AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

18 326-282 GSA

5-19-80
Vol. 45 No. 98
Pages 32655-33588

federal register

Book 1 of 3 Books
Monday, May 19, 1980

Highlights

32655 **Color television receiver imports** Presidential Proclamation

33063 **Hazardous Waste and Consolidated Permit Regulations** EPA issues rules and proposed amendments (10 documents) (Parts II through XI of this issue)

32671 **Cuban Nationals** Treasury/Foreign Assets Control Office amends regulations prohibiting transactions in connection with transportation of certain Cuban nationals to the United States; effective 5–15–80

32657 **Aliens** Justice/INS amends regulations to include reference to new Alien Registration Receipt Card, Form I–551; effective 6–18–80

32710 **Civil Rights** Justice proposes age discrimination regulations regarding programs receiving Federal financial assistance; comments by 6–18–80

32778 **Health Professions** HHS/PHS updates income levels used to define "low income family" for purposes of repayment of educational loans

32751 **Grant Programs—Minority Business** Commerce/MBDA seeks applicants to operate one project for a 12-month period beginning 7–1–80; apply by 6–5–80

CONTINUED INSIDE



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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

Highlights

32755 **Petroleum** DOE/ERA issues first supplemental buy/sell list for allocation period of April through September, 1980

33823 **Hazardous Materials Transportation** DOT/MTB lists applications for renewal of exemptions; comments by 6–3–80

33821 **Hazardous Materials Transportation** DOT/MTB gives notice of receipt and lists applications for exemptions; comments by 6–18–80

32715 **Coal Mining** Interior/GS delineates functions and responsibilities for operations on Federal lands, comment by 7–3–80

32783 **Continental Shelf** Inter/GS announces receipt of proposed development and production plan for oil, gas, and sulphur

32687 **Flood Insurance** FEMA sets forth description of State Assistance Program for National Flood Insurance Program, effective 5–19–80

32671 **Vessels** DOD/NAVY exempts certain vessels from regulations for preventing collisions at sea; effective 4–15–80

32699 **Fisheries** Commerce/NOAA extends emergency regulations implementing Atlantic Groundfish Fishery Management Plan, effective 5–21–80 through 7–4–80

32705 **Bicycles** CPSC proposes amendments to safety requirements to provide rim reflectivity alternative; comments by 7–18–80

Privacy Act Documents

32670 Justice

32829 **Sunshine Act Meetings**

Separate Parts of this Issue

33063–33516 **Parts II through XI, EPA**

Contents

Federal Register
Vol. 45, No. 98
Monday, May 19, 1980

The President
PROCLAMATION
32655 Television receivers, color, imports (Proc. 4759)

Executive Agencies

Air Quality National Commission
NOTICES
32812 Meetings; change

Alcohol, Tobacco and Firearms Bureau
NOTICES
Authority delegations:
32824 Regional regulatory administrators et al.; authority to affix Treasury Department seal
32824 Firearms; granting of relief

Blind and Other Severely Handicapped, Committee for Purchase From
NOTICES
32752 Procurement list, 1980; additions and deletions

Bonneville Power Administration
NOTICES
32752 Public Utility Regulatory Policies Act; utility practices standards for master metering, automatic adjustment clauses, consumer information, etc.; hearings

Civil Aeronautics Board
RULES
Charters, public:
32669 Major changes in itinerary or price; refunds

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
32749 New Jersey
32749 New York
32749 Ohio

Coast Guard
RULES
Anchorage regulations:
32673 Florida
32673 Minnesota
32674 New York
32673 Ohio
32672 Puerto Rico
NOTICES
32816 National Environmental Policy Act; implementation

Commerce Department
See also International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration.
NOTICES
Organizations and functions:
32749 National Oceanic and Atmospheric Administration

Community Services Administration
RULES
32690 Community Food and Nutrition Program; notice of publication
PROPOSED RULES
Grantee personnel management:
32745 Policies and procedures for programs funded under Titles II, IV, and VII of Economic Opportunity Act; correction

Consumer Product Safety Commission
PROPOSED RULES
32705 Bicycle safety requirements; retroreflective rims

Defense Department
See also Navy Department.
NOTICES
Meetings:
32752 Science Board

Economic Regulatory Administration
NOTICES
Crude oil, domestic; allocation program:
32755 Refiners buy/sell list; April through September (1980)
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
32754 Niagara Mohawk Power Corp. et al.

Energy Department
See also Bonneville Power Administration; Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
32758 European Atomic Energy Community

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
32674 Massachusetts
33290 Permit programs, consolidated
33516 Permit programs, consolidated; application forms
Toxic substances:
32676 Tetrachlorodibenzo-p-dioxin (TCDD); contaminated waste disposal; prohibition and notification requirements
Waste management, solid:
33066 Hazardous waste; general provisions; final and interim rules, and request for comments
33084 Hazardous waste; identification and listing; final and interim rules, and request for comments
33154 Hazardous waste; standards and interim status period standards for owners and operators of treatment, storage, and disposal facilities; final and interim rules
33140 Hazardous waste; standards for generators
33150 Hazardous waste; standards for transporters

Water pollution; effluent guidelines for point source categories:
32675 Seafood, canned and preserved, processing; suspension of applicability for facilities in five areas of Alaska
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
32743 Rhode Island
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
32744 Prometryn
Waste management, solid:
33136 Hazardous waste; identification and listing; proposed additions to list
33280 Hazardous waste; interim status period standards for owners and operators of treatment, storage, and disposal facilities; underground injection
33260 Hazardous waste; standards and interim status period standards for owners and operators of treatment, storage, and disposal facilities; financial requirements
NOTICES
Air programs; fuel and fuel additives:
32760 Beker Industries, Inc.; waiver application; denial; correction
Environmental statements; availability, etc.:
32769 Los Angeles/Orange County Metropolitan Area proposed sludge management program, Calif.; hearings
Pesticide registration, cancellation, etc.:
32769 Pay-Off Insecticide
Pesticides; experimental use permit applications:
32769 Monsanto Agriculture Products Co. et al.
Toxic and hazardous substances control:
32770 Premanufacture exemption applications
32771-32772 Premanufacture notices receipts (2 documents)
32760 Premanufacture notices receipts; correction

Federal Aviation Administration
RULES
Administration regulations:
32668 Acoustical engineering representatives; authority to perform functions leading to aircraft noise level approval
Airworthiness directions:
32659 Bell
32660 Lockheed
32661 Control zones
32667 Control zones and transition areas
32662-32666 Transition areas (9 documents)
32667 Transition areas; correction
32661 VOR Federal airways
PROPOSED RULES
Air carriers certification and operation:
32700 Flight attendant seats; extension of compliance time; petition
32702-32705 Transition areas (4 documents)
NOTICES
32815 Exemption petitions; summary and disposition

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
32745 New Jersey television channel assignments; optimum conditions for utilitization; extension of time

Federal Emergency Management Agency
RULES
32687 National Flood Insurance Program; implementation of State Assistance Program

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
32757 Arizona Public Service Co.
32758 Delmarva Power & Light Co.
32758 Utah Power & Light Co. (2 documents)
Meetings:
32757 Revision of Rules of Practice and Procedure Advisory Committee
32829 Meetings; Sunshine Act

Federal Home Loan Bank Board
NOTICES
32830 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
32774 Agreements filed, etc.
32774 Cargo container chassis, furnishing; petition filed
Complaints filed:
32774 Connell Bros. Co., Ltd.
32830 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Applications, etc.:
32775 Blue Hill Agency, Inc.
32775 First Midwest Bancorp, Inc., et al.
32776 Illinois State Bancorp, Inc.
32775 Meader Insurance Agency
32776 Stamford Banco, Inc.
32776 TEA, Inc.

Fish and Wildlife Service
NOTICES
32783 Endangered and threatened species permits; applications (4 documents)

Foreign Assets Control Office
RULES
32671 Cuban nationals; Cuban assets control

Geological Survey
PROPOSED RULES
32715 Coal mining operating rules
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
32783 Zapata Exploration Co.

Health, Education, and Welfare Department
See Health and Human Services Department.

Health and Human Services Department
See also Health Resources Administration; National Institutes of Health.
NOTICES
Meetings:
32777 Vital and Health Statistics National Committee

Health Resources Administration
NOTICES
Grants; availability, etc.:
32778 Health professions and nursing student loans; low-income levels for loan payment
Meetings; advisory committees:
32778 June

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
32759 Cases filed

Immigration and Naturalization Service
RULES
32657 Alien registration receipt card; Form I–551 reference

Interior Department
See Fish and Wildlife Service; Geological Survey; Land Management Bureau; National Park Service.

International Development Cooperation Agency
NOTICES
Authority delegations:
32811 Agency for International Development, Administrator; designation as Special Coordinator for International Disaster Assistance; correction

International Trade Administration
NOTICES
Meetings:
32750 Electronic Instrumentation Technical Advisory Committee
32750–32751 Semiconductor Technical Advisory Committee (2 documents)

International Trade Commission
NOTICES
32830 Meetings; Sunshine Act

Interstate Commerce Commission
PROPOSED RULES
Railroad car service orders; various companies:
32745 Consolidated Rail Corp.
NOTICES
Motor carriers:
32784 Temporary authority applications
32809 Transportation of government traffic; special certificate letter
32809 Railroad applications for long and short haul relief
Water carriers:
32809 Temporary authority applications

Justice Department
See also Immigration and Naturalization Service.
RULES
32670 Privacy Act; implementation
PROPOSED RULES
Nondiscrimination:
32710 Age discrimination in federally assisted programs
NOTICES
32811 Newspaper operating agreement; Chattanooga News-Free Press and Times Printing Co.; temporary approval

Land Management Bureau
NOTICES
Mineral rights, Federal, on public lands; maps availability, etc.:
32782 Michigan and Wisconsin

Management and Budget Office
NOTICES
32812 Agency forms under review
Meetings:
32814 National Agenda for the Eighties, President's Commission (3 documents)

Minority Business Development Agency
NOTICES
32751 Financial assistance application announcements

National Credit Union Administration
NOTICES
32830 Meetings; Sunshine Act

National Highway Traffic Safety Administration
NOTICES
Meetings:
32821 Truck ride quality and drivers' health, relationship; methodology development; research study results
32821 Truck ride quality and safety of operations, relationship; methodology development; research study results
Motor vehicle safety standards; exemption petitions, etc.:
32821 Hyosung (America) Inc.; new pneumatic tires for vehicles other than passenger cars

National Institutes of Health
NOTICES
Meetings:
32779 Aging Review Committee
32779 Biotechnology Resources Review Committee
32779 Eye Institute, National; Scientific Counselors Board
32780 Genetic Basis of Disease Review Committee
32780 Minority Access to Research Careers Review Committee
32780 Population Research Committee
32781 Research Grants Division study sections
32779 Vision Research Program Committee

National Labor Relations Board
NOTICES
32831 Meetings; Sunshine Act

National Oceanic and Atmospheric Administration
RULES
32699 Atlantic groundfish; emergency regulations; extension of effectiveness
NOTICES
Rulemaking petitions; filed, etc.:
32752 Edison Electric Institute

National Park Service
NOTICES
Environmental statements; availability, etc.:
32784 Grand Canyon National Park, feral burro management and ecosystem restoration plan, Ariz.

National Transportation Safety Board
NOTICES
32831 Meetings; Sunshine Act

Navy Department
RULES
Navigation:
32671 USS Ohio et al.; compliance with COLREGS; exemptions

New England River Basins Commission
NOTICES
Environmental statements; availability, etc.:
32812 New England ports and harbors program

Nuclear Regulatory Commission
NOTICES
32831 Meetings; Sunshine Act

Occupational Safety and Health Review Commission
NOTICES
32831 Meetings; Sunshine Act (2 documents)

Research and Special Programs Administration, Transportation Department
RULES
Hazardous materials:
32692 Explosives Bureau; authority delegations withdrawn
32690 Shipment by air; organizational transfer of FAA's functions
NOTICES
Hazardous materials:
32821-32823 Applications; exemptions, renewals, etc. (2 documents)

Securities and Exchange Commission
NOTICES
32831 Meetings; Sunshine Act

Small Business Administration
NOTICES
Applications, etc.:
32815 Columbia Pictures Capital Corp.

Trade Representative, Office of United States
NOTICES
Buy American Act waivers:
32814 Civil aircraft

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration, Transportation Department; Urban Mass Transportation Administration.
NOTICES
32824 Texas Deepwater Port Authority; license extension

Treasury Department
See Alcohol, Tobacco and Firearms Bureau; Foreign Assets Contol Office.

Urban Mass Transportation Administration
RULES
32699 Urban mass transit program (section 5 formula grants); public hearing requirements for service and fare changes; extension of time

Veterans Administration
NOTICES
Meetings:
32878 Educational Allowances Station Committee

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
32749 New Jersey Advisory Committee, 6-12-80
32749 New York Advisory Committee, 6-11-80

COMMERCE DEPARTMENT
International Trade Administration—
32750 Electronic Instrumentation Technical Advisory Committee, 6-3-80
32750 Semiconductor Technical Advisory Committee, Discrete Semiconductor Device Subcommittee, 6-4-80
32751 Semiconductor Technical Advisory Committee, Semiconductor Manufacturing Materials and Equipment Subcommittee, 6-4-80

DEFENSE DEPARTMENT
32752 Antisubmarine Warfare Review Panel under the Defense Science Board, 6-6-80

HEALTH AND HUMAN SERVICES
Assistant Secretary for Health—
32777 Vital and Health Statistics National Committee, Environmental Health Statistics Subcommittee, 5-27-80
Health Resources Administration—
32777 Health Planning and Development National Council, 6-13-80
32777 Health Planning and Development National Council, Implementation and Administration Subcommittee, 6-12-80
National Guidelines, Goals, Priorities, and Standards Subcommittee, 6-12-80
Technology and Productivity Subcommittee, 6-12-80
National Institutes of Health—
32779 Aging Review Committee, National Institute on Aging, 6-26 and 6-27-80
32779 Biotechnology Resources Review Committee, Division of Research Resources, 6-9-80
32779 Board of Scientific Counselors, National Eye Institute, 6-9-80
32781 Division of Research Grants, various Study Sections, May through July, 1980
32780 Genetic Basis of Disease Review Committee, National Institute of General Medical Sciences, 6-23-80
32780 Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, 6-26 and 6-27-80
32780 Population Research Committee, National Institute of Child Health and Human Development, 6-23 and 6-24-80
32779 Vision Research Program Committee, National Eye Institute, 6-27-80

MANAGEMENT AND BUDGET OFFICE
32814 President's Commission for a National Agenda for the Eighties, 5–21–80 (3 documents)

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration—
32821 Relationship Between Truck Ride Quality and Drivers' Health: Methodology Development, 5–30–80
32821 Relationship Between Truck Ride Quality and Safety of Operations: Methodology Development, 5–30–80

VETERANS ADMINISTRATION
32824 Station Committee on Educational Allowances, 6–18–80

CHANGED MEETING

AIR QUALITY NATIONAL COMMISSION
32812 Meeting, 5–19–80

CORRECTED MEETING

CIVIL RIGHTS COMMISSION
32673 Ohio Advisory Committee, 6–7–80

HEARINGS

ENERGY DEPARTMENT
Bonneville Power Administration—
32752 Appropriate implementation standards for utility practices, 6–18–80

ENVIRONMENTAL PROTECTION AGENCY
32769 Grant assistance for recovery of resources from municipal wastewater sludges, 7–8 through 7–10–80

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
4759 32655

8 CFR
101 32657
103 32657
204 32657
211 32657
223 32657
223a 32657
231 32657
245 32657
246 32657
247 32657
249 32657
251 32657
264 32657
299 32657

14 CFR
39 (2 documents) 32659–32660
71 (13 documents) 32661–32667
183 32668
380 32669
Proposed Rules:
Ch. I 32700
71 (4 documents) 32702–32705

16 CFR
Proposed Rules:
1512 32705

28 CFR
16 32670
Proposed Rules:
42 32710

30 CFR
Proposed Rules:
211 32715

31 CFR
515 32671

32 CFR
706 32671

33 CFR
110 (5 documents) 32672–32674

40 CFR
52 32674
122 (2 documents) 33290, 33516
123 (2 documents) 33290, 33516
124 (2 documents) 33290, 33516
125 (2 documents) 33290, 33516
260 33066
261 33084
262 33140
263 33150
264 33154
265 33154
408 32675
775 32676
Proposed Rules:
52 32743
180 32743
261 33136
264 33260
265 (2 documents) 33260, 33280

44 CFR
76 32687

45 CFR
1061 32690
Proposed Rules:
1069 32744

47 CFR
Proposed Rules:
73 32744

49 CFR
107 32690
171 32692
173 32692
174 32692
175 32690
177 32692
635 32699
Proposed Rules:
1033 32745

50 CFR
651 32699

Federal Register
Vol. 45, No. 98
Monday, May 19, 1980

Presidential Documents

Title 3—

The President

Proclamation 4759 of May 15, 1980

Modification of the Implementation of the Orderly Marketing Agreement and the Temporary Quantitative Limitation on the Importation Into the United States of Color Television Receivers and Certain Subassemblies Thereof

By the President of the United States of America

A Proclamation

On January 26, 1979, by Proclamation 4634, I 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), certain temporary quantitative limitations on the importation into the United States of color television receivers and certain subassemblies thereof, provided for in items 923.74 through 923.83, inclusive, of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

Exports to the United States of color television receiver subassemblies, provided for in item 923.78, and subject to Proclamation 4634, fell considerably below the restraint level established by that Proclamation for the first restraint period. The existing carryover provision would allow an increase in the quantity to be entered during the second restraint period of only 29,700 units of such subassemblies. In the interest of equity, this Proclamation will increase the allowable carryover by 5,300 units to 35,000 units. The total number of such subassemblies exported to the United States and entered during the fifteen months covered by Proclamation 4634 will remain less than the number originally contemplated by that Proclamation.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, in order to assure equitable treatment under Proclamation 4634 and 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 U.S.T. (pt. 2) 1786) do proclaim that Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex to this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

ANNEX

Headnote 5(e) of subpart A, part 2, of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified to read as follows:

"(e) *Carryover.*—If the restraint level for any item has not been filled for a restraint period, upon appropriate request, the shortfall may be entered under the same item during the following restraint period provided that the amount of shortfall so entered in the next restraint period for (a) item 923.74 does not exceed 11 percent of the restraint level for the restraint period during which the shortfall occurred, (b) item 923.78 does not exceed 35,000 units, and (c) item 923.81 does not exceed 10 percent of the restraint level for the restraint period in which the shortfall occurred."

[FR Doc. 80-15386
Filed 5-15-80; 2:50 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 98
Monday, May 19, 1980

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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 101, 103, 204, 211, 223, 223a, 231, 245, 246, 247, 249, 251, 264, and 299

Amendments to Various Sections To Include Reference to Form I-551, Alien Registration Receipt Card

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This document amends several sections of the regulations of the Immigration and Naturalization Service to include reference to the new Alien Registration Receipt Card, Form I-551. The amendments are necessary because the Service now issues Form I-551 as the alien registration document to aliens entitled to evidence of alien registration. The amendments are intended to update the Service's regulations.

EFFECTIVE DATE: June 18, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, N.W., Washington, DC 20536. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: In order to include reference to the Alien Registration Receipt Card now issued on Form I-551, the following amendments are hereby prescribed to Chapter I of Title 8 of the Code of Federal Regulations:

PART 101—PRESUMPTION OF LAWFUL ADMISSION

§ 101.3 [Amended]

1. § 101.3 is amended by changing "Form I-151 to read "Form I-551", wherever it appears.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORD

§ 103.1 [Amended]

2. § 103.1, paragraph (o)(1), last sentence is amended by changing "Forms I-151" to read "Forms I-551."

* * * * *

§ 103.2 [Amended]

3. § 103.2, paragraph (b)(1), 14th sentence is amended by substituting "I-151 or I-551" for "I-151".

* * * * *

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERENCE IMMIGRANT

§ 204.2 [Amended]

4. § 204.2, paragraph (b) is amended by changing "Form I-151" to read "Form I-151 or I-551."

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

§ 211.1 [Amended]

5. § 211.1, paragraph (c) is amended by changing "Form I-151" to read "Form I-151 or I-551."

* * * * *

§ 211.3 [Amended]

6. § 211.3 is amended to change "Form I-151" to read "Form I-151 or I-551" wherever it appears in the title and text thereof.

* * * * *

§ 211.5 [Amended]

7. § 211.5, paragraph (a), first sentence is amended to change "Form I-151" to read "Form I-151 or I-551." Paragraph (b), second sentence is amended to change "Form I-151" to read "Form I-151 or I-551." Paragraph (d), first sentence is amended to change "Form I-151" to read "Form I-151 or I-551."

* * * * *

PART 223—REENTRY PERMITS

§ 223.1 [Amended]

8. § 223.1 is amending by changing "Form I-151" to read "Form I-151 or I-551" wherever it appears.

* * * * *

PART 223a—REFUGEE TRAVEL DOCUMENTS

§ 223a.4 [Amended]

9. § 223a.4 is amended by changing "Form I-151" to read "Form I-151 or I-551" wherever it appears.

* * * * *

PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

§ 231.2 [Amended]

10. § 231.2, paragraph (a), 6th sentence is amended by changing "Form I-151" to read "Form I-151 or I-551."

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

§ 245.2 [Amended]

11. § 245.2, paragraph (c) is amended by changing "Form I-151" to read "Form I-151 or I-551" wherever it appears. Paragraph (e), last sentence is amended to change "Form I-151" to read "Form I-551."

* * * * *

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

§ 246.9 [Amended]

12. § 246.9 is amended by changing "Form I-151" to read "Form I-151 or I-551" wherever it appears in the title and text thereof.

* * * * *

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

§ 247.14 [Amended]

13. § 247.14 is amended by changing "Form I-151" to read "Form I-151 or I-551".

* * * * *

PART 249-CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

§ 249.2 [Amended]

14. § 249.2, 10th sentence is amended by changing "Form I-151" to read "Form I-551".

* * * * *

PART 251—ARRIVAL MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

§ 251.1 [Amended]

15. § 251.1, paragraph (c) is amended by changing "Form I–151" to read "Form I–151 or I–551." Paragraph (d), first sentence is amended by changing "Form I–151" to read "Form I–151 or I–551."

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

§ 264.1 [Amended]

16. § 264.1 paragraph (a) is amended by deleting "I–174 Application for Crewman's Landing Permit—Crewman arriving by vessel."

* * * * *

17. § 264.1 paragraph (b) is amended by adding "I–551 Alien Registration Receipt Card—Lawful permanent resident of the United States." in the proper form number sequence.

* * * * *

18. § 264.1 paragraph (c) revised to read as follows:

§ 264.1 Registration and Fingerprinting.

* * * * *

(c) *Replacement of registration.* Any alien whose evidence of registration has been lost, mutilated, or destroyed, shall immediately apply for new evidence of registration. Application for replacement of Form I–185, Nonresident Alien Canadian Border Crossing Card, shall be made on Form I–175. Application for replacement of Form I–186, Nonresident Alien Mexican Border Crossing Card, shall be made on Form I–190. Application for replacement of Form I–94, Arrival-Departure Record, or Form I–95, Crewman's Landing Permit, shall be made on Form I–102, except that a new form I–94 may be issued in lieu of one lost, mutilated, or destroyed without application therefor, when the alien is an applicant for extension of his temporary stay or change of nonimmigrant classification. Application by an alien lawfully admitted for permanent residence for Form I–551, Alien Registration Receipt Card, in lieu of one lost, mutilated, or destroyed, or who requests issuance of such card in a name which has been changed after registration by order of any court of competent jurisdiction or by marriage, shall be made on Form I–90 accompanied by the fee required by 103.7(b) of this chapter, two color photographs, regardless of the applicant's age, unless the requirement for such photographs has been waived by the district director in his discretion because of hardship to an applicant who is confined due to age or physical infirmity, and when issuance of Form I–551 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I–151 or I–551 in the applicant's possession must also be submitted with the application. An application on Form I–90, with two color photographs but without fee, is required for issuance of Form I–551 in the case of a lawful permanent resident who surrenders evidence of registration on other than Form I–151 or I–551; who establishes that such form was never received by him; who is the holder of a Form I–151 or I–551 which is incorrect or in poor condition because of improper lamination and surrenders such form, or in the case of an alien who has attained the age of 14 and is seeking to be registered and fingerprinted pursuant to section 262(b) of the Act and who surrenders evidence of registration previously issued to him; or who is an alien commuter taking up actual permanent residence in the United States. No application or fee is required if Form I–151 or I–551 has been returned to the issuing office, by postal authorities, and is in the applicant's file. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the Service office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I–551, all applicants, regardless of age, shall appear at the appropriate Immigration office for interview; placement of fingerprint, and, signature on Form I–89 unless these requirements are waived at the discretion of the district director because of confinement of age, physical infirmity, illiteracy or other compelling reasons. An alien lawfully admitted for permanent residence who is outside the United States shall submit his application for a new Form I–551 in person to the Service officer stationed outside the United States having jurisdiction over the place where the applicant is temporarily sojourning or, if physically present in the area of jurisdiction of an American consular officer where no Service officer is regularly stationed, to such consular officer. An application filed abroad will be forwarded with completed Form I–89 to the district director having jurisdiction over the alien's place of residence in the United States and, if the application is approved, Form I–551 will be transmitted to the Service officer stationed outside the United States or the American Consular Officer for delivery to the applicant. An alien who files application Form I–90 may be required to appear in person before an Immigration officer prior to adjudication of the application and be interrogated under oath concerning his eligibility for issuance of Form I–551 as evidence of his registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD–258). If the applicant is outside the United States, such interrogation may be conducted by an Immigration officer or a consular officer. The decision on an application for replacement of evidence of registration shall be made by the district director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the district director denying the application.

* * * * *

PART 299—IMMIGRATION FORMS

§ 299.1 [Amended]

19. § 299.1 is amended by deleting "I–174 (3–1–65) Application for Crewman's Landing Permit." and by adding, "I–551 (Jan. 77) Alien Registration Receipt Card" in numerical sequence.

* * * * *

Authority: Secs. 103, 221, 261–265 (8 U.S.C. 1103, 1201, 1301–1305).

These amendments are published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93–502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the amendments contained in this order are editorial in nature, and up-date Service practice and procedure regarding the new Alien Registration Receipt Card in current use.

Effective date: These amendments become effective on June 18, 1980.

Dated: May 14, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80–15295 Filed 5–16–80; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Airworthiness Docket No. 67-SW-68, Amdt. 39-3770]

Airworthiness Directives; Bell Model 47 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supplements, in part, AD 70-10-8, Amdt. 39-983, as amended by Amdt. 39-1063 and Amdt. 39-2642, by reducing the retirement time from 600 to 300 hours for tail rotor blades, P/N 47-642-102, installed on Bell Model 47 helicopters, and OH-13/TH-13T series helicopters including modified versions equipped with Lycoming (Avco) engines. In addition, the AD would require installation of the improved tail rotor blades, P/N 47-462-117, on these same helicopters on or before February 28, 1981. The AD is needed to preclude inflight failure of the tail rotor blades, P/N 47-642-102, with resulting loss of helicopter control. The AD also requires destruction of the tail rotor blades, P/N 47-642-102, whenever they are removed from the affected helicopters to prevent a return to service on another Model 47 helicopter that would not be affected by the proposed AD.

DATES: Effective June 9, 1980.

Compliance required as prescribed in the AD.

ADDRESSES: A copy of the bulletins and instructions may be obtained from the Regional Counsel, Attention: Docket No. 67-SW-68, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Bell service information may be obtained from Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT:

J. H. Major, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, extension 516.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) requiring further mandatory action for all Bell Model 47, H-13, and TH-13T series helicopters, except those equipped with Franklin Engine Co. (Aircooled Motors) engines was published in 45 FR 9945 February 14, 1980. Comments were received and considered as noted herein. The adopted rule reduces the blade, P/N 47-642-102, retirement time from 600 to 300 hours, requires destruction of the blades when removed from service in compliance with the AD and after the blades have attained 300 hours' total time in service, and requires installation of the improved tail rotor blade, P/N 47-642-117, prior to further flight after February 28, 1981, on the affected Bell Model 47, H-13, OH-13, and TH-13T series helicopters. The agency has not changed Amdt. 39-983 as amended by Amdt. 39-1063 and 39-2642, AD 70-10-8, but acknowledges the 300-hour retirement time of blade, P/N 47-642-102, in the new AD will supplant or supersede the 600-hour retirement time specified in AD 70-10-8, paragraphs i, j, and k, for all Bell Model 47 series helicopters except those equipped with Franklin (or Aircooled Motors) engines. The inspections and checks in AD 70-10-8 are still required for all Model 47's and H-13 series helicopters.

The proposal was prompted by the service history of tail rotor blade, P/N 47-642-102, fatigue failures. Since January 1976, ten additional reports have been received by the agency indicating an inflight failure of tail rotor blade, P/N 47-642-102, on six Model 47G-2, a 47G-2A-1, 47J-2, 47D, and 47G-3 helicopters. These particular helicopters were all equipped with Lycoming (Avco) engines.

As a result of inflight blade failures, Bell Helicopter Textron issued Alert Service Bulletin Nos. 47-79-3 and 47-79-4, and OSN 47-79-2 specifying removal of the tail rotor blade, P/N 47-642-102, installation of the improved tail rotor blade, P/N 47-642-117, and also specifying a reduction in retirement time from 600 to 300 hours for blades, P/N 47-642-102, installed on all Model 47 series helicopters regardless of the engine used. It was noted in Service Bulletin No. 47-79-4 that effective January 1, 1981, blade P/N 47-642-102 will not be available from any Bell Helicopter Textron authorized supply outlet.

Interested persons have been afforded the opportunity to participate in the making of the amendment. Twelve responses were received before the closing date for comments in which all objected to requiring installation of the improved tail rotor blades on or before June 30, 1980, since Bell could not fulfill the anticipated demand. In the light of Bell-furnished information and comments received, the AD requires installation of the improved tail rotor blades on or before February 28, 1981. One comment requested clarification that modified versions of the U.S. Army H-13 series helicopter comply with the AD. The proposal applied to H-13 series helicopters; however, the AD contains an additional clarifying paragraph (f) that the AD applies to modified versions of the military H-13 series helicopters.

Five of the responses implied or stated that AD 70-10-8 was sufficient to maintain airworthiness of the Model 47's and stated that they had many, many hours of satisfactory service without any tail rotor blade failures. The FAA has reports of 10 inflight fatigue failures since January 1976 and must conclude the AD is not effective for certain Model 47 series helicopters.

One response recommended the 600-hour life be allowed for restricted operations. Many of the noted blade failures have occurred on restricted helicopters and restricted operations are generally more severe than general operations.

A letter from the NTSB, received after the closing date for comments, recommended immediate adoption of an AD requiring installation of the improved tail rotor blades on all models for which it is approved, and requiring installation of the improved tail rotor blades as soon as possible on all other Model 47's including those equipped with Franklin engines. A letter from an operator was also received after the closing date commending the FAA for not requiring installation of the improved tail rotor blades on Model 47 helicopters equipped with Franklin engines. The operator cited a long history of satisfactory service with these types of Bell Model 47 helicopters. FAA records of Model 47 accidents concerning blade fatigue failures indicate that Franklin engine-powered Model 47 helicopters are not susceptible to tail rotor blade fatigue problems.

Several letters noted a hardship would occur for Model 47 operators and their customers if the 300-hour life were adopted due to a possible short supply of blade, P/N 47-642-102. The FAA does not believe a bonafide short supply will exist, since Bell advised the FAA that 78 blade sets were in stock with about 325 sets on order for delivery before January 1, 1981. It is acknowledged that effective January 1, 1981, blade P/N 47-642-102 will not be available from any Bell Helicopter Textron authorized supply outlet.

Operators, Bell, and the FAA are concerned about proper distribution of the available blade supply. Bell will honor orders for tail rotor blades provided a bonafide helicopter by model and serial number, and possibly

registration number, is furnished with the order. Thus, Bell will recognize orders for Model 47 series helicopters with valid airworthiness certificates. This approach is being used to preclude a large purchase of the blades by other than owners/operators of the Model 47 series helicopters.

The FAA appreciates receiving the aforementioned comments. The 300-hour blade life must be retained for all categories of operation in the light of the service experience associated with AD 70–10–8. Paragraph (f) was added to clarify that modified versions of H–13 series helicopters were included. A note was added to emphasize that the inspections and checks of AD 70–10–8 have not been canceled or superseded by this new AD. In the light of information received, the mandatory "retrofit" date for incorporation of the improved tail rotor blade has been changed from July 30, 1980, to February 28, 1981, to prevent undue hardship because of parts shortages for Model 47 operators and their customers. Operators are encouraged to install the improved tail rotor blades as soon as possible because of their durability and possible lower operating cost.

Adoption of this Amendment

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

Bell: Applies to all Model 47 series helicopters and military Model H–13, OH–13, and TH13T series helicopters certificated in all categories that are equipped with tail rotor blades, P/N 47–642–102, except for those helicopters equipped with Franklin (or Aircooled Motors) engines. (Airworthiness Docket No. 67–SW–68.)

Compliance required as indicated.

To prevent possible failure of tail rotor blades, P/N 47–642–102, due to fatigue cracks, accomplish the following:

(a) Blades with 250 or more hours' time in service on the effective date of this AD must be removed from service within the next 50 hours' time in service and must be destroyed.

(b) Blades with less than 250 hours' time in service on the effective date of this AD must be removed from service prior to or on attaining 300 hours' time in service and must be destroyed on attaining 300 hours' total time in service.

(c) Prior to further flight after February 28, 1981, install improved tail rotor blades, P/N 47–642–117, unless already accomplished, in accordance with Bell Helicopter Textron Service Instruction No. 428 (47G–2A, G–2A–1, G–3, G–3B, G–3B–1, G–3B–2, G–4, G–4A, G–5, J–2, and J–2A) or No. 438 (47G and 47G–2), as appropriate, or data approved by the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region.

(d) The helicopters may be flown in accordance with FAR 21.197 to a base where compliance with this AD can be performed.

(e) Equivalent means of compliance with paragraph (c) may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region.

(f) This AD applies to modified versions of the military H–13, OH–13, and TH–13T series helicopter models. Examples of such modified versions are the Continental Copters or Tomcat helicopters, OH–13H/Tomcat Mark 5 series and 6 series, or the Texas Helicopter OH–13/M74 series helicopters.

Note.—The inspections and checks specified in AD 70–10–8, Amdt. 39–983, as amended by Amdt. 39–1063 and Admt. 39–2642, have not been canceled or superseded by this AD and are still required.

(Bell Helicopter Textron OSN 47–79–2, Service Bulletin 47–76–2, Alert Service Bulletin Nos. 47–79–3 and 47–79–4 pertain to this subject.)

This amendment becomes effective June 9, 1980.

(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 Fort Worth, Tex., on May 2, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 80–15092 Filed 5–16–80; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 78–WE–5–AD; Amdt. 39–3771]

Airworthiness Directives; Lockheed L–188 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes a currently effective airworthiness directive (AD) which requires repetitive inspections of the wing structure on Lockheed L–188 airplanes. This amendment requires additional repetitive inspections and extends the applicability of the inspections to include lower-time airplanes. This AD is needed to detect and repair fatigue cracks which if uncorrected could result in loss of strength capability of the wing.

DATES: Effective June 23 , 1980.

Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive superseding Amendment 39–3204 AD 78–09–06, providing for additional repetitive inspections of the wing structure on Lockheed L–188 airplanes was published in the **Federal Register** at 44 FR 7558. The proposal was prompted by reports of cracks in wing structure in adjacent areas not covered by the present AD and by an FAA determination that subject fatigue damage occurs at an exposure threshold lower than the 35,000 hours' time in service established by the superseded AD.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received. Accordingly, the proposal is adopted without change.

Adoption of the Amendment

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

Lockheed-California Company: Applies to all Model 188A and 188C series airplanes certificated in all categories.

To prevent loss of strength capability of the wing due to fatigue cracking accomplish the following; unless previously accomplished:

(a) Before accumulating 30,000 hours' time in service or within the next 100 hours' time in service on those airplanes with 30,000 or more hours' time in service, unless accomplished within last 400 hours:

(1) Inspect the wing front spar lower cap per paragraph (d) of this AD; and

(2) Reinspect per paragraph (d) prior to accumulating 500 hours' time in service since the last inspection required by paragraph (a)(1).

(b) Within 400 hours' time in service since inspection required in (a)(2) and thereafter at intervals not to exceed 2,000 hours' time in service, inspect per paragraph (e) of this AD.

(c) Inspections per paragraph (e) of this AD (including the 2,000 hour repetitive inspection) may be substituted for the inspections required by paragraph (a)(1) and (a)(2) of this AD.

(d) Inspect wing front spar lower cap per paragraph 1.D.(1) of Lockheed Alert Service Bulletin 88/SB-699B dated July 13, 1979, hereinafter referred to as Lockheed ASB 88/5B-699B.

(e) Inspect spar cap adjacent structure per paragraph 1.D.(2), 1.D.(3), 1.D.(4), 1.D.(5), 1.D.(6), 1.D.(7), and 1.D.(8) of Lockheed ASB 88/SB-699B.

(f) Repair any detected cracks prior to further flight per Lockheed ASB 88/SB-699B.

(g) Incorporation of the modifications/repairs defined by the drawings listed below terminates the inspection requirements of this AD for the listed paragraphs in ASB 88/SB-699B.

(1) Drawing numbers 842174 and 842181 for paragraphs 1.D.1, 1.D.3, 1.D.4 (spar cap only), 1.D.5 (spar cap at Station 203), 1.D.7 (spar cap at Stations 159 and 167).

(2) Drawing Numbers 842185 and 842186 for paragraphs 1.D.2 and 1.D.6.

(3) Drawing Number 842222 for paragraph 1.D.4 (spar web and cap at Station 203 only).

(4) Drawing Number 842217 for paragraph 1.D.4 (spar web at Station 216).

(5) Drawing Number 841738 (spar web at Station 160).

(h) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment supersedes Amendment 39-3204 (43 FR 19210) AD 78-09-06. This amendment becomes effective June 23, 1980.

(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)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the expected impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Los Angeles, Calif., on May 5, 1980.

W. R. Frehse,

Acting Director, FAA Western Region.

[FR Doc. 80-15095 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-NE-12]

Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-93 between Chester, Mass., and Keene, N.H., by reducing the airway width to 7 miles wide for 12 miles northwest of Chester. This action provides additional controlled airspace for the new Standard Instrument Approach Procedure (SIAP) serving Runway 26 at Pittsfield Municipal Airport, Pittsfield, Mass.

EFFECTIVE DATE: May 15, 1980.

FOR FURTHER INFORMATION CONTACT: 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: The purpose of this amendment to Subpart C of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of V-93 between Chester, Mass., and Keene, N.H., by reducing the airway width, in part, to 7 miles. The alteration will add protected airspace for the new SIAP serving Runway 26 at Pittsfield Municipal Airport, Pittsfield, Mass. This action will reduce controller workload by eliminating excessive coordination and increase flight safety. Subpart C of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 307). Since route width reduction is minor in nature in this instance and is necessary to provide the additional controlled airspace for the new approach procedures to become effective without undue delay, I find good cause, in the interest of flight safety, that notice and public procedure are impractical and this amendment may be adopted immediately.

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 (45 FR 307) is amended, effective May 15, 1980, as follows:

Under V-93—"Pawling, N.Y.; Chester, Mass.; Keene, N.H.;" is deleted and "Pawling, N.Y.; Chester, Mass., 12 miles wide (4 miles E. and 3 miles W. of centerline); Keene, N.H.;" 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 May 9, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-15086 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 79-GL-66]

Alteration of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to expend the existing control zone serving Flying Cloud Airport, Minneapolis, Minnesota, and to designate additional controlled airspace to encompass revisions to existing approach procedures.

EFFECTIVE DATE: July 10, 1980.

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 these approach procedures in instrument weather conditions and other aircraft operating under visual weather conditions. The expansion and slight alteration to the control zone boundary is mainly a redefinition of the boundary. The additional airspace required is an area approximately three miles by five miles to the west of the airport. The circumstance which created this action was the addition of a new Very High Frequency Omnidirectional Range (VOR) Runway 9 Right procedure serving this airport. A review of the terminal airspace requirements necessitates that the FAA add the additional airspace to insure that all procedures will be contained within controlled airspace. In addition, aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 13112 of the **Federal Register** dated February 28, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the control zone at Minneapolis, 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 Rulemaking.

Adoption of 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 July 10, 1980, as follows:

In § 71.171 (45 FR 356) the following control zone is amended to read:

Minneapolis, Minn. (Flying Cloud)

Within a 5 statute mile radius of Flying Cloud Airport, Minneapolis, Minnesota (latitude 44°49'30" N; longitude 93°27'45" W); within 2.5 statute miles north of the Flying Cloud (FCM) VOR 292° radial, extending from the 5 mile radius zone to 7.5 statute miles west of the VOR; within 3 statute miles each side of the 276° radial of the FCM VOR extending from the 5 mile radius zone to 8.5 statute miles west of the VOR; and within 2.5 statute miles each side of the FCM VOR 179° radial extending from the 5 mile radius zone to 6.5 miles south of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

(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 Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61))

Note.—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-66, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Ill., on May 1, 1980.

Wm. S. Dalton,

Acting Director, Great Lakes Region.

[FR Doc. 80-15090 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-SO-12]

Alteration of Transition Area, Mocksville, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redesignates an extension in the Mocksville, North Carolina, transition area. This action provides controlled airspace required to protect instrument flight operations at the Twin Lakes Airport.

EFFECTIVE DATE: June 5, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia, 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: In the Mocksville, North Carolina, Transition Area described in § 71.181 (45 FR 445), an extension was designated on the 278° bearing from the Davie RBN to provide controlled airspace for aircraft executing the NDB RWY 9 standard approach procedure at the Twin Lakes Airport. The final approach course in the procedure has been changed to the 275° bearing. It is necessary to redesignate the extension to provide the required controlled airspace to protect aircraft executing the procedure.

Since this amendment is minor in nature and creates no greater burden on the public, notice and public procedure hereon are unnecessary.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., June 5, 1980, as follows:

Mocksville, N.C.

"* * * 278° * * *" is deleted and "* * * 275° * * *" is substituted therefor.

(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)))

Note.—The Federal Aviation Administration 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 no minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on April 30, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-15091 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 79-GL-68]

Designation of Federal Airways Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final action.

