidents from the single hull barges allowed to operate during the transition, this approach can be discarded in its entirety or the proposals herein can be modified accordingly. Comments are particularly requested with respect to benefits and feasibility of phasing out single hull barges within a time frame of less than twenty (20) years.

The first objective of this advance notice is to suggest a mechanism to accelerate the normal attrition of single hull tank barges from oil service. Single hull tank barges that are more than twenty years old would not be certificated for the carriage of oil after 1985. Exceptions would be made as follows:

1. Barges that have been constructed with end voids and double sides, or end voids and double bottoms, or independent cargo tanks would continue in normal, unrestricted operations until the vessel is no longer serviceable.

2. Barges converted to meet the construction provisions of paragraph 1, before the barge is twenty years old and before December 31, 1985, would be allowed the same privileges.

3. Existing single hull barges would be allowed to continue in operation without the conversion proposed in paragraph 2 until the vessel is no longer serviceable, provided the operator could

demonstrate to the satisfaction of the Commandant of the Coast Guard that:

a. The properties of the particular cargo or cargoes to be carried would preclude or significantly retard, at the ambient temperatures anticipated on the vessel's route, the outflow of the product if the hull was breeched; and

b. The temperature of the product during transport would not exceed that critical for retaining the properties demonstrated in paragraph "a" above.

4. The Officer in Charge, Marine Inspection (OCMI) could grant exemptions to individual single hull barges for the carriage of oil if:

a. The vessel is a permanently moored barge; or

b. The vessel's operation is restricted to areas of little commercial vessel traffic where the vessel would not be exposed to any of the following rigors or hazards:

(i) Locking operations;

(ii) Fleeting operations;

(iii) Midstream operations;

(iv) Possible collision with a breakaway from an upstream barge fleeting operation or mooring area;

(v) Any navigational hazard or condition where improper operation or loss of control of the tank barge could likely result in a casualty that would breach the hull.

For example: A vessel would not be certificated to operate in an area having a hard or rocky bottom where even low energy groundings would be expected to penetrate the hull. Or, a vessel would not be certificated to operate in an area having fast currents, where any loss of vessel control could be expected to result in high energy groundings or collisions.

The second objective of this advance notice is to suggest a means to reduce the number of oil pollution incidents that are expected to result from minor hull damage to single hull tank barges. Therefore, it is proposed that no exisitng tank barges would be permitted to carry oil in rake ends, corner voids, or double wall or bottom voids after December 31, 1980.

As an incentive for barge operators to more rapidly convert to double hull barge fleets, the requirements of Title 46 CFR Subchapter O would be changed to make internal inspections of double hull tank barges coincide with drydocking inspections. This would generally have the effect of lengthening the interval between internal inspections. Additionally, inspection of void spaces on externally structured integral tanks could be used by the OCMI as justification for extending the required interval of both drydocking and internal inspections. This would eliminate the need for some gas-freeing operations currently required.

Considerations in Developing Regulations Proposed

Because the need to address tank barges as a significant source of pollution was questioned in 1971 when regulations were first proposed, valuable time has been lost to make a gradual transition to an environmentally safer tank barge fleet by 1985 (The Congressional target date for elimination of polluting discharges, mentioned in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816, 33 U.S.C. 1251)). From a practical viewpoint, it is unacceptable to impose 1985 as the limit for use of all single hull barges. The impact on the nation's ability to transport oil and upon the economic viability of the many operators of single hull barges could not be justified by the expected environmental gains. The date of 1985 has therefore been used as the point after which the environmental benefits of a double hull barge fleet will be increasingly noticeable. To achieve this, single hull barges beyond twenty years of age should be barred from oil service.

The age of twenty years was chosen for several reasons. The transition to a double hull tank barge fleet can be 75 percent completed within a six year period which is not significantly beyond the Congressional target date for elimination of water pollution. The number of barges which would require replacement as a result of this age selection would not exceed the capabilities of today's shipbuilding industry. Approximately 1,000 vessels would be eliminated from service in 1985. But, sufficient time would be provided during the six years between the publication date of the regulations and 1985 to build all needed replacements.