SUMMARY: The nature of this federal action is to designate additional controlled airspace near Van Wert, Ohio to accommodate a new Non-Directional Radio Beacon (NDB) Runway 9 instrument approach procedure into the Van Wert Municipal Airport, Van Wert, Ohio established on the basis of a relocation of the radio beacon from five miles west of the airport to a site on the Airport.

EFFECTIVE DATE: July 10, 1980.

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 weather conditions. The floor of the controlled airspace will be lowered from 1200 feet above the surface to 700 feet above the surface for a distance of approximately three miles west of that now depicted. The development of the proposed procedure necessitates that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes 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 13777 of the **Federal Register** dated March 3, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.101 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Van Wert, Ohio. 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 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 July 10, 1980, as follows:

In Section 71.181 (45 FR 445) the following transition area is amended to read:

Van Wert, Ohio

That airspace extending upward from 700 feet above the ground within a 5 miles radius of Van Wert Municipal Airport, Van Wert, Ohio (latitude 40°51'51" N., longitude 84°36'36" W.) within 3 miles either side of the 271° bearing from the airport extending from the five mile radius area to 8 miles west 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)); and 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-68, 2300 East Devon Avenue, Des Plains, Illinois.

Issued in Des Plaines, Illinois, on May 5, 1980.

Wayne J. Barlow,

Director, Great Lakes Region.

[FR Doc. 80-15102 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 79-GL-63]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate additional controlled airspace near Rochester, Minnesota to accommodate a revised Instrument Landing System (ILS) Runway 13 instrument approach procedure into the Rochester Municipal Airport, Rochester, Minnesota.

EFFECTIVE DATE: July 10, 1980.

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 weather conditions. The floor of the controlled airspace will be lowered from 1200 feet above the surface to 700 feet above the surface for a distance of approximately two miles beyond that now depicted. The development of the proposed procedure necessitates the FAA to alter the designated airspace to insure that the procedure will be contained within 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 13776 of the **Federal Register** dated March 3, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation regulations so as to alter the transition area at Rochester, 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 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 July 10, 1980, as follows:

In Section 71.181 (45 FR 445) the following transition area is amended to read:

Rochester, Minn.

That airspace extending upward from 700 feet above the surface within a 19½ mile radius of the Rochester Municipal Airport, Rochester, Minnesota (latitude 43°54'32" N, longitude 92°29'47" W); and within 4½ miles southwest and 9½ miles northeast of the Rochester ILS localizer southeast course, extending from the 19½ mile radius to 24 miles southeast of the airport; and within 5 miles each side of the Rochester ILS localizer northwest course, extending from the 19½ mile radius to 22½ miles northwest 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-63, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on May 5, 1980.

Wayne J. Barlow,

Director, Great Lakes Region.

[FR Doc. 80-15101 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-GL-4]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate additional controlled airspace near Albert Lea, Minnesota to accommodate a revised Very High Frequency Omnidirectional Range (VOR) Runway 16 instrument approach procedure into the Albert Lea Municipal Airport, Albert Lea, Minnesota.

EFFECTIVE DATE: July 10, 1980.

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 weather conditions. The floor of the controlled airspace will be lowered from 1200 feet above the surface to 700 feet above the surface for a distance of approximately 3 miles beyond that now depicted. The development of the proposed procedure necessitates that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes 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 13774 of the **Federal Register** dated March 3, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Albert Lea, 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 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 July 10, 1980, as follows:

In Section 71.181 (45 F.R. 445) the following transition area is amended to read:

Albert Lea, Minn.

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of the Albert Lea, Airport, (latitude 43°40'52" N, longitude 93°22'04" W).

(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 Sec. 11.61 of the Federal Aviation Regulations (14 C.F.R. 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. 80-GL-4, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on May 5, 1980.

Wayne J. Barlow

Director, Great Lakes Region.

[FR Doc. 80-15100 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-AAL-2]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area, Homer, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the transition area at Homer, Alaska, to provide additional protected airspace for aircraft conducting the LOC/DME Back Course instrument approach procedure and to provide additional controlled airspace to enable ATC to more efficiently control aircraft operations using radar control procedures from an en route radar facility which will be relocated from Fire Island to Kenai, Alaska. This action is made necessary because a review of the LOC/DME Back Course instrument approach procedure revealed that additional controlled airspace was needed to protect the final approach course to Runway 21, and the planned relocation of the Fire Island en route radar facility to Kenai.

EFFECTIVE DATE: 0901 GMT, July 10, 1980.

FOR FURTHER INFORMATION CONTACT: John Costello, Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Box 14, 701 C Street, Anchorage, Alaska 99513, telephone (907) 271-5902.

SUPPLEMENTARY INFORMATION: On April 7, 1980, a Notice of Proposed Rulemaking was published in the **Federal Register** (45 FR 23465) stating that the Federal Aviation Administration proposed to enlarge the 1,200-foot floor portion of the Homer, Alaska, transition area to provide protected airspace for aircraft conducting the LOC/DME Back Course instrument approach procedure and also to provide adequate controlled airspace for ATC to use radar control procedures from an en route radar facility to be relocated from Fire Island to Kenai. Interested persons were invited to participate in this rulemaking process by submitting written comments on the proposal to the FAA. Only one comment was received, which concurred with the proposal.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me Subpart G, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended as follows:

Homer, Alaska

Delete all after "(latitude 59°39'08" N, longitude 151°27'22" W);" and substitute therefor "and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of the Homer VORTAC extending from the 027° radial clockwise to the 252° radial excluding the portion within Control 1218."

(This amendment is made under the authority of § 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); § 6(c) of the 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 May 7, 1980.

Robert L. Faith,

Director, Alaskan Region.

[FR Doc. 80-15096 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-GL-1]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate additional controlled airspace near Little Falls, Minnesota to accommodate a revised Non-Directional Radio Beacon (NDB) Runway 30 instrument approach procedure into the Little Falls Municipal Airport, Little Falls, Minnesota.

EFFECTIVE DATE: July 10, 1980.

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 weather conditions. The floor of the controlled airspace will be lowered from 1200 feet above the surface to 700 feet above the surface for a distance of approximately 1.5 miles beyond that now depicted. The development of the proposed procedure necessitates the FAA to alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes 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 13110 of the **Federal Register** dated February 28, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Little Falls, 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 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 July 10, 1980, as follows:

In Section 71.181 (45 F.R. 445) the following transition area is amended to read:

Little Falls, Minn.

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Little Falls Municipal Airport, Little Falls, Minnesota (latitude 45°56'56" N; longitude 24°20'44" W); within 3.0 miles each side of the 140° bearing from the airport, extending from the 6.5 mile radius area out to 8.0 miles southeast of the airport, excluding that portion which overlies the Camp Ripley, Minnesota 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)); Sec. 11.61 of the Federal Aviation Regulations (14 C.F.R. 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. 80–GL–1, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on May 5, 1980.

Wayne J. Barlow,

Director, Great Lakes Region.

[FR Doc. 80–15098 Filed 5–16–80; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 80–GL–3]

Designation of Federal Airways Area Low Routes, Controlled Airspace, and Reporting Points; 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 Dodge Center, Minnesota to accommodate a new Very High Frequency Omnidirectional Range (VOR–A) instrument approach into Dodge County Municipal Airport, Dodge Center, Minnesota established on the basis of a request from the Dodge County Airport officials to provide that facility with instrument approach capability.

EFFECTIVE DATE: July 10, 1980.

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 60013, 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 that the FAA 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 13775 of the **Federal Register** dated March 3, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Dodge Center, 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 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 July 10, 1980, as follows:

In Section 71.181 (45 FR 445) the following transition area is amended to read:

Dodge Center, Minnesota

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Dodge County Municipal Airport, Dodge Center, Minnesota (Latitude 44°01'15" N; Longitude 92°50'00" W); excluding that portion which overlies the Rochester, Minnesota 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)); 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. 80-GL-3, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on May 5, 1980.

Wayne J. Barlow,

Director, Great Lakes Region.

[FR Doc. 80-15099 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-WE-3]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Establishment of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a transition area at St. Johns, Arizona. The transition area is necessary to provide controlled airspace for arrival/departure operations for the St. Johns Municipal Airport, St. Johns, Arizona.

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. Telephone: (213) 536-6182.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area for St. Johns, Arizona (45 FR 20902). The FAA has established an instrument approach procedure (VOR/DME-A) for the St. Johns Municipal Airport. Designation of this transition area is to provide controlled airspace for increased aircraft operations in the St. Johns area. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates a transition area at St. Johns, Arizona. This transition area provides protection for IFR arrival/departure operations authorized in the St. Johns, Arizona area. This amendment increases air traffic safety and improves flow control procedures.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 G.m.t., July 10, 1980, as follows:

Under § 71.181 add:

St. Johns, Arizona

That airspace extending upward from 700 feet above the surface within a 5-mile radius of St. Johns Municipal Airport (latitude 34°31'15" N., longitude 109°22'45" W.) and within 4 miles each side of the St. Johns VORTAC 294° radial extending from the 5-mile radius area to the VORTAC.

(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)

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 Los Angeles, California on May 5, 1980.

W. R. Frehse,

Acting Director, Western Region.

[FR Doc. 80-15097 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-ASW-5]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area: Antlers, Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to designate a transition area at Antlers, Okla. The intended effect of the action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Antlers Municipal Airport. The circumstance which created the need for the action is the proposed establishment of a nondirectional radio beacon (NDB) located on the airport.

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On March 13, 1980, a notice of proposed rule making was published in the **Federal Register** (45 FR 16198) stating that the Federal Aviation Administration proposed to designate the Antlers, Oklahoma, transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) designates the Antlers, Okla., transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing proposed instrument approach procedures to the Antlers Municipal Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, July 10, 1980, as follows.

In Subpart G, 71.181 (45 FR 445), the following transition area is designated:

Antlers, Oklahoma

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Antlers Municipal Airport (latitude 34°11'34"N., longitude 95°38'59"W.) and within 3.5 miles each side of the 172° bearing of the NDB (latitude 34°11'30"N., longitude 95°39'06"W.), extending from the 6.5-mile radius area to 8.5 miles south of the NDB.

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

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 Fort Worth, Tex., on May 6, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-15106 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 79-ASW-60]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area: Lafayette, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: The nature of the action being taken is to correct a **Federal Register** publication that altered the transition area at Louisiana. The intended effect of the action is to provide controlled airspace for aircraft executing instrument approach procedures to the Lafayette Regional, Acadiana Regional, the Abbeville Municipal Airports. The circumstances which created the need for the action is that the airspace was not properly described as necessary for the protection of aircraft.

EFFECTIVE DATE: July 10, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Federal Register Document 80-10617 was published on April 10, 1980, (45 FR 24455), and altered the transition area at Lafayette, La. Inadvertently, in the description of the transition area, the extension to the Abbeville Municipal Airport was improperly described, and action is taken herein to correct the description. This correction is a minor matter upon which the public would have no particular desire to comment. Therefore, notice and public procedure are not necessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 442) is amended, effective 0901 GMT, July 10, 1980, as follows.

In Subpart G, 71.181 (45 FR 445), the Lafayette, La., transition area is amended by deleting the present description and substituting the following:

Lafayette, La.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Lafayette Regional Airport (latitude 30°12'14"N., longitude 91°59'16"W.); within a 6.5-mile radius of the Abbeville Municipal Airport (latitude 29°58'30"N., longitude 92°05'00"W.) and within 2 miles north and 3 miles south of the 206° radial of the Lafayette VORTAC extending from the 6.5-mile radius to 9.5 miles northeast; within a 6.5-mile radius of the Acadiana Regional Airport (latitude 30°02'15"N., longitude 91°53'02"W.).

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

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 Fort Worth, Tex., on May 8, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-15187 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-EA-5]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Areas for Quantico, Va., and Cambridge, Md., and Control Zone for Quantico, Va.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Control Zone of Quantico, Va., and Transition Areas for Quantico, Va., and Cambridge, Md., by changing the names of the Quantico Marine Corp. Air Station and the Cambridge Municipal Airport.

EFFECTIVE DATE: May 19, 1980.

FOR FURTHER INFORMATION CONTACT: Charles J. Bell, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: This rule is editorial and does not impose any additional burden on any person. In view of the foregoing, notice and public procedure hereon are unnecessary and the rule may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator Subparts F & G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective upon publication in the **Federal Register**, as follows:

1. Amend § 71.171 of Part 71, Federal Aviation Regulations, by altering the description of the Quantico, Virginia control zone as follows:

In the text delete "of Quantico MCAS (Turner Field) Quantico, Virginia" and substitute therefor, "of Quantico MCAF (Turner Field) Quantico, Virginia;".

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Quantico, Virginia, 700-foot floor transition area as follows:

In the text delete "of Quantico MCAS (Turner Field) Quantico, Virginia;" and substitute therefor, "of Quantico, MCAF (Turner Field) Quantico, Virginia;".

3. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to amend the description of the Cambridge, Maryland, 700-foot floor transition areas as follows:

In the text delete, "of Cambridge Municipal Airport, Cambridge, Maryland;" and substitute therefor, "of Cambridge-Dorchester Municipal Airport, Cambridge, Maryland;".

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

Issued in Jamaica, New York, on April 30, 1980.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 80-15232 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 183

[Docket No. 20339; Amdt. No. 183-7]

Representatives of the Administrator; Authorization for the Designation of Acoustical Engineering Representatives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment authorizes the use of designated acoustical engineering representatives. Those representatives will perform specified functions leading to FAA noise level approval for aircraft covered by noise certification rules. Those functions may be performed at any location whenever the designated representative determines the activity or data conforms to the requirements of the applicable regulations. Neither noise level certification nor approval of equivalencies to prescribed procedures and standards are within the scope of designated representatives' authority. This action meets the need to provide greater flexibility and efficiency in the noise certification process.

DATES: Effective date—May 19, 1980. Comments must be received by July 18, 1980.

ADDRESSES: Submit comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Room 916, Docket No. 20339, 800 Independence Avenue, SW., Washington, DC 20591. Or, deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Docket, Monday through Friday between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Harvey H. Van Wyen, Technical Analysis Branch (AWS-110), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8192.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this action is in the form of a final rule, which involves the management, procedures, and personnel of the FAA and, thus, need not be preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments received and any other available information to review the regulation. After the review, if changes are found to be appropriate, the FAA will consider adopting amendments to the regulations. Persons wishing to have receipt of their comments acknowledged must send with their comments a stamped, self-addressed post card on which the following statement is made: "Comments to Docket No. 20339." The post card will be date/stamped and returned to the commenter.

Discussion of the Amendment

This amendment to Part 183 of the Federal Aviation Regulations (FARs) expands the use of designated engineering representatives of the Administrator. Those representatives will perform authorized functions for noise level approvals for aircraft covered by FAA noise certification standards. The designated representatives are qualified, private persons. Authority is delegated to those individuals to perform specified functions concerning the conduct and evaluation of aircraft noise certification tests and test data conformity to applicable regulations, including methodologies and any equivalencies previously approved by the Director, Environment and Energy for that noise test series. Delegation of those functions is contemplated and authorized under section 314 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1355).

The Chief of the Aircraft Engineering Division, Office of Airworthiness with the approval of the Director, Environment and Energy (or their designees), may select representatives from qualified persons who apply for designation. Application for designation is made by a letter accompanied by a statement of qualifications to properly perform those prescribed functions. Minimum qualification for designated representatives include eight years of appropriate and progressively responsible professional engineering experience, one year of which must be in association with, and recognized by, the FAA. For purposes of meeting the experience requirement, applicants should identify their experience with aircraft noise flight testing; acoustical instrumentation and measurement; data correction and analysis; noise certification regulations, documentation, and guidance materials. The qualifications of each applicant will be carefully reviewed by the FAA. Designations will include conditions and limitations appropriate to the representative's training, experience, and knowledge.

Functions of designated representatives are restricted to those for which the representative is qualified and found necessary to determine conformity with the noise certification test requirements for aircraft covered by the noise standards. For transport category large airplanes and turbojet-powered airplanes, the applicable rules are prescribed under FAR Part 36, Subpart B, Appendixes A and B, and the test conditions prescribed in Appendix C. For propeller-driven small airplanes, the rules are under FAR Part 36, Subpart F; and Appendix F, Parts A, B, and C. Those functions may include witnessing and approving aircraft noise tests and approving measured noise data and noise analyses and results. The designated representative will determine conformity to the applicable regulations, including noise evaluation methodology and any equivalencies approved by the Director, Environment and Energy. Those determinations lead to, but are not themselves, findings or approvals of compliance with the noise level requirements. Thus, a representative may not (1) determine that a design change is not an "acoustical change"; (2) approve "equivalencies" to prescribed procedures or standards; or (3) certificate aircraft noise levels. The representative must make such reports as are required by the Administrator or the Administrator's designee.

As prescribed for other designated representatives under Part 183, the acoustical engineering representatives will be issued a "Certificate of Designation" specifying the kind of designation for which the representative is qualified. The certificate will also contain the conditions and limitations that apply to the exercise of the designation. Unless sooner terminated, the certificate is effective for one year after it is issued; it may be renewed for additional one-year intervals at the Administrator's discretion.

Under this amendment, Part 183 does not require aircraft manufacturers or other affected persons to use an acoustical engineering representative. In some cases, an applicant for noise certification or acoustical change approval may not have an employee who is qualified to be so designated. Or, the applicant may not wish to employ, or contract with, a qualified person to serve in that capacity. In those situations, qualified FAA personnel will continue to perform those functions.

Editorial Changes

This amendment to Part 183 includes the editorial changes necessary to reflect the reorganization of the FAA's Flight Standards Service, under the Associate Administrator for Aviation Standards, as the Office of Flight

Operations and the Office of Airworthiness. The title "Flight Standards" is retained, however, for FAA's regional and field organizations. Thus, under § 183.11, the Chief of the Aircraft Engineering Division (or the Chief's designee) may select Designated Engineering Representatives and the Chief of the Aircraft Manufacturing Division (or the Chief's designee) may select Designated Manufacturing Inspection Representatives. In addition, the words "the representative" are substituted for the word "he" in the various paragraphs under § 183.29, to clarify that the determination involved is made by the designated representative.

Cost Evaluation

This amendment will result in potential cost savings to applicants for noise level approvals. It permits the use of designated representatives to avoid costly delays in conducting and validating noise certification tests. Applicants will be better able to plan and expedite aircraft noise tests under Part 36 when conditions are more favorable to conducting those tests. In addition, it is expected that this amendment will lessen the demand for the use of FAA personnel, freeing them to perform their other duties with a resultant cost savings for the Federal Government.

As previously discussed, this amendment does not require the use of designated engineering representatives or the employment of, or contracting with, qualified personnel to perform the functions of those representatives. The election to use representatives is left entirely to the discretion of applicants. They may base their decisions on their particular circumstances. Thus, the expected impact of this amendment is so minimal that it does not warrant a full regulatory evaluation analysing the economic consequences of the regulation.

Effective Date

This amendment to the Federal Aviation Regulations involves matters relating to the agency's management, personnel, delegation of authority, and the process employed in fulfilling the FAA's statutory responsibilities. Accordingly, I find, under 5 U.S.C. 553, that notice and public procedure is unnecessary and that good cause exists for making it effective in less than 30 days after publication in the **Federal Register.**

By so doing, the benefits of the use of designated acoustical engineering representatives are made immediately available to those applicants for noise level approvals who elect to take advantage of the relief granted by the rule change. The FAA is currently implementing the necessary administrative matters to begin designating private individuals as acoustical engineering representatives as soon as practicable.

Adoption of the Amendment

Accordingly, Part 183 of the Federal Aviation Regulations (14 CFR Part 183) is amended, effective May 19, 1980, as follows:

1. By amending § 183.11 by amending paragraph (c) to read as follows:

§ 183.11 Selection.

* * * * *

(c)(1) The Chief of the Aircraft Engineering Division, or the Chief's designee, may select Designated Engineering Representatives from qualified persons who apply by a letter accompanied by a "Statement of Qualifications of Designated Engineering Representative."

(2) The Chief of the Aircraft Manufacturing Division, or the Chief's designee, may select Designated Manufacturing Inspection Representatives from qualified persons who apply by a letter accompanied by a "Statement of Qualifications of Designated Manufacturing Inspection Representative."

* * * * *

§ 183.29 [Amended]

2. By amending § 183.29 as follows:

a. By amending paragraphs (a) through (h) by deleting the word "he" wherever it appears and substituting for it the words "the representative."

b. By adding a new paragraph (i) to read as follows:

§ 183.29 Designated engineering representatives.

* * * * *

(i) An acoustical engineering representative may witness and approve aircraft noise certification tests and approve measured noise data and evaluated noise data analyses, within the limits prescribed by, and under the general supervision of, the Administrator, whenever the representative determines that the noise test, test data, and associated analyses are in conformity with the applicable regulations of this chapter. Those regulations include, where appropriate, the methodologies and any equivalencies previously approved by the Director, Environment and Energy, for that noise test series. No designated acoustical engineering representative may determine that a type design change is not an acoustical change, or approve equivalencies to prescribed noise procedures or standards.

(Secs. 313(a), 314, 601, 603, 608, and 609, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1355, 1421, 1428, and 1429); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

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), and, as discussed in the preamble, the expected impact of this amendment is so minimal that it does not warrant a full regulatory evaluation.

Issued in Washington, DC, on May 14, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-15231 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 380

[SPR-170; Amdt. 10]

Public Charters

AGENCY: Civil Aeronautics Board.

ACTION: Interpretative amendment.

SUMMARY: The CAB is amending its Public Charter rules to make clear that after a major change in a charter package, a charter operator must make all refunds required to be included in the operator-participant contract. The change is at the Board's own initiative.

DATES: Adopted: May 13, 1980. Effective: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: The Public Charter rule (14 CFR 380.32) requires a charter operator to describe, in the contract it offers to charter passengers, their rights to a refund in the event of a cancellation or major change in the charter program. The rule also states (14 CFR 380.33) that the operator must make all refunds *described in the contract* after a major change in a charter package. The Board intended that these rules would make the operator's duty to give refunds both a direct requirement of the rule and a contractual obligation.

It has come to the Board's attention, however, that these rules could be misconstrued. If the operator failed to put a refund obligation into the contract (which would be a violation of the rules), it might be argued, if a major

change occurred, that the participant had no refund right against the operator: none under the contract because mention of it was left out of the contract, and none under the rule because that only required the operator to make the refunds specified in the contract. To correct this unintended loophole, the rule (§ 380.33(e)) is being amended to make clear that a refusal to refund money will be a violation, by stating that an operator must make refunds "required to be described" in the contract.

The Board is also amending the notice requirement concerning refunds (§ 380.33(c)) to conform to this interpretation. The rule currently requires the operator to notify participants of any major change that occurs in a charter package, and of their rights to refunds. This amendment adds after the word "refunds" the words, "required to be described in the operator-participant contract." This will help to ensure that the participants know their rights, at the time when they must decide whether or not to accept or reject a change in the charter package.

This interpretation will take effect immediately. Since this is an interpretative and not a substantive rule, we find that notice and comment procedures are unnecessary and the rule may be made effective less than 30 days after publication.

Accordingly, in 14 CFR Part 380, *Public Charters*, paragraphs (c) and (e) of § 380.33 are amended to read as follows:

§ 380.33 Major changes in itinerary or price; refunds.

* * * * *

(c) The charter operator shall notify all participants of major changes, as required by the operator-participant contracts. This notification shall include the participants' rights to refunds required to be described in the operator-participant contract. The operator shall, if applicable, also notify the participants that the acceptance of a refund constitutes a waiver of their legal rights.

* * * * *

(e) The charter operator shall make all refunds required to be described in the operator-participant contract within the time limits set forth in paragraphs (k), (n), (r), and (s) of § 380.32, as applicable.

* * * * *

(Secs. 204, 401, 402, 411, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 92 Stat. 1710, 72 Stat. 757, 769, 92 Stat. 1731, 1732; 49 U.S.C. 1324, 1371, 1372, 1381, 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-15292 Filed 5-16-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 48-80]

Production or Disclosure of Material or Information; Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On October 12, 1979, the Department of Justice published in the **Federal Register** a proposal (44 FR 58921) to exempt a new system, the United States National Central Bureau Criminal Investigative Records System, JUSTICE/DAG-007, from the provisions of subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g) of the Privacy Act, 5 U.S.C. 552a. This exemption is proposed in those cases where a request for access to a case file is made prior to resolution of the case or during an ongoing investigation. It is needed to protect against compromise during the investigation and to protect the identity of confidential sources.

EFFECTIVE DATE: May 19, 1980.

ADDRESS: Administrative Counsel, Justice Management Division, Room 1214, Department of Justice, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: William J. Snider, (202) 633-3452.

SUPPLEMENTARY INFORMATION: Upon further review after publishing the proposed rule, it was decided that the acronym INTERPOL would be deleted from the system name to avoid misrepresentation or confusion as to the role of the Department of Justice United States National Central Bureau (USNCB). The system was republished in the Notice Section of the **Federal Register** on March 3, 1980 (45 FR 13847) to effect this and other changes and to clarify the roie of the USNCB. No comments were received on the revised and republished system notice nor on the proposed regulations which were published in the Proposed Rules Section the same day. Nevertheless, one clarification has been made in the rule. The authority cite has been revised to include 5 U.S.C. 552a(k)(5).

Therefore, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a(j)(2), (k)(2), and (k)(5), and delegated to me by Attorney General Order No. 793-98, the proposed regulations amended as described above are adopted and are set forth below.

Dated: May 8, 1980.

Kevin D. Rooney,

Assistant Attorney General for Administration.

28 CFR is amended in Part 16 by adding § 16.71 (c) and (d) to read as follows:

§ 16.71 Exemption of the Office of the Deputy Attorney General Systems.

* * * * *

(c) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2), and (3), (e)(4) (G) and (H), (e)(5) and (8), (f) and (g):

(1) The Criminal Investigative Records System (JUSTICE/DAG-007). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), and (k)(5).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From paragraph (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement.

(2) From paragraph (c)(4), (d), (e)(4) (G), and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From paragraph (e)(1) because information received in the course of an international criminal investigation may involve a violation of state or local law, and it is beneficial to maintain this information to provide investigative leads to state and local law enforcement agencies.

(4) From paragraph (e)(2) because collecting information from the subject of criminal investigations would thwart the investigation by placing the subject on notice.

(5) From paragraph (e)(3) because supplying an individual with a statement of the intended use of the requested information could compromise the existence of a confidential investigation, and may inhibit cooperation.

(6) From paragraph (e)(5) because the vast majority of these records come

from local criminal justice agencies and it is administratively impossible to ensure that the reords comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

(7) From paragraph (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

[FR Doc. 80-15262 Filed 5-16-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Transportation of Certain Cuban Nationals

AGENCY: Office of Foreign Assets Control, Department of the Treasury

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Cuban Assets Control Regulations. The purpose of the amendment is to add § 515.415, interpreting the applicability of the prohibitions of § 515.201 to transactions in connection with the transportation of certain Cuban nationals to the United States. The need for the amendment is to make it clear that all such transactions are prohibited by the regulations. The effect of the amendment is that interested members of the public will be on notice that such transactions are prohibited in the absence of a specific license issued by the Office of Foreign Assets Control.

EFFECTIVE DATE: May 15, 1980.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable.

The provisions of this interpretation only affect transactions in connection with transportation to the United States of Cuban nationals who do not hold an unexpired immigrant or non-immigrant visa or who are not returning residents of the United States. The interpretation does not affect ordinary tourist and family travel to Cuba under the general license in § 515.560.

31 CFR Part 515 is amended by the addition of § 515.415, as follows:

§ 515.415 Travel to Cuba; transportation of certain Cuban Nationals.

(a) The following transactions are prohibited by § 515.201 when in connection with the transportation of any Cuban national, except a Cuban national holding an unexpired immigrant or non-immigrant visa or a returning resident of the United States, from Cuba to the United States, unless otherwise licensed:

(1) Transactions incident to travel to, from, or within Cuba;

(2) The transportation to Cuba of a vessel or aircraft;

(3) The transportation into the United States of any vessel or aircraft which has been in Cuba since the effective date, regardless of registry;

(4) The provision of any services to a Cuban national, regardless of whether any consideration for such services is furnished by the Cuban national;

(5) The transportation or importation of baggage or other property of a Cuban national;

(6) The transfer of funds or other property to any person where such transfer involves the provision of services to a Cuban national or the transportation or importation of, or any transactions involving, property in which Cuba or any Cuban national has any interest, including baggage or other such property;

(7) Any other transaction such as payment of port fees and charges in Cuba and payment for fuel, meals, lodging; and

(8) The receipt or acceptance of any gratuity, grant, or support in the form of meals, lodging, fuel, payments of travel or maintenance expenses, or otherwise, in connection with travel to or from Cuba or travel or maintenance within Cuba.

(b) Transactions incident to the travel to the United States of Cuban nationals traveling without a visa issued by the Department of State are not authorized under the provisions of § 515.564.

(c) Transactions described in paragraph (a) of this section are not "transactions ordinarily incident to travel to and from Cuba" within the general license of § 515.560.

(Sec. 5, 40 Stat. 415, as amended, 50 U.S.C. App. 5; sec 620(a), 75 Stat. 445, 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR, Comp. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: May 15, 1980.

Stanley L. Sommerfield,

Director.

Approved:

Richard J. Davis,

Assistant Secretary.

[FR Doc. 80-15416 Filed 5-16-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) has determined that USS OHIO (SSBN-726), USS MICHIGAN (SSBN-727), and USS GEORGIA (SSBN-729) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval submarines; and (2) has authorized the use of exemptions allowed in 72 COLREGS' Rules 38(a), 38(b), and 38(g) by USS OHIO (SSBN-726), USS MICHIGAN (SSBN-727), and USS GEORGIA (SSBN-729). The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 15, 1980.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles Stanley PRENTACE, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia 22332, Telephone number (202) 325-9744.

SUPPLEMENTARY INFORMATION: This amendment to Part 706 provides notice that the Secretary of the Navy has certified that USS OHIO (SSBN-726), USS MICHIGAN (SSBN-727), and USS GEORGIA (SSBN-729) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c) regarding the arc of visibility and location of the stern light; Annex I, section 2(a)(i) regarding the height of the masthead light; Annex I, section 2(k) regarding the height and relative

positions of the anchor lights; and Annex I, section 3(b) regarding the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special function of the ship. The Secretary of the Navy has certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that the Secretary of the Navy has authorized the use by SSBN–726 class vessels of certain exemptions permitted by 72 COLREGS, Rule 38. Specifically, the use of the exemptions has been authorized as allowed in Rule 38(a), pertaining to lights with ranges and intensities prescribed in Rule 22; Rule 38(b), pertaining to lights with color specifications prescribed in Annex I, section 7, and Rule 38(g), pertaining to sound signal-appliances required by Annex III.

The Secretary of the Navy has determined that USS OHIO (SSNB–726), USS MICHIGAN (SSBN–727), and USS GEORGIA (SSBN–729) are members of the SSBN–726 class, are in compliance with the 1960 Rules of the Road, and their keels were laid prior to July 15, 1977.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to the public interest since it is based on technical findings that the placement of lights on these ships in a manner different from that prescribed herein will adversely affect the ships' ability to perform their military function. Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table One of § 706.2 is amended as follows to indicate certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), annex I
* * * * *		
U.S.S. Will Rogers	SSBN–659	* * *
U.S.S. Ohio	SSBN–726	3.70
U.S.S. Michigan	SSBN–727	3.70
U.S.S. Georgia	SSBN–729	3.70
* * * * *		

2. Table three of § 706.2 is amended as follows to indicate certification issued by the Secretary of the Navy:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Sidelights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Sidelights, distance inboard of ship's sides in meters; § 3(b), annex I	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in metors; § 2(K), annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(K), annex I
*	*	*	*	*	*	*	*	*
U.S.S. Will Rogers	SSBN–659	* * *	* * *	* * *	* * *	* * *	* * *	* * *
U.S.S. Ohio	SSBN–726	225°	112.5°	209°	5.3	9.0	3.8	4.0 below.
U.S.S. Michigan	SSBN–727	225°	112.5°	209°	5.3	9.0	3.8	4.0 below.
U.S.S. Georgia	SSBN–729	225°	112.5°	209°	5.3	9.0	3.8	4.0 below.
		*	*	*	*	*	*	

§ 706.3 [Amended]

3. Table One of § 706.3 is amended as follows to indicate exemptions authorized by the Secretary of the Navy:

Vessel or class	Lights with ranges in rule 22, 4 years; rule 38(a)	Lights with color specs in § 7, annex I, 4 years; rule 38(b)	Sound signal appliances in annex III, 9 years; rule 38(g)
* * * * *			
SSBN–640 Class	* * *	* * *	* * *
SSBN–726 Class	X	X	X
* * * * *			

(E.O. 11964 and 33 U.S.C. 1605)

Effective Date. The effective date of this Amendment will be April 15, 1980.

Dated: April 15, 1980.

Edward Hidalgo,

Secretary of the Navy.

[FR Doc. 80–15205 Filed 5–16–80; 8:45 am]

BILLING CODE 3810–71–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 79–119]

Reduction of Temporary Anchorage E, San Juan Harbor, P.R.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule reduces the size of Temporary Anchorage E, San Juan Harbor, Puerto Rico. The reduction is considered necessary due to the construction of mooring dolphins within the present anchorage area. Reducing the size of the Temporary Anchorage Area will ensure it is well removed from vessels utilizing the mooring dolphins.

EFFECTIVE DATE: This amendment is effective June 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ensign Rhae A. Giacoma, Office of Marine Environment and Systems (G–WLE/TP11) Room 1611, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593 (202) 426–1927.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Coast Guard published a proposed rule (45 FR 10812) concerning this amendment. Interested persons were given until April 1, 1980 to submit comments. No comments were received. The Coast Guard has determined that in accordance with the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034), this amendment is nonsignificant.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ensign Rhae A. Giacoma, Project

Manager, Office of Marine Environment and Systems and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by revising paragraph (a)(2) of § 110.240 to read as follows:

§ 110.240 San Juan Harbor, P.R.

(a) * * *

(2) *Temporary Anchorage E (general).* Beginning at a point which bears 262° T, 878 yards from Isla Grande Aero Beacon; thence along a line 75°47', 498 yards; thence along a line 134°49', 440 yards; thence along a line 224°49' to the northerly channel limit of Graving Dock Channel, and thence to the point of beginning.

* * * * *

(Sec. 7, 38 Stat. 1053, as amended (33 U.S.C. 471); sec 6(g)(1)(A), 80 Stat. 937 (49 U.S.C. 1655(g)(1)(A); 49 CFR 1.46(c)(1))

Dated: May 7, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-15297 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 110

[CGD 79-170]

Establishment of Special Anchorage Area, Duluth-Superior Harbor, Duluth, Minn.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard, at the request of the Park Point community club, Duluth, Minnesota, is amending the Anchorage Regulations by establishing a Special Anchorage Area adjacent to Park Point in Duluth-Superior Harbor, Duluth, Minnesota (Superior Bay). This area will be for the use of the general public. It is needed because of the large increase of pleasure craft utilizing this area. Establishment of the Special Anchorage Area will eliminate the necessity for displaying anchor lights on vessels of 65 feet or less while anchored within the area.

EFFECTIVE DATE: This amendment is effective on June 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ensign Rhae A. GIACOMA, Office of Marine Environment and Systems (G-WLE/TP11), Room 1611, U.S. Coast Guard Headquarters, 2100 Second St., S.W. Washington, D.C. 20593, (202) 426-1927.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Coast Guard published a proposed rule (45 FR 10813) concerning this amendment. Interested persons were given until April 1, 1980 to submit comments. No comments were received. The Coast Guard has determined that, in accordance with the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034), this amendment is nonsignificant.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ensign Rhae A. GIACOMA, Project Manager, Office of Marine Environment and Systems and Lieutenant J.W. SALTER, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by adding § 110.77a to read as follows:

§ 110.77a Duluth-Superior Harbor, Duluth, Minn.

The area adjacent to Park Point in Duluth-Superior Harbor within the following boundaries: beginning at latitude 46°45'19.3"N., longitude 92°04'43"W.; thence to latitude 46°45'11.7"N., longitude 92°05'01"W.; thence to latitude 46°44'21.2"N., longitude 92°04'15.7"W.; thence to latitude 46°44'29.4"N., longitude 92°03'57.5"W.; thence to the point of beginning.

(Sec.1, 28 Stat. 647, as amended, (33 U.S.C. 258); sec. 6(g)(1)(C) 80 Stat. 937, (49 U.S.C. 1655 (g)(1)(C)); 49 CFR 1.46 (c)(3)).

Dated May 7, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-15296 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 110

[CGD 79-118]

Establishment of Special Anchorage Area, Manatee River, Bradenton, Fla.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Special Anchorage Area on the Manatee River, Bradenton, Florida. With the establishment of this Special Anchorage Area, owners of small pleasure craft would be relieved of the requirement to carry and display anchor lights while at anchor. This area will provide space well removed from channels and fairways to accommodate anchoring of local and transit pleasure craft.

EFFECTIVE DATE: This amendment is effective on June 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ensign Rhae A. Giacoma, Office of Marine Environment and Systems (G-WLE/TP11), Room 1611, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593 (202) 426-1927.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Coast Guard published a proposed rule (45 FR 10813) concerning this amendment. Interested persons were given until April 1, 1980 to submit comments. No comments were received. The Coast Guard has determined that, in accordance with the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034), this amendment is nonsignificant.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ensign Rhae A. Giacoma, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by adding § 110.74a to read as follows:

§ 110.74a Manatee River, Bradenton, Florida.

The waters of the Manatee River enclosed by a line beginning at latitude 27°31'18.6" N. longitude 82°36'49.2" W.; thence westerly to latitude 27°31'21" N., longitude 82°37'7.2" W.; thence northwesterly to latitude 27°31'22.2" N., longitude 82°37'8.4" W.; thence northeasterly to latitude 27°31'25.8" N., longitude 82°37'00" W.; thence easterly to latitude 27°31'24" N., longitude 82°36'44.4" W.; thence to the point of beginning.

(Sec. 1, 30 Stat. 98 as amended, (33 U.S.C. 180); sec. 6(g)(1)(B), 80 Stat 937; (49 U.S.C. 1655(g)(1)(B)); 49 CFR 1.46(c)(2))

Dated: May 7, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Environmental Systems.

[FR Doc. 80-15310 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 110

[CGD 79-169]

Establishment of Special Anchorage Area, Cedar Point, Sandusky, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Special Anchorage Area in Sandusky Bay (Lake Erie) adjacent to Cedar Point, Sandusky, Ohio. Due to the increase of

pleasure craft utilizing the waters of Sandusky Bay, establishment of a Special Anchorage Area is warranted. The Special Anchorage would provide a safe area, protected from transiting vessels by a break wall, where small craft may anchor without having to display anchor lights.

EFFECTIVE DATE: This amendment is effective on June 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ensign Rhae A. Giacoma, Office of Marine Environment and Systems (G-WLE/TP11), Room 1611, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593 (202) 426-1927.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Coast Guard published a proposed rule (45 FR 10814) concerning this amendment. Interested persons were given until April 1, 1980 to submit comments. One comment was received in favor of the anchorage area. Additionally, the coordinates of the anchorage area as stated in the proposal differed by several seconds from the coordinates of the breakwall serving as one of the anchorage's boundaries. The final rule has been revised to rectify this discrepancy. The Coast Guard has determined that, in accordance with the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034), this amendment is nonsignificant.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ensign Rhae A. Giacoma, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by adding § 110.83a to read as follows:

§ 110.83a Cedar Point, Sandusky, Ohio.

The water area enclosed by the break wall beginning at latitude 41°28'13' "N., longitude 82°40'39"w; thence along the break wall to latitude 41°28'21"N., longitude 82°40'53"W.; thence along a straight line southwesterly to latitude 41°28'20"N., longitude 82°40'55"W.; thence along the break wall to latitude 41°28'33"N., longitude 82°40'58"W.; thence along the shoreline to the point of beginning.

(Sec. 1, 28 Stat. 647, as amended, (33 U.S.C. 258); sec. 6(g)(1)(C) 80 Stat. 937 (49 U.S.C. 1655 (g)(1)(C)); 49 CFR 1.46 (c) (3).)

Dated: May 7, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-15309 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 110

[CGD 79-098]

Enlargement of Special Anchorage Area, Niagara River, Youngstown, N.Y.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule expands and redefines the Special Anchorage Area in the Niagara River, Youngstown, New York. An increase in the number of vessels desiring to anchor in the area necessitates expansion of this anchorage. Expanding the anchorage will provide additional space in which vessels of not more than 65 feet in length may anchor without having to display anchor lights. Also, it is believed that a redefinition of the existing Special Anchorage Area by means of using latitude and longitude coordinates would clarify the location.

EFFECTIVE DATE: This amendment is effective on June 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ensign Rhae A. Giacoma, Office of Marine Environment and Systems (G-WLE/TP11), Room 1611, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, D.C. 20593 (202) 426-1927.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Coast Guard published a proposed rule (45 FR 10810) concerning this amendment. Interested persons were given until April 1, 1980 to submit comments. No comments were received. The Coast Guard has determined that, in accordance with the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034), this amendment is nonsignificant.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Ensign Rhae A. Giacoma, Project manager, Office of Marine Environment and Systems and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by revising § 110.85 to read as follows:

§ 110.85 Niagara River, Youngstown, NY.

(a) *Area 1.* Beginning at a point at the intersection of the south line of Swain Street extended with the east shoreline of the Niagara River at latitude 43°14'33"N., longitude 79°03'7.5"W.; thence westerly to a point at latitude 43°14'33"N., longitude 79°03'15"W.; thence northerly to a point at latitude 43°14'54.5" N., longitude 79°03'14" W.; thence southeasterly to a point at latitude 43°14'52.3"N., longitude 79°03'09"W.; thence southerly to a point at latitude 43°14'51.4"N., longitude 79°03'09"W.; thence easterly to a point at latitude 43°14'51.5"N., longitude 79°03'6.5"W.; thence along the shoreline to the point of beginning.

(b) *Area 2.* Beginning at a point at latitude 43°14'53.2"N., longitude 79°03'08"W.; thence northwesterly to a point at latitude 43°14'56"N., longitude 79°03'14"W.; thence northerly to a point at latitude 43°15'07"N., longitude 79°03'13"W.; thence northwesterly to a point at latitude 43°15'9.5"N., longitude 79°03'13.5"W.; thence southeasterly to a point at latitude 43°15'7.5"N., longitude 79°03'08"W.; thence southerly to the point of beginning.

(c) *Area 3.* Beginning at a point at latitude 43°15'7.9"N., longitude 79°03'03"W.; thence westerly to a point at latitude 43°15'7.9"N., longitude 79°03'04"W.; thence northwesterly to a point at latitude 43°15'11.8"N., longitude 79°03'14"W.; thence northerly to a point at latitude 43°15'14"N., longitude 79°03'14"W.; thence northwesterly to a point at latitude 43°15'22"N., longitude 79°03'21.5"W.; thence northeasterly to a point at latitude 43°15'25.5"N., longitude 79°03'13"W.; thence along the shoreline to the point of beginning.

(Sec 1. 28 Stat. 647 as amended, (33 U.S.C. 258), sec. 6(g)(1)(C), 80 Stat. 937 (49 U.S.C. 1655 (g)(1)(C)); 49 CFR 1.46 (c)(3).)

Dated: May 7, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine, Environment and Systems.

[FR Doc. 80-15311 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1494-3]

Approval and Promulgation of Implementation Plans—Massachusetts; Receipt of Implementation Plan Revision: New Source Review Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of submittal to satisfy condition of plan approval.

SUMMARY: This notice is to announce the receipt of State Implementation Plan (SIP) revision for Massachusetts. The revision was submitted on April 17, 1980 to satisfy a condition of EPA's recent approval of Massachusetts' Attainment Plan SIP revisions, which were required under Part D of the Clean Air Act. Massachusetts' submittal amends the new source review regulation by adding a provision to require that emissions from new or modified sources not interfere with reasonable further progress towards attainment of National Ambient Air Quality Standards (NAAQS).

ADDRESSES: Copies of the Massachusetts submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; and Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control, Room 320, 600 Washington Street, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Linda Murphy, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223–5609.

SUPPLEMENTARY INFORMATION: EPA published a final rulemaking notice in the **Federal Register** on January 10, 1980 (45 FR 2036), conditionally approving Massachusetts' Attainment Plan SIP revisions submitted on May 3, 1979. These SIP revisions were found to be in substantial compliance with the requirements of Part D of the Clean Air Act, since they implement measures for controlling new sources of air pollution in non-attainment areas. However, one of the conditions for approval of the Attainment Plan was that by March 1, 1980, the state must submit a regulation governing construction and operation of major new and modified sources to satisfy Section 173(1)(A) of the Clean Air Act, which requires compliance with reasonable further progress towards attainment of the NAAQS as specified in the SIP.

Massachusetts has submitted a SIP revision amending the new source review regulation to include this provision. EPA is presently reviewing the state's submittal to determine compliance with Clean Air Act requirements, and intends to publish a final rulemaking notice in the **Federal Register** by June 15, 1980. The conditional approval of the SIP will be continued until EPA's final action is published in the **Federal Register.**

Dated: May 6, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-15266 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

---

40 CFR Part 408

[FRL 1495-7]

Effluent Guidelines and Standards; Canned and Preserved Seafood Processing Point Source Category; Suspension of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Suspension of regulations.

SUMMARY: In response to a petition for suspension, the United States Environmental Protection Agency is today temporarily suspending the applicability of effluent guidelines regulations for Seafood processing facilities located in five areas of Alaska. Specifically, EPA has suspended the applicability of regulations for "non-remote" facilities located in Anchorage, Cordova, Juneau, Ketchikan and Petersburg pending detailed review of a petition for modification of these regulations. During the period of the suspension, these areas will be subject to the promulgated regulations for "remote areas."

EFFECTIVE DATE: May 19, 1980.

FOR FURTHER INFORMATION CONTACT: Calvin J. Dysinger, Effluent Guidelines Division, 401 M St., S.W., Room 932, WSME (WH–552), Washington, D.C. 20460, (202) 426–2707.

SUPPLEMENTARY INFORMATION:

Petition for Suspension and Preliminary Petition for Modification

A portion of the Alaskan seafood industry has submitted a petition to the Agency requesting that the applicability of effluent guidelines regulations based on the application of the "best practicable control technology currently available" (BPT) be suspended for the 1980 salmon processing season (May 15 through Oct. 15) for facilities located in the following cities originally classified as "non-remote" by EPA: Anchorage, Cordova, Juneau, Ketchikan and Petersburg. Processing plants in these cities have not installed the wastewater solids screening equipment required by the BPT regulations. The industry has submitted a preliminary petition for modification of these regulations, a detailed complete petition will be submitted by June 16, 1980.

Petitioners do not seek suspension of the regulations for Kodiak. Further, petitioners have agreed to comply with the regulations for remote Alaska processors during the suspension period. Therefore, the effect of granting the suspension petition is to designate grinding as BPT for the facilities in Anchorage, Cordova, Juneau, Ketchikan and Petersburg, rather than the current screening technology.

The petitioners rationale supporting the request for a one-season suspension is two-fold. First, the petitioners have submitted new information showing that they anticipate a record salmon catch for the 1980 season. The industry is concerned that the processing capacity of all facilities be available to handle the exceptionally large amount of fish. If the facilities in the above-mentioned areas were unable to operate due to non-compliance with regulations, the result would be an incomplete salmon harvest and a significant negative impact on the Alaskan economy.

Second, the petitioners argue that the cost of the BPT limitations in the affected cities in Alaska is out of proportion to the effluent reduction benefits. The screening and barging operations which would be used would not result in removal of any waste from the receiving water but would only affect its placement.

Response To Petition for Suspension

The Agency concurs with the petitioners that the applicability of the BPT regulations to facilities located in Anchorage, Cordova, Juneau, Ketchikan and Petersburg should be suspended for the 1980 salmon processing season. EPA reaches this conclusion on the basis of petitioners preliminary Petition for Modification and Petition for Suspension of the regulations. In particular, EPA is relying on the new information on the economic impact of the existing BPT regulations and the unique situation in the Alaska seafood industry. Under the existing BPT regulations in that industry, effluent reduction benefits are highly questionable; indeed, the result proposed by the industry may in effect result in the same degree of effluent reduction at much lower cost. Temporary suspension of the BPT requirements for these "nonremote" areas will provide time for the Agency to adequately consider all information relevant to the costs and effluent reduction benefits of these regulations, in addition to providing substantial economic relief to the Alaskan industry. Information currently available indicates that serious environmental

damage is not likely to result from the suspension of these regulations.

Therefore, the applicability of the BPT seafood processing regulations for Alaskan facilities is suspended as follows: In 40 CFR Part 408, §§ 408.40, 408.60, 408.90, 408.162, 408.165, 408.172, 408.175, 408.202, 408.205, 408.292, 408.295, 408.312, and 408.315 the phrase "* * * population or processing centers including but not limited to Anchorage, Cordova, Juneau, Ketchikan, Kodiak, and Petersburg * * *" does not apply to Anchorage, Cordova, Juneau, Ketchikan and Petersburg during the 1980 salmon processing season. The regulations applicable during this period are those promulgated for "remote" facilities, i.e., grinding of solids prior to discharge. The "non-remote" regulations above remain in effect for the city of Kodiak. This suspension is effective immediately. The suspension will be in effect untl October 15, 1980, by which time the Agency will respond to the complete petition for modification.

Effective Date

The suspension to 40 CFR Part 408 is effective immediately. Ordinarily, EPA would propose suspensions of this type for public comment and allow 30 days before making a final rule effective. However, because the 1980 salmon processing season is imminent, EPA has decided that good cause exists to promulgate this final rule without public comment and to make the rule immediately effective.

Schedule for Petition for Modification and Response

Petitioners have agreed to supplement the preliminary petition for modification with a complete petition by June 16, 1980. EPA will review the complete petition and make any requests for clarification or additional data by July 15, 1980. Any additional submissions in response to such requests shall be made by the petitioners no later than August 15, 1980. EPA's final response to the petition shall be completed by October 15, 1980.

EPA will provide an opportunity for public comment on this complete petition. The petition for suspension and supporting information received to date are contained in the Agency's Administrative record. These documents are available for public inspection at Room 932 East Tower, WSMW, 401 M St. SW., Washington, D.C.

Dated: May 13, 1980.

Douglas M. Costle,

Administrator.

Subpart D—Non-Remote Alaskan Crab Meat Processing Subcategory

§ 408.40 [Suspended]

1. In § 408.40, the applicability of the subpart to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart F—Non-Remote Alaskan Whole Crab and Crab Section Processing Subcategory

§ 408.60 [Suspended]

2. In § 408.60, the applicability of the subpart to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart I—Non-Remote Alaskan Shrimp Processing Subcategory

§ 408.90 [Suspended]

3. In § 408.90, the applicability of the subpart to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart P—Alaskan Hand-Butchered Salmon Processing Subcategory

§ 408.162(b)(1) [Suspended]

4. In § 408.162(b)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

§ 408.165(a)(1) [Suspended]

5. In § 408.165(a)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart Q—Alaskan Mechanized Salmon Processing Subcategory

§ 408.172(b)(1) [Suspended]

6. In § 408.172(b)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

§ 408.175(a)(1) [Suspended]

7. In § 408.175(a)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart T—Alaskan Bottom Fish Processing Subcategory

§ 408.202(b)(1) [Suspended]

8. In § 408.202(b)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

§ 408.205(a)(1) [Suspended]

9. In § 408.205(a)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart AC—Alaskan Scallops Processing Subcategory

§ 408.292(b)(1) [Suspended]

10. In § 408.292(b)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

§ 408.295(a)(1) [Suspended]

11. In § 408.295(a)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

Subpart AE—Alaskan Herring Fillet Processing Subcategory

§ 408.312(b)(1) [Suspended]

12. In § 408.312(b)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

§ 408.315(a)(1) [Suspended]

13. In § 408.315(a)(1), the applicability of the section to Anchorage, Cordova, Juneau, Ketchikan and Petersburg is suspended until October 15, 1980.

[FR Doc. 80-15290 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

---

40 CFR Part 775

[OPTS-62007; FRL 1494-5]

Storage and Disposal of Waste Material; Prohibition of Disposal of Tetrachlorodibenzo-P-Dioxin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 11, 1980, EPA published in the **Federal Register** at 44 FR 15592 an immediately effective proposed rule which prohibited the Vertac Chemical Company (Vertac) of Memphis, Tennessee, from disposing of certain wastes containing 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) at its Jacksonville, Arkansas facility and required other persons intending to dispose of TCDD-containing wastes to notify the Agency sixty days in advance of such disposal. The Agency issued the rule under section 6(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(a), and declared it immediately effective under section 6(d) of TSCA.

EPA now promulgates as final the proposed rule with certain

modifications. The final rule allows Vertac to dispose of certain wastes which are generated on or after the effective date of the rule in accordance with certain criteria.

EPA also promulgates as final the provisions of the proposed rule which prohibit the disposal of TCDD-contaminated wastes located at Vertac's Jacksonville, Arkansas facility which were generated before the promulgation of this rule. The final rule also requires all persons who intend to dispose of any wastes resulting from the production of 2,4,5-TCP (2,4,5-Trichlorophenol) or its pesticide derivatives or from production of other substances on equipment which was previously used for production of 2,4,5-TCP or its pesticide derivatives to notify EPA of such intent at least sixty days before the disposal.

DATE: This final rule takes effect on the date it is signed by the Administrator of EPA (May 12, 1980).

FOR FURTHER INFORMATION CONTACT: Gordon R. Olson, Office of Pesticides and Toxic Substances (TS–794), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202–755–1260).

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

EPA issued an immediately effective proposed rule, published in the March 11, 1980 issue of the **Federal Register.** (45 FR 15592), which prohibited Vertac Chemical Corporation [1] from disposing of specific chemical wastes contaminated with 2,3,7,8-TCDD located at its Jacksonville, Arkansas facility. The rule also required any person to notify EPA at least sixty days before he intends to dispose of any TCDD containing wastes resulting from the production of 2,4,5-TCP or its pesticide derivatives, or substances produced on equipment which was previously used for production of 2,4,5-TCP or its pesticide derivatives.

EPA issued this rule under the authority of section 6(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(a), and declared it immediately effective under section 6(d) of TSCA. For a discussion of this immediately effective proposed rule and the legal authority under which it was issued, see the Supplementary Information section of the Preamble to the immediately effective rule published in the **Federal Register** of March 11, 1980 (45 FR 15593).

[1] The proposed rule refers to the company by its former name, Vertac, Inc.

If the Administrator declares a rule immediately effective section 6(d)(2)(B) requires the Administrator to commence a hearing within 5 days from the date of a request for it unless the Administrator and the person requesting the hearing agree upon a later date. The subsection also requires the Administrator to promulgate or revoke the proposed rule within 10 days of the conclusion of the hearing.

B. Informal Hearing

EPA originally established a sixty day comment period on this immediately effective proposed rule, after which it intended to hold an informal hearing pursuant to section 6(c) (2) and (3) and 40 CFR Part 750. On Friday, April 11, 1980, EPA received a written request from Vertac to commence an expedited hearing pursuant to section 6(d)(2)(B) of TSCA. On April 15, 1980, EPA informed Vertac and other interested persons who could be immediately identified that EPA was commencing a hearing in accordance with Vertac's request at 9:00 am, Wednesday, April 16, 1980, and the EPA would begin to receive testimony from interested persons. The hearing began as scheduled and was conducted in accordance with Procedures for Rulemaking under Section 6 of TSCA, 40 CFR Part 750, Subpart A, with certain abbreviated time requirements established for purposes of expediting the hearing. EPA conducted the April 16th session as a legislative hearing pursuant to 40 CFR, Section 750.7.

To ensure that interested parties were not denied the right to participate in the hearing, EPA scheduled an additional session of the legislative hearing on May 1, 1980, and issued a Notice of the expedited hearing and shortened comment period in the **Federal Register** of April 18, 1980 (45 FR 26386).

Vertac participated in the first session of the public hearing. Vertac later notified EPA that it would not be able to attend the May 1 session. Accordingly, EPA announced that it would hold open the hearing record to afford Vertac the opportunity to present additional testimony and to cross examine, if appropriate. No persons participated in this May 1 session.

On May 2, 1980, Vertac notified EPA notified EPA that it did not intend to present further testimony and did not wish to cross-examine witnesses. Accordingly, EPA formally concluded the public hearing on May 2, 1980. In addition to the testimony of Vertac, EPA has received written comments on the immediately effective proposed rule from four persons. A copy of the transcript of the hearing and these comments are contained in the public record for this rulemaking.

C. Vertac's Facility

Vertac purchased the Jacksonville, Arkansas facility from Hercules, Inc., which for many years had been manufacturing chemicals and had generated large amounts of chemical wastes in such a manner that a serious public health hazard developed over time. In response to this hazard the State of Arkansas issued an Administrative Order on June 15, 1979, requiring Vertac to clean up the waste materials at the Jacksonville facility.

A portion of the wastes located at the Jacksonville facility contain high concentrations of 2,3,7,8-TCDD produced as a byproduct of the manufacture of the pesticides 2,4,5-T (Trichlorophenoxyacetic Acid) and Silvex. The Jacksonville facility no longer manufactures these pesticides. In partial compliance with the Arkansas Administrative Order, Vertac placed these wastes into 85 gallon plastic-lined and 55 gallon unlined drums and relocated them to a storage area consisting of a diked concrete slab covered by a fixed metal roof. This method of storage protects the drums from corrosion caused by exposure to weather. Moreover, in accordance with the Arkansas order, Vertac now closely monitors the drums for possible leakage. Vertac now has approximately 2,745 drums of wastes contaminated with highly concentrated amounts of TCDD—up to 111 parts per million (ppm) based on sampling by EPA—stored in a manner that is relatively safe for the immediate future.

In addition, Vertac has in storage approximately 3,200 drums of TCDD-containing wastes resulting from production of 2,4-D[2,4-Dichlorophenoxyacetic Acid] since September 1979.[2] These wastes contain TCDD because the equipment used to produce 2,4-D had been used previously to produce 2,4,5-T, and the equipment remained contaminated with TCDD after production shifted from 2,4,5-T to 2,4-D.

EPA had received indications that Vertac was preparing to ship the TCDD waste to landfills. The Agency determined, however, that the landfill disposal alternative presents a considerable risk when compared to the

[2] The proposed rule only noted 700 durms of waste from 2,4-D production. At the April 16, 1980, hearing session, Vertac informed EPA that it had approximately 2,500 additional drums generated from such production [April 16, 1980, Hearing Transcript, page 111]. Further reference to the Transcript of the April 16, 1980, session will be cited [TR. page #].

relatively safe, easily monitorable condition at Jacksonville. In a landfill, the danger of leaking drums is always present, but the technical problems of monitoring, cleaning up or preventing additional movement of the contents are extremely complicated. Remedy may be impracticable in many cases. This sharply contrasts with the relatively simple remedial methods that Vertac could use at Jacksonville to contain the wastes and prevent injuries to public health.

EPA issued the immediately effective proposed rule to prohibit Vertac from disposing of both types of wastes on the grounds that the removal of these wastes from the Jacksonville facility for disposal presented unreasonable risks.

D. Vertac's Testimony

Vertac, the sole participant in the public hearing, testified principally about issues concerning the wastes from the production of 2,4-D,[3] and stated, in essence, that space for the storage of any additional 2,4-D wastes is so limited that the Jacksonville plant would close down if Vertac could not ship the wastes from the continuing production of 2,4-D off-site for disposal.[4]

Vertac said that the current rates of production of 2,4-D are generating approximately five hundred to seven hundred drums of wastes per month [T.R. 112].

Vertac testified that existing waste drums are stored at three sites on the facility. First, the 2,745 drums resulting from 2,4,5-T production are located on a specially constructed diked, roofed, concrete pad mandated by the State of Arkansas. Vertac testified verbally and by illustration that little open space remained on this pad [T.R. 39–55, passim].

Second, seven hundred drums containing 2,4-D wastes are now located in a warehouse that formerly stored formulated finished products [T.R. 108]. Vertac testified that the building contained no additional available storage space [T.R. 154].

Finally, the 2,500 additional 2,4-D drums are stored on a concrete loading platform behind the plant facility [T.R. 112]. Vertac testified that the drums are stacked tightly, leaving little room for inspection of and access to leaking drums [T.R. 146]. With the exception of a 20,000 gallon storage tank which Vertac characterized as defective, Vertac testified that it has no other available sites for storage.

Vertac also stated that there are no other concrete slab areas on the operating site. Much of the site consists of hillsides or open ground that drain into a creek. Vertac stated that, in fact, the concrete pad mandated by the Arkansas order was constructed because there are no other places to store the wastes [T.R. 162]. Vertac further testified that when it could not store additional wastes at Jacksonville, it would be forced to close the plant. The following testimony occurred between Messrs. Allan Gates, Vertac's Counsel, and Mr. Kenneth Howard, Technical Manager of the Jacksonville plant [T.R. 111–112]:

Mr. Gates: And is it rapidly approaching the point where the plant's just going to have to shut down, period, because it cannot accumulate any more waste safely and soundly?

Mr. Howard: There's only so much space that you can accumulate something like this and do it on a safe and monitor it type of basis.

We will have to shut the plant down.

Mr. Gates: Do you feel that the plant is close to that point right now?

Mr. Howard: We've been worried to death that we were close to that point a month ago.

Vertac testified that it had intended to find a method of disposal for all of the drums [T.R. 73], and that they retained in storage both the highly contaminated 2,4,5-T wastes and the 2,4-D wastes strictly because of regulatory concerns.

Vertac also presented testimony on the costs of storage and the degree of TCDD contamination of the 2,4-D wastes. Vertac estimated that the cost of storing the 2,4-D wastes in compliance with the rule would be approximately $150,000 annually [T.R. 164] (principally for purchasing replacement drums and employee costs), but indicated that additional costs may be incurred by the necessity to comply with regulations of the Occupational Safety and Health Administration [T.R. 47]. Vertac stated that these costs were significant [T.R. 169], but did not aver that the costs of storage themselves would lead to plant closure. Vertac expressed concern that the safety of workers inspecting for leaking drums might be jeopardized because the 2,500 drums on the loading platform are packed so tightly that it is difficult to reach leaking drums for repair purposes. Further, Vertac indicated there was a danger of exploding drums [T.R. 150–152].

Vertac also presented testimony that TCDD contamination in future 2,4-D process wastes was likely to be slight. The original TCDD contamination resulted from imperfect detoxification of the 2,4,5-T production equipment before it was transferred to 2,4-D production [T.R. 100]. Vertac testified that trace residues of 2,4,5-T remaining in the equipment are extracted during ongoing 2,4-D processing, thereby reducing the TCDD contamination. Vertac presented a calculation which demonstrated that, after ten process cycles, approximately 99.999+ percent of the original TCDD contamination can be removed from the process stream. This calculation assumed a 75 percent extraction efficiency, which Vertac claims is a conservative estimate [T.R. 99–103].

Vertac also indicated that the actual level of contamination of the 2,4-D wastes by TCDD deposits remaining in the production equipment depended on the quantity of TCDD residue which remained in the equipment after cessation of 2,4,5-T production. Vertac testified that it analyzed three "grab" samples taken on a "strictly random basis" from three of the 700 drums of wastes resulting from the initial production of 2,4-D on the contaminated equipment and found TCDD levels of approximately twenty parts per billion (ppb) [T.R. 107]. With regard to the 2,500 drums of 2,4-D wastes from subsequent production of 2,4-D on the same equipment, Vertac stated that they did not have any analytic results representative enough to "draw any lines" with regard to TCDD contamination between the 2,500 drums and the first 700 drums of 2,4-D wastes [T.R. 122].

II. Description of the Rule

This final rule prohibits Vertac Chemical Company (Vertac) from disposing of wastes containing TCDD produced before the date of the rule from its Jacksonville, Arkansas facility, unless such wastes are shown to contain no detectable TCDD using an EPA-approved methodology.

As provided in section 775.6(b), if the samples contain no detectable TCDD, then Vertac may dispose of the waste associated with the batch sampled and any other batches produced afterwards so long as the equipment did not, in the interim, return to production of 2,4,5-TCP or its pesticide derivatives.

The final rule, in contrast to the proposed rule, allows Vertac to dispose of wastes produced after the effective date of this rule on equipment which had produced 2,4,5-T at disposal sites which meet certain criteria. These criteria, contained in 40 CFR 761.41(b),

[3] Vertac also outlined for the record its general objections to the rule. EPA responded in general to those objections. [T.R. 11–29 passim].

[4] In its testimony, Vertac also requested that EPA consider the issues related to the 2,4-D wastes on a more expedited basis than the remaining issues [T.R. 34]. EPA agreed to consider the request [T.R. 137]. EPA has decided that, as a practical matter, proceeding on a bifurcated basis would increase the already substantial task of taking final Agency action of the entire proposed rule within ten days after concluding the public hearing.

minimize the migration of material placed in the landfill, provide for floodplain protection, lessen the potential for fire danger, limit erosion, and require leachate collection and treatment systems.

If Vertac provides testing data which confirms that the wastes generated from any production batch after the effective date of this rule contain no detectable TCDD, then, as provided by section 775.6(b), this rule no longer governs the disposal of the wastes. If, on the other hand, test results indicate the presence of TCDD, EPA will take action as is necessary to protect public health.

The rule also requires other persons to notify EPA of their intent to dispose of wastes from the production of 2,4,5–TCP or its pesticide derivatives or of wastes generated on equipment that had previously been used to produce 2,4,5–TCP or its pesticide derivatives. The rule requires that such notification be made 60 days in advance of disposal, providing the Agency with specific information which will allow EPA to determine the magnitude of risk on specific cases. As provided by section 775.6(b), if such wastes contain no detectable TCDD, then the notification requirement of section 775.4(b) shall not apply.

The rule lists the penalties for non-compliance and presents certain exclusions to the 60 day notification requirements.

III. Findings

EPA finds that the disposal of the approximately 2,745 drums of 2,4,5–T wastes located at Jacksonville, presents an unreasonable risk of injury to human health. EPA also finds that disposal of the TCDD contaminated wastes generated by production of 2,4–D at Jacksonville before the effective date of this final rule presents an unreasonable risk. The Agency, therefore, promulgates a final rule to continue in effect the restrictions on disposal of these wastes. EPA has determined that disposal of 2,4–D wastes at Jacksonville after the effective date of this final rule will not present an unreasonable risk if disposal occurs in accordance with the restrictions imposed in the rule.

Finally, EPA finds that the disposal by any person of any wastes from the production of 2,4,5–Trichlorophenol or its pesticide derivatives or from production of other substances on equipment that was previously used for production of 2,4,5–Trichlorophenol or its pesticide derivatives without notification to EPA at least sixty days in advance of such disposal presents an unreasonable risk.

In reaching these decisions, EPA applied the principles for determining unreasonable risk that are set forth in the statutory language and the legislative history of TSCA. Determining unreasonable risk involves an administrative judgement which is reached by balancing the probability that harm will occur and the magnitude and severity of that harm against the adverse effects on society of any proposed regulatory action. Thus, the showing of the existence of potential harm does not, itself, constitute a finding of unreasonable risk. If the economic or other adverse impact on society of regulating the harm outweighs the risk of harm which the regulation is designed to prevent, EPA would not find such risk unreasonable.

The rationale for these findings of unreasonable risk are discussed below. In the preamble to the immediately effective proposed rule, at 45 FR 15994–6, EPA set forth its tentative findings required by section 6(a) of TSCA. Based on the proposed findings, the testimony at the hearing, and the entire rulemaking record designated below, EPA hereby sets forth its final findings.

A. Toxicological Effects of TCDD on Human Health

EPA adopts as its final finding the statement on human toxicological effects contained in the preamble to the immediately effective proposed rule at 45 FR 15994–5. In the proposed finding EPA determined that exposure to TCDD can result in adverse effects to human beings. The Agency relied on laboratory animal studies showing that statistically significant fetotoxic, teratogenic, and carcinogenic effects occurred at extremely low dietary levels.

The Agency concluded that there is no level of exposure at which the Agency could be confident that these adverse effects would not occur. One of the comments received on the proposed rule objected to this conclusion in two major respects. First, the comment claimed that a laboratory animal study on which EPA principally relied does not support the Agency's conclusion that there was no level of exposure at which adverse carcinogenic effects would not occur. The comment stated that the study showed a carcinogenic response at 0.1 micrograms of TCDD/kg/day, but no carcinogenic response at the intermediate dose level of 0.01 micrograms/kg/day and that the lower dose level of 0.001 micrograms/kg/day did not cause any effects of toxicologic significance. Second, the comment stated that the reproductive effects study on which EPA relies showed no reproductive effects associated with exposure to the lower dose level of 0.001 micrograms/kg/day over the multiple generations of the study. Therefore, the comment claims, a no adverse effect level has been demonstrated for TCDD reproductive toxicity.

1. *Cancer effects.* The analysis of the cancer study suggested by this comment is fundamentally different from the Agency's cancer risk assessment policy. EPA does not accept the position that failure to detect cancer at lower doses in laboratory animal studies establishes a "no effect level" for cancer risk, but has adopted the no-threshold concept for cancer induction. According to this concept, any exposure to a carcinogen, however small, will confer some risk of cancer on the exposed population.

The Agency's assessment of the carcinogenic risk is founded on principles developed and followed by EPA as well as other federal regulatory agencies and research institutions charged with measuring the risks associated with toxic chemicals in the environment. The Agency analyzes carcinogenic risks in accordance with its "Interim Guideline for Carcinogen Risk Assessment" (Interim Guideline).[5] The policies described in the Interim Guideline are consistent with a recent report of the Interagency Regulatory Liaison Group (IRLG) entitled "Scientific Basis for Identification of Potential Carcinogens and Estimation of Risks" (IRLG Report).[6] The IRLG report reflects the consensus of scientists and policymakers of four major federal regulatory agencies, including EPA, which regulate carcinogenic substances as well as senior scientists from two federal agencies involved in cancer research.

Even the effects noted at the intermediate dose level of the study in question provide substantial evidence that TCDD is a human carcinogen. At the intermediate dose levels there did occur statistically significant incidences of hepatocellular neoplastic nodules, a type of tumor which has been demonstrated to have the capacity to progress in time into liver cancer.

According to the Interim Guideline, the best evidence that a chemical substance is a human carcinogen comes from a combination of epidemiological studies on humans and experimental animal data. Substantial evidence is

[5] U.S. Environmental Protection Agency. Interim Procedures and Guidelines for Health Risk and Economic Impact Assessments of Suspected Carcinogens. 41 F.R. 21402 (May 25, 1976).

[6] Work Group on Risk Assessment of the Interagency Regulatory Liaison Group (IRLG) 1979. Scientific Bases for Identification of Potential Carcinogens and Estimation of Risks. 44 F.R. 39858–39879 (July 6, 1979).

provided by animal tests which demonstrate that the substance induces in one or more animal species malignant tumors or benign tumors, which are generally recognized as precursors of malignant tumors. Suggestive evidence of a potential human cancer risk includes the induction in laboratory animals of non-life shortening benign tumors which are generally considered to progress to malignancy. According to the IRLG report, few, if any, benign tumor types are presently known to be incapable of progressing to malignancy.

2. Reproductive Effects. With respect to the reproductive effects study, the Dow chemical Company raises an issue that has been disputed in the Agency's proceedings under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136, et seq., to cancel the uses of the pesticides 2,4,5-T and Silvex. The Agency has noted that despite consistent undisputed fetotoxic and teratogenic effects at higher doses, the existence of somewhat sporadic results at the lowest dose tested in the rodent reproductive effects study has given rise to different interpretations of whether a no adverse effect level can be determined in some rodent test systems. For the purpose of this rulemaking, EPA's approach is to adopt a conservative position that interprets the results as indicating that pregnant animals respond adversely to a TCDD exposure which is relatively close to the minimum level which the study is able to detect.[7]

However, notwithstanding any controversy that exists in the FIFRA proceeding, for the purposes of this rule under section 6 of TSCA, the Agency finds that it could not confidently state that a no adverse effect level has been found for reproductive effects.

B. Magnitude of Exposure of Human Beings to TCDD

EPA adopts for the final rule the findings on exposure to TCDD stated in the preamble to the immediately effective proposed rule at 45 FR 15595–96. No significant comments were submitted challenging EPA's basic determination that maintaining the drummed wastes in a monitorable situation at the Vertac facility presents a relatively known and correctable hazard and that disposing of the drums poses comparatively a substantially greater risk.

Vertac stated in its testimony the wastes corrode the drums rapidly causing a high rate of leakage. Vertac further indicated there is a risk of drums exploding on the concrete pad when exposed to the elements. No specific instances or results of exploding drums were cited by Vertac. EPA notes these problems but finds that primarily because of the ability to correct these problems the risks from maintaining the drums are less than the risks from landfilling. At Jacksonville, leaks can be stopped, workers can wear protective clothing, and the drums can be distributed in such a way to reduce the risks to workers that must monitor them. In landfills, the problems that occur from leakage are essentially uncorrectable.[8] The possibility of leaking drums is, in fact, precisely the reason why Vertac should keep the drums on site, as long as it is practicable to do so. On-site leaks are relatively easily corrected. If Vertac deposits these drums in landfills and they leak, the drums are not retrievable. Only very difficult and costly remedial procedures may be available.

Furthermore, EPA has evidence that TCDD has leaked from landfills in the past. EPA has assembled in the rulemaking record evidence which shows potentially great exposures that can result from landfill leaking of TCDD contaminated wastes. In fact, at Jacksonville there is significant evidence of groundwater, surface water, stream bed, and soil contamination from two landfills located on the site.

This rule recognizes, however, that all wastes cannot be kept on site at Vertac indefinitely, and allows the disposal of wastes generated on or after the effective date of the final rule.[9] In the case of these wastes currently being produced, in order to further minimize potential exposure, EPA finds that only the highest quality landfills should be used. In order to ensure that these landfills are of sufficient quality for disposal of a highly toxic waste like TCDD, the landfills must be approved on an individual basis by the Agency.[10] Until now the Agency has only approved landfills on an individual basis under the standards for landfilling of polychlorinated byphenyls under 40 CFR 761.41. These standards are the most stringent landfill requirements the Agency has approved to date in general rulemaking. Accordingly, the Agency adopts those standards for landfilling of Vertac's wastes until such time as their testing indicates no detectable quantities of TCDD in the wastes.

C. Effects of TCDD on the Environment

No testimony was presented at the hearing regarding the effects of TCDD on the environment. The findings contained in the proposed rule state that the Agency did not consider environmental effects, per se, since the human health effects of TCDD are so significant. EPA, therefore, adopts for this final rule the environmental effects finding in the proposed rule.

D. Economic Impacts [11]

1. *Future Wastes at Jacksonville.* EPA finds that if it does not permit Vertac to ship wastes generated from current and future production of 2,4-D, the Jacksonville plant will cease operating when Vertac no longer has space available to store wastes on site. Vertac has presented convincing testimony that it is close to that point now. Vertac's description of the Jacksonville site indicates little space is available on existing concrete slabs and that the remainder of the site is unsuitable for storing additional drums. In addition, the plant manager stated that Vertac is approaching the point at which the plant would close because safe storage of additional drums would not be feasible.

The Agency believes it is reasonable to presume that closing of the Jacksonville plant would result in job losses to the community and in local economic impacts of significance.

---

[7] A more complete discussion of the scientific issues associated with the reproductive effects study is found in "Respondents Prehearing Brief on the Risks Associated with the Registered Uses of 2,4,5-T and Silvex" submitted by U.S.E.P.A. in re: the Dow Chemical Company, et al., FIFRA Doc. No. 415, et al., pages 45–51. This portion of the brief is in the record in this proceeding. As noted in the proposed rule, in this rulemaking the Agency is relying on toxicological evidence presented in the EPA proceedings under FIFRA on the suspensions of certain uses of 2,4,5-T and Silvex. See 45 FR 15595. That evidence is sufficient to support the risk finding in this rulemaking, although in the FIFRA adjudiciary hearing the evidence will be subject to rebuttal on major issues.

[8] The technical details of the problems associated with landfill containment of wastes are described in the preamble to the proposed rule (45 FR 15595).

[9] In the case of Vertac EPA has determined, as explained below, that, if certain drums are not shipped for disposal, the Jacksonville facility will shut down.

[10] This would not include "interim status" facilities under section 3005(e) of the Resource Conservation and Recovery Act (RCRA), since those facilities are not approved by EPA on an individual basis.

[11] The Agency finds that this rule will not have significant effect on the national economy, small business, or technological innovation. The principle economic impacts affect the area in the vicinity of the Jacksonville facility. All other impacts resulting from the notice requirement are minimal. Furthermore, TCDD itself has no commercial uses. It is produced as an inevitable contaminant in the production of chemicals, particularly certain pesticides. This rule is only imposing disposal requirements and is not directly restricting production of any commercial chemicals and the impact of the cost of disposal upon the cost of production of the pesticides products is expected to be slight.

Significant loss of revenue to Vertac would also result.[12]

The final rule will require Vertac to dispose of its future wastes in landfills approved under specific criteria set forth in this rule. Since it is anticipated that there will be few landfills that will be able to comply with the criteria, the cost of disposal will be somewhat greater than the costs of disposal in landfills which may have otherwise been used. This additional cost may be approximately $2,500 per month. The rule, however, waives the special requirement if actual testing by the EPA approved method shows no detectable levels of TCDD in the wastes. EPA therefore expects that the additional costs of requiring disposal in approved landfills will be a short term effect and will be low compared to impacts of plant closure that could result if the Agency does not permit shipment of future waste production.

2. *Existing TCDD wastes in Jacksonville.* Based on Vertac's testimony, EPA finds the costs of maintaining the existing 2,4,5-T wastes and the 2,4-D wastes contaminated with TCDD are higher than the Agency found them to be in the proposed findings. Vertac has stated that it must replace a large number of corroded, leaking drums, which would, in total cost approximately $250,000 per year for both the existing 2,4,5-T and 2,4-D contaminated wastes. Vertac argued that these costs are significant and that the Agency should not force the company to incur them. Vertac, however, did not state that it would close its Jacksonville facility if it had to incur these costs. This contrasts with Vertac's claim that it would close the plant when space is no longer available for storage of future wastes. EPA asked Vertac at the April 16th hearing session how it would decide whether it could reasonably continue to incur the costs of retaining the drums [TR 169]. Vertac presented no testimony in response to these requests. In the absence of evidence to the contrary, EPA has determined that Vertac can reasonably bear the cost of maintaining the existing drums in place. Furthermore, the costs of storing wastes on site at Jacksonville appear minor compared to the costs of clean-up if the TCDD leaks from a landfill in which it is deposited. These clean-up costs could be extremely high, based on EPA experience. This rule presents a temporary solution to TCDD waste disposal. It is hoped that in a relatively brief period of time longer range solutions will be found. EPA is examining proper disposal methods to be implemented under the Resource Conservation and Recovery Act (RCRA); EPA is also considering methods of destroying TCDD wastes. Vertac, thus, is expected to bear the costs of maintaining these wastes for only a relatively short time.

3. *Notification Requirement for Other Facilities.* In the preamble to its proposed rule, the Agency found that the costs of the notification requirement will be minimal. Although comments have been filed in opposition to the notification requirement, no person has submitted any data to challenge this determination. Accordingly, EPA adopts the determination in the preamble to the proposed rule, that the costs of submitting notification to EPA sixty days before disposal of TCDD containing wastes are minimal.

E. Findings of Unreasonable Risk

1. *Future wastes at Jacksonville.* The Agency finds that disposal of Vertac's waste materials from future production of 2,4-D in chemical waste landfills in accordance with the conditions of this rule should not present an unreasonable risk, since the hazards from landfill disposal in this case are outweighed by the severe economic consequences that would result if the Jacksonville facility ceases operation. The economic consequences of prohibiting disposal represent an important consideration in EPA's decision to allow the disposal. The Agency, however, also considers the fact that it has reason to believe that the wastes from production of 2,4-D after the effective date of this rule do not contain any significant level of TCDD contamination.

In order to further assure protection of public health, the Agency has imposed additional conditions on the disposal. The rule's requirement that Vertac dispose of these wastes in landfills approved by EPA under standards for disposal of PCB's reduces to an extremely low level the likelihood of human exposure to whatever TCDD may be present in these 2,4-D wastes. As an additional safeguard, this rule requires Vertac to test its wastes for TCDD and to submit the results of these tests to the Agency.

If testing shows levels of TCDD in the 2,4-D wastes which merit serious concern, EPA may take action to modify its decision with respect to future 2,4-D wastes. If, on the other hand, testing shows that TCDD is not detectable, Vertac will be under no further obligation to use the landfills meeting the criteria of section 775.4(c)(2).

Furthermore, permitting Vertac to dispose of future 2,4-D waste production in accordance with the requirements imposed in this action confers public health benefits. Vertac will be able to alleviate worker exposures to the existing waste drums it must retain on site. Vertac has indicated that the drums on the loading platform are packed very tightly, making monitoring for leakage very difficult. If Vertac does not have to use the additional space on the loading platform to store wastes from current production, the existing stored wastes could be redistributed more evenly, permitting more effective monitoring.

2. *Existing wastes at Jacksonville.* EPA finds that the shipping of 2,4,5-T and the other TCDD contaminated wastes already existing at the Jacksonville facility presents an unreasonable risk, since the risks of disposal outweigh the costs of maintaining the wastes on site. This unreasonable risk finding is based on the statements contained in the unreasonable risk finding contained in the preamble to the proposed rule, 45 FR 15596, and comments submitted during the rulemaking proceeding.

a. *Risks of disposal of existing wastes.* The finding for the proposed rule noted the high levels of TCDD contamination contained in the 2,4,5-T drums and the possibility of exposure to TCDD if Vertac were to dispose of the drums. These risks were compared to the lower risks presented in the relatively secure, monitored environment at the Jacksonville facility, and to the possibility that methods may be found to destroy TCDD and make potential exposure to landfilled TCDD an unnecessary risk.

EPA found that the Agency did not have sufficient knowledge of the contents of the 2,4-D drums to permit shipment for disposal considering the high toxicity of TCDD and the risks of disposal. Although comments were submitted questioning the Agency's findings on the toxicity of TCDD and the magnitude of exposure, as explained above, the Agency finds no reason to modify the finding in the proposed rule as it applies to risks. The highly concentrated 2,4,5-T wastes clearly present a high risk. The Agency to this point is still uncertain of the TCDD levels in the 2,4-D wastes. No empirical data exist to show that TCDD is present below the limits of detection of the testing methodology approved by EPA.[13]

b. *Costs of the rule.* Vertac's testimony shows that the costs of

[12] Revenues from the Jacksonville plant were approximately $8 million in 1979.

[13] At the April 16, 1980, hearing session Vertac indicated it had shipped samples of its existing 2,4-D wastes for testing by the EPA approved methodology. If the test shows no detectable levels of TCDD in Vertac's wastes, they are exempt from the rule in accordance with § 775.6(b).

maintaining existing wastes at Jacksonville are higher than EPA had originally determined. Nevertheless, Vertac's testimony indicates that, although the company may consider the costs of maintenance to be a burden, the costs would be absorbed by the company at least for the near future. Further, the rule represents a temporary solution to a problem that EPA is working to resolve. It is expected that Vertac will not have to bear these costs for the long term.

3. *Wastes at other facilities.* EPA finds that permitting persons to dispose of TCDD containing wastes without prior notification to EPA presents an unreasonable risk. This finding, as stated in the preamble to the proposed rule, results from an Agency determination that the general risk of TCDD disposal outweighs the minimal economic impact of notifying EPA of the person's intention to dispose and small costs of holding wastes for sixty days while EPA evaluates the notification.

EPA has received comments that the Agency has not made findings of unreasonable risk with respect to the notification requirement and that the requirement is, therefore, not valid.[14] EPA disagrees. EPA has made a finding of unreasonable risk which states that the probability of harm from any TCDD disposal outweighs the minimal burden that a notification requirement and a sixty-day waiting period would impose.

In its findings on toxicity of TCDD and the magnitude of exposure to TCDD, the Agency has examined the likelihood of harm that may occur. The Agency is not required to show the factual certainty of harm before it regulates a chemical, particularly when it is dealing with disposal and regulatory action which will not result in removal from society of the benefits of a chemical. The application of the unreasonable risk standard varies depending upon the risk of harm and the impact on society of the regulation of that harm. The notification requirement imposes a very limited restriction that will not deprive the public of the benefits of the regulated chemical, nor does it impose a substantial regulatory burden. In fact, the notification requirement ensures that EPA will be informed of potential risks and will be able to protect the public against exposure to a highly toxic chemical.

F. *Public interest finding.* In promulgating a rule under section 6(a) of TSCA, the Administrator must find that it is in the public interest to use TSCA when action is possible under another statutory authority within the Administrator's jurisdiction. In the preamble of the proposed rule EPA found it could protect against the risk by bringing injunctive action against Vertac under section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, but found it is in the pubic interest to promulgate a rule under TSCA. In making this finding in accordance with section 6(a), EPA considered (1) all relevant aspects of the risk; (2) a comparison of the estimated costs of complying with action taken under TSCA and actions under RCRA; and, (3) the relative efficiency of each act to protect against the risk of injury. The Agency adopts the finding in the proposed rule for the final rule for the same reasons stated in the preamble to the proposed rule. These reasons are summarized below.