The number of barges to be constructed as replacements for those retired from service in each year after 1985 could also be attained and the number of replacements needed should decrease gradually. Thus, the shipbuilding industry would not have to gear up for a short-lived massive barge production effort. Further, operators of single hull tank barge fleets would be given time to recover capital invested in recently acquired single hull tank barges. Finally, transport related pollution incidents could be reduced significantly by removing vessels from service when they reach the age where analysis of pollution data has shown the likelihood of their becoming involved in a pollution incident is significantly greater than that of newer vessels.

Including the provisions to allow some vessels to continue in service, if they have double sides, double bottoms, or independent tanks would accommodate the 403 vessels so configured. The data analyzed from the Coast Guard Pollution Information Reporting System showed that these configurations, while not reducing the possibility of a transport pollution incident to a level acceptable for an entire tank barge fleet, do reduce the risk significantly when compared only with single hull tank barges.

A joint study by the Coast Guard and the Maritime Administration indicated that the cost of retrofitting vessels was not an economically feasible alternative for the entire single hull tank barge fleet. However, since that study was completed in 1974, there have been some vessels which have been retrofitted to provide double sides. Apparently this is, for some operators, an economically acceptable undertaking. Provision would be made, therefore, to allow this as an additional alternative to the proposed phase out.

It is recognized that there are some products, defined as oil, which have physical or chemical properties that make the probability of large spills occurring as a result of hull damage less likely. It appears that there may be an appreciable number of products which, with the proper precautions or operational procedures, could be safety transported in single hull barges. With adequate input from industry, it may be possible to generate a list of these products and then project the number of tank barges that are more than twenty years of age that could be used in such service. This could ease the economic impact by providing for barges more than twenty years old a value in excess of scrap value.

Similarly, an alternate use could be provided by allowing single hull vessels to be exempted by the OCMI if certificated for limited service. The low pollution incident ratios of some of the oldest barges indicate that some service may be allowed with little environmental risk when the vessels are restricted to certain limited operations.

The proposal prohibiting the carriage of oil in rake ends and void spaces would allow an early realization of the pollution prevention benefits that these empty spaces have been shown to provide. In view of the high incidence of damage to these areas that the various studies have shown, the carriage of oil in these spaces should be curtailed as soon as possible.

The revision of the internal inspection standards for double hull tank barges would ensure that the single hull tank barges (which have the greatest potential for becoming involved in a transport related oil pollution incident) would receive the most frequent examinations. This would also provide an economic incentive for more rapidly converting to a double hull fleet.

Economic Impact

The cost of the proposed regulations discussed in this document was basically computed by assessing the early replacement cost of single hull tank barges. A normal attrition curve was projected based upon recent retirement trends. The cost of barge replacement under normal conditions was compared with the cost of barge replacement under the imposed attrition of the proposal. Assumption were made that should assure that the projected costs will be greater than actual costs.

These proposals are estimated to cost approximately $222 million dollars, or a 31 percent increase over normal expenses for the tank barge industry. A detailed discussion of the costs, as well as the benefits, is included in chapter 4 of the Regulatory Analysis. The assessment of the benefits has been difficult to make in terms of a dollar figure that would offset the cost. Information concerning current costs to the tank barge industry incurred by response, recovery, and cleanup of tank barge oil spills is solicited. Likewise, comments concerning projection of the costs associated with the regulatory suggestions are welcome.

A single draft Regulatory Analysis and Environmental Impact Statement has been prepared for this advance notice of proposed rulemaking and the notice of proposed rulemaking for new tank barge construction appearing elsewhere in this issue of the **Federal Register**. This was done so that the scope of the Coast Guard's regulatory action to prevent oil pollution from barges is clearly presented and all applicable information is available to the public in a single document. All the major background studies are included as appendices to the Regulatory Analysis.

The Regulatory Analysis establishes the need for regulations by carefully analyzing pollution and casualty data. The double hull design was selected based on effectiveness for preventing pollution due to hull damage, which was established in the 1974 Tank Barge Study. The alternatives to double hull design are discussed and the reasons for the Coast Guard rejecting these alternatives are presented. Alternatives and considerations in developing the proposals for existing single hull tank barges are also detailed.

The impacts of these rulemakings on the industries' economies, on the nation's environment, and the nation's ability to transport oil are also addressed.