In the proposed rule preamble EPA found no difference between the two acts with respect to the first two factors required to be considered under section 6(a), but decided to use TSCA because of the relative efficiency of using the immediately effective rulemaking authority of section 6(d) of TSCA.

The Dow Chemical Company commented on this. Dow concluded that EPA had abused its discretion in using TSCA instead of RCRA, primarily because the Agency has proceeded under section 7003 of RCRA in other cases involving improper storage or disposal of chemical wastes. Each of the cases cited by Dow involves an action against a single entity to seek clean up of hazardous waste sites and storage areas. This rule is directed at the disposal of all TCDD containing wastes. While the rule prohibits Vertac from disposing of certain wastes, the rule is comprehensive and requires that other persons intending to dispose of TCDD containing wastes notify the Agency sixty days in advance of such disposal. These other persons are not presently known to EPA except to the extent that they have come forward as a result of the issuance of the immediately effective proposed rule. Accordingly, while injunctive relief might be sought against Vertac pursuant to Section 7003 of RCRA, there is presently no effective way, other than rulemaking, to identify the other persons seeking to dispose of TCDD containing wastes while at the same time preventing them from disposing of the wastes until EPA learns the particular facts of the proposed disposal. Under these circumstances, EPA has not abused its discretion in conducting a rulemaking pursuant to Section 6(d) of TSCA.

Dow further criticizes the use of TSCA instead of RCRA on the basis that the Agency's regulations governing disposal of hazardous waste under RCRA have been subjected to rigorous public comment and that the policy choices governing disposal of wastes have already been made. This comment ignores the fact, however, that RCRA has made no specific finding regarding disposal of TCDD. The policy choices under RCRA apply to disposal of wide categories of wastes under general interim standards. Under the TSCA section 6 rule the policy choices apply specifically to TCDD wastes. However, the Agency's final permits issued under section 3005(c) of RCRA will supersede the TSCA rule.

IV. Other Issues

A. Relationship to RCRA

The notification requirement of the proposed rule does not apply to persons disposing of TCDD at facilities permitted for disposal under section 3005(c) of RCRA, 42 U.S.C. 6925(c), but does require notification to EPA before persons dispose of TCDD in facilities covered by interim status under section 3005(e) of RCRA.

Dow claims that this distinction violates RCRA and is contrary to sound public policy. Dow argues that RCRA does not allow more stringent requirements to be imposed upon an "interim status" facility than is imposed on a fully permitted facility and that the Agency is not authorized to discriminate against a facility on the basis of its "interim status." Dow also argues that such a distinction fosters duplication of effort by creating jurisdiction in two separate offices over identical material.

EPA disagrees. This rule is consistent with the requirements of RCRA. The rule rationally distinguishes between interim status facilities under section 3005(e) of RCRA and fully permitted facilities under section 3005(c) of RCRA. Before it issues a permit to a facility under section 3005(c), EPA will evaluate whether or not that facility complies with applicable standards. Under interim status provisions, in contrast, any person who submits an application is treated as having a permit, although EPA has not yet evaluated that particular facility. The public, therefore, has less assurance that a person operating an interim status facility will adequately dispose of wastes.

[14] One comment states that a sixty-day delay could cause an unreasonable risk in and of itself. No direct support is given for such a statement and EPA fails to see how a properly drummed and stored waste retained for sixty days could present an unreasonable risk.

B. Relationship to FIFRA "Use Permits"

Several persons have commented that EPA currently permits the use on rice and other crops of the pesticide 2,4,5-T containing approximately 100 ppb of TCDD. These persons state that EPA cannot justify restricting disposal of wastes containing a significantly lower level of TCDD.

EPA disagrees with this conclusion. The Agency instituted proceedings under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136, *et seq.*, to cancel all uses of 2,4,5-T and Silvex. The Agency issued emergency suspensions for some uses of 2,4,5-T and Silvex in March, 1979.[15] In December 1979, EPA issued its final determination concerning the rebuttable presumption against registration for all uses of 2,4,5-T that had not previously been suspended (44 FR 72316). EPA has determined under FIFRA that the potential oncogenic, fetotoxic and teratogenic risks associated with the non-suspended uses do not appear to be justified by offsetting economic, social or environmental benefits and that such uses therefore appear to cause unreasonable adverse effects on the environment. Action under the rule to restrict disposal is, therefore, consistent with Agency action under FIFRA.

C. Section 8(a) of TSCA

One commentor stated that Section 8(a) "was to be used to collect information that might later be used in 'unreasonable risk' determinations for regulation of chemical substances under section 6." EPA agrees. The comment then claims that "By proposing to impose reporting requirements under section 6(a) rather than section 8(a), EPA seeks to expand its authority under 6(a) beyond the scope intended by Congress."

EPA reemphasizes that it has found that the absence of notification of the intent to dispose of TCDD containing wastes constitutes an unreasonable risk. This final rule reduces those unreasonable risks by requiring persons to notify the Agency of the intended disposal. It is one method to regulate disposal of TCDD contaminated wastes under the authority of section 6(a)(6), which authorizes the Administrator to reduce unreasonable risks by "promulgating or otherwise regulating any manner or method of disposal . . .". It constitutes what EPA has determined is the least burdensome manner to reduce the unreasonable risk, and falls clearly within the authority of section 6(a).

D. Section 6(d) of TSCA

Two comments objected to the use of 6(d) with regard to the notification requirement in the rule on the grounds that "EPA points to no evidence or reason to believe that disposals by persons other than Vertac would present an imminent risk of serious or widespread harm." [16] These comments suggest that EPA must identify particular persons who are intending to dispose of TCDD contaminated wastes before the effective date of a final rule in order to declare the notification portion of the proposed rule immediately effective.

EPA does not interpret section 6(d) as requiring evidence of imminent injuries or actions leading to injuries, but rather evidence of *risks* of imminent injury or actions leading to injury. EPA believes that these comments fail to distinguish between evidence of risks of imminent injury and evidence of imminent injury.

The record for this rulemaking contains ample evidence that improper disposal of TCDD can cause serious and widespread injuries. EPA finds it reasonable to conclude that there is a risk that improper disposal of TCDD contaminated wastes will occur before the effective date of a final rule requiring prior notification of disposal. For example, in the absence of the restrictions contained in this rule, persons who wish to avoid the increased costs associated with proper disposition of TCDD may attempt to dispose of it before federal regulations impose responsible solutions.

The risk that improper disposal of TCDD contaminated wastes could occur before the effective date of a final rule balanced against the minimal economic impact of the proposed rule justify EPA's declaring the notification portion of the proposed rule immediately effective.

One comment also stated that section 6(d) should be used rarely because violations occur and penalties accrue on the date of publication without prior public comment. EPA believes that section 6(d) should be used when, as in this case, the Agency can properly justify its use, and notes that the expedited hearing procedures are designed to provide an affected person with speedy Agency consideration and rapid judicial review in order to mitigate any unreasonably harsh consequences of the immediately effective rule.

E. The Analytical Methodology for Testing TCDD

One comment argued that EPA should set a limit of detection to remove wastes from the notification requirement. The comment further stated that this limit should not be at the level of detection of a testing methodology.

EPA finds that its use of the GC/HRMS methodology in this rulemaking is reasonable and that a limit of detection is not required. The notification requirement is triggered if a person has wastes from the production of 2,4,5-Trichlorophenol or its pesticide derivatives or wastes resulting from process equipment formerly used to manufacture such chemicals. This is a simple, definite test which permits a person to know with a high degree of certainty that he is subject to the rule. If the person wishes an exclusion from notification, then he may at his option have his wastes tested. If, under EPA's approved methodology, which is the most sensitive test, the person finds no detectable levels of TCDD, the Agency has decided that it has enough assurance that what may be considered a TCDD-contaminated waste is not of present concern to the Agency. EPA will not set a definitive general regulatory limit of detection for TCDD, a chemical for which the Agency cannot be confident that a "no adverse effect level" has been found.

F. Vertac

Vertac commented that the notification provision of the rule suggests that EPA "does not intend to unilaterally restrict all parties from landfilling or otherwise disposing of TCDD contaminated wastes . . .". Vertac then concludes that because the regulation bars them from disposing of TCDD contaminated wastes, Vertac "is not treated equally."

EPA disagrees. First, EPA does not regard the notification requirement as implicitly condoning the disposal of TCDD contaminated wastes by other persons. EPA cannot at this time assess whether other intended disposals of TCDD present or will present unreasonable risks. EPA will examine any plans to dispose of such wastes. If, as in the case of Vertac, such intended disposals pose unreasonable risks, EPA will act as is necessary to adequately protect public health.

Vertac also suggests that this rulemaking prohibits Vertac from exploring alternate solutions for the disposal of the 2,4,5-T drums, and that therefore the rule is arbitrary.

This rule bars Vertac from disposing of the highly contaminated 2,4,5-T

[15] For a discussion of these suspensions see the March 15, 1979 **Federal Register** (44 FR 15874).

[16] Comment of the Chemical Manufacturers Association, Inc., May 5, 1980, at page 11.

wastes because such disposal at the present time presents an unreasonable risk. However, EPA does not intend by this prohibition to discourage Vertac or any other person from exploring methods for the final disposition of TCDD contaminated wastes. On the contrary, if Vertac or any other person identifies alternate solutions for final TCDD disposition which adequately protect public health, EPA will take appropriate action under this rule on notifications which include such plans.

VI. Rulemaking Record

EPA has established a public record for this final rulemaking (docket number OPTS-62007)* which along with a complete index is available for inspection in the OPTS reading room from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, at 401 M Street, S.W., Washington, D.C. 20460. This record contains the basic information considered by the Agency in this rulemaking.

Federal Register Notices Pertaining to This Rule

1. 42 F.R. 61259, USEPA: "Procedures for Rulemaking Under Sec. 6 of the Toxic Substances Control Act." (December 2, 1977)
2. 45 F.R. 15547, USEPA: "Tetrachlorodibenzo-P-Dioxin; Prohibition of Disposal." Action: Notice of Immediately Effective Rule. (March 11, 1980)
3. 45 F.R. 15592, USEPA: "Tetrachlorodibenzo-P-Dioxin; Prohibition of Disposal." Action: Immediately Effective Rule. (March 11, 1980)
4. 45 F.R. 26386, USEPA: "Tetrachlorodibenzo-P-Dioxin; Prohibition of Disposal." Action: Notice of Expedited Hearing and Shortened Comment Period. (April 18, 1980)

Expedited Hearing

1. Schedule for April 16th Session.
2. USEPA/Transcript of Proceedings: Tetrachlorodibenzo-P-Dioxin Prohibition of Disposal—Vol. 1. (April 16, 1980)
3. Submission from Vertac Chemical Corp. *Engineering Calculations.*
4. Submission by Vertac Chemical Corp. State of Arkansas, Dept. of Pollution Control and Ecology. Letter from Paul N. Means, Enforcement Branch, to Thurman Bennett, Vertac Chemical Corp. Subject: Transportation of Dioxin. (January 22, 1980)
5. Submission from Vertac Chemical Corp. of a photograph of a blackboard sketch of the Jacksonville plant and its surrounding area.
6. Schedule for May 1st session.
7. USEPA/Transcript of Proceedings: Tetrachlorodibenzo-P-Dioxin Prohibition of Disposal—Vol. 2. (May 1, 1980)

Other Federal Register Notices

1. *43 F.R. 17116,* USEPA: "Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing 2,4,5,T." OPP 30000/26. (April 21, 1978)
2. *44 F.R. 15874,* USEPA: "2,4,5,T and Silvex: Introduction to Suspensions and Notices of Intent to Cancel." (March 15, 1979)

USEPA News Releases

1. USEPA, OTS: *Report of the Chlorinated Dioxin Work Group to the Toxic Substances Priorities Committee* (TSPC) (January 10, 1980) w/ enclosure(s) (4)
2. USEPA, Region VI: *Statement of Francis E. Phillips, Assistant Regional Administrator, EPA. Region 6. Environmental Protection Agency Before the Subcommittee on Oversight of Government Management Committee on Government Affairs, U.S. Senate.* (07/19/79)

Communications—Written

1. State of Arkansas/Dept. of Pollution Control and Ecology: Letter from Jarrell E. Southall, Director, to Mr. Ray Guidi, V.P., Vertac, Inc. (06/15/79) w/ enclosure(s) (2)
2. State of Arkansas/Office of the Governor: Letter from Bill Clinton, Governor of Arkansas to Adelene Harrison, RA, USEPA, Region VI. Subject: Request for Review of Vertac's Proposed Containment and Destruction of Dioxin Containing Waste Products. (08/30/79)
3. State of South Carolina/Department of Health and Environmental Control: Letter from Hartsill W. Truesdale, P.E., Director, Solid Waste Management Division, to Gordon Olson, CAD, USEPA. Subject: TCDD, Vertac, Jacksonville, AK. (01/05/80) w/ enclosure (1)
4. USDHEW, PHS, CDC, NIOSH: Memo from John R. Kominsky, Industrial Hygienist, to Chuck Morgan, USEPA, OE, Pesticides and Toxic Substances Enforcement Div. Subject: Mirex, Lindane and Tetrachloro-Dibenzo-P-Dioxin, Hyde Park Chemical Landfill Disposal Site, Niagara Falls, New York. (01/04/80) w/enclosure (1)
5. USDHEW, PHS, CDC, NIOSH: Letter from Philip J. Landrigan, M.D., to George Shanahan, Water Enforcement Br., Region II, USEPA. Subject: Data on Migration of Dioxin, Mirex, and Lindane from the Hyde Park Landfill. (01/04/80) w/enclosure(s)
6. USEPA, IERL/ Cincinnati: Memo from David R. Watkins, Organic Chemicals and Products Branch, to Mike Kilpatrick, Hazardous Waste Task Force. Subject: Expected Isomers of Tetrachlorinated Dioxins in Vertac Samples. (02/01/80)
7. USEPA, OE: Memo from Richard Smith, Attorney, Hazardous Waste Enforcement Task Force, to the File. Subject: Comparison of Costs of On-Site Storage with Shipment for Off-Site Disposal of 700 Barrels of 2,4,5-T Wastes at Vertac. (01/30/80)
8. USEPA, OE: Memo from Michael A. Kilpatrick, Chemical Engineer, Hazardous Waste Enforcement Task Force, to the File. Subject: Landfilling of 2,3,7,8 TCDD Contaminated Waste from Vertac, Inc. (02/07/80)
9. USEPA, OE: Memo from Michael A. Kilpatrick, Chemical Hazardous Waste Enforcement Task Force, to the File. Subject: Present On-Site Situation at the Vertac Facility. (02/08/80)
10. USEPA, ORD: Memo from Steven J. Gage, AA for ORD, to Adelene Harrison, RA, EPA Region VI. Subject: Evaluation of Vertac TCDD Destruction Process. (undated) w/enclosure(s) 2
11. USEPA, OPTS, CAD: Memo from Linda C. Thomson, Hearing Clerk, to whom it may concern. Subject: Expedited Hearing on the Immediately Effective Proposed Rule on Disposal of Waste Products Containing TCDD. (Undated)
12. Letter from Linda C. Thomson, to Mr. C. Kalil, Dow Chemical Co. Legal Dept. Subject: Expedited Hearing on TCDD. (04/15/80)
13. Memo from Linda C. Thomson, to Alan Carpien (OGC), Gordon R. Olson (OPTS), Lamar Miller, Hazardous Waste Enforcement Task Force, Gary Dietrich, (OSW). Subject: Expedited Hearing on the Immediately Effective Proposed Rule on Disposal of Waste Products Containing TCDD. (04/15/80)
14. Memo from Linda C. Thomson, to R. E. Wright, Ohio Power Co. Subject: Expedited Hearings. (04/23/80)
15. USEPA, OSW: Memo from Gene Crumpler, OSW, to Michael Kilpatrick, Environmental Scientist, Hazardous Waste Enforcement Task Force, OE, USEPA. Subject: Incineration of TCDD Contaminated Waste. (02/07/80)
16. Memo from Michael W. Kosakowski, Chief Disposal Branch, to Alan Carpien, OGC. Subject: Vertac Expedited hearing. (04/22/80) w/ enclosure (1)
17. USEPA, OSW: Record of Telephone Call Between M. W. Kosakowski and Kenneth Howard of Vertac Chemical Corp. (04/22/80)

* The docket number for this rulemaking has been changed from 61004 to 62007. 80T-7 is not a valid reference number for this rulemaking.

18. USEPA, OTS: Memo from Steven D. Jellinek, AA, Chairman TSPC, to John White, RA, Region IV, USEPA and to Adelene Harrison, RA, Region VI. Subject: Interim Guidance for Management of Dioxin Contaminated Waste at Vertac Facility. (12/14/79)

19. Vertac, Inc: Letter from Dick Karkkainen, Director of Environment and Safety, to Mr. Jarrell Southall, Director, Arkansas Department of Pollution Control and Ecology, Subject: Vertac, Inc.—Jacksonville Plant. (08/15/79) w/enclosure (1)

20. Vertac, Inc: Letter from Dick Karkkainen, Director of Environment and Safety, to Wayne Stevens, Browning Ferris Industries, Chemical Services, Inc. Subject: Request to Dispose of Waste Phenoxy Acids and Phenols in Drums. (11/08/79) w/enclosure (1)

21. Wright State University: Letter from Michael L. Taylor, Ph. D., Assoc, Professor of Pharmacology and Assoc. Director of the Brehm Laboratory, to Mr. Charles Gozda, Chief, Compliance Sec. (6ATSC) USEPA, Region VI. Subject: EPA Contract 68–03–2830 (10). (12/05/79) w/enclosue (2)

Communications—Telephone Conversations

1. USEPA, OGC, Toxic Substance Div.: Memo from Alan Carpien, to the Record. Subject: Conversation with Allen Gates, Vertac Counsel on the Expedited Hearing Request. (04/15/80)

2. Memo from Alan Carpien, to the Record. Subject: Conversation with Allen Gates, Vectac Counsel, of April 17, 1980. (04/18/80)

3. Memo from Alan Carpien, to the record. Subject: Conversation with Allen Gates, Vectac Counsel of April 18, 1980. (04/21/80)

4. USEPA, OPTS, CAD: Record of Communication from Gordon R. Olson, to the Record. Subject: Telephone Conversation with Chuck Kalil, Dow Chemical re: Expedited Hearing on TCDD. (04/15/80)

5. Record of Communication from Gordon R. Olson, to the Record. Subject: Telephone conversation with Kent Storner, Syntex Agribusiness re: expedited Hearing on TCDD. (04/15/80)

6. Record of Communication from Gordon R. Olson, to the Record. Subject: Telephone conversation with Chuck Kalil and Fred Herger of Dow Chemical re: Clarification of Discussion Regarding TCDD Rule. (04/17/80)

7. Record of Communication from Gordon R. Olson, to the Record. Subject: Telephone conversation with Bob Fisher, Vertac Chemical Corp. re: Public Record related to TCDD. (04/17/80)

8. Memo from Linda Thomson, Hearing Clerk, to the Record. Subject: Tetrachlorodibenzo-P-Dioxin Prohibition of Disposal, Site of Legislative Hearing for May 11, 1980. (04/24/80)

9. Memo from Gordon R. Olson, to the File. Subject: Record of telephone conversation with Roger Fuentes, USEPA, Region X re: Cost of Disposals in Chemical Waste Landfills Approved Under § 761.41(b). (05/08/80)

10. USEPA, OPTS, CAD: Memo from Gordon R. Olson to the File. Subject: Record of telephone conversation with Wayne Pierre, USEPA, Region II re: Cost of Disposal in Chemical Waste Landfills Approved under § 761.41(b). (05/08/80)

11. Record of communication from Linda C. Thomson: to companies interested in the May 1, 1980 Dioxin Hearing. Subject: Telephone call re: Hearings. (05/09/80)

Reports

1. Allen, J.R., Barsotti, D.A., Van Miller, J.P.: "Morphological Changes in Monkeys Consuming a Diet Containing Low-Levels of 2,3,7,8 Tetrachlorodibenzo-P-Dioxin." In Press *Fd. Cosmet. Toxicology*

2. Courtney, K.D.: "Mouse Teratology Studies with Chlorodibenzo-P-Dioxins." *Environ. Contam. Toxicol* (1976): 674–618

3. Courtney, K.D., Moore, J.A.: "Teratology Studies with 2,4,5-Trichlorophenoxyacetic Acid and 2,3,7,8-Tetrachlorodibenzo-P-Dioxin." *Toxicol Appl. Pharmacol.* 20 (1971): 396–403

4. Dow Chemical USA: *Preliminary Assessment of Chronic Toxicity Study and Three-Generation Reproduction Study of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin.* Midland, MI

5. Dow Chemical: *Dow Chemical Company's Report to the FIFRA Scientific Advisory Panel on 2,4,5-T and Silvex.* (August 6, 1979) w/enclosure(s) (3)

6. Dow Chemical USA: *Preliminary Assessment of Chronic Toxicity Study and Three Generation Reproduction Study of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin.* (1977) Unpublished Report

7. Kociba, R.J., et al.: Toxicology and Applied Pharmacology *46*:279/303 (1978).

8. Kouri, R.E., Salerno, R.A., Whitmire, C.E.: "Relationships between Aryl Hydrocarbon Hydroxylase Inducibility and Sensitivity to Chemically Induced Subcutaneous Sarcomas in Various Strains of Mice." *Journal of the National Cancer Inst.* 50:2 (1973):396–368

9. Moore, J.A., Gupta, B.N., Vos, J.G.: "Postnatal Effects of Maternal Exposure to 2,3,7,8-Tetrachlorodibenzo-P-Dioxin (TCDD)." *Environ. Health Perspec.*, 5:(1973):81–85

10. Murray, F.J., et al.: Toxicology and Applied Pharmacology *50*:241/252 (1979)

11. Neubert, D. and Dillmann, I.: "Embryotoxic Effects in Mice Treated with 2,4,5, Trichlorophenoxyacetic Acid and 2,3,7,8-Tetrachlorodibenzo-P-Dioxin." *Naunyn-Schmiedebergs' Arch. Pharmacol.* 272(1971):243–264

12. Poland, A. Glover, E.: "Comparison of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin, a Potent Inducer of Aryl Hydrocarbon Hydroxulase, with 3-Methylcholanthrene. *Molec. Pharmacol.* 10(1974):349–359

13. Poland, Alan, Glover, Edward: "Stereo-specific, High Affinity Binding of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin by Hepatic Cytosol." *The Journal of Biological Chemistry.* 254:16(1976):4936–4946

14. Poland, Alan, and Glover, Edward: "Studies on the Mechanism of Toxicity of the Chlorinated Dibenzo-P-Dioxins." *Environ. Health Perspec.* (5:1973):244–251

15. Smith, F.A., Schwetz, B.A., Nitschke, K.D.: "Teratogenicity of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin in CF–1 Mice." *Toxicol. and Appl. Pharmacol.* 38(1976):517–523

16. Sparschu, G.L., Dunn, F.L., Rowe, V.K.: "Study of the Teratogenicity of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin in the Rat. *Fd. Cosmet. Toxicology.* 9(1971):405:412

17. USA, In the US District Court for the Eastern District of Arkansas. USA, Plaintiff *v.* Vertac Chemical Corp., and Hercules, Inc., Defendents. *Motion for Preliminary Injunction.* Civil Action No. LR–C–80. (April 12, 1980)

18. USEPA, Before the Administrator: In re: the Dow Chemical Co., et al., *Respondent's Prehearing Brief on the Risks Associated with the Registered Uses of 2,4,5-T and Silvex.* FIFRA Docket #415 et al. (January 25, 1980):46–51

19. USEPA, Carcinogen Assessment Group, ORD: Memo from Elizabeth L. Anderson, Ph.D., Exec. Director, to Harvey L. Warnich, Project Manager, SPRD. Subject: Carcinogen Assessment Group's Risk Assessment on 2,4,5-Trichlororphenoxy Acetic Acid (2,4,5-T), and 2,3,7,8-tetrachloro-dibenzo-P-Dioxin (TCDD). 02/23/79 w/enclosure (1)

Summary and Conclusions on 2,4,5-T

20. USEPA, Carcinogen Assessment Group, ORD: *Preliminary Report on 2,4,5, Trichlorophenoxy-acetic Acid (2,4,5,T) 2,4,5-Trichlorophenol (2,4,5,TCP), 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD).* (October 19, 1977)

21. USEPA, IERL, ORD: *At-Sea Incineration of Herbicide Orange Onboard the M/T Vulcanus.* EPA 600/2–

78–086. TRW, Inc., Redondo Beach, CA. (April 1978)

22. USEPA, OPP: *Environmental Fate of TCDD (2,3,7,8-Tetrachlorodibenzo-P-Dioxin) a Contaminant of 2,4,5-TCP.* (March 1, 1979)

23. USEPA, Region 6: *Affidavit of Robert B. Elliott before the State of Texas, County of Dallas.* (February 14, 1980)

24. US NIEHS/IARC Work Group: *Long Term Hazards of Polychlorinated Dibenzofurans* Lyon. (June 1978) (2)

25. Van Miller, J.P., Lalich, J.J., Allan, J.R.: *Increased Incidence of Neoplasms in Rats Exposed to Low Levels of 2,3,7,8-Tetrachlorodibenzo-P-Dioxin. Unpublished*

In an effort to develop more orderly organization of this part the numbering for Subpart J has been changed. For the convenience of the reader the following redesignation table is being provided:

Proposed section:	Final rule section
775.1	775.1180
775.2	775.1183
775.3	775.1186
775.4	775.1190
775.5	775.1195
775.6	775.1197

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." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: May 12, 1980.

Douglas M. Costle,

Administrator.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended by adding a new Part 775 consisting at this time of Subpart J.

PART 775—STORAGE AND DISPOSAL OF WASTE MATERIAL

Subparts A–I—[Reserved]

Subpart J—Disposal of Waste Material Containing Tetrachlorodibenzo-p-dioxin (TCDD)

Sec.
775.180 Scope.
775.183 Definitions.
775.186 Prohibited Acts.
775.190 Required Acts.
775.195 Compliance.
775.197 Exclusions.

Authority: Sec. 6 Toxic Substances Control Act (TSCA). Pub. L. 94–469. 90 Stat. 2020 (15 U.S.C. 2605).

Subpart J—Disposal fo Waste Material Containing Tetrachlorodibenzo-p-dioxin (TCDD)

§ 775.180 Scope.

This subpart prohibits the removal for disposal of wastes containing TCDD presently located at the Vertac Chemical Co. facility at Jacksonville, Arkansas. In addition, this subpart requires persons who dispose of wastes containing TCDD to notify the Administrator sixty days before disposal.

§ 775.183 Definitions.

In addition to the definitions in section 3 of the toxic Substances Control Act (TSCA), 15 U.S.C. 2602, the following definitions shall apply to this subpart.

(a) "Assistant Administrator" means the EPA Assistant Administrator for Pesticides and Toxic Substances.

(b) "EPA" means the U.S. Environmental Protection Agency.

(c) "Dispose of chemical substances or mixtures for commercial purposes" means disposal by any person who disposes of chemical substances or mixtures for the purpose of obtaining commercial advantage, as well as disposal by any person incidental to his commercial activities.

(d) "Person" includes any individual, firm, company, corporation, joint venture, partnership, proprietorship, association, or any other business entity; any state or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the federal government.

(e) "TCDD" means 2,3,7,8-Tetrachlorodibenzo-p-dioxin.

(f) "Waste material" or "waste" means any garbage, refuse, sludge from a waste treatment plant or water supply facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations.

(g) "Waste material containing TCDD" or "waste(s) containing TCDD" means any waste material or waste(s) resulting from manufacture or processing of 2,4,5-Trichlorophenol or its pesticide derivatives, or any waste(s) resulting from manufacturing processes using equipment that was at some time used in the manufacture of 2,4,5-Trichlorophenl or its pesticide derivatives.

§ 775.186 Prohibited acts.

(a) Vertac Chemical Co., of Memphis, Tennessee, shall not remove for disposal any of the wastes containing TCDD produced before May 12, 1980, currently located at its facility in Jacksonville, Arkansas.

(b) No person who disposes of chemical substances or mixtures for commercial purposes shall remove for purposes of disposal the wastes containing TCDD produced before May 12, 1980 currently located at the Vertac Chemical Co. facility in Jacksonville, Arkansas.

§ 775.190 Required acts.

(a) Vertac Chemical Co.: (1) Shall post a notice (or notices, as appropriate) at the principal access point to the storage area(s) at its Jacksonville facility stating that Tetrachlorodibenzo-p-dioxin contaminated waste materials are stored on site and that removal for disposal of such waste is prohibited without express permission from the Assistant Administrator.

(2) Shall dispose of all waste material containing TCDD produced at the Jacksonville facility after May 12, 1980, at facilities which comply with the requirements of § 761.41(b), until the required actions of § 775.190(a)(3) are completed. Vertac shall notify the Assistant Administrator at least one week prior to shipment in accordance with the requirements of § 775.190(b) (1) through (5). Such notification shall also include sufficient additional information to allow the Assistant Administrator to evaluate compliance with the requirements of § 761.41(b). (This additional information will only be required once for each facility receiving waste material containing TCDD).

(3) Shall test the wastes produced after May 12, 1980 at the Jacksonville facility, employing the TCDD detection methodology described in § 775.197(c) of this subpart and provide the Assistant Administrator with the results within two weeks of the date the analyses are completed. If the wastes contain no detectable TCDD then the requirement in § 775.190(b) will be withdrawn, and the exclusion in § 775.197(b) will be controlling. In the event that future production shifts to 2,4,5-Trichlorophenol or its pesticide derivatives separate notification under § 775.190(b) will be required before any wastes generated in such production can be disposed of.

(b) *Disposal Notification.* Any person who disposes of chemical substances or mixtures for commercial purposes who wishes to dispose of wastes containing TCDD shall notify the Assistant Administrator sixty (60) days prior to their intended disposal of such wastes. Notification shall be by certified letter to the Assistant Administrator with a copy to the EPA Regional Administrator for

the region in which the waste is currently stored. The notification shall include, at a minimum, the following information.

(1) The name of the firm involved and the address of both the corporate headquarters and the specific site for which notification of intent to dispose is being given.

(2) The name and telephone number of a person to whom EPA personnel can direct any questions for clarification or additional information.

(3) The concentration of TCDD in the waste materials and the method of detection, e.g., whether the amount is an estimate or is from laboratory data, and if the latter, the name of the laboratory and the methodology employed, including the level of detection achievable by the methodology.

(4) The total quantity of waste material and the number of containers involved.

(5) A brief description of the proposed disposal including the method of disposal, e.g., landfill, incineration, etc., the location of the disposal, and the name of any disposal firm(s) involved.

(6) A summary of the present status of the waste including the method of containment (drums, barrels, etc.), the presence or absence of

(i) An impermeable pad.

(ii) Curbing.

(iii) Dikes.

(iv) Roof structure.

(v) Accessibility to unauthorized persons.

In addition, firms are encouraged to include any other information that may be of use to the Agency in determining the feasibility of various alternative courses of action. The Assistant Administrator shall have the authority to prohibit the intended disposal, by notification of the concerned party(-ies) by registered mail, if the Assistant Administrator determines that the proposed disposal will present an unreasonable risk, or if there is insufficient information on which to base a finding that such an unreasonable risk is absent.

§ 775.195 Compliance.

(a) Section 15(1) of TSCA (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under section 6. Section 15(3) (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to submit reports, notices or other information required by any rule promulgated under the Act. Thus, failure to comply with any aspect of this rule would be a violation as defined by section 15 (1) and (3).

(b) Section 16(a) of TSCA (15 U.S.C. 2615) provides that any person who violates any provision of section 15 shall be liable to the United States for a civil penalty of up to $25,000 per violation, with each day of violation constituting a separate violation. If a violation is knowing or willful, criminal penalties of up to one year in prison and $25,000 per day of violation may also be assessed. Under section 17 of TSCA (15 U.S.C. 2616), the Agency may take injunctive action to restrain persons from violating section 6 rules.

§ 775.197 Exclusions.

(a) This subpart does not apply to persons disposing of wastes containing TCDD at facilities permitted for disposal of TCDD under Section 3005(c) of the Resource Conservation and Recovery Act, 42 U.S.C. 6925(c).

(b) This subpart does not apply to persons who would otherwise be subject to this subpart if they show that their wastes contain no detectable levels of TCDD employing the TCDD detection methodology established by the EPA Dioxin Monitoring Program—capillary column gas chromatography interfaced with high resolution mass spectrometry (GC/HRMS).

(c) This subpart does not apply when the Assistant Administrator exercises his discretion and waives, in writing, the 60 day notice requirement for any person.

[FR Doc. 80-15312 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 76

[Docket No. FEMA-FIA-76]

Implementation of State Assistance Program for the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth a description of the State Assistance Program for the National Flood Insurance Program. The State Assistance Program is designed to promote an intergovernmental flood hazard mitigation partnership by providing States with the opportunity to strengthen their role in NFIP flood hazard mitigation activities. This interim rule defines the objectives and elements of the program, the funding approach, apportionment formula, application evaluation criteria, eligible applicants and administrative procedures.

DATE: Effective date, May 19, 1980.

COMMENT DATE: Comments received on or before July 18, 1980, will be considered before this rule is made final.

ADDRESS: Send comments in duplicate to Rules Docket Clerk, Office of General Counsel, Room 801, Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Krimm, Federal Insurance Administration, Washington, D.C. 20410, (202) 755-5581.

SUPPLEMENTARY INFORMATION: FEMA has discussed the need for State financial assistance for flood hazard mitigation and National Flood Insurance Program activities with the States. The States will be the only eligible participants in the program. There is a need to implement this program as soon as possible. Therefore, FEMA has determined that sufficient good cause exists for making this rule effective immediately. Also, in view of the need to implement this program as soon as possible and since actual notice has been provided to all States, notice and public participation have been found unnecessary. Comments, however, are requested and will be considered before this rule is made final.

The Federal Emergency Management Agency (FEMA) was formed to focus the Federal hazard mitigation effort in one agency. A high priority within FEMA is flood hazard mitigation. The Federal Insurance Administration (FIA) has the responsibility within FEMA for identifying the Nation's flood plains and encouraging State and local governments to adopt flood hazard mitigation measures in order to reduce flood hazards, to prevent losses of life and property, and to reduce the spiralling costs associated with flood damage. Part of this responsibility involves promoting a working understanding of the objectives of the National Flood Insurance Program (NFIP) and the concepts and methods of flood hazard mitigation. To address this responsibility, FEMA provides general and technical assistance to communities intended to increase capabilities in implementing and administering flood hazard mitigation programs under the NFIP. To continue these efforts in the face of the increasing number of communities participating in the NFIP's Regular Program, intensified assistance demands must be met.

States are in a key position to support NFIP activities and to assist FEMA in

addressing intensified assistance demands. The National Flood Insurance Program's Rules and Regulations (44 CFR 59, et seq.) outline functions which States may undertake to increase State and local flood hazard mitigation capabilities. Section 60.25 groups these functions into three broad areas: development of a planning and legislative framework for local flood plain management; coordination of Federal, State and local aspects of the Program; and, provision of general and technical assistance to local officials.

FEMA recognizes that State capacity to deal effectively with these areas and to shape meaningful intergovernmental cooperation is essential to the ultimate success of the NFIP. In order to be responsive to the needs of these States and their local communities, the FIA has developed a State Assistance Program to encourage a Federal/State partnership to achieve the NFIP's ultimate objectives of reducing loss of life and property due to flooding.

FEMA has determined that an environmental impact statement is not needed for this program. A copy of the finding of no significant impact is available for inspection at the above address.

This rule is in consonance with the President's memorandum of November 16, 1979, and does not impose an unnecessary burden on the small business sector.

Accordingly, Subchapter B of Chapter 1 of Title 44, Code of Federal Regulations, is amended by adding a new Part 76 as follows:

PART 76—STATE ASSISTANCE PROGRAM FOR THE NATIONAL FLOOD INSURANCE PROGRAM

Sec.

76.1 Purpose.
76.2 Description of program.
76.3 Eligible applicants.
76.4 Administrative procedures.
76.5 General provisions for cooperative agreement.
76.6 Ineligible tasks.

Authority: The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act 1973, 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 43 FR 41943; Executive Order 12127, effective April 1, 1979, 44 FR 19367.

§ 76.1 Purpose.

(a) The State Assistance Program is designed to promote an intergovernmental flood hazard mitigation partnership by providing States with opportunity to strengthen their role in NFIP flood hazard mitigation activities. The Program will provide individual States an opportunity to complement NFIP activities by developing, implementing, and evaluating approaches to accomplish NFIP objectives through State programs. It is intended that each State undertake activities consistent with its demonstrated capability in NFIP and flood hazard mitigation activities. The Program is designed to increase existing State capabilities as well as develop new ones. In turn, States will assist in increasing their communities' capabilities to develop, implement, and administer flood hazard mitigation measures.

(b) Adequate State participation in NFIP coordination and flood hazard mitigation activities is one of the best means available to ensure that the NFIP is effectively implemented at the local level. As more communities are converted to the Regular Program, greater demands are placed on States to assist their local communities in meeting NFIP requirements. Increased State involvement is necessary to help ensure the proper implementation and administration of NFIP flood plain management standards at the local level. Through the State Assistance Program, FEMA, in concert with individual States, will be able to provide quality community assistance.

§ 76.2 Description of program.

The State Assistance Program is designed for all States which submit acceptable applications regardless of their present level of involvement or degree of expertise in NFIP and flood hazard mitigation activities. It is structured to recognize the fact that States have individual needs and different levels of sophistication in dealing with the NFIP. Thus, the State Assistance Program allows each State the flexibility necessary to develop its application to accommodate the unique characteristics of the State and its communities, and allows each State to undertake an appropriate level of effort.

(a) *Program Elements.* The State Assistance Program has been designed around three Program Elements: *Assessment, General Assistance and Public Information,* and *Community Services;* each encompassing its own general objective. Each objective for the State's project (the "Project Objective") chosen by the State shall be derived from one of the three general objectives defined under the Program Elements. The State shall then choose tasks that meet its chosen Project Objectives. The Program Elements are structured in order of increased levels of capability needed to accomplish their tasks. *Assessment* tasks demand the least capability; *Community Services* tasks demand the most capability. The State shall choose objectives and tasks from the Program Elements that are consistent with its demonstrated capability and develop a project designed to provide a foundation upon which to progress towards Program Elements requiring higher capabilities. Accomplishing the objectives of the Program Elements requiring less capability is a prerequisite for choosing elements requiring higher capability. A State's project may contain a mix of tasks chosen from among the different elements, provided the State "qualifies" for each element. In delineating a project, States shall choose Project Objectives and corresponding tasks that are derived from the following Program Elements:

(1) *Assessment.* The general objective of the Assessment element is to provide a State with the opportunity to examine and evaluate current State and local NFIP and flood hazard mitigation activities. A plan designed to expand the State's role in NFIP coordination and flood hazard mitigation activities will result. Its implementation will become the basis for future State Assistance Program funding. Generally, this element is designed for States which have not developed a formal State-wide hazard mitigation program and have been minimally involved in NFIP activities.

(2) *General Assistance and Public Information.* The general objective of the General Assistance and Public Information element is to provide a State with the opportunity to develop a Statewide information base and coordination network. Under this element states will promote an increased understanding of the NFIP and its concepts and provisions, develop information dissemination and retrieval systems, and create approaches to maximize the coordinated use of Federal and State resources for flood hazard mitigation.

(3) *Community Services.* The general objective of the Community Services element is to provide States with an opportunity to work closely with local government officials in the mechanics of implementing and administering flood hazard mitigation programs. The tasks are designed for States which have already demonstrated a leadership role through strong State flood hazard mitigation laws, programs, and policies.

(b) *Funding Approach.* Each State will be provided a target funding figure which is based on an objective formula. Each State will then develop an application using the target figure to guide the scope of work. Both the scope of work and the funding figure provided

to FEMA will be subject to negotiation. To be funded, each application must provide for new or substantially expanded activities. The State Assistance Program is not intended to provide funds for on-going State activities in related areas of planning or technical assistance. Furthermore, any subcontracting must be justified as to how it meets the objectives of the Program.

(1) *Apportionment Formula.* The apportionment formula has been developed to guarantee a fair share of the Program's funds to each State interested in assistance. The formula weighs data for each State reflecting the magnitude of lives at risk to flood hazards, the extent of flood hazard within communities, development pressures, and historical flood damage.

(2) *Formula Factors.* The four factors used to derive a percentage of the total State Assistance Program's fiscal year funds for each State include: Population in Special Flood Hazard Areas; Number of Communities Participating in the Regular Program of the National Flood Insurance Program; Total Increase in Households from Census Bureau data; and, Flood Damages by National Flood Insurance Program Flood Insurance Claims. The first factor, Population in Special Flood Hazard Areas, reflects the magnitude of lives at risk from flooding in each State. The second factor, Number of Communities Participating in the Regular Program, relates to priorities established by FEMA Regional Offices for detailed flood hazard study purposes. Study priorities generally are based on the severity of flooding and damage potential in each community. The third factor, Total Increase in Households, indicates which States are experiencing increasing development pressures which may increase flood risks. The fourth factor, Flood Damage by National Flood Insurance Program Flood Insurance Claims, weighs the relative historical flood damage sustained by each State. All factors are weighted equally.

(c) *Application Evaluation Criteria.* All State applications will be evaluated as to how well they meet the following criteria:

(1) *Objectives expressed*—specific and clearly stated objectives which relate to the national objectives of the State Assistance Program;

(2) *Tasks defined*—clear and cogent definitions of the tasks to be undertaken;

(3) *Implementation*—description of how these tasks will be accomplished, the approaches used to achieve the objectives, and the results, products and benefits expected to be derived from each task;

(4) *Needs*—explanation and understanding of the needs to be addressed by the tasks;

(5) *Coordination*—explanation of a plan of coordination with FEMA programs and offices, other federal agencies and other state agencies and programs;

(6) *Capacity*—demonstration of an acceptable level of performance in dealing with the NFIP to undertake more sophisticated tasks covered in the *General Assistance and Public Information* and *Community Services* elements.

(7) *Sustainability*—demonstration of the extent to which a state will be able to integrate NFIP standards into the overall framework of state and community planning and development activities to achieve maximum sustainability.

(8) *Consistency*—with FEMA programs and policies, particularly the NFIP.

(9) *State Evaluation component*—definition of an evaluation system which includes:

(i) Clearly stated *objectives.*

(ii) *Tasks* to be undertaken.

(iii) *Performance indicators* (quantifiable expressions of the project objectives).

(iv) *Performance standards* (desired level of achievement for an indicator).

(v) *Data sources* (base from which information about performance indicators can be obtained).

(vi) *Narrative comments* addressing what other impacts the project had, problems encountered, the overall success of the project, etc.

(10) *Organizational Qualifications:* current and previous experience in related projects of comparable scope, preferably demonstrated knowledge in dealing with the NFIP.

(11) *Project Management and Workplan*—demonstration of an appropriate project management and work plan.

(d) *Federal Insurance Administrator's Discretionary Fund for Innovative Projects.* (1) *General.* Each State's application for the target amount of funding may contain a supplement proposing innovative tasks involving an additional level of effort than that proposed in the principal application and requesting an additional level of funding from the Administrator's Discretionary Fund. An innovative task may take any of several forms. It may be a product, process, an organizational arrangement or technique. Each innovative task should encompass a concept that is untried, unique, and/or advances the state of the art of flood hazard mitigation. Proposed tasks which have been undertaken before or are in use at the present may be considered for demonstration if the application identifies and addresses the question of the special nature or circumstances surrounding the proposed task which would warrant its consideration for funding under the Discretionary Fund.

(2) *Application Procedure.* Requests for funding of tasks from the Administrator's Discretionary Fund must be identified separately as a supplement to the principal application for the target amount of funding. The supplemental Discretionary Fund application will be evaluated separately from the principal application. All requests for discretionary funding of tasks will be presented to the Federal Insurance Administrator at one time so that priorities may be weighed and funds may best be distributed.

(3) *Review Criteria.* Each task proposed for funding from the Administrator's Discretionary Fund must be justified specifically as to how it meets the following criteria:

(i) The unique capabilities, related experience, facilities or techniques and the commitment which the applicant possesses and offers for achieving the objectives of the task.

(ii) The extent to which the identified problem is common to a substantial number of states and the proposed approach can be adopted and replicated in a number of other states.

(iii) The overall technical merit of the proposed tasks including the specific impacts of the innovation.

(iv) The availability of discretionary funds for innovative tasks in light of competing needs.

§ 76.3 Eligible applicants.

Each State, the District of Columbia, Puerto Rico, the Virgin Islands and Guam are eligible to participate in the State Assistance Program. The Governor of each State and representatives of the District of Columbia, Puerto Rico, the Virgin Islands and Guam have been requested by letter to designate a lead agency to coordinate projects under the State Assistance Program and to receive a Request for Application for the State Assistance Program. The designated lead agency will be considered the State Coordinating Agency for purposes of the National Flood Insurance Program.

§ 76.4 Administrative procedures.

(a) *Size of award.* The amount of each award will be determined by the objective apportionment formula set forth in 76.2(b) above. Each applicant should, therefore, submit an application

within the range of its target amount derived from the apportionment formula. The target amount will be provided to each applicant in the Request for Application letter.

(b) *Project period.* The project period typically will be twelve months.

(c) *Submission procedures.* Each applicant shall comply with the following submission procedures:

(1) *Issuance of Request for Application.* Each designated State agency will receive a Request for Application package from the State's respective Federal Emergency Management Agency Regional Director.

(2) *How to submit.* Each State shall submit the original application and three copies to its respective Federal Emergency Management Agency Regional Office.

(3) *Application package.* The application package for the State Assistance Program shall consist of the following:

(i) A letter of transmittal signed by the chief executive officer of the State or the designated State agency.

(ii) A copy of the Agreement Articles for Cooperative Agreement.

(iii) Standard Form 424, Federal Assistance, prescribed by OMB Circular No. A–102. (Non-construction, long-form.)

(iv) A detailed Program Narrative Statement developed according to the Special Instructions provided as part of the Request for Application package provided to the States.

(v) Budget information on OMB Form 80–R0186.

(vi) Standard Form 270 "Request for Advance or Reimbursement," as required by OMB Circular A–102 and FEMA General Provisions for Cooperative Agreements.

(vii) A copy of A–95 review comments or documentation of no comment and full review period.

(viii) A copy of Assurances as required by the FEMA General Provisions for Cooperative Agreement (provided to each State as part of the Request for Application package).

(d) *Reporting requirements.* (1) *Project Performance Reporting Requirements.* Each State shall submit a narrative evaluation of its level of achievement of project objectives. Each State shall report actual levels of performance standards achieved for project objectives against levels expressed by the State as desirable in its application. In addition, each State shall compare percentages of tasks accomplished against percentages projected for each month in the State's application. These narrative reports shall be submitted at intervals specified in the Agreement Articles for Cooperative Agreement.

(2) *Financial Reporting Requirements.* (i) Standard Form 270 "Request for Advance or Reimbursement" is the voucher form to be submitted for all bills for reimbursement.

(ii) Standard Form 272 "Federal Cash Transactions Report" must be submitted each reporting period.

(iii) Standard Form 269 "Financial Status Report" must be submitted each reporting period.

(iv) A narrative report projecting the percentage of cost expended per task by month must be submitted each reporting period.

(3) *Project Completion Reporting Requirements.* At the conclusion of the project the State must submit the following:

(i) Final Standard Forms 272 and 269.

(ii) A narrative report which included an analysis of the project's success in achieving the Project Objectives.

(e) *Agreement Articles for Cooperative Agreement under the State Assistance Program.* The Agreement Articles shall be the basic terms to which the State and FEMA agree. The Agreement Articles shall become part of the Cooperative Agreement.

§ 76.5 General provisions for cooperative agreement.

The legal funding instrument for the State Assistance Program for the National Flood Insurance Program shall be cooperative agreement. All States will be required to comply with FEMA General Provisions for Cooperative Agreement. The General Provisions for Cooperative Agreement shall be provided to the States as part of the Request for Application Package. The General Provisions shall become part of the Cooperative Agreement.

§ 76.6 Ineligible tasks.

The following is a list of tasks which are ineligible under most circumstances and serves as a general guide regarding ineligible tasks. This list of examples of ineligible tasks is merely illustrative and does not constitute a list of all ineligible tasks.

(a) *Public works, facilities and site or other improvement.* The general rule is that public works, facilities and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated or installed.

(b) *Purchase of equipment.* The purchase of equipment is generally ineligible.

(c) *Analysis of NFIP or its products.* Tasks choices shall in no way analyze or recommend changes to the NFIP or its products. For example, proposed tasks shall not duplicate or potentially conflict with hydrologic and hydraulic engineering activities performed by the Federal Insurance Administration.

(d) *Flood Insurance Studies.* Flood Insurance Studies shall not be conducted under the State Assistance Program.

(e) Any task which is not within the general scope of the State Assistance Program's objectives.

Issued: May 13, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–15388 Filed 5–16–80; 8:45 am]

BILLING CODE 6718–01–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1061

Community Food and Nutrition Program

AGENCY: Community Services Administration.

ACTION: Notice of publication of final rule.

SUMMARY: The Community Services Administration gives notice that regulations concerning the Community Food and Nutrition Program (CFNP) will be published Tuesday, May 20, 1980 in Part IV of the **Federal Register.**

FOR FURTHER INFORMATION: Contact Harold L. Gore, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. telephone: (202) 632–6694.

Thomas J. Mack,

Deputy General Counsel.

[FR Doc. 80–15425 Filed 5–16–80; 8:45 am]

BILLING CODE 6315–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 175

[Docket No. HM–166–E; Amdt. Nos. 107–7, 175–14]

Shipment of Hazardous Materials by Air; Miscellaneous Amendments

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Department's Hazardous Materials Regulations is to incorporate the Federal Aviation

Administration's (FAA) change in the hazardous materials function from the various District Offices to the Office of Civil Aviation Security. This action is being taken to reflect the organizational changes of the hazardous materials function within the FAA.

EFFECTIVE DATE: July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, Washington, DC 20590, Phone 202–472–2726.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration's hazardous materials function is now assigned to the Office of Civil Aviation Security. Required training of security field personnel will be completed on or before July 1, 1980 in order to transfer the field hazardous materials function.

Since these amendments do not impose additional requirements, public notice has not been provided and this amendment is effective on July 1, 1980. The MTB has determined that the environmental and economic impact associated with these amendments is minimal.

In consideration of the foregoing, 49 CFR Parts 107 and 175 are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Appendix A [Amended]

1. In Part 107, Appendix A, the introductory text and the first two paragraphs are revised to read:

Appendix A

LIST OF DEPARTMENT OF TRANSPORTATION OFFICIAL THROUGH WHOM APPLICATION FOR EXEMPTIONS SEEKING PRIORITY TREATMENT ON THE BASIS OF EXISTING EMERGENCIES MAY BE INITIATED BY TELEPHONE.

CERTIFICATE HOLDING AIRCRAFT OPERATORS

The Federal Aviation Administration Civil Aviation Security Office which serves the place where the flight(s) will originate or which is responsible for the operators overall aviation security program.

NONCERTIFICATE HOLDING AIRCRAFT OPERATORS (OPERATORS OPERATING UNDER FAR PART 91)

The Federal Aviation Administration Civil Aviation Security Office which serves the place where the flight(s) will originate. The nearest Civil Aviation Security Office may be located by calling the FAA Duty Officer. Day or Night, 202–426–3333.

* * * * *

Appendix B [Amended]

2. In Part 107, paragraphs 5, 7, and 8 of Appendix B are revised to read:

Appendix B

* * * * *

(5) If the aircraft is being operating by a holder of a certificate issued under Part 121 or Part 135 of Title 14, CFR, operations must be conducted in accordance with conditions and limitations specified in the certificate holder's operations specifications or operations manual accepted by the FAA. If the aircraft is being operated under Part 91 of Title 14, CFR, operations must be conducted in accordance with an operations plan accepted and acknowledged in writing by the Civil Aviation Security Office responsible for the operator's overall aviation security program.

* * * * *

(7) The aircraft and the loading arrangement to be used must be approved for safe carriage of the particular materials concerned by the FAA Civil Aviation Security Office responsible for the operator's overall aviation security program or the FAA Civil Aviation Security Office serving the place where the material is to be loaded.

(8) When Class A explosives are carried aboard a cargo aircraft under the provisions of Subchapter C, the aircraft operator shall take all possible action to insure that routes over heavily populated areas are avoided commensurate with considerations of flight safety. During the approach and landing phase, the aircraft operator shall request appropriate vectors when under radar control to avoid heavily populated areas.

PART 175—CARRIAGE BY AIRCRAFT

3. In § 175.10 paragraphs (a)(12)(ii) and (a)(12)(v) are revised to read:

§ 175.10 Exceptions.

(a) * * *

(12) * * *

(i) * * *

(ii) Each operator shall prepare and keep current a manual containing operational guidelines and handling procedures, for the use and guidance of flight, maintenance, and ground personnel concerned in the dispensing or expending of hazardous materials. The manual must be approved by the FAA Civil Aviation Security Office responsible for the operator's overall aviation security program or the FAA Civil Aviation Security Office in the region where the operator is located. Each operation must be conducted in accordance with the manual.

* * * * *

(v) When dynamite and blasting caps are carried for avalanche control flights, the explosives must be handled and, at all times, be under the control of the blaster who is licensed under a state or local authority identified in writing to the FAA Civil Aviation Security Office responsible for the operator's overall aviation security program or the FAA Civil Aviation Security Office in the region where the operator is located.

4. In § 175.45 the introductory text of paragraph (a) is revised to read:

§ 175.45 Reporting hazardous materials incidents.

(a) Each operator who transports hazardous materials shall report to the nearest FAA Civil Aviation Security Office by telephone at the earliest practicable moment after each incident that occurs during the course of transportation (including loading, unloading or temporary storage) in which as a direct result of any hazardous materials:

* * * * *

5. In § 175.320 paragraphs (b)(5), and (b)(7) are revised to read:

§ 175.320 Cargo-only aircraft; only means of transportation.

* * * * *

(b) * * *

(5) If the aircraft is being operated by a holder of a certificate issued under 14 CFR Part 121, Part 127 or Part 135, operations must be conducted in accordance with conditions and limitations specified in the certificate holder's operations specifications or operations manual accepted by the FAA. If the aircraft is being operated under 14 CFR Part 91, operations must be conducted in accordance with an operations plan accepted and acknowledged in writing by the Civil Aviation Security Office serving the operator's location or the place where the material is to be loaded.

* * * * *

(7) The aircraft and the loading arrangement to be used must be approved for safe carriage of the particular materials concerned by the FAA Civil Aviation Security Office responsible for the operator's overall aviation security program or the appropriate FAA Civil Aviation Security Office serving the place where the material is to be loaded.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1.)

Note.—The Materials Transportation Bureau has determined that this document will not result in a major economic impact under the terms of Executive Order 12044 and DOT Implementing procedures (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the Docket.

Issued in Washington, D.C. on May 8, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-15130 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-60-M

---

49 CFR Parts 171, 173, 174, 177

[Docket No. HM-163-D; Amdt. Nos. 171-54; 173-138; 174-38; 177-49]

Hazardous Materials Regulations; Withdrawal of Certain Bureau of Explosives Delegations of Authority

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of these amendments to the Department's Hazardous Materials Regulations is to withdraw or cancel the remaining delegations of authority to the Bureau of Explosives (B of E) in Part 173 (except for § 173.34(d) and § 173.303(a)) of 49 CFR. However, the B of E will continue to play a role in the testing of explosives and other hazardous materials for MTB. This action is being taken to conform existing programs with the purposes of the Hazardous Materials Transportation Act.

EFFECTIVE DATE: May 19, 1980.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, Washington, DC 20590, phone 202-472-2726.

SUPPLEMENTARY INFORMATION: On November 26, 1979, the Materials Transportation Bureau (MTB) published a Notice of Proposed Rulemaking, Docket HM-163D; Notice 79-15 (44 FR 67476) which proposed these amendments. The background and the basis for incorporating these amendments into the regulations were discussed in that notice. Interested persons were invited to give their views prior to the closing date of January 15, 1980.

The MTB received eight comments on Notice 79-15.

The main objections received were in reference to § 171.20 and § 173.86. The objections were (1) no time limitation on the approval response from the Associate Director for OE after an application for approval has been submitted, (2) no mention of an appellate review in the event that the Associate Director for OE denies an approval, and (3) the economic hardship and excessive time delay that would occur if the present authority now delegated to the Department of Defense and the Department of Energy was withdrawn.

In response to the first objection, the MTB has and will continue to rely on the expertise and recommendations of the B of E. Therefore, we do not visualize the need to incorporate a time period for the Associate Director for OE to respond to an approval request at this time. All applications received for approval will be processed as expeditiously as possible. If actual practice dictates the need for a time limit at a later date, the MTB will consider the issuance of a notice of proposed rulemaking for public comment.

In reference to the second objection, § 171.20 has been revised by adding paragraph (c) to allow any applicant to file an appeal with the Director, MTB in the same manner as provided in § 107.121 for an exemption.

The proposed changes in § 173.86 were not intended to disrupt or change the present authority delegated to the Department of Defense and the Department of Energy. Therefore, § 173.86(b) has been revised to require OE approval only on those items examined by the B of E.

Two paragraphs in Part 174 and three paragraphs in Part 177 have been revised and included in this rulemaking to coincide with similar changes made in Part 173. The changes proposed for § 173.34(d) and § 173.303(a) have been withdrawn from this rulemaking and will be republished in a separate notice of proposed rulemaking in the near future. In addition to § 173.34(d) and § 173.303(a) the MTB believes that the only remaining delegation of authority to the B of E in Parts 173, 174, 177 and 178 that has not been changed is § 177.821(e). The MTB will include these three proposed changes in the same notice.

Primary drafters of these amendments are Darrell L. Raines, Exemptions and Regulations Termination Branch, and George W. Tenley, Office of the Chief Counsel, Research and Special Programs Administration.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

In consideration of the foregoing, 49 CFR Parts 171, 173, 174, and 177 are amended as follows:

1. Section 171.20 is added to read:

§ 171.20 Submission of Examination Reports.

(a) When it is required in this subchapter that the issuance of an approval by the Associate Director for OE be based on an examination by the Bureau of Explosives (or any other test facility recognized by MTB), it is the responsibility of the applicant to submit the results of the examination to the Associate Director for OE.

(b) Applications for approval submitted under paragraph (a) of this section, must be submitted to the Associate Director for Operations and Enforcement, Materials Transportation Bureau, Washington, D.C. 20590.

(c) Any applicant for an approval aggrieved by an action taken by the Associate Director for OE, under this subpart may file an appeal with the Director, MTB within 30 days of service of notification of a denial.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. In § 173.28 paragraph (h)(1) is deleted:

§ 173.28 Reuse of containers.

* * * * *

(h) * * *

(1) [Deleted]

* * * * *

3. In § 173.31 paragraph (d)(4) Table footnote [1] is revised to read:

§ 173.31 Qualification, maintenance, and use of tank cars.

* * * * *

(d) * * *

(4) * * *

[1] Tanks and safety relief devices in hydrocyanic acid service must be retested and inspected by a written procedure filed with and approved by the Associate Director for OE.

* * * * *

4. In § 173.32 paragraph (b)(3) is revised to read:

§ 173.32 Qualification, maintenance, and use of portable tanks.

* * * * *

(b) * * *

(3) Tanks having capacities of between 750 pounds and 1,000 pounds of water shall be considered as portable tank containers for the purposes of this part. In lieu of using safety relief valves on such containers they may be equipped with fusible plugs only when the container is filled by weight. Size, number, and location, as well as character and physical properties of fusible plugs shall be examined by the Bureau of Explosives and approved by the Associate Director for OE. These containers shall be marked "DOT Specification 51S."

* * * * *

5. In § 173.34 paragraphs (c)(3)(i), introductory text of paragraph (g)(4)(ii), the introductory text of paragraph (i),

paragraph (i)(4)(i), and the introductory text of paragraph (l) are revised to read:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(c) * * *

(3) * * *

(i) Marked service pressure may be changed only upon application to the Associate Director for OE and receipt of written instructions as to the procedure to be followed. Such a change is not authorized for a cylinder which has failed to pass the prescribed periodic hydrostatic retest unless it is reheat treated and requalified in accordance with the requirements of this section.

* * * * *

(g) * * *

(4) * * *

(ii) The permanent expansion shall not be less than 3 percent nor more than 10 percent of the total expansion in the hydrostatic retest, in which case the flattening and physical tests are not required. For this alternative method the hydrostatic retest pressure may not exceed 115 percent of the minimum prescribed test pressure except with specific approval of the Associate Director for OE.

* * * * *

(i) *Repair by welding or brazing of DOT–4 series and DOT–8, welded or brazed cylinders.* Repairs on DOT–4 series and DOT–8 series welded or brazed cylinders are authorized to be made by welding or brazing. Such repairs must be made by a manufacturer of these types of DOT cylinders or by a repair facility approved by the Associate Director for OE and by a process similar to that used in its manufacture and under the following specific requirements:

* * * * *

(4) * * *

(i) Must be done by a manufacturer of these types of DOT cylinders or by a repair facility approved by the Associate Director for OE.

* * * * *

(l) *Rebuilding of DOT–4 series and DOT–8, welded or brazed cylinders.* Rebuilding of DOT–4 series and DOT–8 series, welded or brazed cylinders is authorized. Such rebuilding must be done by a manufacturer of these types of DOT cylinders or by a repair facility approved by the Associate Director for OE and by a process similar to that used in its original manufacture and under the following specific requirements:

* * * * *

6. In § 173.53 paragraphs (h), (h)(1), and (j) are revised to read:

§ 173.53 Definition of Class A explosives.

* * * * *

(h) *Type 8.* Any solid or liquid compound, mixture or device which is not specifically included in any of the above types, and which under special conditions may be so designated and examined by the Bureau of Explosives and approved by the Associate Director for OE. Example: Shape charges, commercial.

(1) A shaped charge, commercial, consists of a plastic, paper, or other suitable container comprising a charge of not to exceed 8 ounces of a high explosive containing no liquid explosive ingredient and with a hollowed-out portion (cavity) lined with a rigid material. Detonators or other initiating elements may not be assembled in the device unless examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

(j) *Ammunition for cannon with projectiles.* Ammunition for cannon with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, or shell is fixed ammunition assembled in a unit consisting of the cartridge case containing the propelling charge and primer, and the projectiles, or shell, fuzed or unfuzed. Detonating fuzes, tracer fuzes, explosive or ignition devices, or fuze parts with explosives contained therein may not be assembled in ammunition or included in the same outside package unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

* * * * *

7. In § 173.56 paragraphs (a), (c), and (d) are revised to read:

§ 173.56 Ammunition, projectiles, grenades, bombs, mines, gas mines, and torpedoes.

(a) Detonating fuzes, tracer fuzes, explosive or ignition devices, bouchons, or fuze parts with explosives contained therein, must not be assembled in explosive projectiles, grenades, explosive bombs, explosive mines, or explosive torpedoes, or included in the same outside package with them unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

* * * * *

(c) The following explosives may be shipped without being boxed when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD:

(1) Explosive projectiles, explosive torpodoes, explosive mines, or explosive bombs, exceeding 90 pounds in weight, and explosive projectiles of not less than 4½ inches when palletized.

(2) Explosive projectiles less than 4½ inches when palletized.

(d) Gas projectiles, smoke projectiles, incendiary projectiles, illuminating projectiles, gas bombs, smoke bombs, incendiary bombs, gas grenades, smoke grenades, incendiary grenades, and gas mines, explosive, containing a bursting charge must be packed and properly secured in strong wooden boxes. Detonating fuzes, boosters or bursters, bouchons or ignition elements may not be assembled in these articles or included in the same package with them unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

* * * * *

8. In § 173.57 paragraph (a) is revised to read:

§ 173.57 Rocket ammunition.

(a) Rocket ammunition with explosive projectiles, gas projectiles, smoke projectiles, incendiary projectiles, or illuminating projectiles, must be well packed and properly secured in strong wooden, metal, preformed fiber glass resin impregnated container, or other packagings or approved military specifications which comply with § 173.7(a).

* * * * *

9. In § 173.65 the introductory text of paragraph (h) is revised to read:

§ 173.65 High explosives with no liquid explosive ingredient nor any chlorate.

* * * * *

(h) Shaped charges, commercial, having exposed lined conical cavities must have such cavities effectively filled. Those having conical cavities that are covered shall be paired together with the cavities facing each other and with one or more pairs in a fiber tube, or so arranged that the conical cavities of the shaped charges at the ends of the column face toward the center of the tube. The shaped charges in the fiber tubes must fit snugly with no excess space and the fiber tubes containing the shaped charges must be packed snugly with no excess space in the outside containers. Other methods of packaging for devices of which shaped charges are a component part may be employed when examined by the Bureau of Explosives and approved by the Associate Director for OE. Shaped charges, commercial, must be packed in specification containers as follows:

* * * * *

10. In § 173.79 paragraphs (a)(2) and (c) are revised to read:

§ 173.79 Jet thrust units (jato), class A explosives; rocket motors, class A explosives; igniters, jet thrust (jato), class A explosives; and igniters, rocket motor, class A explosives.

(a) * * *

(2) Wooden boxes, wooden crates, or other packagings of approved military specifications which comply with § 173.7(a)

* * * * *

(c) Jet thrust units Class A explosives or rocket motors, Class A explosives, may be packaged in the same outside packaging with their separately packaged igniters (or igniter components), Class A, B, or C explosives only when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

* * * * *

11. In § 173.86 paragraph (b) is revised as follows:

§ 173.86 New explosives definitions; approval and notification.

* * * * *

(b) No person may offer a new explosive for transportation unless it has been examined by the Bureau of Explosives and classed and approved by the Associate Director for OE; or examined, classed, and approved by one of the following agencies.

(1) U.S. Deparment of Energy (DOE) for new explosives made by, or under the direction or supervision of DOE when tested in accordance with the Explosives Hazardous Classification procedures contained in DOT TB 700–2 (May 19, 1967), or

(2) U.S. Army Material Development and Readiness Command (DRCSF), Naval Sea Systems Command (NAVSEA 04H), or HQUSAF (IGD)/SEV/ for new explosives made by, or under the direction or supervision of the Department of Defense when tested in accordance with Explosives Hazard Classification procedures contained in DOD TB 700–2 (May 19, 1967), (NAVSEAINST 8020.8 AFTO 11A–1–47, DSAR 8220.1).

* * * * *

12. In § 173.88 paragraph (g) is revised to read:

§ 173.88 Definition of class B explosives.

* * * * *

(g) Explosives power devices, Class B, are devices designed to operate ejecting apparatus or other mechanisms by means of a propellant explosive, Class B, and differ from explosive power devices, Class C, in that they contain larger or more powerful propellants. The devices must not rupture on functioning and must be of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, except as otherwise provided in § 173.51(a)(16) and § 173.86(a).

* * * * *

13. In § 173.92 paragraphs (a)(4) and (c) are revised to read:

§ 173.92 Jet thrust units (jato), class B explosives; rocket motors, class B explosives; igniters, jet thrust (jato), class B explosives; igniters, rocket motors, class B explosives; and starter cartridges, jet engine, class B explosives.

(a) * * *

(4) Wooden boxes, wooden crates, or other packagings of approved military specification which comply with § 173.7(a).

* * * * *

(c) Jet thrust units, Class B explosives, or rocket motors, Class B explosives, may be packaged in the same outside packaging with their separately packaged igniters (or igniter components), Class A, B, or C explosives, only when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

* * * * *

14. In § 173.94 the introductory text of paragraph (a) and paragraph (b) are revised to read:

§ 173.94 Explosive power devices, class B.

(a) Explosive power devices, Class B may not be shipped with igniters assembled therein unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD. Explosive power devices, Class B, must be packed in outside containers complying with the following specifications:

* * * * *

(b) Explosive power devices, Class B packed in any other manner must be in containers of a type examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

15. In § 173.95 paragraphs (a)(2), (b) and (c) are revised to read:

§ 173.95 Rocket engines (liquid), class B explosives.

(a) * * *

(2) Wooden boxes or metal packagings of approved military specification which comply with § 173.7(a).

(b) Rocket engines (liquid), Class B explosives, may not be shipped with igniters or initiators assembled therein unless shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

(c) Rocket engines (liquid), Class B explosives, may be packed in the same outside packaging with their separately packaged igniters, jet thurst, Class B explosives when shipped by or for the Department of Defense (DOD) and in accordance with established practices and procedures specified by DOD.

* * * * *

16. In § 173.100 paragraph (p), the sixth sentence of the introductory text paragraph (r), paragraphs (r)(11), and (u), the introductory text of paragraph (x), paragraphs (y) (aa) and (ee) are revised to read:

§ 173.100 Definition of class C explosives.

* * * * *

(p) Toy plastic or paper caps for toy pistols in sheets, strips, rolls, or individual caps, must not contain more than an average of twenty-five hundredths of a grain of explosive composition per cap and must be packed in inside packages constructed of cardboard not less than 0.013-inch in thickness, metal not less than 0.008-inch in thickness, noncombustible plastic not less than 0.015-inch in thickness, or a composite blister package consisting of cardboard not less than 0.013-inch in thickness and noncombustible plastic not less than 0.005-inch in thickness, which shall provide a complete enclosure and the mimimum dimensions of each side or end of such package shall be not less than ⅛-inch in height. The number of caps in these inside packages shall be limited so that not more than 10 grains of explosives composition shall be packed into one cubic inch of space and not exceeding 17.5 grains of the explosive composition of toy caps shall be packed in any inside container. These inner containers must be packed in outside containers as specified in § 173.109.

* * * * *

(r) * * *. Any new device, not enumerated in this paragraph, must be examined by the Bureau of Explosives and approved by the Associate Director for OE, before being offered for transportation as Common Fireworks. * * *.

* * * * *

(11) Novelties consisting of two or more devices enumerated in this paragraph when examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

(u) Toy propellant devices and toy smoke devices consist of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder. These devices must be so designed that they will neither burst nor produce external flame on functioning.

Ignition elements, if attached, must be of a design examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

(x) Cigarette loads, trick matches, and trick noise makers, explosive, must be of type examined by the Bureau of Explosives and approved by the Associate Director for OE and are described as follows:

* * * * *

(y) Smoke candles, smokepots, smoke grenades, smoke signals, signal flares, hand signal devices, and very signal cartridges are devices designed to produce visible effects for signal purposes. These devices must contain no bursting charges and no more than 200 grams of pyrotechnic composition each (see Note 1), exclusive of smoke composition (see Note 2), unless greater weight of composition is examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

(aa) Explosive power devices, Class C, are devices designed to drive generators or mechanical apparatus by means of propellant explosives, Class B. The devices consist of a housing with a contained propellant charge and an electric igniter or squib. The devices must be of a type examined by the Bureau of Explosives and approved by the Associate Director for OE for this classification.

* * * * *

(ee) Starter cartridges, jet engine, Class C, consist of a metal, plastic, and/or rubber case, each containing a pressed cylindrical block of flammable solid material and having in the top of the case a small compartment that encloses an electric squib, small amount of black powder, and/or smokeless powder which constitute an igniter. The starter cartridge is used to activate a mechanical starter for jet engines and must be of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, except as provided in § 173.51(a)(16) and § 173.86(a).

* * * * *

17. In § 173.102 paragraph (a)(2) is revised to read:

§ 173.102 Explosive cable cutters; explosive power devices, class C; explosive release devices, or starter cartridges, jet engine, class C explosives.

(a) * * *

(2) In addition to specification containers prescribed in this section, explosive cable cutters, explosive power devices, Class C, explosive release devices, or starter cartridges, jet engines, Class C may be shipped in strong wooden or metal boxes. Starter cartridges, jet engine, must have igniter wires short-circuited when packed for shipment.

* * * * *

18. In § 173.120 paragraph (c) is revised to read:

§ 173.120 Automobiles, motorcycles, tractors, or other self-propelled vehicles.

* * * * *

(c) *Truck bodies or trailers on flat cars.* Truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail highway movement, provided the equipment and fuel supply are of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. The heating or refrigerating equipment is considered as carriers' equipment and is not subject to any other requirements of this subchapter.

* * * * *

19. In § 173.124 paragraphs (a)(1) and (a)(2) are revised to read:

§ 173.124 Ethylene oxide.

(a) * * *

(1) Specification 15A, 15B, 15C, or 16A (§§ 178.168, 178.169, 178.170, 178.185 of this subchapter) wooden boxes and Spec. 12B (§ 178.205 of this subchapter) fiberboard boxes with metal inside containers not over 12-ounce capacity each. Each inside container must have a minimum bursting strength of 180 psig as prepared for shipment and be provided with a safety vent having a minimum diameter of 0.1023 inch and closed with fusible metal having a yield temperature of 157 to 170°F. The safety vent opening shall be hot tinned before filling with fusible metal. Filling shall be such that the container will not be liquid full below 185°F. Each inside container must be completely insulated, except for top closure, with two coats of heat-retardant paint, of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, applied over suitable primer and finished with suitable waterproof paint, or with other equally efficient insulation examined by the Bureau of Explosives and approved by the Associate Director for OE. Not more than 12 inside containers nor more than one layer of containers may be packed in one outside container.

(2) Cylinders as prescribed for any compressed gas, except acetylene, not exceeding 30 gallons nominal water capacity, which meet the following requirements: All cylinders must be seamless or steel welded. Cylinders must be equipped with safety devices of the fusible plug type with threaded straight bore orifice, with yield temperature of 157° to 170°F. having a minimum vent area of 0.0055 square inch per pound of water capacity of the container for containers not over 1-gallon capacity and 0.0012 square inch per pound of water capacity of the container for all containers over 1-gallon capacity. Each cylinder must be tested for leakage at a pressure of at least 15 psig with an inert gas before each refilling. Filling must be such that the container will not be liquid full at 185°F. Pressurizing valves must be provided for all containers over 1-gallon capacity. Eductor tubes must be provided for all containers over 5-gallon capacity. Cylinders having a water capacity in excess of 1 gallon must be insulated with at least three coats of heat-retardant paint, of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, applied over suitable primer and finished with suitable waterproof paint; or with other equally efficient insulation examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

20. In § 173.162 paragraph (h) is revised to read:

§ 173.162 Charcoal.

* * * * *

(h) Charcoal, screenings or ground, crushed, granulated or pulverized charcoal, in bags, when loaded in cars for shipment by rail must be so loaded that the bags are laid horizontally in the car, and so piled that there will be spaces for efficient air circulation. These spaces must be not less than 4 inches wide. If the bags are not compactly filled and closed so as to avoid free space within, transverse wooden strips must be laid between the bags and extending the full width of the car; these strips should be approximately 2 feet apart vertically and longitudinally. The bags must not be piled closer than 6 inches from the top of the car, and no more than 26,000 pounds of screenings, ground, granulated, crushed, or

pulverized charcoal, shall be loaded in a 36-foot, 6-inch car; 27,000 pounds in a 37-foot, 6-inch car; 28,000 pounds in a 38-foot, 6-inch car; 29,000 pounds in a 39-foot, 6-inch car; 36,000 pounds in a 40-foot, 6-inch car; and 40,000 pounds in a 50-foot, 6-inch car. A tight car must be used, and any loose material must be swept up and removed from the doorway of the car before completing the loading.

* * * * *

21. § 173.197a is revised to read:

§ 173.197a Smokeless powder for small arms.

Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives and approved by the Associate Director for OE. Maximum quantity in any inside packaging must not exceed 8 pounds and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Each outside package must bear a flammable solid label.

22. In § 173.202 paragraph (a)(1) is revised to read:

§ 173.202 Sodium metal liquid alloy, potassium metal liquid alloy, and sodium potassium liquid alloy.

(a) * * *

(1) Specification 15A or 15B (§§ 178.168, 178.169 of this subchapter). Wooden boxes with inside metal containers of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Inside containers must be cushioned with incombustible cushioning material. Each container must have been tested hydrostatically to a pressure of not less than 60 pounds per square inch. Closing devices must be protected from injury. Not more than 300 pounds of sodium or potassium liquid alloy may be shipped in one outside container.

* * * * *

23. In § 173.218 paragraph (a)(1) is revised to read:

§ 173.218 Isopropyl percarbonate, unstabilized.

(a) * * *

(1) Specification 15A, 15B, 15C, 16A, or 19A (§§ 178.168, 178.169, 178.170, 178.185, 178.190 of this subchapter). Wooden boxes, with glass, metal, or earthenware inside containers of not over 2 gallons capacity each which must be maintained at a temperature below 0°F. Shipments are authorized for transportation by private or contract carrier by motor vehicle only.

24. In § 173.225 paragraph (a)(1) is revised to read:

§ 173.225 Phosphorus trisulfide; phosphorus sesquisulfide; phosphorus heptasulfide, and phosphorus pentasulfide.

(a) * * *

(1) Specification 15A or 15B (§§ 178.168, 178.169 of this subchapter). Wooden boxes with metal inside containers hermetically sealed (soldered) or watertight metal cans with screw-top closures.

* * * * *

25. In § 173.237 paragraph (a)(2) is deleted.

§ 173.237 Chlorine dioxide hydrate, frozen; chloric acid.

(a) * * *

(2) [Deleted]

26. In § 173.238 paragraph (a), is revised to read:

§ 173.238 Aircraft rocket engines (commercial) and/or aircraft rocket engine igniters (commercial).

(a) Aircraft rocket engines (commercial) and their igniters may be offered for transportation when of a type examined by the Bureau of Explosives and approved by the Associate Director for OE to be so described and classed, and when packaged as follows:

(1) Specification 15A, 15B, 15E or 16A (§§ 178.168, 178.169, 178.172, 178.185 of this subchapter). Wooden boxes. Igniters must be packaged in sealed metal containers examined by the Bureau of Explosives and approved by the Associate Director for OE and packed in wooden boxes as specified above when shipped separately from the aircraft rocket engines.

(2) Aircraft rocket engines (commercial), when examined by the Bureau of Explosives and approved by the Associate Director for OE may be packed in the same outside shipping container with their separately packaged igniters. Igniters must be packed in separate sealed metal containers in strong inside containers.

(3) Aircraft rocket engines (commercial) and/or their igniters, packed in any other manner than specified in paragraphs (a) (1) and (2) of this section, must be in containers of a type examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

27. In § 173.245 paragraph (a)(25) is revised to read:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(25) Specification 12A or 12B (§§ 178.210, 178.205 of this subchapter). Fiberboard boxes with inside aluminum containers. Aluminum containers must be examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

28. In § 173.252 paragraph (g)(1) is revised to read:

§ 173.252 Bromine.

* * * * *

(g) * * *

(1) Specification 5K or 5M (§§ 178.88, 178.90 of this subchapter). Specification 5K nickel drums of not over 10 gallons capacity each and containing not more than 225 pounds net weight of bromine or Specification 5M monel drums of not over 25 gallons capacity each and containing not more than 600 pounds net weight of bromine. Drums must be of metal at least 14-gauge United States standard throughout and must have chime reinforcement adequate for their protection. All openings must be in one head and closing parts (plug, cap, flange, etc.) must be of the same metal as the drum. One opening not over 2.3 inches in diameter and one opening not over ¾-inch standard pipe size are permitted. Each drum must be completely emptied and dried before reuse and must be equipped with gaskets of a material examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

29. In § 173.256 paragraph (a)(3) is revised to read:

§ 173.256 Compounds, cleaning, liquid.

(a) * * *

(3) Specification 22B (§ 178.197 of this subchapter). Plywood drums equipped with molded liner of a type and material examined by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

30. In § 173.260 paragraph (g) is revised to read:

§ 173.260 Electric storage batteries, wet.

* * * * *

(g) Electric storage batteries, containing electrolyte or corrosive battery fluid in a coil from which it is injected into the battery cells by a gas generator and initiator assembled with the battery, and which are nonspillable and leakproof, are excepted from Parts 170–189 of this title when examined by the Bureau of Explosives and approved by the Associate Director for OE.

31. In § 173.266 paragraph (f)(2) is revised to read:

§ 173.266 Hydrogen peroxide solution in water.

* * * * *

(f) * * *

(2) Specification MC 310 or MC 312 (§ 178.343 of this subchapter). Tank motor vehicles. Tanks shall be welded construction of aluminum complying with Aluminum Association Nos. 1060, 1260, 5254, or 5652, and having a minimum wall thickness of one-half inch. They must be built to a design working pressure of not less than 40 psig and shall be designed so that internal surfaces may be effectively cleaned and passivated. All openings in the tank shall be located on top of tank. All valves and safety devices shall be provided with overturn protection and dust covers. The tank metal identification plate required shall be marked "DOT MC 310–H_2O_2" or "DOT MC 312–AL–H_2O_2," as appropriate, and, in addition, the vehicle shall be clearly marked in letters not less than one inch high "FOR HYDROGEN PEROXIDE ONLY." Designs for venting and pressure relief devices must be examined by the Bureau of Explosives and approved by the Associate Director for OE.

32. In § 173.268 paragraph (f)(4) is revised to read:

§ 173.268 Nitric acid.

* * * * *

(f) * * *

(4) Cushioning for carboys must be incombustible mineral material, elastic wooden strips, natural cork blocks or rubber blocks. The use of hay, excelsior, loose ground cork, or similar materials, whether treated or untreated, is prohibited.

* * * * *

33. In § 173.269 paragraph (b) is revised to read:

§ § 173.269 Perchloric acid.

* * * * *

(b) Cushioning for carboys must be incombustible mineral material, elastic wooden strips, natural cork blocks or rubber blocks. The use of hay, excelsior, loose ground cork, or similar materials, whether treated or untreated, is prohibited.

* * * * *

34. In § 173.272 paragraph (i)(18) is revised to read:

§ 173.272 Sulfuric acid.

* * * * *

(i) * * *

(18) Specification 17F (§ 178.117 of this subchapter). Metal barrels or drums (single-trip only). Drums equipped with vented closures of an experimental type examined by the Bureau of Explosives and approved by the Associate Director for OE are also authorized for export shipments. Authorized for sulfuric acid of 77.5 percent to 98 percent concentrations with or without an inhibitor, provided such acid has a corrosive effect on steel no greater than 93.2 percent sulfuric acid, measured at 100°F.

* * * * *

35. In § 173.300 paragraph (b)(1) is revised to read:

§ 173.300 Definitions.

* * * * *

(b) * * *

(1) Either a mixture of 13 percent or less (by volume) with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

36. In § 173.305 paragraph (c)(1) is revised to read:

§ 173.305 Charging of cylinders with a mixture of compressed gas and other material.

* * * * *

(c) * * *

(1) Specification 2P (§ 178.33 of this subchapter). Inside metal containers equipped with safety relief devices of a type examined by the Bureau of Explosives and approved by the Associate Director for OE, and packed in strong wooden or fiber boxes of such design as to protect valves from injury or accidental functioning under conditions incident to transportation. Pressure in the container may not exceed 85 psia at 70°F. Each completed metal container filled for shipment must be heated until content reaches a minimum temperature of 130°F., without evidence of leakage, distortion or other defect. Each outside shipping container must be plainly marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS."

* * * * *

37. In § 173.306 paragraph (d)(1) is revised to read:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(d) * * *

(1) Truck bodies or trailers with automatic heating or refrigerating equipment of the gas burning type may be shipped with fuel tanks filled and equipment operating or inoperative, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement, provided the equipment and fuel supply are of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. The heating or refrigerating equipment is considered as carriers' equipment and is not subject to any other requirements of this subchapter.

* * * * *

38. In § 173.315 paragraph (i)(12) is revised to read:

§ 173.315 Compressed gases in cargo tanks and portable tank containers.

* * * * *

(i) * * *

(12) Subject to conditions of paragraph (a)(1) of this section for the methyl chloride and sulfur dioxide optional portable tanks, one or more fusible plugs examined by the Bureau of Explosives and approved by the Associate Director for OE may be used on these tanks in place of safety relief valves of the spring-loaded type. The fusible plug or plugs must be in accordance with CGA Pamphlet S–1.2, to prevent a pressure rise in the tank of more than 120 percent of the design pressure. If the tank is over 30 inches long, each end must have the total specified safety discharge area.

* * * * *

39. In § 173.332 paragraph (d) is revised to read:

§ 173.332 Hydrocyanic acid, liquid (prussic acid) and hydrocyanic acid, liquefied.