(R.S. 4417a (46 U.S.C. 391a, amended by Pub. L. 95-474, Port and Tanker Safety Act of 1978) 49 CFR 1.46(n)(4))

Dated: June 11, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-18586 Filed 6-13-79; 8:45 am]

BILLING CODE 4910-14-M

federal register

Thursday
June 14, 1979

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; June 1979

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; June 1979

June 11, 1979.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of June 1, 1979, of 11 rescissions and 57 deferrals contained in the first nine special messages of FY 1979. These messages were transmitted to the Congress on October 2, November 30, December 7, December 12, 1978, January 31, February 14, March 15, April 4, and April 26, 1979.

Rescissions (Table A and Attachment A)

Congressional action has been completed on all FY 1979 rescission proposals. Table A summarizes the status of rescissions proposed by the President as of June 1, 1979, while Attachment A shows the history and status of each rescission proposed during FY 1979.

Deferrals (Table B and Attachment B)

As of June 1, 1979, $2,768.0 million in 1979 budget authority was being deferred from obligation and another $2.4 million in 1979 obligations was being deferred from expenditure. Table B summarizes the status of deferrals reported by the President, and Attachment B shows the history and status of each deferral reported during FY 1979.

Information From Special Messages

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the **Federal Register** of:

Wednesday, October 11, 1978 (Vol. 43, No. 197, Part III).
Wednesday, December 6, 1978 (Vol. 43, No. 235, Part III).
Wednesday, December 13, 1978 (Vol. 43, No. 240, Part VI).
Monday, December 18, 1978 (Vol. 43, No. 243, Part VI).
Monday, February 5, 1979 (Vol. 44, No. 25, Part VI).
Wednesday, February 21, 1979 (Vol. 44, No. 36, Part VII).
Tuesday, March 20, 1979 (Vol. 44, No. 55, Part VIII).
Monday, April 9, 1979 (Vol. 44, No. 69, Part VI).
Tuesday, May 1, 1979 (Vol. 44, No. 85, Part V).

James T. McIntyre, Jr.,

Director.

BILLING CODE 3110-01-M

Table A

STATUS OF 1979 RESCISSION PROPOSALS

	Amount (in millions of dollars)
Rescissions proposed by the President	$908.7 a/
Accepted by the Congress	-723.6 b/
Rejected by the Congress	-185.1 c/
Pending before the Congress	-0-

* *

Table B

STATUS OF 1979 DEFERRALS

	Amount (in millions of dollars)
Deferrals proposed by the President	$ 4,373.8
Routine Executive releases (-$1,588.9 million) and adjustments (-$7.8 million) through June 1, 1979*	-1,596.8
Overturned by the Congress	-6.6
Currently before the Congress	$ 2,770.4 d/

a/ This amount is net of a $6.0 million reduction proposed in a Small Business Administration rescission (R79-11A).
b/ Public Law 96-7.
c/ Of this amount, $51.0 million is presently deferred (D79-55 and D79-29A).
d/ This amount includes $2.4 million in outlays for a Department of the Treasury deferral (D79-25B).
* Detail does not add to total due to rounding.

PAGE 1 ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1979 AS OF 06/04/79 14:30

AS OF JUNE 1, 1979 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
DEPARTMENT OF ENERGY							
Energy Programs							
Fossil energy construction							
BA	R79- 2	50,000a		1 31 79			
DEPARTMENT OF ENERGY TOTAL BA		50,000					
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE							
National Institutes of Health							
Buildings and facilities							
BA	R79- 3	37,000		1 31 79	37,000b		
Health Resources Administration							
Health resources							
BA	R79- 4	167,893		1 31 79	46,350b	121,543	3 28 79
Office of Education							
Special projects and training							
BA	R79- 5	22,365		1 31 79	12,500b	9,865	3 28 79
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE TOTAL BA		227,258			95,850	131,408	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Housing Programs							
Subsidized housing programs							
BA							