* * * * *

(d) Specification 105A500W or 105A600W (§§ 179.100 and 179.101 of this subchapter). Tank cars. Tank must be restenciled 105A300W and be equipped with safety valves of the type and size used on Spec. 105A300W (§§ 179.100 and 179.101 of this subchapter). Tank car tank must be equipped with approved dome fittings and safety devices, and with cork insulation at least 4 inches in thickness. Each tank car must be marked "HYDROCYANIC ACID" in accordance with the requirements of § 172.330 of this subchapter. Written procedures covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection, and testing practices shall be examined by the Bureau of Explosives and approved by the Associate Director for OE before any tank car is offered for transportation of hydrocyanic acid. The

maximum permitted filling density is 63 percent of the water capacity of the tank.

40. In § 173.333 paragraph (a)(2) is revised to read:

§ 173.333 Phosgene or diphosgene.

(a) * * *

(2) Specification 106A500X (§§ 179.300, 179.301 of this subchapter) tanks. Authorized only for phosgene. Tanks must not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130°F. (55°C.) Additional requirements are prescribed for rail shipments under § 174.200 of this subchapter, and for highway shipments under § 177.834(m) of this subchapter.

* * * * *

41. In § 173.336 paragraphs (a)(3) and (a)(4) are revised to read:

§ 173.336 Nitrogen dioxide, liquid; nitrogen peroxide, liquid; and nitrogen tetroxide, liquid.

(a) * * *

(3) Specification 106A500X or 110A500W (§§ 179.300, 179.301 of this subchapter) tanks. Each tank must be equipped with gas tight valve protection caps. Tanks must not be equipped with safety devices of any type. Outage must be sufficient to prevent tanks from becoming liquid full at 130°F. (55°C.). (See § 174.600 and 177.834(m) of this subchapter for special requirements for rail and highway shipments). Specification 110A500W tanks must be stainless steel.

(4) Specification 105A500W (§§ 179.100, 179.101 of this subchapter) tanks cars. Authorized for nitrogen tetroxide only. Tanks must be lagged with not less than a four-inch thickness of cork. All valves and fittings must be protected by a securely attached cover made of metal not subject to deterioration by the lading, and all valve openings, except the safety valve, must be fitted with screw plugs or caps to prevent leakage in the event of valve failure. Safety valve must be equipped with an approved stainless steel or platinum frangible disc. Each tank car must be marked "NITROGEN TETROXIDE" in accordance with the requirements of § 172.330 of this subchapter. Written procedures covering details of tank car appurtenances, dome fittings and safety devices, and marking, loading, handling, inspection and testing practices, must be examined by the Bureau of Explosives and approved by the Associate Director for OE before any tank car is offered for transportation of nitrogen tetroxide.

42. In § 173.366 paragraph (a)(3) is revised to read:

§ 173.366 Arsenic (arsenic trioxide) or arsenic acid (solid).

(a) * * *

(3) In addition to specification containers prescribed in this section, arsenic (arsenic trioxide) or arsenic acid (solid) may be shipped when packed in collapsible, rubber containers, not over 70 cubic feet capacity, of a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Authorized for carload, truckload or freight container shipments only.

* * * * *

43. In § 173.370 paragraph (a)(13) is revised to read:

§ 173.370 Cyanides and cyanide mixtures, dry.

(a) * * *

(13) Bulk in strong, water-tight, metal portable containers or not over 70 cubic feet capacity each and approved by the Associate Director for OE.

* * * * *

44. In § 173.385 paragraph (b) and (c) are revised to read:

§ 173.385 Tear gas grenades, tear gas candles, or similar devices.

* * * * *

(b) These articles may not be assembled with or packed in the same compartment with mechanically or manually operated firing, igniting, bursting, or other functioning elements, unless of a type or design examined by the Bureau of Explosives and approved by the Associate Director for OE.

(c) No shipment of packages containing articles under this section may be made until samples thereof have been examined by the Bureau of Explosives, or examined under their supervision, and approved by the Associate Director for OE.

* * * * *

PART 174—CARRIAGE BY RAIL

45. In § 174.61 paragraph (b) is revised to read:

§ 174.61 Truck bodies, trailers or freight containers on flatcars.

* * * * *

(b) A truck body, trailer or freight container equipped with automatic heating or refrigerating equipment employing any fuel or article classed as a hazardous material may be loaded and transported on a flatcar if the equipment is of type examined by the Bureau of Explosives and approved by the Associate Director for OE. The truck body, trailer or freight container must be secured on the flatcar so that it cannot change position during transit.

46. In § 174.81 Note 5 of the table is revised to read:

§ 174.81 Segregation and separation requirements for hazardous materials in rail cars.

(a) * * *

Note 5.—Smokeless powder for small arms in quantities not exceeding 100 pounds net weight in one car shall be classed as a flammable solid for purposes of transportation when examined for this classification by the Bureau of Explosives and approved by the Associate Director for OE.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

47. In § 177.821 paragraph (f) is revised to read:

§ 177.821 Hazardous materials forbidden or limited for transportation.

* * * * *

(f) Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives and approved by the Associate Director for OE. Maximum quantity in any inside packaging must not exceed 8 pounds and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Each outside package must bear a flammable solid label.

48. In § 177.838 paragraph (g) is revised to read:

§ 177.838 Flammable solids and oxidizing materials.

* * * * *

(g) Smokeless powder for small arms in quantities not exceeding 100 pounds net weight transported in one car or motor vehicle may be classed as a flammable solid when examined for this classification by the Bureau of Explosives and approved by the Associate Director for OE. Maximum quantity in any inside packaging must not exceed 8 pounds and inside packagings must be arranged and protected to prevent simultaneous ignition of the contents. The complete package must be a type examined by the Bureau of Explosives and approved by the Associate Director for OE. Each outside packaging must bear a flammable solid label.

49. In § 177.848 Note 5 of the table is revised to read:

§ 177.848 Loading and storage chart of hazardous materials

(a) * * *

Note 5.—Smokeless powder for small arms in quantities not exceeding 100 pounds net weight in one motor vehicle shall be classed as a flammable solid for purposes of transportation when examined for this classification by the Bureau of Explosives and approved by the Associate Director for OE.

* * * * *

Note.—The Materials Transportation Bureau has determined that this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available in the docket.

Issued in Washington, D.C., on May 7, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-15131 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

49 CFR Part 635

[Docket No. 80-C]

Public Hearing Requirements for Service Changes and Fare Changes

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Extension of Comment Period.

SUMMARY: In the **Federal Register** of April 17, 1980 (45 FR 26298), the Urban Mass Transportation Administration of the Department of Transportation published regulations concerning public hearings prior to changes in fares or substantial changes in service. Comments were requested on a revision in the final regulation concerning percentage changes affecting a "transit system" versus percentage changes affecting a "transit route". A new closing date for comments has been established and is set out below.

DATE: Comments on § 635.7 of the regulations must be received by June 20, 1980.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-C, 400 7th Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination in room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Charlotte Adams, Office of Program Analysis, (202) 472-6997.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be utilized to determine if further revisions to § 635.7 are necessary.

UMTA was specifically requested to extend the comment period until June 20, 1980 and has agreed to this request. UMTA was also requested to delay the effective date of the regulations from May 17, 1980 to June 30, 1980. The effective date will not be changed since UMTA has determined that insufficient justification for this change has been presented at this time.

Dated: May 14, 1980.

Lillian C. Liburdi,

Deputy Administrator.

[FR Doc. 80-15313 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Atlantic Groundfish Fishery; Emergency Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Extension of Emergency Regulations.

SUMMARY: Emergency amendments to the regulations implementing the Atlantic Groundfish Fishery Management Plan (FMP), and a request for public comment on the emergency regulations, were published in the **Federal Register** on April 4, 1980 (45 FR 22949). The action, which became effective on April 6, 1980, (1) changed the incidental catch allowance of yellowtail flounder for vessels using small mesh nets (cod-end mesh less than 5⅛ inches) to 1,000 pounds per fishing trip and (2) changed the incidental catch allowance of yellowtail flounder for vessels during a fishery closure to 1,000 pounds per fishing trip. These emergency regulations were in force for 45 days and are hereby extended for an additional 45 day period.

EFFECTIVE DATE: The emergency regulations are extended from 2400 hours May 21, 1980, through 0001 hours July 4, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone: (617) 281-3600.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries has determined that the emergency situation described in the April 4 rulemaking still exists and therefore has determined that extending the emergency regulations for an additional 45 days is necessary. The changes in the incidental catch allowances will not substantially affect the total harvest level of yellowtail flounder from the Northwest Atlantic ocean during this fishing year (October 1, 1979–September 30, 1980).

Signed at Washington, D.C., this 13th day of May 1980.

(16 U.S.C. *et seq.*)

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-15328 Filed 5-16-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 98
Monday, May 19, 1980

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Ch I

[Docket No. 20289; Petition Notice No. PR 80-8]

Petition for Rule Making of Air Transport Association of America

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of petition for rule making; request for comments.

SUMMARY: By letter dated April 16, 1980, the Air Transport Association of America (ATA) petitioned the FAA to amend § 121.311(j) of the Federal Aviation Regulations (FAR) to allow an extension not to exceed March 6, 1982, of the compliance time for § 121.311(f) concerning flight attendant seats, provided the Part 121 certificate holder submits an acceptable schedule of compliance by July 7, 1980. This notice publishes the ATA petition for rule making in accordance with § 11.27 of this chapter.

DATES: Comments must be received on or before July 14, 1980.

ADDRESS: Send comments on the petition in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Room 916, Docket No. 20289, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Norman C. Miller, Regulatory Projects Branch, AVS-24, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments on the petition for rule making as they desire. Communications should identify the regulatory docket number or petition notice number and be submitted in duplicate to the address specified above. All communications received on or before the date specified above, will be considered by the Administrator before taking action on the petition for rule making. The petition, any comment received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

Background Information

On February 4, 1980, the FAA promulgated Cabin Safety and Flight Attendant Amendments to the FAR. These amendments, in part, require Part 121 certificate holders operating transport category airplanes to meet new equipment requirements for seats, berths, safety belts, and harnesses (Amendment Nos. 25-51 and 121-155; 45 FR 7750; February 4, 1980). New § 121.311(f) requires that after March 6, 1980, no person may operate a transport category airplane unless each flight attendant seat in the passenger compartment used during takeoff and landing meets the airworthiness requirements of new § 25.785.

Under § 121.311(j), certificate holders may obtain from the Director of Flight Operations an extension of up to 1 year (to March 6, 1981) of the compliance date in § 121.311(e). To get an extension, certificate holders must: (1) show that due to circumstances beyond their control, they cannot comply by March 6, 1980; and (2) submit by March 6, 1980, a schedule of compliance acceptable to the Director of Flight Operations, indicating that compliance will be achieved at the earliest practicable date.

After the issuance of these amendments, numerous Part 121 operators advised the FAA that they were having difficulty in submitting a schedule of compliance with the equipment requirements contained in the rule since the information necessary to justify the extensions was not yet available from the appropriate equipment manufacturers and suppliers. Accordingly, on March 6, 1980, the FAA, pursuant to § 121.311(j), extended the compliance dates of § 121.311 to March 6, 1981, for operators who requested one by March 6, 1980, and showed that due to circumstances beyond their control they could not comply by the specified compliance dates. Each extension was contingent upon each operator submitting an acceptable schedule of compliance to the Director of Flight Operations by May 6, 1980. Although the date of submittal for compliance schedules has already been extended from March 6, 1980, to May 6, 1980, several operators have indicated that the information necessary for them to submit an acceptable schedule of compliance is still not available from the manufacturers. Thus, they stated that they could not meet the May 6, 1980, deadline.

On May 6, 1980, the FAA amended § 121.311(j)(2) to extend until July 7, 1980, the date by which a Part 121 certificate holder must submit an acceptable schedule of compliance to justify a request for extension of the compliance period for § 121.311(f) pursuant to the extension procedure in § 121.311(j). The amendment requires a certificate holder who wishes an extension of the compliance period for § 121.311(f) to submit a schedule of compliance acceptable to the Director of Flight Operations by July 7, 1980.

On April 16, 1980, the ATA submitted a petition for rulemaking, in accordance with Part 11 of this chapter, to amend § 121.311(j). This petition, excluding attachment "B", which is available for inspection in the rules docket, is published in its entirety as part of this notice.

The petitioner contends that all ATA member airlines have requested and received an extension of the compliance date for § 121.311(j) to March 6, 1981, but have been unable to provide an acceptable schedule of compliance due to uncertainties in the interpretation of the regulation and lack of information on hardware availability. The petitioner alleges that a meaningful schedule of compliance can be provided by July 7, 1980, however, in some cases, airlines will require additional time beyond the present extended deadline of March 6, 1981, due to their inability to develop the necessary design changes and obtain

the necessary hardware. This requested amendment would still require compliance at the earliest practicable date, but would allow up to an additional year (to March 6, 1982) for compliance in unusual circumstances.

This notice sets forth the contents of the petition as received by the FAA, and its publication to solicit public comments in accordance with FAA procedures governing the processing of petitions for rulemaking. Accordingly this notice does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the agency on the merits of the petition. The FAA intends to consider the petition under the applicable procedures of Part 11 and to reach a conclusion on the merits of the proposal after it has had an opportunity to carefully evaluate it, the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rulemaking procedures on the petition, appropriate rulemaking action, including an evaluation of the proposal, will be published.

Request for Additional Information

The FAA is aware that strict adherence to the present compliance periods specified in § 121.311 may not be possible due to circumstances beyond the control of individual operators. To assist the FAA in determining the extent to which logistic and operational factors may frustrate timely compliance with § 121.311, certificate holders, manufacturers, suppliers, and the general public are requested to provide additional information. The questions listed below are intended to elicit from all interested persons and organizations, the projected ramifications of an FAA decision to act on the ATA petition favorably or unfavorably. Accordingly, answers to the following questions will assist the FAA in determining whether there is a need to provide for additional extensions to the compliance schedule to account for unusual situations encountered by individual operators.

1. If you are a Part 121 certificate holder, from which suppliers and/or manufacturers have you ordered required retrofit kits, components, or both?

(a) What installation times do you project for each aircraft?

(b) What rate of installation do you project for your fleet of aircraft?

2. If you are a supplier or a manufacturer, what is your capability to provide retrofit kits, components, or both to satisfy this rule?

3. Will these modifications be accomplished during regularly scheduled maintenance? If so, during which phase of scheduled maintenance do you plan to install retrofit kits or perform modifications required for your fleet?

4. If the required modifications are performed during scheduled maintenance, how long will it take to modify all aircraft in your fleet without disrupting scheduled operations?

5. Which specific items requiring modifications or changes can be accomplished by March 6, 1981?

6. What additional costs will these requirements impose if you are required to comply by March 6, 1981? Describe them in detail.

7. What proportion of aircraft requiring modifications can be retrofitted within the present compliance period?

8. If the compliance period for § 121.311(f) is not extended beyond March 6, 1981, what consequences do you project for your operations? Please discuss both the economic and operational impacts.

9. How will an extension of the compliance periods contained in § 121.311(f) affect the individuals who must occupy the seats to which this rule applies?

The Petition

Accordingly, the Federal Aviation Administration publishes verbatim, excluding the tabular listing in Attachment A which was not legible enough for printing and attachment "B" [this information is contained in the public document], for public comment, the ATA's petition for rulemaking dated April 16, 1980.

Issued in Washington, D.C., on May 8, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Air Transport Association of America,
Washington, D.C., April 16, 1980.

Mr. Walter S. Luffsey,
Associate Administrator for Aviation Standards, Federal Aviation Administration, Washington, D.C. 205912.

Dear Mr. Luffsey: This is in regard to recently adopted Amdt. 25–51 and Amdt. 121–155 concerning cabin safety and flight attendants and in particular paragraph 121.311(j). In accordance with FAR 11.25 and on behalf of the ATA member airlines, it is respectfully requested that paragraph (j) be changed to read as follows:

"(j) A certificate holder may obtain an extension, not to exceed *March 6, 1982,* of the compliance date specified in paragraphs (e), (f), and (h) of this section from the Director, Office of Flight Operations, if the certificate holder:

(1) Shows that, due to circumstances beyond its control, it cannot comply by the specified compliance date; and

(2) Submits by *July 7, 1980 for paragraph (f) and by the specified compliance date for paragraphs (e) and (h),* a schedule of compliance acceptable to the Director, indicating that compliance will be achieved at the earliest practicable date."

The changes from the existing regulations are underlined.

Amdts. 25–51 and 121–155 were published in the **Federal Register** of February 4, 1980 effective March 6, 1980. The pertinent paragraphs in Amdt. 121–155 required, except as provided in paragraph 121.311(j):

121.311(e) By March 6, 1981, each seat at a flight deck station must be equipped with a combined safety belt and shoulder harness that meets the applicable requirements of 25.785 as adopted, in Amdt. 25–51.

121.311(f) After March 6, 1980, each flight attendant seat, except for passenger seats, occupied by flight attendants not required by section 121.391, must comply with the requirements of 25.785 as adopted in Amdt. 25–51.

121.311(h) Required by March 6, 1981 each occupant of a seat equipped with a combined safety belt and shoulder harness must have that belt/harness properly secured about the occupant during takeoff and landing and be able to properly perform assigned duties.

In paragraphs 121.311 (e) and (f) there were provisions for continued use of already approved safety belt and shoulder harness systems and that these systems need only be designed to the inertia load factors established under the certification basis of the airplane.

Paragraph 121.311(j) provided for an extension, not to exceed one year, for paragraphs 121.311 (e), (f) and (h) provided the certificate holder submitted an acceptable request and compliance schedule by the specified compliance date. In effect, this required an acceptable request for time extension to be submitted by March 6, 1981 for 121.311(e), March 6, 1980 for 121.311(f) and March 6, 1981 for 121.311(h).

It should be noted that this petition does not change the ultimate permitted time extension for paragraphs 121.311 (e) and (h). It does add an additional year for 121.311(f) but requires an acceptable compliance plan for that paragraph to be submitted by July 7, 1980.

The effect of Amdts. 25–51 and 121–155 was essentially to require immediate compliance with 121.311(f) by the March 6, 1980 effective date of the amendments or to request a time extension under 121.311(j) by that date. All of the ATA member airlines found it necessary to request a time extension for paragraph (f) under 121.311(j) and did so prior to March 6, 1980. These amendments were in need of interpretation and clarification in many respects and it was not until February 21, 1980 that FAA issued interpretive material. The airlines were unable to provide information concerning a schedule of compliance to accompany their petition for extension because of the many unknowns in regard to the regulation and their inability to obtain hardware delivery

information. In its telegraphic response to all airlines March 6, 1980 granting the time extension, FAA recognized this difficulty and requested that an acceptable schedule of compliance be submitted by May 6, 1980.

Prior and subsequent to the issuance of the required time extension, the airlines and the manufacturers have been making a diligent effort to come up with the required information. This has necessitated additional discussions with FAA as to intent and interpretation and diligent efforts by manufacturers and airlines alike to develop the necessary design changes and determine when the necessary hardware would be available. At an industry meeting of affected airlines and manufacturers on March 25, 1980 it became apparent that in many cases adequate information would not be available by May 6, 1980 to provide a meaningful schedule of compliance and, that in some cases, additional time would be required beyond the extended date of March 6, 1981 to comply with 121.311(f). It should be noted that many of the petitions for extension to March 6, 1981 indicated it was doubtful that the one year extension would be sufficient. This is particularly true for large fleet operators. Some smaller fleet operators are affected as well however since in some cases they will be required to redesign certain seat installations on their own. Most of the airlines are heavily dependent on the capabilities of the airframe or seat manufacturers who have many customers to satisfy.

In an effort to determine the magnitude of the problem we have surveyed our member airlines. The results of this survey are tabulated in Attachment A. The individual airline responses from which this tabulation was derived are shown in Attachment B. *It should be noted that the responses to this survey are based on the airlines interpretations of the regulations and the guidance material provided thus far by FAA. If these airline interpretations are not in accordance with FAA's views, the results of this tabulation could change significantly.*

On a total ATA member airline basis this tabulation shows:

1. 170 flight deck seats will require shoulder harness installation per 121.311(e).
2. 2867 flight attendant seat installations will require shoulder harness installation per 25.785(h).
3. 2812 flight attendant seats will require energy absorbing rest installation/modification per 25.785(h).
4. 490 passenger seats will need to be modified or replaced to meet flight attendant seat requirements.
5. 270 flight attendant seats may need to be moved.
6. 321 galley/stowage compartments/serving carts may require modification.
7. 586 safety belts/shoulder harnesses will require modification so that the occupant can perform assigned duties with the harness fastened. It should be noted that in cases where no shoulder harness is now installed, as indicated in items 1 and 2 above, this modification may be done in combination with the requirements in 1 and 2.

As indicated in this tabulation, except for a few cases, little information is available in regard to hardware delivery dates.

It should be noted from this tabulation that the primary problem is the flight attendant seat requirements of 121.311(f). On the other hand, there are many flight attendant seats which already meet the regulations, in whole or in part. There are relatively few flight deck seats which require shoulder harness installation under 121.311(e)(2) and most of those are in the older CV–580/FH–227/YS–11 airplanes which will require a major effort. Similarly, the requirements of 121.311(h) affects relatively few airlines and airplanes.

Not all airlines are affected identically, even for the same type/model airplanes. It is also obvious that not all airlines would require the full two years to comply with 121.311(f). It is not the intent of this petition to request a blanket time extension but merely allow an extension of up to two years if the airline can demonstrate to the satisfaction of FAA that the two year is required. As the required modifications will be accomplished progressively, the number of non-complying flight attendant seats will be progressively reduced.

In view of (1) the airlines inability to comply with the extremely short deadline in 121.311(f) of March 6, 1980, (2) the need for additional time beyond the present March 6, 1981 extended deadline in some cases and (3) the difficulty in obtaining adequate information to provide a meaningful compliance schedule by the date requested, it is believed that the granting of this petition is in the public interest. There would be no point in submitting a schedule of compliance by May 6, 1980 which would be based on inadequate information and would need to be subsequently revised. If, in spite of diligent efforts on the part of airlines, the extended compliance date of March 6, 1981 cannot be met then it would be necessary to take airplanes out of service.

In accordance with the requirements of FAR 11.25(c), we are attaching a summary of this petition as Attachment "C". Your expeditious processing of this petition would be appreciated.

Sincerely,

E. L. Thomas,

Vice President-Engineering.

Attachment A

Survey of ATA Member Airlines, Modifications Required for Compliance With Amendment 121–155

The attached tabular data is taken from the individual airline replies. Columns (1) through (8) represent the answers to the following numbered questions for each type/model airplane in that airlines' fleet:

(1) Number of airplanes.

(2) How many total flight deck seats will require shoulder harness installation per 121.311(e)(2).

(3) How many total flight attendant seats will require:

a. Shoulder harness installation

b. Energy absorbing rest installation.

(4) How many total passenger seats will need to be modified or replaced to meet flight attendant seat requirements.

(5) How many total flight attendant seats will require moving to comply with proximity, direct view or galley/stowage compartment/serving cart requirements.

(6) How many total galleys/stowage compartments/serving carts will require modification.

(7) How many total safety belt/shoulder harnesses will need to be modified because of the requirements of 121.311(h).

(8) Any information you have on firm delivery of parts.

Note.—Where a question mark (?) is shown in a column, this indicates the airline still has some questions regarding compliance as reflected in their individual responses.

When N/A is shown in Column (8), this indicates the airline was unable to provide any information. Where "yes" is shown that airline has limited information which is shown in its individual response. A dash (—) indicates the airline is of the opinion this airplane type/model is in compliance.

[FR Doc. 80–15088 Filed 5–16–80; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 80–NW–7]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: This notice proposes to alter the Newport, Oregon, transition area. This proposal is necessary to provide controlled airspace for aircraft executing the newly amended VOR/DME Runway 16 Standard Instrument Approach Procedure to Newport Municipal Airport, Newport, Oregon.

DATE: Comments must be received on or before June 30, 1980.

ADDRESS: Send comments on the proposal to:

Chief, Operations, Procedures and Airspace Branch, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108.

The official docket may be examined at the following location: Office of the Regional Counsel, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace Specialist, Operations, Procedures and Airspace Branch, (ANW–534), Air Traffic Division, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108; telephone (206) 767–2610.

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (45 FR 445) of FAR 71

contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Alteration of the Transition Area at Newport, Oregon, will necessitate an amendment to this subpart.

Comment 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 to the Chief, Operations, Procedures and Airspace Branch, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108. All communications received on or before June 30, 1980, 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, before and after the closing dates for comments, in the official docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rule Making by submitting a request to the Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, ANW-530, Northwest Region, FAA Building, Boeing Field, Seattle, Washington 98108 or by calling (206) 767-2610. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 1102 which describes the application procedure.

The Proposal

The Federal Aviation Administration is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 1,200-foot transition area. The proposal is necessary to provide controlled airspace for aircraft executing the revised VOR/DME Runway 16 Standard Instrument Approach Procedure for the Newport Municipal Airport. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

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 (45 FR 445) by adding the following:

Newport, Oreg.

add after "* * * extending from the VORTAC to 19 miles N." on line 10 with: "* * *, and that airspace within the area bounded by the arcs of 16 and 20 nautical mile radius circles centered on the Newport VORTAC extending clockwise from the VORTAC 335° radial to the VORTAC 355° radial; including additional airspace within the area bounded by the arcs of 11 and 17 nautical mile radius circles centered on the Newport VORTAC extending clockwise from the VORTAC 200° radial to the VORTAC 220° radial."

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (47 U.S.C. 1348(a)); section 6(c) of the 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 proposed regulation which is not considered to be significant under the procedure and criteria prescribed by Executive Order 12044 and as implemented by Department of Transportation 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 Seattle, Wash., May 5, 1980.

E. O'Connor,

Acting Director.

[FR Doc. 80-15087 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 80-ASW-23]

Proposed Alteration of Transition Area: Hammond, La.

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 Hammond, La. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Hammond Municipal Airport. The circumstance which created the need for the action is the proposed installation of an instrument landing system (ILS) to Runway 18.

DATES: Comments must be received on or before June 18, 1980.

ADDRESSES: Send comments on the proposal to:

Chief, Airspace and Procedures 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, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, 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 (45 FR 445) 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 Hammond, La., 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 June 18, 1980, 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 also be 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 Hammond, La. The FAA believes this action will enhance IFR operations at the Hammond Municipal Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures using the proposed ILS. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

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 (45 FR 445) by deleting the present description and substituting the following:

Hammond, La.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Hammond Municipal Airport (latitude 30°31'19" N., longitude 90°24'57" W.).

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

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, Tex. on May 5, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-15089 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-20]

Proposed Designation of Transition Area: Cameron, La.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose designation of a transition area at Cameron, La. The intended effect of the proposed action is to provide controlled airspace for helicopters executing a new instrument approach procedure to the ERA landing area near Cameron, La. The circumstance which created the need for the action is the proposed special instrument approach procedure to the ERA landing area for helicopters using the Lake Charles VORTAC.

DATES: Comments must be received on or before June 18, 1980.

ADDRESSES: Send comments on the proposal to:

Chief, Airspace and Procedures 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, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, 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 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Designation of a transition area at Cameron, La., 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 June 18, 1980, 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 also be 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 designate a transition area at Cameron, La. The FAA believes this action will enhance IFR operations to the ERA landing area by providing controlled airspace for helicopters executing a proposed instrument approach procedure using the Lake Charles VORTAC. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

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 (45 FR 445) by adding the Cameron, La., transition area as follows:

Cameron, La.

That airspace extending upward from 700 feet above the surface within 2.5 miles each side of the 197° radial of the Lake Charles VORTAC extending 3.5 miles north and 2 miles south of latitude 29°46'31.4" N, longitude 93°14'03.4" W.

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

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, Tex., on May 6, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-15093 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-22]

Proposed Designation of Transition Area; Pauls Valley, Okla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose designation of a transition area at Pauls Valley, Okla. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Pauls Valley Municipal Airport. The circumstance which created the need for the action is the proposed establishment of a nondirectional radio beacon (NDB) located on the airport. Coincident with this action the airport is changed from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

DATES: Comments must be received on or before June 18, 1980.

ADDRESSES: Send comments on the proposal to:

Chief, Airspace and Procedures 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, Airspace 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 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Designation of a transition area at Pauls Valley, Okla., 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 June 18, 1980, 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 also be 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 designate a transition area at Pauls Valley, Okla. The FAA believes this action will enhance IFR operations at the Pauls Valley Municipal Airport by providing controlled airspace for aircraft executing proposed instrument approach procedures using the proposed NDB located on the airport. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

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 (45 FR 445) by adding the Pauls Valley, Okla., transition area as follows:

Pauls Valley, Okla.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Pauls Valley Municipal Airport (latitude 34°42'45"N., longitude 97°13'30"W.) and within 3 miles each side of the 169° bearing from the NDB (latitude 34°42'55"N., longitude 97°13'44"W.) extending from the 6.5-mile radius area to 8.5 miles south of the NDB.

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

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, Tex. on May 8, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-15094 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

Proposed Amendments to Bicycle Safety Requirements: Retroreflective Rims

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Proposed amendments.

SUMMARY: The Commission's bicycle safety regulation currently has side reflectivity requirements that may be satisfied by either spoke reflectors or retroreflective tires. The Commission has granted a petition that requested a

third alternative for side reflectivity, retroreflective rims. In this document, the Commission is proposing amendments that would provide the rim reflectivity alternative.

DATES: Comments on the proposed amendments are due by July 18, 1980. The amendments are proposed to become effective June 18, 1980.

ADDRESSES: Comments should be mailed (preferably with five copies) to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, Third Floor, 1111 18th Street, N.W., Washington, D.C. during normal working hours.

FOR FURTHER INFORMATION CONTACT: Terri Rogers, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6754.

SUPPLEMENTARY INFORMATION:

Background

The Commission issued a bicycle safety regulation in July 1974, and amended it in November 1975 (16 CFR Part 1512). The regulation became effective on May 11,1976, except for certain provisions that became effective on November 13, 1976. In June 1977, a federal court of appeals upheld all but a few provisions of the regulation. *Forester v. Consumer Product Safety Commission*, 559 F.2d 774 (D.C. Cir. 1977).

The regulation requires bicycles to be recognizable and identifiable from the side, when illuminated by automobile headlamps. Either spoke-mounted reflectors or retroreflective tire sidewalls may be used, as long as they meet the specified performance criteria for side reflectivity. In addition, the regulation includes tests for assuring adherence and resistance to abrasion for retroreflective material used on tire sidewalls.

In a June 1978 petition, the Minnesota Mining and Manufacturing Company (3M) requested amendments to the side reflectivity requirements that would permit the use of retroreflective rims as a third option on bicycles equipped with non-caliper-rim brakes (brakes that do not function by gripping the sides of the wheel rim). The Commission granted 3M's petition in December 1978, and the staff began developing the proposed amendments.

The existing regulation requires that the retroreflective material on bicycle tires be as resistant to abrasion as the adjacent tire sidewall itself. Further, the retroreflectivity material must not be capable of being peeled or scraped away without removal of tire material. The proposed amendments would involve the application of retroreflective material to metal. Therefore, two new tests, one for abrasion and one for peeling, are needed to assure the durability of the retroreflective material on any rims that would be used to comply with the side reflectivity requirements. The proposed amendment would require retroreflective rims to meet these reflectivity requirements after the abrasion and peeling tests are performed.

Discussion

A list of the documents on which the proposed amendment is based appears below. All numbered citations in this discussion refer to the documents on that list. The documents are available in the Office of the Secretary.

A. Abrasion Test

The National Bureau of Standard (NBS) and the CPSC engineering staffs developed the abrasion test proposed below. It is designed to assure that retroreflective material on rims will not unduly lose its reflective properties when exposed to normal bicycle operating conditions.

Under contract to the Commission, NBS developed an abrasion test procedure (6) that is based on a General Services Administration (GSA) test method for measuring paint scrub resistance (30). NBS modified the scrub resistance procedure so that the test could be performed on a bicycle rim (7). The GSA procedure evaluates the scrub resistance of paint that is applied to specially-described pieces of metal, and cannot be used on rims without modification. At the same time, the post-abrasion retroreflectivity tests can be performed meaningfully only if the entire rim is abraded. Therefore, NBS modifided the scrub resistance procedure so that the test can be performed on a bicycle wheel rim. A test apparatus was devised in which a rotating brush abrades a revolving rim. Any apparatus can be used as long as four critical factors for the test are maintained: (1) the size and type of bristles on the bush; (2) the force with which the brush is applied to the rim; (3) the speeds of the rotating brush and revolving rim; and (4) the number of rim revolutions.

The petition granted by the Commission stemmed from 3M's development of a self-adhesive retroreflective tape that can be applied to metal bicycle rims. Similar 3M tape has been used on street signs, automobile license plates, and vehicle parking stickers for many years without significant degradation from weather and other deleterious factors. The 3M tape has also been road-tested on bicycle rims with similar results. The test and use data on the 3M tape are contained in an August 15, 1978 letter from 3M and in 3M's petition (3, 4).

At the present time, the 3M tape is the only retroreflective material that the Commission knows is suitable for application to bicycle rims. Therefore, it was used as a guide for establishing the proposed abrasion test specifications. The Commission believes it is reasonable to expect that other retroreflective tapes or coatings developed for this purpose will perform satisfactorily on a bicycle as long as they can meet the reflectivity requirements after being subjected to the proposed abrasion test.

To establish the appropriate specifications for the four critical factors, NBS and CPSC staff attempted to attain a degree of abuse similar to that which would be experienced during the paint scrub resistance test (7).

For example, the velocity of the bicycle wheel in the test proposed below approximates the velocity at which the metal pieces are stroked by the brush in the GSA test. Since the brush in the proposed bicycle rim test must be smaller than the brush specified in FTMS No. 141A so it fits the rim, the applied force has been reduced to maintain the appropriate pressure between the bristles and the reflective material. Finally, a rotational component of velocity was added to assure that abrasion will take place uniformly over the width of the reflective material.

Some degradation in the reflectivity of the 3M tape does occur when it is subjected to the proposed abrasion test. Since this tape exceeds the reflectivity requirements when new, and continues to meet them after being tested (8), an extra margin of safety exists. The Commission believes that the proposed test specifications will assure the satisfactory performance of any other retroreflective material that might be developed in the future for use on bicycle rims.

The details of how NBS and the Commission staff developed the abrasion test and selected the specifications proposed below are contained in a November 1, 1979 report from NBS, "Bicycle Wheel Rim Reflective Materials" (6), and a February 28, 1980 staff memorandum, "Peel and Abrasion Tests for Amendment to Bicycle Regulation Requirements for Side Reflectivity" (7).

B. Peel Test

According to the amendments proposed below, retroreflective material could be applied to bicycle rims as a coating, such as paint, or as a tape, such as 3M's. If a tape is used, it must not be too easy to peel off. A vandal or a curious child could totally deprive a rim of its reflectivity in seconds by peeling the tape off in one piece around the entire rim. To prevent this, the proposed amendments include a peel test for retroreflective tape.

The test requires, very simply, that the tape material break before it peels (7). This test, performed by grasping a piece of the tape between the fingers and pulling on it, is similar to a peel resistance test published by the American Society for Testing and Materials (ASTM)(28). Although the ASTM test measures pulling force, the purpose of the proposed test is to assure that the tape cannot be peeled off. Therefore, the test proposed below specifies no particular force but simply requires that the tape must break rather than peel away.

C. Economic Effects and the Injury Risk

Although exact costs of retroreflective rims on a per-bicycle basis would depend on actual volume of sales, it is likely that the cost to bicycle manufacturers would be competitive with the cost of a set of spoke reflectors (9). The Commission does not expect the retail price of bicyles to increase because of adoption of the proposal below.

Acceptance by bicycle manufacturers and consumers will determine the extent to which retroreflective rims replace other side reflectivity devices. Officals for firms manufacturing spoke reflectors have indicated to the Commission staff little concern regarding the proposed amendments due to bicycle manufacturers' and consumers' satisfaction with their product (9).

The Commission believes that the proposed amendments would impose no economic burden on manufacturers or consumers. Rather, they would provide a greater choice of acceptable methods of side reflectivity for bicycles. Regardless of the alternative selected, all bicycles would be required to meet specified reflectivity requirements. Therefore, riders will be protected as fully as they are now protected.

Conclusion

The Commission believes that permitting a third alternative for bicycles to comply with the side reflectivity requirements would benefit consumers and industry. New technologies for rim reflectivity might prove to be more effective than spoke and tire reflectivity and the costs to consumers and the industry might prove to be lower. However, even if no benefits are achieved, the proposed amendments assure that bicycle riders will be protected as well as they are now.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), (q)(1)(A), (s); 3(e)(1); 10; 74 Stat. 1304–05, 83 Stat. 187–89; 15 U.S.C. 1261, 1262, 1269) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes to amend 16 CFR Part 1512 as follows:

§ 1512.16 Requirements for reflectors.

1. Section 1512.16(b) is amended to read as follows:

* * * * *

(b) *Side reflectors.* There shall be retroreflective tire sidewalls or, alternatively, reflectors mounted on the spokes of each wheel, or, for non-caliper-rim brake (those that do not function by gripping the sides of the wheel rim) bicycles, retroreflective wheel rims. The center of spoke-mounted reflectors shall be within 76 mm (3.0 in.) of the inside of the rim. Side reflective devices shall be visible on each side of the wheel.

§ 1512.16(i) [Added]

2. A new subsection 1512.16(i) is added as follows:

(i) *Retroreflective rims.* When retroreflective rims are used in lieu of spoke-mounted reflectors or retroreflective tire sidewalls, the reflecting material shall meet the following requirements:

(1) The retroreflective material is applied to the rim in the form of a self-adhesive tape, the following requirement must be met: Use a sharp knife, razor blade, or similar instrument to carefully release an end of the tape material sufficient to be grasped between the thumb and finger. Grasp the freed tape end and gradually pull in a direction 90° to the plane of the rim. The tape material must break before additional separation (peeling) from the rim is observed.

(3) After the retroreflective material is abraded in accordance with the abrasion test for retroreflective rims at § 1512.18(r), the rim must then be tested for performance in accordance with the retroreflective tire and rim test at § 1512.18(o), to assure the reflectance properties over the angles given in table 3.

§ 1512.18(o) [Amended]

3. Section 1512.18(o) is amended to read as follows:

(o) *Reflective tire and rim test.* (Ref. § 1512.16 (h) and (i)).

(1) *Apparatus.* Arrangements for the reflective intensity measurement shall be as shown in figure 3 of this Part 1512. A light projector (having a maximum effective lens diameter of $D/500$, where D is the distance from the source to the retroreflective surface being measured) capable of projecting light of uniform intensity shall be used to illuminate the sample. The light falling on the sample shall have a color temperature of 2856°K±10% (equivalent to a tungsten filament lamp operated at a color temperature of 2856°K±10% having approximately the relative energy distribution given in table 4 of this Part 1512). The light reflected from the test surface shall be measured with a photoelectric receiver, the response of which has been corrected for the spectral sensitivity of the average photopic human eye. The dimensions of the active area of the receiver shall be such that no point on the perimeter of the receiver is more than $d/100$ from its center (where d is the distance from the receiver to the retroreflective surface). Wheels used for the measurement of retroreflective tires or rims shall have all exposed metallic surfaces, including spokes, masked in flat black so that when measured these surfaces indicate no appreciable reflectance. The tire shall be mounted and fully inflated. Distances shall be measured from the plane of the wheel and the center of the hub. For the tests, the distance D between the projector and the center of the wheel and distance d between the center of the wheel and the receiver shall each be at least 15 m (50 ft).

(2) *Procedure*—(i) *Masking.* The reflecting strip to be tested shall be within two concentric circles, the larger of which is no more than 0.02 m (0.79 inc.) greater in radius than the smaller. While additional reflecting material is permitted outside such boundaries, such additional material shall not be counted in determining the average width of the reflecting strip and shall be masked off with opaque matte black tape in testing the reflecting material.

(ii) *Orientation.* Every position of the reflecting strip on the rim or the mounted and fully inflated tire to be tested shall be oriented so that the normal to this portion is within 40° of parallel to the axis of rotation of the wheel.

(iii) *Measurement.* Measure the distance d from the receiver to the center of the wheel and the minimum

distance r from the axis of rotation of the wheel to the unmasked portion of the reflective strip. Measure the illumination incident on the reflective strip at uniform intervals of no more than 45° around the wheel, with the receiver oriented in the direction of the incident radition. The average of such readings will be the mean illumination of the sample E. If any one of such readings differs by more than 10 percent from the mean illumination, then a more uniform source must be obtained. Measure the illumination of the receiver due to reflection from the retroreflective surface for each entrance angle and each observation angle given in table 3 of this Part 1512. The entrance angle and the observation angle shall be in the same plane. A negative entrance angle (figure 3 of this Part 1512) is specified when the entrance angle is small because the location of the receiver with respect to the direction of illumination becomes important for distinguishing between ordinary mirror-like reflection and retroreflection. The illumination incident on the test surface and the receiver shall be measured in the same units on a linear scale. Compute the ratio A for each combination of entrance angle and observation angle listed in table 3 as follows:

$$A=[(E_r/E_s)(d^2/r)]$$

Where:

A = Ratio in meters,

E_r = Illumination incident upon a plane perpendicular to the incident ray at the specimen position (see instructions above in this paragraph (o)(2)(iii) for averaging), measured in the same units as E_r,

d = The distance in meters from the receiver to the center of the wheel,

r = The minimum radius in meters of the boundary circles of the retroreflective strip.

The minimum value of A shall be that listed in table 3 of this Part 1512 for each combination of entrance angle and observation angle.

The plane containing the entrance angle and the plane containing the observation angle shall coincide. In table 3, a positive entrance angle corresponds to the case in which the line of sight to the receiver lies between the line of incidence and the optic axis of the reflector, and a negative entrance angle corresponds to the case in which the line of incidence lies between the line of sight of the receiver and optic axis of the reflector.

(iv) *Criteria.* The ration A as defined in § 1512.18(o)(2)(iii) shall not be less than:

$$A = [4(\cos^3\theta/1 + (\phi/0.225)^{3/2}]$$

where A is ratio in meters, θ is the entrance angle, and ϕ is the observation angle in degrees. The criterion applies only for entrance angles from 0° to 40° and observation angles from 0.2° to 1.5°, and performance is not specified beyond this range. The values of A in table 3 are obtained from the above formula by rounding up to two significant figures. Accept in cases in which the performance of the reflector is seriously questionable, a reflector with A at least the value given in table 3 at each of the six combinations of entrance and observation angles will be considered to satisfy this criteria.

§ 1512.18(r) [Added]

4. A new subsection 1512.18(r) is added as follows:

(r) Abrasion test for retroreflective rims (Ref. § 1512.16(i).)

(1) This test consists of a steel wire cup brush rotating at a constant velocity of 60 rpm that is applied at a force of 2N (0.451b) to the retroreflective material on one side of a bicycle wheel rim. The rim is rotated about the axle at a linear velocity of 0.23 m/sec (9 in/sec). The test is complete when the wheel has completed 1000 revolutions.

(2) *Apparatus.* Figure 8 of this Part 1512 illustrates the following test fixture arrangement that is suitable to perform this abrasion test:

(i) *Test fixture.* The test fixture contains a clamp to hold the axle of a bicycle wheel so that the wheel can rotate freely about the axle. The axis of rotation is capable of being inclined from the vertical to bring that portion of the side of the wheel rim containing the retroreflective material into a horizontal plane as it passes beneath the abrading brush. A drive mechanism to rotate the bicycle wheel contains a means to adjust the rotational velocity to obtain the specified linear velocity measured at a point on the wheel rim on the axis of the abrading brush.

(ii) *Abrader.* The abrader is a cup brush meeting the specification in paragraph 3(v) of this section. It is mounted in a chuck attached to a motor that rotates about a vertical axis at the specified rotational velocity. A means is provided to apply the rotating cup brush at the specified force against the retroreflective material on the bicycle wheel rim. The axis of the abrading brush is positioned on the mid point in the width of the retroreflective material. The force is produced by deadweights applied to a pan on the axis of the counterbalanced motor/brush assembly.

(3) *Specifications.* (i) The linear velocity of the reflective band on the bicycle wheel rim shall be 0.23 m/sec (9 in./sec) measured at a point on the axis of the abrading brush.

(ii) The rotational velocity of the abrading brush shall be 60 rpm.

(iii) The force normal to the plane of the retroreflective material at which the abrading brush is to be applied shall be 2 N (0.45 lb).

(iv) The bicycle wheel shall make 1,000 complete revolutions per test.

(v) The abrader shall be a cup brush having bristles that are 0.005 in. diameter low carbon steel wire; an outside diameter of 0.5 inch; a wire bristle length of 0.25 inch; and a cup diameter of 0.405 inch.[6]

(vi) The abrasion test shall be conducted at an ambient temperature of between 16°C (60°F) and 27°C (80°F).

(4) *Procedure.* (i) The retroreflective bicycle rim to be tested shall be an unused sample free from grit, grime and grease. Prior to beginning the test, remove, according to instructions supplied with the bicycle, any protective coating or material used to prevent damage in shipping.

(ii) Test the wheel in a suitable test fixture, according to the specifications in paragraph (r)(3).

(iii) Clamp the wheel by its axle in the test fixture and align the axis of rotation so that the portion of the reflective material below the axis of the abrading brush is horizontal.

(iv) Shape the cup brush by hand to the specified 0.5 in. diameter. Any stray wire bristles projecting more than 1/32 in. beyond the tip of the bulk of the bristles should be clipped off. Adjust the position of the brush so that its axis is centered over the mid-point in the width of the retroreflective material.

(v) Adjust the rotational velocity of the bicycle wheel to obtain a linear velocity of 0.23 m/sec (9 in./sec) measured at the mid-point in the width of the retroreflective material. Adjust the force to obtain a force normal to the surface under the brush of 2 N (0.45 lb).

(vi) Apply the abrading brush to the retroreflective material on the wheel rim, and continue the test for 1,000 complete revolutions of the bicycle wheel.

PART 1512—FIGURE 8 [ADDED.]

5. A new figure 8 is added.

BILLING CODE 6355-01-M

[6] For compliance testing the Commission will use a brush meeting this description distributed by Dremel Manufacturing Company, Racine, Wisconsin as Dremel Part No. 442. This brush is manufactured by Weiler Brush Company as No 26074, MC-10 Wire.

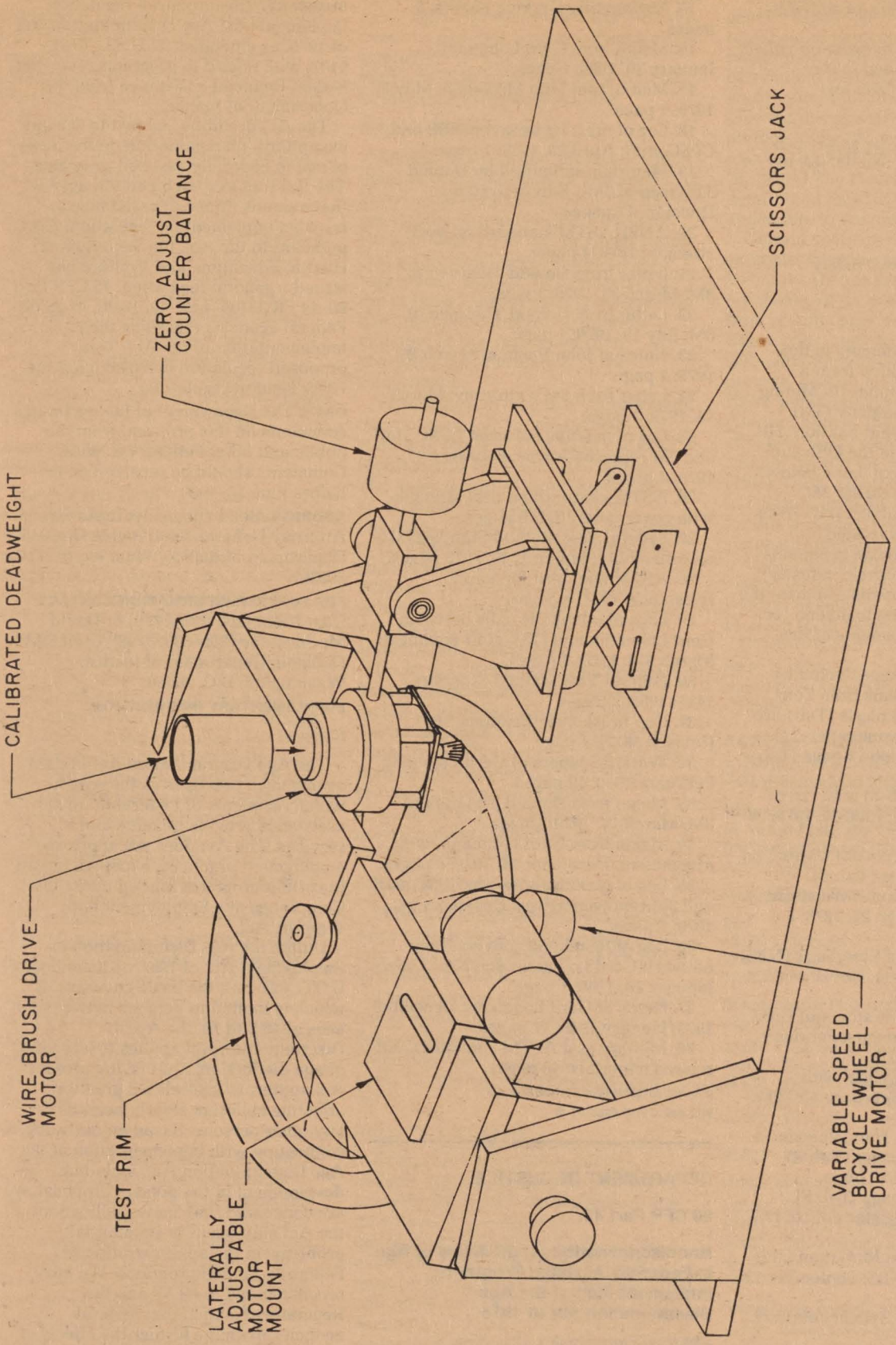


FIG 8—REFLECTORIZED BICYCLE WHEEL RIM ABRASION TEST DEVICE

BILLING CODE 6355-01-C

6. The title of table 3 is amended to read:

Table 3.—*Minimum acceptable values for the quantity A defined in the retroreflective tire and rim test procedure.*

(Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), and 10(a), 74 Stat. 1304–05, 83 Stat. 187–89; 15 U.S.C. 1261, 1262)

Dated: May 13, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Record

The proposed amendments to the bicycle regulation resulted from a petition filed by the Minnesota Mining and Manufacturing Company (3M). Documents related to that petition (HP 78–8) are available from the Office of the Secretary but are not listed below. The same is true of an earlier 3M petition on the same subject (HP–78–5) that 3M withdrew, and related documents (including some comments from members of the bicycle industry).

The following documents comprise the record of the proceeding to amend the side reflectivity requirements of the bicycle regulation:

1. Staff briefing package, including cover and briefing memos from Terri Rogers; April 7, 1980; 8 pages (Tabs are listed separately as documents 2–11).
2. Chronology of events; 1 page (Tab A to briefing package).
3. 3M petition (HP 78–8) with cover letter and attachments; June 30, 1978; 33 pages (Tab B).
4. Follow-up letter from 3M's attorney; August 15, 1978; 2 pages (Tab B).
5. Follow-up letter from 3M's attorney, with attachment; August 23, 1978; 2 pages (Tab B).
6. National Bureau of Standards (NBS) report, with attachments; November 1, 1978; 11 pages (Tab C).
7. Memo from John Preston and Gerd Lohmann, with attachments; February 28, 1980; 8 pages (Tab D).
8. Memo from Neil Zylich, with attached test results; February 14, 1980; 3 pages (Tab D).
9. Memo from Jacob Handelsman; December 28, 1979; 2 pages (Tab E).
10. Memo from David Thome; December 28, 1979; 1 page (Tab F).
11. Draft **Federal Register** notice; 17 pages (Tab G).
12. Memos from John McGahan and Nicholas Calvano of NBS; September 13, 1978; 2 pages.
13. Memo from Neil Zylich; February 7, 1980; 3 pages.
14. Memo from Gerd Lohmann, with attachment; January 23, 1980; 6 pages.
15. Engineering working papers; 5 pages.
16. Memo from Gerd Lohmann; January 30, 1980; 1 page.
17. Memo from John McGahan; May 7, 1979; 1 page.
18. Log of meeting between NBS and CPSC staff; April 25, 1979; 1 page.
19. Materials submitted by Donald Theissen of 3M's Safety Systems Division; 17 pages.
20. ANSI/ASTM standard on peel strength; 1978; 4 pages.
21. Letter from Donald Theissen of 3M; March 23, 1979; 1 page.
22. Letter from Donald Theissen of 3M; July 19, 1979; 1 page.
23. Notes of John Preston; March 29, 1979; 1 page.
24. Letter from 3M's attorney; March 15, 1979; 1 page.
25. Log of meeting between CPSC staff and 3M representatives; February 27, 1979; 2 pages.
26. ASTM standard on peel strength, with cover note; 1972; 5 pages.
27. Federal Test Method Standard 370 on reflectivity; March 1, 1977; 13 pages.
28. ASTM standard for scrub resistance; 1974; 4 pages.
29. Logs of telephone calls between Gerd Lohmann and GSA staff members; March 5–6, 1980; 2 pages.
30. Federal Test Method Standard 141a; 1965; 2 pages.
31. Cup brush specifications; 1971 (revised 1977); 1 page.
32. Working papers of Gerd Lohmann, February 1980; 19 pages.
33. Memo from Donald Theissen of 3M; March 14, 1979; 1 page.
34. Memo from Gerd Lohmann, with attachment; December 14, 1979; 6 pages.
35. Log of meeting between CPSC staff and 3M representatives; December 12, 1979; 1 page.
36. Log of telephone conversation between Gerd Lohmann and Neil Zylich; January 28, 1980; 1 page.
37. Notes of Gerd Lohmann; December 1979/January 1980; 17 pages.
38. Military and ASTM standards and related materials; 46 pages.

[FR Doc. 80–15195 Filed 5–16–80; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 42

Nondiscrimination on the Basis of Age in Federally Assisted Programs; Implementation of the Age Discrimination Act of 1975

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed regulation implements the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107, with regard to programs receiving Fedeal financial assistance from the Department of Justice.

The Act prohibits, subject to certain exceptions, discrimination on the basis of age in Federally assisted programs. The Act requires each Federal agency that extends financial assistance to issue an implementing regulation. Also, pursuant to the Act, the Secretary of Health, Education, and Welfare has issued a general regulation, 45 CFR Part 90, 44 FR 33708 (June 12, 1979), to guide Federal agencies regarding their implementation of the Act. This proposed regulation is based upon the HEW general regulation.

DATE: The Department of Justice invites comments on this proposal from the public and other Federal agencies. Comments should be received on or before June 18, 1980.

ADDRESS: Send comments to Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Cizo Aloot (202–724–6799) or David Marblestone (202–633–3728), Civil Rights Division, Department of Justice, Washington, D.C. 20530.

SUPPLEMENTARY INFORMATION:

General

The Age Discrimination Act of 1975 covers such practices as the way in which recipients of Federal financial assistance provide benefits and services. The Act does not apply to employment practices, except in regard to certain programs funded under the Comprehensive Employment and Training Act.

Unlike the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621–634, the basic coverage of which is limited to persons between the ages of 40 and 70, the Age Discrimination Act applies to any kind of age distinction. That is, the present Act applies to age-related practices affecting children, elderly persons or any other persons. Based on our work in connection with implementation of the Age Discrimination Act, including development of the present proposal, we are concerned that some applications of the Act may result in substantial problems in the administration of Federally funded programs. We have recommended to HEW and the Regulatory Council that Federal agencies examine further the effects of the Act upon particular types of assisted programs.

This proposed regulation applies to programs receiving financial assistance from the Department of Justice. The largest amount of such assistance is administered by the Law Enforcement Assistance Administration. Other parts of the Deparment that extend such assistance are the National Institute of Justice, the Bureau of Justice Statistics, the Federal Bureau of Investigation, the Bureau of Prisons, and the Drug Enforcement Administration.

Regarding the scope of coverage, this proposal (§ 42.601(b) and § 42.602(i)) states that the term "program or activity" refers, for example, to the entire operation of an assisted police department. The same concept of coverage is applicable under other nondiscrimination laws. See, e.g., the Department's regulation under the Crime Control Act, 28 CFR § 42.202(g).

Standards for Determining Age Discrimination

The Act sets forth a general prohibition against age discrimination in Federally assisted programs, but the prohibition is subject to three exceptions. The general regulation of the Secretary of Health, Education, and Welfare deals with the nature of the exceptions. The present proposal (§§ 42.611–42.613) follows the substance of the HEW general regulation. In addition, §§ 42.611–613 of the present proposal include a number of examples. The purpose of the examples is to illustrate the manner in which the Act may apply to programs assisted by the Department of Justice. We are especially interested in receiving comments on the examples and suggestions on ways to make the regulation more clear. In our final regulation, the examples may be set forth in an appendix.

The present examples deal with such recipients as police departments, court systems and corrections departments. Another major category of recipients, educational institutions, is not discussed. Guidance regarding such institutions will come primarily from the Department of Health and Human Services and the Department of Education.

Duties of Recipients

Pursuant to a requirement set forth in the HEW general regulation (45 CFR § 90.43(b)), proposed § 42.622 provides that any recipient with 15 or more full-time employees must prepare a written self-evaluation of its compliance with the regulation. This is not a continuing requirement; only one such self-evaluation is to be prepared by a recipient. In its self-evaluation, a recipient must identify and justify any age distinction—i.e., any rule or practice using age or an age-related term—that it uses in a covered program. If such a rule or practice is to be continued, the recipient must be able to show that one of the Act's exceptions applies.

Compliance Procedures

Section 42.631 of this proposal, which deals with the handling of complaints, is based upon the provisions of the HEW general regulation (45 CFR § 90.43(c)). Section 42.631(a) of this proposal states that a complaint may be filed by an "aggrieved" person. This limitation is not intended to prevent any person who has information regarding possible violation of this regulation from providing the information to the Department.

With regard to means of enforcement, the provisions of the present Act are similar to those of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–1. The basic means of enforcement are (1) an administrative proceeding to terminate Federal financial assistance or (2) a lawsuit by the Department to enjoin discriminatory practices. In addition, the present Act expressly authorizes lawsuits by private parties who have exhausted their administrative remedies.

Under § 42.633(b)(2) of this proposal, a final decision terminating Office of Justice Assistance, Research, and Statistics grants to a recipient may be made by the Director of OJARS, rather than by the Attoney General. This provision is consistent with the responsibility of the Director under the nondiscrimination provision of the Crime Control Act.

Effective Date of Prohibitions

HEW has taken the position that the Act's prohibitions became effective on July 1, 1979. See § 304(a)(5) of the Act, as amended, 42 U.S.C. 6103(a)(5).

This proposed regulation will apply to any program that received or receives Federal financial assistance from the Department after July 1, 1979. It will apply to conduct occurring after that date.

Regulatory Analysis

Executive Order 12044 requires Federal agencies to prepare regulatory analyses for significant regulations that may have major economic consequences. Under § 3(a)(1) of the executive order, a regulatory analysis must be prepared for any regulation that will result in (1) an annual effect on the economy of at least $100 million or (2) a major increase in costs for individual industries or levels of government.

In connection with issuance of its general regulation, HEW considered the total cost of implementing the specific regulations of all Federal agencies and determined that no regulatory analysis was required for the general regulation. (See the discussion of this matter in the preface to the proposed specific regulation of HEW, 44 FR 55116 (Sept. 24, 1979).) The Department has determined that HEW's conclusion is applicable to the present proposal.

Certain costs for recipients—for example, the expense of defending lawsuits—do not depend upon provisions of the regulation, but result from specific provisions of the Act. Other costs, such as preparation of a self-evaluation or using the mediation process, pertain to requirements of the HEW general regulation. In any event, it does not appear that the economic effects of the present proposal will be "major" within the meaning of Executive Order 12044; and the Department does not plan to prepare a regulatory analysis for this proposed regulation. We invite comments on this matter, however.

The Department of Justice proposes to amend Part 42 of Title 28 of the Code of Federal Regulations by adding Subpart H as set forth below.

Dated: May 12, 1980.

Drew S. Days, III,

Assistant Attorney General, Civil Rights Division.

PART 42—NONDISCRIMINATION: EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart H—Nondiscrimination on the Basis of Age in Federally Assisted Programs—Implementation of the Age Discrimination Act of 1975.

General Provisions

Sec.

42.600 Purpose.
42.601 Application.
42.602 Definitions.

Standards for Determining Age Discrimination

42.610 General prohibition.
42.611 Exception—authorized by law.
42.612 Exception—normal operation or statutory objective.
42.613 Exception—reasonable factors other than age.
42.614 Burden of proof regarding exceptions.

Duties of Recipients

42.620 General Responsibility.
42.621 Notice to subrecipients.
42.622 Self-evaluation.
42.623 Compliance information.
42.624 Remedial and affirmative action.

Compliance procedures

42.630 Compliance procedures.
42.631 Complaints.
42.632 Prohibition against intimidation.

Sec.

42.633 Enforcement procedures.
42.634 Alternative Funding.
42.635 Judicial review.
42.636 Private lawsuits.

Authority.—Section 304(a)(4) of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6103(a)(4); and the general regulation of the Department of Health, Education, and Welfare, 45 CFR Part 90, 44 FR 33768 (June 12, 1979).

General Provisions

§ 42.600 Purpose

(a) This subpart implements the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107. Subject to certain exceptions, the Act prohibits discrimination on the basis of age in programs receiving Federal financial assistance.

(b) The Secretary of Health, Education, and Welfare has issued a general regulation (45 CFR Part 90) to guide other Federal agencies regarding implementation of the Act. This subpart is based upon the general regulation.

§ 42.601 Application.

(a) This subpart applies to each program that received or receives Federal financial assistance from the Department of Justice after July 1, 1979.

(b) The coverage or scope of this Act is like that of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to d–6, and other similar statutes. For example, when a city's police department receives Federal financial assistance, the Act applies to operation of the entire department. The coverage of the Act is not limited to the particular aspect of the police department's operation for which the financial assistance is used.

(c) The Act pertains to such matters as the way in which recipients of Federal financial assistance provide benefits or services. The Act does not apply to employment practices, except in regard to certain programs assisted under the Comprehensive Employment and Training Act.

§ 42.602 Definitions.

As used in this subpart, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107.

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age distinction" means any action using age or an age-related term.

(d) "Age-related term" means a term that necessarily implies a particular age or range of ages (e.g., "youth," "junveile," "adult," "older persons," but not "student").

(e) "Department" means the Department of Justice.

(f) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides assistance in the form of:

(1) Funds;

(2) Services of Federal personnel, or

(3) Real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(g) "FMCS" means the Federal Mediation and Conciliation Service.

(h) "OJARS" means the Office of Justice Assistance, Research, and Statistics. OJARS coordinates the work of the Law Enforcement Assistance Administration, the National Institute of Justice, and the Bureau of Justice Statistics.

(i) "Program or activity" means the operations of the agency, organizational unit of government or other entity receiving or substantially benefiting from Federal financial assistance; e.g., a police department or a department of corrections.

(j) "Recipient" means any State or political subdivision, any instrumentality of a State or political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. "Recipient" includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of Health, Education, and Welfare.

(l) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Standards for Determining Age Discrimination

§ 42.610 General prohibition.

(a) Subject to the exceptions discussed in §§ 42.611–42.613, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program to which this subpart applies. This prohibition applies to actions taken by a recipient, directly or through contractual or other arrangements, that have the purpose or effect of discriminating on the basis of age.

(b) This prohibition encompasses treatment of elderly persons, children and any other age group. Unless one of the exception applies, the recipient may use neither a minimum age limit nor a maximum age limit in connection with receipt of benefits or services or other participation in a program subject to this subpart.

§ 42.611 Exception—authorized by law.

(a) This subpart does not apply to an age distinction contained in a portion of a Federal or State statute or a local statute or ordinance adopted by an elected, general-purpose legislative body which portion (1) provides any benefits or assistance to persons on the basis of age, (2) establishes criteria for participation in age-related terms, or (3) describes intended beneficiaries or target groups in age-related terms.

(b) The exception set forth in § 42.611 (a) does not extend to regulations adopted, pursuant to a specific statutory provision or otherwise, by an administrative agency and does not extend to enactments of a special-purpose body (such as a school board). An age distinction contained in a regulation or in an enactment of a special-purpose body is prohibited by this subpart, unless another exception is applicable.

(c) The operation of § 42.611(a) may be illustrated by the following examples:

(1) Under a statutory or constitutional provision of a State, the qualifications for jury service include a minimum age limit. Such a limit is within the exception of § 42.611(a).

(2) A State statute concerning the jurisdiction of juvenile courts prescribes minimum and maximum age limits for persons subject to that jurisdiction. Such limits are within the exception of § 42.611(a). A different issue is presented, however, where the statute prescribes only a maximum age (e.g., 18) and the minimum applied in the state (e.g., 7) is based upon court decisions following the common law rule. In such a situation, the minimum is not within the exception of § 42.611(a), because it is not prescribed in a statute. The validity of such a minimum would depend upon the exception discussed in § 42.612.

(3) The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5635(a), prescribes the conditions for receipt of formula grants by the States. One condition is

that a State have a plan providing that juveniles shall not be confined in any institution in which they have regular contact with incarcerated adults. Action by a State to comply with that condition is within the exception of § 42.611(a).

§ 42.612 Exception—normal operation or statutory objective.

(a) A recipient may take an action that would otherwise be prohibited by § 42.610(a), if such action reasonably takes age into account as a factor necessary to the normal operation of or the achievement of any statutory objective of the program.

(b)(1) The nature of a program's "normal operation" is a question of fact, to be determined on the basis of such factors as the experience of the particular recipient and the experience of other similar recipients. This term refers to the operation of a program without significant changes that would impair its ability to meet its objectives.

(2) A "statutory objective" of a program is a purpose that is expressly stated in a Federal or State statute or a local statute or ordinance adopted by an elected, general-purpose body.

(c) The general regulation of the Secretary of Health, Education, and Welfare provides (45 CFR § 90.14) that this exception applies when the following test is met:

(1) Age is used as a measure or approximation of one or more other characteristics;

(2) The other characteristic must be measured or approximated in order to continue the normal operation of the program or to achieve any statutory objective of the program;

(3) The other characteristic can be reasonably measured or approximated by the use of age; and

(4) The other characteristic is impractical to measure directly on an individual basis.

(d) The question whether an age distinction comes within the exception of § 42.612(a) depends upon the particular facts—the nature and purpose of the program, the basis for and the nature and purpose of the age distinction, and the manner in which the age distinction is used. The following examples illustrate situations in which this exception might be available. These hypothetical situations are not intended, however, to provide definite answers regarding applicability of the exception.

(1) A State maintains several institutions in which juveniles found to be delinquent are placed. Pursuant to a State statute, a State agency has issued regulations eatablishing standards for admission to the various institutions. E.g., certain institutions are for persons aged 15 to 18; others are for persons aged 12 to 15. The question here is whether the age limits are necessary to the normal operation of the institutions. This would depend upon such factors as the nature of the institutions, the reasons for serparating the juveniles on the basis of age, and the gounds for selecting the particular age limits.

(2) A county jail has a rule regarding visits to inmates. A visitor who is under 18 must be accompanied by a person who is 18 or over. To show that such an administrative rule is within the exception for "normal operation," the recipient would have to establish that it is necessary in terms of such factors as maintaining order or security or protecting the visitors.

(3) A State prison has a separate facility that is limited to elderly (e.g., age 60 or over) inmates. To show that the special treatment of elderly inmates is necessary to "normal operation," the recipient would need to explain the basis for it, such factors as the special needs of older inmates.

(4) A private organization operates a project that involves counseling, academic work, job training and employment for juveniles who have commetted serious offenses. The project is limited to persons aged 14 to 17. The question in such a situation is whether the limits are necessary for the "normal operation" of the project or for achievement of an objective of a pertinent statute. Relevant factors include the purposes of the project, the nature of the job training, and the requisites for the employment related to the project.

(5) A police department's regulation concerning investigation of missing persons calls for special, additional steps when the individual who is missing is a young child or an elderly person. As is true in other situations that may involve the exception for "normal operation," the question turns upon the bases for the age distinctions. A practice of this type might be justified by showing the special needs of or risks to young children or elderly persons.

(6) A different kind of situation is presented when age is one of several factors that determine the manner in which a person is treated. E.g., in determining its recommendation to the court concerning release of an arrested person, a bail agency considers, as one factor, the peson's age; or, in performing its intake function, a police department or a juvenile agency considers the person's age. In such cases, persons are dealt with on an inividual basis. Still, because, age is considered, it may be a deciding factor in some cases. A recipient that follows such a practice must be able to bring it within the exception of § 42.612(a). This would depend upon the nature of the practice, the manner in which age is used, and the basis for considering age.

§ 42.613 Exception—reasonable factors other than age.

(a) A recipient may take an action, otherwise prohibited by § 42.610(a), that affects age groups differently, if such differentiation is based upon reasonable factors other than age.

(b) This exception does not apply to the use of an explicit age distinction, but to conduct that has the effect of differentiating among age groups. The general regulation of the Secretary provides (45 CFR § 90.15) that this exception applies when the factor (other than age) upon which the recipient's action is based bears a direct and substantial relationship to the normal operation of or achievement of a statutory objective of the program.

(c) The following examples illustrate application of this exception:

(1) A job-training project uses a physical-strength test in selecting participants. This test is failed more often by older persons than by younger persons. The job in question involves heavy lifting. Accordingly, the test comes within the exception of § 42.613(a), because physical strength bears a direct and substantial relationship to the purpose of the job training.

(2) A physical-strength test is used in regard to training for a job that does not require physical strength (e.g., clerical work). Such a test does not come within this exception, because physical strength does not have the necessary relation to the purpose of the training.

(3) A bail agency uses a point system to evaluate individuals. Age as such is not a factor, but certain of the factors that are used (e.g., holding a job; length of employment) affect age groups differently. The exception of § 42.613(a) would apply, so long as the factors bear the necessary relation to the function of the bail agency, that is, determining stability or ties to the community.

§ 42.614 Burden of proof regarding exceptions.

The general regulation of the Secretary provides (45 CFR § 90.16) that the burden of proving that an age distinction or other action falls within the exceptions described in § 42.612(a) and § 42.613(a) of this subpart is on the recipient. This allocation of the burden of proof applies in proceedings by the Department to enforce the Act.

Duties of Recipients

§ 42.620 General responsibility.

Regarding any program subject to this subpart, the recipient has primary responsibility to insure compliance with the Act and this subpart.

§ 42.621 Notice to subrecipients.

Any recipient that receives Federal financial assistance from the Department and extends such assistance to subrecipients shall give its subrecipients written notice of their obligations under this subpart.

§ 42.622 Self-evaluation.

(a) Any recipient (including any subrecipient) that has 15 or more full-time employees shall, on a one-time basis, prepare a written self-evaluation of its compliance with this subpart. A recipient shall complete its self-evaluation within 18 months of the effective date of this subpart or, in the case of a recipient that does not become subject to this subpart until after its effective date, within 18 months of becoming subject to this subpart.

(b) In its self-evaluation, a recipient shall, with respect to any program subject to this subpart, identify and justify any age distinction used by the recipient.

(c) When a self-evaluation indicates a violation of the Act or this subpart, the recipient shall take appropriate corrective action.

(d) There is no general requirement that such self-evaluations be sent to the Department. Each recipient shall, however, keep its self-evaluation for three years after its completion. During the three-year period, a recipient shall, upon request, make its self-evaluation available to the Department or to any person.

42.623 Compliance information.

(a) Upon request by the Department, a recipient shall make available to the Department information necessary to determine whether the recipient is complying with this subpart.

(b) Each recipient shall permit reasonable access by the Department to the recipient's facilities, books, records and other sources of information concerning the recipient's compliance with this subpart.

§ 42.624 Remedial and affirmative action.

(a) If the Department finds that, in violation of this subpart, a recipient has discriminated on the basis of age, the recipient shall take remedial action that the Department considers necessary to overcome the effects of the discrimination.

(b) Even in the absence of a finding of discrimination, a recipient, in administering a program, may take steps to overcome the effects of conditions that resulted in limited participation on the basis of age.

Compliance Procedures

§ 42.630 Compliance Reviews.

The Department may conduct pre-award or post-award compliance reviews of an applicant or a recipient to determine compliance with this subpart. When a compliance review indicates probable noncompliance, the Department shall inform the applicant or recipient and shall promptly begin enforcement as described in § 42.633.

§ 42.631 Complaints.

(a) *Receipt of complaints.* (1) Any aggrieved person, individually or as a member of a class, may file with the Department a written complaint alleging a violation of this subpart. A complaint may be filed by a representative of an aggrieved person. A complaint must be filed within 180 days of the date the complainant first knew of the alleged violation. However, this time limit may, for good cause shown, be extended by the Department.

(2) The Department shall promptly review each such complaint for sufficiency. A complaint will be deemed sufficient if it:

(i) Describes an action that may constitute a violation of this subpart, and

(ii) Contains information necessary for further processing (i.e., identifies the parties involved, states the date when the complainant first learned of the alleged violation, and is signed by the complainant).

(3) When a complaint is deemed sufficient, the Department shall refer it to the FMCS for mediation.

(4) When a complaint is deemed insufficient, the Department shall advise the complainant of the reasons for that determination. A complainant shall be freely permitted to add information necessary for further processing.

(b) *Representation of parties.* During each stage of the complaint process, the complainant and the recipient may be represented by an attorney or other representative.

(c) *Assistance from the Department.* Any complainant or recipient may request from the Department information or assistance regarding the complaint process.

(d) *Mediation.* (1) When a complaint is referred for mediation, the complainant and the recipient shall participate in the mediation process to the extent necessary either to reach an agreement or to enable the mediator to determine that no agreement can be reached. No determination that an agreement is not possible shall be made until the mediator has met at least once, jointly or separately, with each of the parties.

(2) If the complainant and the recipient reach an agreement, the mediator shall prepare a written agreement and have the complainant and recipient sign it. A copy of the statement shall be provided to the complainant, the recipient and the Department.

(3) If no agreement is reached within 60 days of the Department's receipt of a complaint or if, within that 60-day period, the mediator determines that no agreement can be reached, the mediator shall return the complaint to the Department.

(4) The mediator shall protect the confidentiality of information obtained during the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained during the mediation process without prior approval of the Director of the FMCS.

(e) *Department investigations.* The Department shall promplty investigate any complaint that is unresolved after mediation or is reopened because of violation of a mediation agreement. An investigation should include a review of the pertinent actions or practices of the recipient, the circumstances under which the alleged discriminations occurred, and other relevant factors. During an investigation, the Department shall take appropriate steps to obtain informal resolution of the complaint.

(f) *Resolution of matters.* (1) Where, prior to any finding by the Department of probable noncompliance with this subpart, discussions between the Department and the parties result in settlement of a complaint, the Department shall prepare an agreement to be signed by the parties and an authorized official of the Department. A settlement shall not affect the operation of any other enforcement efforts of the Department, including compliance reviews or investigation of other complaints involving the recipient.

(2) If the Department determines that an investigation pursuant to § 42.631(e) indicates probable noncompliance with this subpart, the Department shall inform the recipient and shall promptly begin enforcement pursuant to § 42.633.

(3) If the Department determines that an investigation does not indicate probable noncompliance, the Department shall inform the recipient

and the complainant. The Department shall also inform the complainant of his or her right to bring a civil action as described in § 42.636.

§ 42.632 Prohibition against intimidation.

A recipient may not intimidate or retaliate against any person who attempts to assert a right secured by this subpart or who cooperates in any mediation, investigation, hearing, or other aspect of the Department's compliance procedure.

§ 42.633 Enforcement procedures.

(a) *Voluntary compliance.* When a compliance review or complaint investigation results in a finding of probable noncompliance with this subpart, the Department shall attempt to obtain voluntary compliance. An aggreement for voluntary compliance shall describe the corrective action to be taken and time limits for such action and shall be signed by the recipient and an authorized official of the Department.

(b) *Means of enforcement.*

(1) *General.* The Department may seek to enforce this subpart (i) by administrative proceedings that may lead to termination or refusal of Federal financial assistance to the particular program or (ii) by any other means authorized by law. Such other means include lawsuits by the Department to enjoin violations of this subpart. To the extent consistent with the Act, the Department, in enforcing this subpart, shall follow the procedures applicable to enforcement of Title VI of the Civil Rights Act of 1964.

(2) *Termination of Federal financial assistance.* With regard to envorcement of this subpart through the termination or refusal of Federal financial assistance, the Department shall follow the provisions of its Title VI regulation concerning notice, 28 CFR § 42.108(c); hearings, 28 CFR § 42.109; and decisions, 28 CFR § 42.110. However, with respect to programs receiving Federal financial assistance from a component of OJARS, the requirement of 28 CFR § 42.110(e) that a sanction be approved by the Attorney General shall not apply; that function may be performed by the Director of OJARS.

(3) *Other means of enforcement.* With regard to enforcement of this subpart through other means, the Department shall follow the procedures of 28 CFR § 42.108(d). In addition, at least 30 days before commencing a lawsuit or taking other saction pursuant to § 42.633(b)(1)(ii), the Department shall send an appropriate report to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program involved.

(c) *Deferral.* When a proceeding for the termination or refusal of Federal financial assistance is initiated pursuant to § 42.633(b)(1)(i), the Department may defer granting new Federal financial assistance to the recipient.

(1) New Federal financial assistance includes any assistance for which, during the deferral period, the Department requires an application or approval, including renewal or continuation of existing activities or authorization of new activities. New Federal financial assistance does not include assistance approved prior to initiation of the administrative proceeding or increases in funding as a result of a change in the manner of computing formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Department. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 42.634 Alternative funding.

When assistance to a recipient is terminated or refused pursuant to § 42.633(b)(1)(i), the Department may disburse the withheld funds directly to an alternative recipient serving the same area (i.e., a public or non-profit private organization or agency, or State or political subdivision). Any such alternative recipient must demonstrate the ability to comply with the requirements of this subpart and to achieve the goals of the Federal statute authorizing the assistance.

§ 42.635 Judicial review.

A final decision of the Department in an administrative proceeding pursuant to § 42.633(b)(1)(i) is subject to judicial review as provided in § 306 of the Act, 42 U.S.C. 6105.

§ 42.636 Private lawsuits.

(a) Upon exhausting administrative remedies under the Act, a complainant may file a civil action to enjoin a violation of the Act with regard to a program. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the Department has made no finding with regard to the complaint; or

(2) The Department issues a finding, pursuant to § 42.631(f)(3), in favor of the recipient.

(b) Whenever administrative remedies are exhausted in accord with § 42.636(a), the Department shall promptly inform the complainant that:

(1) The complainant may bring a civil action in a United States district court for a district in which the recipient is located or transacts business;

(2) A complainant who prevails in such an action has the right to be awarded reasonable attorney's fees, if the complainant demands such an award in the complaint initiating the lawsuit;

(3) Before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary, the Attorney General, and the recipient;

(4) The notice must state the nature of the alleged violation, the relief requested, the court in which the action will be brought, and whether attorney's fees will be demanded; and

(5) The complainant may not bring an action if the same alleged violation by the recipient is the subject of a pending action in any court of the United States.

[FR Doc. 80-15329 Filed 5-16-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 211

Coal Mining Operations

AGENCY: Geological Survey, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The rules in this Chapter delineate the functions and responsibilities of the Geological Survey (GS) for coal mining operations on Federal lands and govern coal mining operations for production, development, mineral resource recovery and protection, royalties, diligent development, and maximum economic recovery (MER) on Federal lands under the Mineral Leasing Act of 1920, as amended (MLA). The rules also recodify the regulations in 30 CFR Part 211 relating to the initial Federal Lands Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATE: Interested persons may submit written comments on the proposed rules on or before July 3, 1980.

ADDRESS: Comments should be addressed to Chief, Conservation Division, (M.S. 650) U.S. Geological

Survey, U.S. Department of the Interior, Reston, Virginia 22092. Comments will be available for public review at the above address from 7:45 to 4:15 p.m. on regular working days.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew V. Bailey, Chief, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092, (703) 860–7506; FTS—928–7506.

SUPPLEMENTARY INFORMATION: On May 17, 1976, the Department adopted regulations (41 FR 20252) which govern operations for discovery, testing, development, mining, preparation, reclamation, and handling of coal under leases, licenses, and permits issued for federally owned coal. On August 22, 1978, the Department modified those regulations in the **Federal Register** (43 FR 37181) to implement the initial regulatory program of the SMCRA on Federal lands. On March 13, 1979, the Office of Surface Mining Reclamation and Enforcement (OSM) published its final permanent regulatory program regulations (44 FR 14902 to 15463) which include provisions for a permanent Federal Lands Program, 30 CFR Chapter VII, Subchapter D, which fully implements SMCRA on Federal lands. On December 31, 1979, these regulations were amended to postpone the implementation schedule for the permanent phase of the Federal Lands Program.

These proposed revisions of 30 CFR Part 211 (1) separate environmental and reclamation requirements and responsibilities of SMCRA for mining on Federal lands in 30 CFR Subchapter D from the requirements and responsibilities of the GS under the MLA, as amended, and proposed 30 CFR 211.1 through 211.80; (2) retain and clarify the mining responsibilities and requirements of the MLA, and the 30 CFR Part 211 regulations of May 17, 1976, for production, development, mineral resource recovery and protection, royalties, and exploration outside of an approved OSM permit area; (3) revise and clarify the existing regulations and requirements of the Federal Coal Leasing Amendments Act of 1976 (FCLAA) for maximum economic recovery (MER), diligent development, continued operations, and Logical Mining Units (LMU); and (4) recodify the regulations in 30 CFR Part 211 relating to the initial Federal Lands Program under SMCRA.

These proposed rules contain the responsibilities and requirements of the GS under the MLA, as amended, in §§ 211.2 through 211.80. The initial Federal Lands Program of OSM is recodified in §§ 211.81 through 211.99.

Relation to Federal Lands Program

On August 22, 1978, final regulations were published in the **Federal Register** (43 FR 37181) that revised 30 CFR Part 211 to comply with the requirements of Section 523 of SMCRA. The purpose of these revisions was to adopt for Federal lands the existing portions of the initial regulatory program issued by OSM in 30 CFR Part 700 et seq. As explained in the **Federal Register** (43 FR 37181), these revisions represented the initial phase of the Federal Lands Program which is required by section 523 of SMCRA and are intended to remain in effect until they are completely superseded by implementation of the permanent Federal Lands Program in a State.

On March 13, 1979, the Department published final rules implementing a permanent Federal Lands Program in 30 CFR Parts 740 through 745 (44 FR 15332 to 15341) as a part of the overall permanent regulatory program (44 FR 15312 to 15463) of OSM. These rules became effective on April 12, 1979. As originally adopted, the regulations required that after April 12, 1979, all persons submitting a mining plan for new mine or for the addition of new acreage to be mined at an existing operation shall obtain a permit pursuant to the requirements of 30 CFR Chapter VII, Subchapter D, prior to the commencement of surface coal mining and reclamation operations. Section 741.11 of the rules of March 13, 1979, sets forth a schedule for compliance with the permanent program on Federal lands which required that on or after October 12, 1979, existing or new operations will be required to comply with the performance standards in 30 CFR Subchapter K, and that, no later than 2 months after the effective date of a State program or a Federal program for a State, all operators could be required to file a complete permit application. Eight months after the effective date of a State program or Federal program, operators must have obtained a new permit to conduct mining and reclamation operations on Federal lands, except in certain circumstances as specified in 30 CFR 741.11(d).

In response to a petition from the State of Montana, the Department has recently revised the schedule contained in 30 CFR 470.11, as published on March 13, 1979. The amended schedule, published on December 31, 1979 (44 FR 77440–77447), postpones the implementation of the permanent Federal Lands Program until approval of a State program or implementation of a Federal program for a State. The new schedule applies to all surface coal mining operations on Federal lands and to all States. Once the Federal Lands Program is fully implemented in all of the States under the schedule in 30 CFR 741.11, the rules in §§ 211.81 through 211.99 relating to the initial regulatory program will become obsolete and will be revoked.

The Department proposes to recodify the applicable provisions of the initial regulatory program on Federal lands as §§ 211.81 through 211.99. Revisions are restricted to rearrangement, deletion, clarification, and recodification of the text, except in those instances explained below.

It is proposed to amend the regulations in six places to delete the phrase "permit, lease or license" or the phrase "leased, permitted or licensed lands" wherever they occur. The specific sections involved are:

Existing Section in Part 211	*New Section in 30 CFR Part 211.81–99*
1. Section 211.1(a)	Section 211.81(a)
2. Section 211.3(a)(3)(ii)	Section 211.83(a)(3)(ii)
3. & 4. Section 211.3(a)(3)(iv)	Section 211.83(a)(iv)
5. & 6. Section 211.10(a)(2)(i)	Section 211.886 (a) and (b)

The reason for these changes is that the terms "lease, license or permit" and "leased, licensed or permitted lands" are associated with the disposition of federally owned coal under the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947. The terms do not reflect the fact that under Section 701(4) of the Surface Mining Control and Reclamation Act, private surface overlying federal owned coal and privately owned coal overlain by federally owned surface fall within the scope of the definition of "Federal Lands." This concept was discussed in the preamble to the final permanent program regulations of the Office of Surface Mining at 44 FR 14911 (March 13, 1979).[1] That explanation is

[1] The full text of that discussion is as follows: *Federal lands.* An effort has been made to make the Federal lands definition clearer and more concise than that in section 701(4) of the Act without changing its substance.