AS OF JUNE 1, 1979 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
	R79- 6	600,000		1 31 79	600,000b		
New Communities Development Corporation							
New community assistance grants BA	R79- 7	8,167		1 31 79	8,167b		
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA		608,167			608,167		
DEPARTMENT OF THE INTERIOR							
Bureau of Mines							
Helium fund BA	R79- 8	3,127		1 31 79	3,127b		
DEPARTMENT OF THE INTERIOR TOTAL BA		3,127			3,127		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION							
Research and program management BA	R79- 9	2,400		1 31 79	2,400b		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TOTAL BA		2,400			2,400		
OTHER INDEPENDENT AGENCIES							
Foreign Claims Settlement Commission							

PAGE 3 ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1979 AS OF 06/04/79 14:30

AS OF JUNE 1, 1979 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Payment of Vietnam prisoner of war claims	BA	R79-10	9,000c		1 31 79	8,000b	d	
Salaries and expenses	BA	R79- 1	75		11 30 78		75	3 13 79
Small Business Administration								
Salaries and expenses	BA	R79-11	14,665		1 31 79			
	BA	R79-11A	-6,000		3 15 79	6,065b	2,600	3 26 79
OTHER INDEPENDENT AGENCIES TOTAL	BA		17,740			14,065	2,675	
TOTAL	BA		908,692			723,609	134,083e	

FOOTNOTES

a. These funds are included in a deferral (D79-55) transmitted to the Congress on April 26, 1979.

b. Public Law 96-7.

c. This amount was initially deferred (D79-29) in a special message transmitted to the Congress on October 2, 1978.

d. $1.0 million of the $9.0 million proposed for rescission is included in a deferral (D79-29A) transmitted to the Congress on April 26, 1979.

e. In addition to these amounts, rescissions totalling $51.0 million were rejected by the Congress, but are now included in deferrals D79-55 and D79-29A (as indicated under footnotes a and d).

END OF REPORT

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1979

AS OF 06/01/79 14:16

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Military assistance	BA	D79-31	161,875		11 30 78	-161,875a			
International military education and training	BA	D79-35	24,312		12 7 78	-24,312a			
Foreign military credit sales	BA	D79-45	651,000		12 12 78	-601,690			49,310
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL	BA		837,187			-787,877			49,310
DEPARTMENT OF AGRICULTURE									
Foreign Agricultural Service									
Salaries & expenses (special foreign currency)	BA	D79- 1	415		10 2 78	-13			402
Agricultural Stabilization & Conservation Service									
Commodity credit corporation	BA	D79- 2	3,530		10 2 78				
	BA	D79- 2A			12 7 78	-3,530			
Forest Service									
Acquisition of lands for Wasatch National Forest	BA	D79-36	209		12 7 78				209
Timber salvage sales	BA	D79-37	5,500		12 7 78	-702			4,798
Expenses, brush disposal	BA	D79- 3	32,225		10 2 78				
	BA	D79- 3A		5,276	1 31 79				37,501

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AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
Restoration of forest lands	BA	D79- 4	48		10 2 78				48
DEPARTMENT OF AGRICULTURE TOTAL	BA		41,927	5,276		-4,245			42,958
DEPARTMENT OF COMMERCE									
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	BA	D79-47	500		1 31 79				500
Construction	BA	D79- 5	9,830		10 2 78				
	BA	D79- 5A		202	12 12 78	-10,032			
Promote and develop fishery products and research	BA	D79- 6	12,060		10 2 78	-5,481	-6,579b		
Fisheries loan fund	BA	D79- 7	5,429		10 2 78				
	BA	D79- 7A		208	1 31 79				5,637
United States Fire Administration									
Facilities	BA	D79-32	6,150		11 30 78	-6,150			
Maritime Administration									
Ship construction	BA	D79-33	157,000		11 30 78	-134,000			23,000
DEPARTMENT OF COMMERCE TOTAL	BA		190,969	410		-155,663	-6,579		29,137
DEPARTMENT OF DEFENSE-MILITARY									
Procurement									
Shipbuilding and conversion, Navy	BA	D79-34	563,940		11 30 78				563,940

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
Research, Development, Test, and Evaluation									
Navy									
	BA	D79-53	107,964		4 4 79	-107,964a			
Military Construction									
Military construction, all services									
	BA	D79- 8	548,451		10 2 78	-467,592		374	81,233
DEPARTMENT OF DEFENSE-MILITARY TOTAL BA			1,220,355			-575,556		374	645,173
DEPARTMENT OF DEFENSE-CIVIL									
Corps of Engineers									
Alaska hydroelectric power development fund									
	BA	D79-10	5,450		10 2 78				5,450
Wildlife Conservation, Military Reservations									
Wildlife conservation, all services									
	BA	D79- 9	458		10 2 78				
	BA	D79- 9A		130	1 31 79	-38			550
DEPARTMENT OF DEFENSE-CIVIL TOTAL BA			5,908	130		-38			6,000
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy construction									
	BA	D79-55	50,000c		4 26 79				50,000
	BA	D79-56	570		4 26 79				570
Strategic Petroleum Reserve									
	BA	D79-57	113,528		4 26 79				113,528
Uranium enrichment - operating expenses									
	BA	D79-48	63,000		1 31 79				63,000

AMOUNTS IN THOUSANDS OF DOLLARS

AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
DEPARTMENT OF ENERGY								
TOTAL BA		227,098						227,098
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabetns Hospital								
BA	D79-11	27,577		10 2 78				27,577
Social Security Administration								
Limitation on salaries and expenses								
BA	D79-12	1,725		10 2 78				1,725
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE								
TOTAL BA		29,302						29,302
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Oregon and California grant lands								
BA	D79-46	12,811		12 12 78				
BA	D79-46A		1,901	1 31 79				14,712
Heritage Conservation and Recreation Service								
Land and water conservation fund								
BA	D79-13	30,000		10 2 78				30,000
Geological Survey								
Exploration of National Petroleum Res. in Alaska								
BA	D79-54	1,792		4 4 79				1,792
Payments from proceeds, sale of water								
BA	D79-14	36		10 2 78				36
Bureau of Mines								

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
Drainage of anthracite mines	BA	D79-15	1,700		10 2 78	-363			1,337
Office of Territorial Affairs									
Administration of territories	BA	D79-38	25,000		12 7 78	-25,000			
Trust territory of the Pacific Islands	BA	D79-16	12,000		10 2 78	-12,000			
DEPARTMENT OF THE INTERIOR TOTAL BA			83,339	1,901		-37,363			47,877
DEPARTMENT OF JUSTICE									
Legal Activities									
Salaries and expenses, Community Relations Service	BA	D79-49	572		1 31 79				572
Federal Prison System									
Buildings and facilities	BA	D79-17	25,300		10 2 78				
	BA	D79-17A		11,865	11 30 78	-160			37,005
DEPARTMENT OF JUSTICE TOTAL BA			25,872	11,865		-160			37,577
DEPARTMENT OF LABOR									
Employment and Training Administration									
Employment and training assistance	BA	D79-50	122,133		1 31 79				122,133
DEPARTMENT OF LABOR TOTAL BA			122,133						122,133

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AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
DEPARTMENT OF STATE									
Administration of Foreign Affairs									
Acquisition, operation, & maintenance of buildings									
	BA	D79-39	36,787		12 7 78				36,787
Other									
Emergency refugee and migration assistance fund									
	BA	D79-18	2,750		10 2 78				
	BA	D79-18A		9,500	11 30 78	-12,250			
DEPARTMENT OF STATE TOTAL BA			39,537	9,500		-12,250			36,787
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Civil supersonic aircraft development termination									
	BA	D79-19	3		10 2 78				3
Facilities & equip. (Airport & airway trust fund)									
	BA	D79-20	290,176		10 2 78				
	BA	D79-20A		21,259	1 31 79				311,435
Federal Highway Administration									
Trust fund share of other highway programs									
	BA	D79-21	40,000		10 2 78				
	BA	D79-21A		14,169d	2 14 79				54,169
Overseas highway									
	BA	D79-22	13,100		10 2 78				13,100
Urban Mass Transportation Administration									
Urban mass transportation fund									
	BA	D79-51	968,616		1 31 79				968,616
DEPARTMENT OF TRANSPORTATION TOTAL BA			1,311,895	35,428					1,347,323

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
Antirecession financial assistance fund									
	BA	D79-23	2,205		10 2 78				
	BA	D79-23A		73	12 7 78	-50			2,228
	O	D79-40	5		12 7 78				
	O	D79-40A		3	1 31 79	-8			
State and local government fiscal assistance fund									
	BA	D79-24	78,489		10 2 78				
	BA	D79-24A		1,665	12 7 78	-530			79,624
	O	D79-25	2,404		10 7 78				
	O	D79-25A		1,562	12 7 78				
	O	D79-25B		11,835e	2 14 79	-14,154		7.5	2,432
Bureau of the Mint									
Construction of mint facilities									
	BA	D79-26	5,730		10 2 78				5,730
DEPARTMENT OF THE TREASURY									
TOTAL BA			86,424	1,738		-580			87,582
TOTAL O			2,409	13,400		-14,162		785	2,432
GENERAL SERVICES ADMINISTRATION									
Property Management and Disposal Activities									
Rare silver dollar program									
	BA	D79-27	2,123		10 2 78				2,123
Federal Preparedness Agency									
State and local preparedness									
	BA	D79-28	80		10 2 78				80
GENERAL SERVICES ADMINISTRATION									
TOTAL BA			2,203						2,203

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AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 06-01-79
OTHER INDEPENDENT AGENCIES								
Foreign Claims Settlement Commission								
Payment of Vietnam prisoner of war claims								
BA	D79-29	10,945		10 2 78				
BA	D79-29A		1,000	4 26 79	-1,051		-9,000f	1,894
International Communication Agency								
Salaries & expenses								
BA	D79-41	2,095		12 7 78				2,095
Acquisition & construction of radio facilities								
BA	D79-42	3,141		12 7 78				
BA	D79-42A		7,832	2 14 79				10,973
Interstate Commerce Commission								
Payments for directed rail service								
BA	D79-30	13,990		10 2 78				13,990
Small Business Administration								
White House conference on small business								
BA	D79-43	1,600		12 7 78				1,600
Navaho & Hopi Indian Relocation Commission								
Salaries and expenses								
BA	D79-44	12,000		12 7 78				12,000
Tennessee Valley Authority								
Tennessee Valley Authority fund								
BA	D79-52	15,000		1 31 79				15,000
OTHER INDEPENDENT AGENCIES TOTAL BA		58,771	8,832		-1,051		-9,000	57,552
TOTAL BA		4,282,920	75,080		-1,574,783	-6,579	-8,626	2,768,012
TOTAL O		2,409	13,400		-14,162		785	2,432

FOOTNOTES

a. This amount was released before the special message containing the deferral was transmitted to Congress.

b. Impoundment resolution S. Res. 50 passed the Senate on March 13, 1979, rejecting this deferral.

c. This amount was included in a rescission proposal (R79-2) transmitted to the Congress on January 31, 1979.

d. This amount is net of a release of $10,831 thousand that was made prior to the transmittal of this supplementary report.

e. This amount is net of a release of $2,857 thousand that was made prior to the transmittal of this supplementary report.

f. This amount was included in a rescission proposal (R79-10) transmitted to the Congress on January 31, 1979.

[FR Doc. 79-18680 Filed 6-13-79; 8:45 am]

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452.....33127
453.....33127
611.....31651, 31652
661.....31983
662.....31654
674.....33250

Proposed Rules:

17.....33915
20.....34082
70.....33915
410.....33127
652.....34171
661.....32012
810.....31858, 33916

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
DOT/UMTA*	MSPB/OPM		DOT/UMTA*	MSPB/OPM
DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

28323 5–15–79 / Hydrogenated fish oil; affirmation of GRAS status as indirect human food ingredient

LABOR DEPARTMENT

Mine Safety and Health Administration—

28588 5–15–79 / State grants; procedures and requirements for applying for, receiving, and administering

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing June 12, 1979

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: July 6 at 9 a.m.
WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235.

LOS ANGELES, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).
WHERE: Federal Building, Army Corps of Engineers Conference Room 7412, 300 N. Los Angeles Street
RESERVATIONS: Federal Information Center, 213–688–3800.

SAN FRANCISCO, CALIFORNIA

WHEN: June 28 and 29 at 9:00 a.m. (identical sessions).
WHERE: Federal Building, Room 2007, 450 Golden Gate Avenue
RESERVATIONS: Call Mike Modena or Judy Barbee, Federal Executive Board, 415–556–0250.