1. One commenter suggested deleting the phrase "including mineral interests" from the definition of "Federal lands." No rationale was given. OSM has rejected this comment since in conflicts with the statutory definition in section 701(4) of the Act, which specifically includes "mineral interest" under the definition of "Federal lands."

2. Other commenters recommended a change in the definition to exempt private lands overlying federally owned coal rights. Exemption of privately owned surface was suggested in order to clarify Congressional intent that the private surface be controlled by the owner. Congress considered and provided protection for surface owners in section 714 of the Act. An exemption for private surface would be a departure from the statutory definition. If private surface overlying Federal coal were

Footnotes continued on next page

adopted herein as a part of the explanation of these proposed changes. The Department is requesting interested parties to comment on the six amendments listed above.

However, public comments on the requirements of the initial regulatory program repeated in §§ 211.81 through 211.99 were fully considered at the time the initial program was proposed in the **Federal Register** (42 FR 60890) on November 29, 1977. Consequently, except for the sections listed above, further comments on the substantive provisions of the rules in Sections 211.81 through 211.99 are not being requested. These sections of Part 211 will become effective upon final publication of the rules in §§ 211.2 through 211.80.

Because of the legal responsibilities of OSM under the Federal Lands Program, the Department has assigned certain responsibilities regarding coal mining operations on Federal lands between OSM and GS. These proposed rules reflect that division of responsibilities under the MLA and SMCRA. The Department also determined that GS and OSM should coordinate certain responsibilities for coal mining operations on Federal lands. The proposed rules in this part, when read in conjunction with 30 CFR Subchapter D, reflect the coordination required by OSM and GS for approval of coal mining plans, inspections, and enforcement of performance standards on Federal lands under the initial and permanent OSM Federal Lands Program and the MLA.

Responsibilities Under the Mineral Leasing Act

The MLA has been amended numerous times, but mostly recently by Pub. L. 94–554 and Pub. L. 94–377, know otherwise as the FCLAA. For the purposes of this preamble, we refer to the MLA and its amendments as the MLA.

The GS is responsible for management of the coal resource and mining operations pursuant to the requirements of the MLA. The GS continues to exercise the Secretary's authority for managing mining operations for the MLA requirements concerning production, development, resource recovery and protection, MER, diligent development, continued operations, and royalties. These proposed rules delineate those responsibilities and requirements and clarify certain sections of the existing regulations.

All the basic requirements in these proposed rules for diligent development and MER are found in the existing regulations of 43 CFR Part 3400 of July 19, 1979, or 30 CFR Part 211 and the MLA. These proposed rules, in accordance with the MLA, require that no mining operating plan (mining plan) shall be approved which is not found to achieve the MER of the coal within the tract, and that consolidation of coal leases into an LMU may only be approved upon determing that MER of the coal deposit or deposits is achieved.

These proposed rules attempt to conform to the final rules of the Bureau of Land Management, 43 CFR Group 3400—on coal management, that were published in the **Federal Register** on July 19, 1979 (44 FR 42584 et seq.). Any differences will be resolved upon final publication of these rules. The public is invited to comment on any differences between the respective rules. These proposed rules attempt to conform to the policy determinations of the Secretary of the Interior made on June 1 and 2, 1979, especially for the determination of MER. The Department of the Interior (DOI) prepared a Final Environmental Statement on the Federal Coal Management Program in April 1979.

Transfer of Certain Responsibilities to Department of Energy

The Department of Energy Organization Act transferred from the DOI to the Department of Energy (DOE) the responsibilities for establishing regulations for diligence requirements on Federal coal leases. When the DOE issues regulations for diligence, it may be necessary to make further revisions in this part. These proposed rules indicate the responsibilities of the GS for implementation of DOE regulations applicable to coal leasing.

Exploration on Federal Lands

The GS will continue to administer all coal exploration activities on Federal lands outside of any permit area for a surface coal mining operation approved by the Regulatory Authority Under 30 CFR Chapter VII, Subchapter D. OSM will administer all coal exploration activities on Federal lands within an approved permit area for surface coal mining and reclamation operations. All applications for exploration on Federal lands outside of an approved permit area will be submitted to the Mining Supervisor who shall make any necessary consultations with OSM. No exploration may commence on Federal lands outside of an approved permit area without the approval of an exploration plan under the proposed rules of this Part.

Editorial Changes

The proposed rules repeated all unchanged sections of the regulations promulgated on and since May 17, 1976. Minor editorial changes were made throughout the proposed rules in order to clarify the existing regulations. The editorial changes are not intended to alter any substantial content of the existing regulations.

Pursuant to the Office of the Secretary's rules of 43 CFR Part 14, functions, responsibilities, and requirements for coal mining operations on Federal lands are referred to as "rules" rather than "regulations." References to the term "regulations" in the preamble apply to the historical use of that term in the previous revisions of 30 CFR Part 211.

Revised Sections 211.1 Through 211.80

The existing 30 CFR Part 211 regulations are proposed to be revised for GS requirements and responsibilities by making the following changes to §§ 211.1 through 211.80:

1. All of the analogous environmental and reclamation provisions of the 211's for coal mining operations on Federal lands, which are now addressed in the SMCRA and 30 CFR Subchapter D, would be deleted. These proposed deletions include most of the environmental performance standards in § 211.40, environmental requirements for mine plans in § 211.10, environmental definitions in § 211.2, public participation for environmental matters in § 211.5, and all other such references throughout this Part.

2. Several references to 30 CFR Chapter VII are made in the text of this part. This is necessary because certain sections of this part are incorporated in the procedures required by the permanent Federal Lands Program of the SMCRA. A § 211.10 plan (referred to synonymously as a "mining and operations plan" or "operation and reclamation plan") is required to be submitted by an operator for responsibilities of the operator under the MLA as a part of a mining plan. The term "mining plan" is defined at 30 CFR 740.5. Mining plans and modifications thereof would be submitted to the

---

Footnotes continued from last page
exempted from the Federal lands definition then, arguably, the lands would fall under a State program and the State would serve as the regulatory authority over the extraction of Federal coal. This would be an unauthorized result, particularly, when under section 714 of the Act the Federal Government would be leasing the coal under the Mineral Lands Leasing Act of 1920, as amended.

3. Another commenter suggested that the Section be revised to read "any land, including surface land or mineral interest," in order to make it clear that Federal surface overlying private coal is included in the definition of Federal lands. "Federal lands" are defined as "any lands * * * owned by the United States without regard to how the United States acquired ownership of the lands." Since OSM's interpretation of the definition is consistent with the comment, OSM believes it is unnecessary to adopt the suggested language.

Regional Director pursuant to 30 CFR Part 741. Section 211.1 includes paragraphs which state the Scope and Purpose of the initial Federal Lands Program of OSM which is fully recodified in §§ 211.81 through 211.99.

These proposed rules in §§ 211.2 through 211.80 attempt to conform completely to the final 30 CFR Chapter VII rules of OSM which became effective April 12, 1979. Any differences will be resolved upon final publication of these rules. The public is invited to comment on any differences or inconsistencies between these proposed rules and OSM's final rules.

3. Section 211.6 would be revised to clarify the responsibility of the GS for confidentiality of data under MLA, and to maintain a consistent approach to handling confidential data in accordance with the OSM rules.

4. Sections 211.11, 211.13, 211.20, 211.21, 211.30, 211.31, 211.32, 211.33, 211.35, 211.36, and 211.66 are proposed to be revised by eliminating the section numbers and incorporating the applicable text into other sections of Part 211. Sections 211.11, 211.30, 211.31, 211.32, 211.33, 211.35, and 211.36 would be incorporated into § 211.40, Performance Standards. Section 211.13 would be incorporated into proposed § 211.12 and § 211.20 would be incorporated into proposed § 211.62.

5. Sections 211.10, 211.12, 211.40, 211.63, 211.64, and 211.65 would be retained and revised to clarify the GS responsibilities under the MLA. Exploration plan requirements would be revised slightly to be consistent with terminology required under SMCRA. The purpose of the mining and operations plan in § 211.10 is to indicate how the operator proposes to comply with the MLA. These rules would require the operator to include a mining and operations plan as a separate part of the mine plan submitted to the Regulatory Authority under the permanent Federal Lands Program of SMCRA. The requirements in § 211.10 are not intended to duplicate information required under SMCRA. The public is invited to comment on the relationship of the mining and operations plan requirements to permit application requirements of OSM on Federal lands under 30 CFR 741.13.

Section 211.10 also proposes to require submission of mining plans for all private and Federal lands consolidated into an LMU prior to any mining on that LMU. Section 211.10 also proposes that approval of an LMU composed of consolidated lands would not relieve the operator of the requirements of the FCLAA. A mining plan would be required for an LMU composed of consolidated lands prior to taking any mining action on lands within the LMU and not later than 3 years from the date of the earliest Federal lease issued or readjusted after August 4, 1976, which lacks a mining plan.

Section 211.40 proposes to include performance standards for coal exploration and mining operations on Federal lands under MLA. These standards include MER, diligent development, and requirements for protection and recovery of the coal resource. Section 211.40 also proposes to include a standard for mining coal up to the lease boundary line. One purpose of this standard is to allow the Mining Supervisor to encourage the lessee to enter into backstripping agreements with adjacent leases to mine up to the boundary line, in the interest of conservation of natural resources; provided that all such agreements would be in compliance with existing State and Federal laws.

Section 211.40 also proposes to require that applications for extensions of the deadline for meeting diligent development in accordance with 43 CFR 3475.4 be submitted to the Mining Supervisor for review and recommendation of approval or denial to the Secretary.

6. Sections 211.62, 211.63, and 211.64 would be revised to clarify procedures and correct oversights for computation of royalty payments due on all coal mined, recovered from coal waste, and recovered by in situ methods. These rules propose to change the royalty payment requirement of § 211.63 from a quarterly submission to a monthly submission. These rules also propose to delegate to the GS the Secretary's authority under the MLA to act on applications for reduction of royalty and to establish a procedure for acting on such applications.

7. The existing responsibilities and requirements in §§ 211.70, 211.71, and 211.72 for inspections and enforcement under the MLA would be retained. The GS solicits comments on whether the Department should consider revising these sections to utilize the same procedures and administrative actions required by OSM for enforcement actions on Federal lands under the SMCRA. Section 211.72 is proposed to be revised to reflect GS responsibilities relating to enforcement of DOE regulations applicable to coal leasing under the Department of Energy Organization Act.

8. Section 211.80, LMU's, would be added. Regulations which define LMU's are found in 43 CFR Part 3400. Section 211.80 clarifies the existing regulations as to the GS's responsibilities for LMU's, specifies criteria for establishing LMU's, and indicates the operator's requirements and responsibilities.

Revised Sections 211.81 through 211.99

It is proposed that the provisions in 30 CFR Part 211, as amended on August 22, 1978, which relate to the initial Federal Lands Program under SMCRA be recodified in Title 30 CFR §§ 211.81 through 211.99. It is intended that the substantive requirements of the August 22, 1978, amendments remain unchanged except to add clarifying language where necessary. The proposed changes are as follows:

1. Section 211.3(a)(1) [new § 211.83(a)(1)] has been modified by deleting paragraphs (a)(1)(i) through (a)(1)(x) of § 211.3. These requirements would be incorporated into proposed rules 30 CFR 211.1 through 211.80. The last sentence of new § 211.83(a)(1) is modified to be consistent with proposed 30 CFR 211.1 through 211.80.

2. Section 211.10(a)(1)(i) is redesignated § 211.86(a) and is revised to clarify the division of functional responsibilities between GS and OSM as they relate to exploration operations. In accordance with the Under Secretary's decision of July 5, 1978, and the Memorandum of Understanding entered into on October 24, 1979, GS will retain responsibility for exploration operations on leased lands outside a permit area. OSM will have responsibility for exploration operations in the permit area or that area of land on which mining and reclamation operations are occurring or are expected to occur prior to the time a permit is approved pursuant to 30 CFR Part 741.

3. Sections 211.10(f) and (g) are deleted because the period covered by these provisions has expired.

4. A new § 211.81(c) would be added to clarify the period of applicability of the requirements of revised §§ 211.81 through 211.99.

5. Section 211.70 [new § 211.97] is retitled, Inspections, Enforcement, and Civil Penalties. This section would incorporate all of the provisions of §§ 211.70, 211.72, and 211.78.

6. Several provisions in the existing regulations relating to State/Federal Cooperative Agreements are to be deleted or modified as follows:

a. Section 211.10(e) is proposed to be recodified § 211.86(g), and the reference to § 211.75(c) is redesignated § 211.99(c). Additionally, it is proposed that the references to 30 CFR 211.10(c) in paragraphs (1) thorugh (6) be redesignated 30 CFR 211.86(d).

b. Section 211.75 is proposed to be renumbered § 211.99.

c. Sections 211.76 and 211.77 are proposed to be deleted and comparable provisions, if adopted, will be codified in 30 CFR Subchapter D.

Other Information

The DOI has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14. Publication of this rulemaking has been determined by the Department not to be a major Federal action significantly affecting the quality of the human environment, and no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4332(2)(C) is required.

The proposed rules in §§ 211.1 through 211.80 contain no new major revisions that are not addressed in existing rules or the MLA. There are no new major recordkeeping or reporting requirements.

These proposed rules were drafted by a work group comprised of GS Mining Supervisors and staffs of the Regional Conservation Manager, Denver, and the Chief, Conservation Division. Preparation of the rules is under the responsibility of Andrew V. Bailey, Chief, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092.

Primary Authors

The primary authors of these proposed rules at the time of drafting were: Andrew Bailey, Chief, Branch of Mining Operations, and Thomas Leshendok, Geologist, Branch of Mining Operations, Conservation Division, U.S. Geological Survey, Reston, Virginia 22092, phone (703) 860–7506; Earl Cox, Mining Engineer, Office of the Conservation Manager, Conservation Division, U.S. Geological Survey, Central Region, Denver Federal Center, Lakewood, Colorado 80225; Paul Storrs, Area Mining Supervisor, Central Rocky Mountain Area, Conservation Division, U.S. Geological Survey, Denver, Colorado 80225; Albert Czarnowsky, Area Mining Supervisor, Southern Rocky Mountain Area, Conservation Division, U.S. Geological Survey, Albuquerque, New Mexico 87102; Jackson Moffitt, Area Mining Supervisor, Western Rocky Mountain Area, Conservation Division, U.S. Geological Survey, Salt Lake City, Utah 84138, as assisted by Chedville, L. Martin, Staff Attorney, Division of Surface Mining, Office of the Solicitor; John Carlson, Office of Surface Mining; and Ann Vance, Staff Attorney, Division of Energy and Resources, Office of the Solicitor.

It is proposed to revise Part 211, Chapter II, Title 30 of the Code of Federal Regulations as set forth below.

Dated: May 13, 1980.

Joan M. Davenport,

Assistant Secretary—Energy and Minerals.

PART 211—COAL MINING OPERATING RULES

Sec.

211.1 Scope and purpose.
211.2 Definitions.
211.3 Responsibilities.
211.4 General obligations of the operator.
211.5 Procedures and public participation.
211.6 Confidentiality.
211.10 Exploration and mining and operations plans.
211.12 Operation mine maps.

Performance Standards

211.40 Exploration, surface mining, and underground mining standards.
211.41 Completion of operations and abandonment.

Reports, Records, Royalties, and Audits

211.62 Reports.
211.63 Royalties.
211.65 Audits
211.66 Maintenance of and access to records

Inspection, Issuance of Orders, Enforcement, and Appeals

211.70 Inspections.
211.71 Notices and orders.
211.72 Enforcement.
211.73 Appeals.

Logical Mining Units

211.80 Logical mining units.

Initial Regulatory Program on Federal Lands of the Surface Mining Control and Reclamation Act 1977

211.81 Applicability.
211.82 Definitions.
211.83 Responsibilities.
211.84 General obligations of the operator.
211.85 Procedures and public participation.
211.86 Exploration and mining plans.
211.87 Approaching oil, gas, or water wells.
211.88 Mine maps.
211.89 Failure of lessee to furnish maps.
211.90 Core and test holes.
211.91 Maximum recovery for underground mining.
211.92 Subsidence.
211.93 Development of leased tracts through adjoining mines.
211.94 Operating and reclamation standards.
211.95 Completion of operations and abandonment.
211.96 Reports.
211.97 Inspections, enforcement, and civil penalties.
211.98 Appeals.
211.99 Applicability of State law.

Authority.—30 U.S.C. 181 et seq.; 30 U.S.C. 351–395; and 38 Stat. 741.

PART 211—COAL MINING OPERATING RULES

§ 211.1 Scope and purpose.

(a) *Scope.* (1) The regulations in §§ 211.1 through 211.80 of this part shall govern operations for the exploration, development, mining, preparation, and handling of coal under leases, exploration licenses, and licenses issued for federally owned coal, regardless of surface ownership, pursuant to the Mineral Leasing Act of 1920, as amended (MLA), the regulations in 43 CFR Group 3400, and the Alaska Coal Leasing Act of October 20, 1914, as amended (38 Stat. 741; 48 U.S.C. 432–445). Except as may otherwise be provided in 25 CFR Chapter I, these regulations do not apply to operations for the testing, development, mining, preparation, and handling of coal in Indian lands under leases and permits issued under the regulations in 25 CFR Parts 171, 172, 174, and 177.

(2) The regulations in §§ 211.81 through 211.99 constitute the initial regulatory program for Federal lands required by section 502 and section 523 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1252 and 1273). These regulations apply to surface coal mining and reclamation operations on Federal lands, including but not limited to the discovery, testing, development, mining, preparation, and handling of coal. Except as may otherwise be provided in 25 CFR Chapter I and this subsection, these regulations do not apply to such operations on tribal or allotted Indian lands under leases and permits issued subject to 25 CFR Part 177. A mining plan for an operation to be conducted on both Federal and Indian lands shall be subject to concurrent review pursuant to the requirements of this part and 25 CFR Part 177.

(b) *Purpose.* (1) The purposes of the rules in §§ 211.2 through 211.80 of this part are to assure orderly and efficient development, mining, preparation, and handling operations; to assure production practices that prevent avoidable waste or loss of coal or other mineral resources; to avoid damage to coal-bearing or other mineral-bearing formations; to encourage maximum economic recovery (MER) and use of coal resources; to assure that operations meet requirements of diligent development and continuous operations; to protect the public health and safety; to ensure effective and reasonable regulation of surface and underground coal mining operations in accordance with the requirements of §§ 211.2 through 211.80 of this part; to require a proper record and accounting of all coal

produced; and to assure efficient and environmentally sound exploration operations outside an approved Office of Surface Mining Reclamation and Enforcement (OSM) permit area for surface mining and reclamation operations.

(2) The purposes of the rules in §§ 211.81 through 211.99 of this part are to ensure the protection of public health and safety and of environmental resources during and after surface coal mining and reclamation operations on Federal lands, and to ensure the completion of reclamation capable of restoring the land after mining to the same or higher uses which it would have supported prior to mining.

(c) *Exploration Licenses.* The rules govern operations for exploration on unleased Federal lands issued in accordance with regulations in 43 CFR Part 3410, Exploration Licenses.

(d) *Office of Surface Mining.* The responsibility for enforcement of the SMCRA (91 Stat. 445, 30 U.S.C. 1201 et seq.) and the environmental and reclamation rules for surface coal mining operations contained in this Chapter, including §§ 211.81 through 211.99, is vested in the OSM, Department of the Interior (DOI).

(e) *Worker Health and Safety.* The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended, (83 Stat. 742; 30 U.S.C. 801) and the coal mine health and safety rules contained in Chapter I of this title is vested in the Mine Safety and Health Administration (MSHA), Department of Labor.

(f) *Effective Date.* These rules are effective upon publication as final rulemaking, except that a plan under 30 CFR 211.10(c) is required pursuant to 30 CFR Part 741.

§ 211.2 Definitions.

(a) As used in §§ 211.2 through 211.80 of this part, the following terms shall have the following meanings:

Advance royalty means an advance payment authorized in lieu of continued operations.

Coal reserve base means the tons of coal in place contained in beds of (1) metallurgical or metallurgical-blend coal 12 inches or more; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation; (2) metallurgical and metallurgical-blend coal 24 inches or more thick, anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 or more inches thick occurring from 50 to 3,000 feet; and (3) any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet which is presently being mined or for which there is evidence that it could be commercially mined at this time. Coal reserve base includes measured, indicated, and inferred categories as defined in General Mining Order No. 1.

Conservation Manager means a Conservation Manager, Conservation Division, Geological Survey (GS).

Daylighting is a term used to define the surface mining procedure for exposing an underground mined area to remove remaining coal.

Development means preparing a mine for production by drilling, excavating, sinking shafts, slopes, or driving drifts.

Director means the Director of the U.S. Geological Survey, DOI.

Division Chief means the Chief of the Conservation Division, GS.

Exploration license means a license issued by the authorized officer under 43 CFR Part 3410 to permit the licensee to explore for coal on unleased Federal lands.

Exploration plan means a detailed plan to identify the depth, thichness, extent, and quality of coal resources, and shows the location and type of exploration work to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

General Mining Order means a formal numbered order issued by the Mining Supervisor, with prior approval of the Division Chief, and published in the **Federal Register** after opportunity for public comment. The order implements rules in §§ 211.2 through 211.80 of this part.

Leased Lands, Leased Premises, or Leased Tract means lands embraced within a Federal coal lease and subject to the rules in this part.

Lessee means any person or persons, partnership, association, corporation, or municipality to whom a Federal coal lease is issued, or an assignee of such lease under an approved assignment.

License means a license to mine coal pursuant to the provisions of 43 CFR Part 3340.

Licensee means the holder of an exploration license or a license to mine.

Maximum economic recovery (MER) means, after safety factors are taken into account, the extraction of all portions of the coal deposit within a Federal lease that have a private incremental cost of recovery (including reclamation costs and opportunity costs) less than or equal to the market value of the coal.

Method of operation means the methods and manner by which activities are performed by the operator, as described in an exploration or mining plan.

Mine means an underground or surface excavation and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

Minable reserve base means the tons of coal in place contained only in the area and thickness which is commerically minable with no deductions for coal to be left in pillars, fenders, property barriers, and other areas where mining is not permissible, such as (1) coal under land determined to be prime farmland, (2) coal under certain alluvial valley floors, (3) land classified as unsuitable for coal mining under OSM regulations, (4) land designated as containing historic, cultural, or archaeological sites protected under provisions of 36 CFR Part 800, (5) lands in the proximity of or containing the habitat of certain endangered species, and (6) lands with zoning restrictions.

Mining and operations plan means a detailed plan submitted under 30 CFR Part 211 as part of the mining plan showing that the proposed operation meets the requirements of the MLA for development, production, resource recovery and protection, diligence, and MER requirements pursuant to §§ 211.2 through 211.80 of this part.

Mining Supervisor means the Area Mining Supervisor, Conservation Division, GS, or District Mining Supervisor or other subordinates acting under his direction.

Notice of availability means formal notification by the Mining Supervisor to appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public through posting in the appropriate county clerk's office of the availability for inspection of the proposed establishment of a Logical Mining Unit (LMU). The notice will adequately define the proposed action, will establish a specific time limit for public review and comments, and will provide for a public hearing at the request of anyone adversely affected by the proposed action.

Operator means lessee, licensee, or one conducting operations on a lease or exploration license under the authority of a lessee or licensee.

Preparation means the physical or chemical treatment to prepare coal for market or to remove noncoal waste and

other impurities in order to enhance the quality and therefore the value of the coal. Treatment includes crushing, sizing, drying, cleaning, mixing, or other processing.

Permanent abandonment for exploration operations means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes and reclamation of all disturbed surfaces.

Permanent abandonment for mining means the completion of all development, production, and mineral resource recovery and protection requirements conducted under an approved mining and operations plan.

Production means recovering coal or commercial byproducts from a mine using surface, underground, auger methods, or in situ gasification.

Recoverable reserves means the tons of coal that can be commercially mined under existing technology and economics. It does not include coal that will be left in pillars, fenders, property barriers, or other areas where mining is not permissible such as (1) coal under land determined to be prime farmland, (2) coal under certain alluvial valley floors, (3) land classified as unsuitable for coal mining under OSM regulations, (4) land designated as containing historic, cultural, or archaeological sites protected under provisions of 36 CFR Part 800, (5) lands in the proximity of or containing the habitat of certain endangered species, and (6) lands with zone restrictions. In these rules, the terms "reserves" and "recoverable reserves" are used interchangeably. Recoverable reserves include measured, indicated, and inferred categories as defined in General Mining Order No. 1.

Resource recovery and protection includes practices to efficiently recover the coal resources subject to these rules: to avoid waste or loss of coal or other mineral resources; to prevent damage or degradation to coal-bearing or other mineral-bearing formations; to encourage MER of the coal; and to ensure that all mineral resources are protected upon abandonment.

Secretary means the Secretary of the Interior.

Subsidence means a lowering of surface elevations over an underground mine caused by loss of support and subsequent caving of strata lying above the mine.

(b) The following shall have the meanings indicated in 43 CFR 3400.0–5:

Authorized officer
Continued operations
Commercial quantities
Diligent development
Exploration
Logical mining unit (LMU)
Maximum economic recovery (MER)
Mining plan

(c) The following definitions shall have the meanings indicated in 30 CFR 700.5 and 701.5:

Alluvial valley floors
Aquifer
Federal lands
Federal Lands Program
Groundwater
Office
Overburden
Permit
Permit area
Regional Director
Regulatory authority
Roads
Spoil
Surface coal mining and reclamation operations

§ 211.3 Responsibilities.

(a) The GS has the general responsibility to administer the MLA with respect to coal mining, production, and resource recovery operations on Federal leases and licenses and to supervise coal exploration opreations outside of an approved Federal permit area for surface coal mining and reclamation operations.

(b) Subject to the supervisory authority of the Secretary, the regulations in § 211.2 through 211.80 of this part shall be administered by the Director, through the Division Chief, the Conservation Manager, and the Mining Supervisor.

(c) The Mining Supervisor is empowered to oversee exploration, development, production, resource recovery and protection, diligent development, preparation, handling, and mineral abandonment operations subject to the provisions of this Part and, shall be responsible for:

(1) *Exploration plans.* Approve, disapprove, approve upon condition, or require modification of exploration plans for activities outside of an approved OSM permit area.

(2) *Mining plans.* Review mining plans or modifications thereof and give written concurrence on the development, production, resource recovery and protection, diligent development, continued operations, and royalty requirements of mining and operations plans prior to approval by the Secretary.

(3) *LMU applications.* Approve or disapprove LMU applications or modifications thereof; direct the establishment of an LMU in the interest of conservation; conduct public hearings as appropriate; recommend amendment to lease terms when determined necessary to assure consistency with LMU agreements; monitor and assure compliance with LMU requirements and regulations; and require reports and information for the establishment of the LMU.

(4) *Inspection of operations.* Examine as frequently as necessary, but at least quarterly, the lease, exploration license, or licensed lands where operations for the exploration, development, production, preparation, and handling of coal, resource recovery and protection, diligent development, and collection of royalties are conducted or are to be conducted; inspect such operations for the purpose of determining whether waste or degradation of mineral substances or damage to formations and deposits or nonmineral resources affected by the operations is being minimized; and determine whether all provisions of applicable laws, regulations, and orders, all terms and conditions of leases, exploration licenses, and licenses, and all requirements of approved exploration or mining and operation plans are being complied with.

(5) *Compliance.* Require operators to conduct operations subject to this part in compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of leases, exploration licenses, or licenses, under the requirements of the MLA, and all requirements of approved exploration or mining and operation plans for requirements of production, development, resource recovery and protection, MER, diligent development, continued operations, and collection of royalties.

(6) *Reports and recommendations.* Make reports to the Division Chief, through the Conservation Manager, as to the general conditions of lands under lease, exploration license, or license, and the manner in which operations are being conducted and orders are being complied with; and submit information and recommendations for responsibilities of this part toward protection of the coal and the coal-bearing formations, other mineral resources, and the non-mineral resources.

Furnish copies of reports to the operator upon request and make them available for public inspection, subject to the requirements of confidentiality of data in this part, during normal business hours at the office of the Mining Supervisor.

(7) *Records of production; rentals and royalties.* Obtain and audit coal production and sales including establishment of coal values in absence of arms-length transactions; collect and

deposit rental and royalty payments; and maintain rental and royalty accounts.

(8) *Waiver, suspension, or reduction of rental or minimum royalty; reduction of royalties.* Act on applications for waiver, suspension, or reduction of rental or minimum royalty, and act on applications for reduction of royalties filed pursuant to 43 CFR 3473.3–2 and 30 CFR 211.63(i).

(9) *Suspension of operations and production.* Act on applications for suspension of operations or production, or both, filed pursuant to 43 CFR 3473.4, and terminate, when appropriate, suspensions which have been granted, provided that approval of a suspension of operations and production shall not preclude the OSM from requiring the operator to continue to comply with the reclamation requirements of 30 CFR Subchapter K and this part.

(10) *Cessation and abandonment.* Upon receipt of notice of proposed abandonment from the Regional Director or relinquishment of a lease or license, conduct an inspection to determine whether all rentals and royalties due the lessor have been paid and the development, production, mineral resource recovery and protection, abandonment, and royalty requirements of the lease or exploration license have been met.

(11) *Wells or prospect holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might be incurred as a result of any wells or prospect holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(12) *Trespass.* Report to the appropriate authorized officer with a copy to the Regional Director any trespass on unleased Federal lands that involves exploration activities or removal of coal, determine the quantity of coal removed, and determine the amount of trespass damages.

(13) *Extension of diligence.* Receive and act on applications by the operator for extension of diligence requirements and coordinate review of submission of applications with the authorized officer.

(14) *Water and air quality.* Inspect exploration operations to determine compliance with air and surface and ground-water management and pollution control measures required by the terms and conditions of applicable leases, exploration licenses, or licenses or approved exploration plans, and promptly notify appropriate representatives of other Federal and State agencies in the event of any noncompliance.

(15) *Implementation of regulations.* Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or assure compliance with the rules in §§ 211.2 through 211.80 of this part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(16) *Lease bonds.* (i) Determine whether the total amount of lease bond with respect to operations under this part is at all times adequate to satisify the estimated reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to §§ 211.2 through 211.80 of this part is at all times adequate to satisfy the requirements of the lease or license relating to development, production, mineral resource recovery and protection, and payments of rents and royalties; and notify the appropriate authorized officer in the event of any inadequacies.

(17) *Consultation.* Consult with the appropriate authorized officer prior to taking final action to approve an exploration plan outside an approved OSM permit area or modification thereto and to determine the amount of lease bond or modification thereto necessary to assure compliance with the exploration plan and 30 CFR Part 211. Any disagreements between the Mining Supervisor and the authorized officer arising in connection with any such final action or determination will be referred for resolution to higher authorities and, if necessary, to the Secretary of the DOI. Any such disagreements between the Mining Supervisor and the appropriate authorized officer of any Federal surface management agency not in the DOI will be referred for resolution to comparable higher authorities in each agency and, if necessary, to the respective Departments for final resolution.

§ 211.4 General obligations of the operator.

(a) The operator shall conduct exploration activities, reclamation, and abandonment of exploration operations pursuant to the performance standards set forth in this part and 30 CFR 815.15, the terms and conditions of the lease or exploration license, the requirements of the approved exploration plans, and orders issued by the Mining Supervisor.

(b) The operator shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules in §§ 211.2 through 211.80 of this part, terms and conditions of the leases or licenses, the approved mining and operation plan, and any orders issued by the Mining Supervisor.

(c) The operator shall prevent waste of coal and other mineral resources during exploration and production and shall adequately protect the coal deposit and other mineral resources upon abandonment.

(d) The operator shall promptly report to the Mining Supervisor, by telephone, any accidents threatening loss of coal resources or damage to the mine, the lands or other mineral resources, such as, but not limited to, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts along with corrective action initiated. Within 30 days after such accident, the operator shall submit a detailed report of damage caused by such accident and of the corrective action taken.

(e) The operator shall submit the reports required by Part 200 of this Chapter, §§ 211.2 through 211.80 of this part, and any other reports required by the Mining Supervisor.

§ 211.5 Procedures and public participation.

(a) *Written findings.* All major decisions and determinations of any Mining Supervisor shall be in writing; shall set forth with reasonable detail the facts and the rationale upon which such decisions or determinations are based; and shall be available for public inspection during normal business hours at the offices of the Mining Supervisor.

(b) *Availability of LMU proposals.* Applications for the approval of an LMU or modification thereof submitted under § 211.80 of this part or a proposal by the Mining Supervisor to establish an LMU shall be available for public inspection in the office of the appropriate Mining Supervisor. To allow for such public inspection, a notice of the availability of any such proposed LMU or modification shall be prepared by the Mining Supervisor, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; to appropriate Federal and States agencies; and to the clerk or other appropriate officer in the county in which the proposed LMU is located for posting or publication in accordance with the procedures of that office.

A copy of such notice shall be published by the Mining Supervisor in a local newspaper of general circulation in the locality of the proposed operation at least once a week for 2 consecutive weeks.

No action with respect to approval of any such LMU or modification thereof shall be taken by the Mining Supervisor

for a period of 30 days after such posting and mailing.

(c) *Notice of proposed decision.* Prior to the final approval or establishment of any LMU, the Mining Supervisor shall publish his proposed decision in a newspaper of general circulation in the geographical area involved at least once each week for 2 consecutive weeks and shall not approve the application for at least 30 days after the first publication.

(d) *Public participation.* A public hearing shall be conducted upon the receipt of a written request to the appropriate Mining Supervisor of any person having an interest, which is or may be adversely affected by approval of the proposed LMU; provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation.

A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of the Mining Supervisor under whose auspices such meeting is conducted and shall be furnished at cost to any interested party. In making any decision or taking any action subject to such public hearing, the Mining Supervisor shall take into account all testimony submitted at such meeting, including any written comments submitted for the record.

§ 211.6 Confidentiality.

(a) Information on file with the GS relating to information obtained under this Part shall be open for public inspection and copying at reasonable times upon the written request of the applicant, pursuant to rules in 43 CFR Part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal coal reserves obtained from exploration licensees under §§ 211.2 through 211.80 of this part shall not be disclosed to the public until after the areas to which the information pertains have been leased by the Department, or until the Secretary or designee determines that release of the information to the public would not damage the competitive position of the holder of the exploration license, whichever comes first; and

(2) Information obtained from a lessee or operator under §§ 211.2 through 211.80 of this part which constitutes trade secrets and commercial or financial information which is privileged or confidential or other information which may be withheld under the Freedom of Information Act, 5 U.S.C. § 552(b), such as geological and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the lessee or operator. Provided, however, that upon termination of a lease, whether by expiration of its terms or otherwise, such information may be made available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the licensee, lessee, or operator by marking each page of documents submitted with the words "CONFIDENTIAL INFORMATION" at the top of the page. All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection.

§ 211.10 Exploration and mining and operations plans.

(a) *Exploration.* (1) Except for casual use, before conducting any exploration operations on leased or licensed lands outside of an approved OSM permit area, or under a coal exploration license, the operator shall submit an exploration plan to and obtain approval from the Mining Supervisor. Casual use, as used in this subsection, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include use of heavy equipment or explosives, or vehicular movement off established roads and trails. The operator shall submit seven copies of such plans to the Mining Supervisor.

All such plans shall be identified by the name and address of lessee or licensee and the serial numbers of leases or licenses included in the plan, and shall show in detail the exploration, reclamation, and abandonment operations to be conducted. Exploration plans shall be consistent with and responsive to the requirements of the lease or license for the protection of mineral and nonmineral resources and for the reclamation of the surface of the lands affected by the operations. The exploration plans shall show that reclamation it an integral part of the proposed operations and will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method.

(2) Exploration plans shall contain all of the following: (i) The name, address, and telephone number of the applicant;

(ii) The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;

(iii) An exploration and reclamation operations plan, including: (A) A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (2)(V) of this section, including surface topography; geological, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archaelogical resources located within the proposed exploration area;

(B) A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris-disposal activities;

(C) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation;

(D) The estimated amounts of coal to be removed, a description of the methods to be used to determine those amounts, and the proposed use of the coal removed; and,

(E) A description of the measures to be used to comply with the applicable requirements of 30 CFR 815.15 and 30 CFR 211.40(a); which shall include the methods for grading, backfilling, soil stabilization, compacting and contouring, soil preparation, fertilizer application, planting, and type and mixture of vegetation to be planted.

(iv) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area;

(v) A map at a scale of 1:24,000 or larger showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris-disposal areas; existing bodies of surface water; historic, topographic, cultural and draingage features; and habitats of any endangered or threatened species listed pursuant to the

Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and,

(vi) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to that land for the purpose of conducting exploration and reclamation;

(vii) A narrative description including:

(A) The method for plugging drill holes.

(B) Estimated size and depth of drill holes, trenches, and test pits.

(C) The methods that will be used to protect any mineral resource encountered.

(D) Plans for transfer and modification of exploration wells for use as surveillance or monitoring wells.

(viii) Such other data as may be required by the Mining Supervisor.

(b) *Mining Plans.* (1) Before conducting any coal mining operation on Federal leases or licenses, and on any lands within an approved LMU, the operator shall submit and obtain approval of a mining plan, unless a mining plan has been approved prior to the effective date hereof under 30 CFR Part 211 or 30 CFR Part 741 for all the lands in the LMU.

(2) Mining plans and modification(s) thereof are submitted to the Regional Director pursuant to 30 CFR Part 741 and this part. On any lease issued or readjusted after August 4, 1976, the first mining plan containing a mining and operations plan shall be submitted to the Regional Director not later than 3 years after the effective date of the lease or 3 years after the date of readjustment unless a plan has been previously approved under 30 CFR Part 211 and/or 30 CFR Part 741 for the readjustment lease.

(3) A mining plan for any lease issued after August 4, 1976, must provide for the mining of the recoverable reserves of the LMU of which the lease is a part in a period of not more than 40 years; that period shall begin on the date of approval of the first mining plan for that LMU. Every existing Federal coal lease is considered to be an individual LMU as of June 1, 1976, until it may be combined with other Federal coal leases or with interests in non-Federal coal to form larger LMU. A mining plan for any existing lease issued prior to August 4, 1976, and consolidated into an enlarged LMU, must provide for the mining of the recoverable reserves of the LMU within 40 years from the effective date of the enlarged LMU. Information for the life of the mine shall be submitted under § 211.10(c) of this part.

(4) Nothing in this part shall relieve the operator of an LMU of the requirement to file a mining plan under the FCLAA, 30 U.S.C. 207(c). A mining plan submitted after the approval of an LMU must cover all lands within the LMU and contain the information required by § 211.10(c).

(5) No mining plan shall be approved which is not found to achieve the MER of the coal within the LMU.

(c) *Mining and operations plans.* The mining and operations plan shall cover operations to be conducted on leases and on any lands within an LMU under this part. The mining and operations plan under this part provides for the requirements of the MLA and shall be submitted as part of the mining plan required under 30 CFR Part 741. Mining and operations plans are reviewed and recommended for approval by the Mining Supervisor who may directly contact operators regarding requirements thereof. Formal MER determination shall be made at the time of mine plan approval based on information submitted in the mining and operations plan such as configuration of seams, actual mining costs, and revenues. The mining and operations plan shall contain all the requirements pursuant to the MLA for the life of the mine and for all lands within the LMU and shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered; and the names and addresses of lessees and surface and mineral owners of record, if other than the United States.

(2) A description of geologic condition, with maps and tables where appropriate, within the area where mining is to be conducted. Such description shall include, as a minimum, potential geologic hazards; and a description of the structural features of the coal and overlying strata, including faults, cleats, joints, and fractures, and any other information required by the Mining Supervisor which would affect the orientation of the mine or production methods.

(3) A description, with maps and tables where appropriate, of other mineral resources within the LMU.

(4) A description of the proposed operation, including: (i) The quality of the coal in terms of Btu content, ash, moisture, sulphur, volatile matter, and fixed carbon content over the extent of the coal deposit. If available, information on other chemical or physical properties of the coal that may affect blending or combustion should be included.

(ii) The method of mining, including mining sequence, proposed production rate, and estimated recovery factors.

(iii) Coal reserve base, minable reserve base, and recoverable reserves for each Federal lease covered in the mining plan. If the mining and operations plan covers an approved LMU, recoverable reserves will be reported for the non-Federal lands included in the plan. The recoverable reserves shall be reported for all coal seams considered to be of minable thickness, considering the type of mining and the value of the coal.

(iv) Sufficient data to assure MER and to determine the recovery factor for the coal reserve base. Data includes sufficient information in the form of a narrative, cross sections, coal thickness isopachs, overburden isopachs, and quality and quantity data of all known potentially minable seams on the lands involved. The areal extent of mining of each seam to be mined should be delineated.

(v) The engineering techniques to be used to ensure MER. The plan shall describe the method of mining, compare other mining methods, and present the justification for the method selected. For underground mining, longwall and room and pillar or conventional mining should be compared. For strip mining, draglines, shovels, scraper units, truck and shovel, or any combination of these systems should be evaluated. The selected mining system must conform to sound mining practices and be based on current technology and economics. Justification for not recovering any coal seams that may be damaged by future recovery or development of the proposed operation should be presented.

(vi) Sufficient economic data and analyses to indicate that the incremental cost of recovery (including reclamation and opportunity costs) of the coal seam(s) that are proposed to be mined would be less than or equal to the market value of the coal, and sufficient economic data and analyses to indicate that the costs of recovery (including reclamation and opportunity costs) of coal seam(s) that are not being recovered are greater than the market value of the coal.

(vii) The economic and engineering analyses should include processing costs and techniques for coal preparation, especially costs and techniques for coal washing or cleaning. Estimated recovery rates and comparisons of raw coal to processed coal should be included. If no coal preparation plant is planned and if the operator plans not to mine coal beds or portions of coal beds because of high sulfur, high ash, or other chemical or physical properties, the operator shall submit a narrative and analysis of the rationale for not mining such beds or

portions of seams, and a rationale, including economic and engineering analyses, why a preparation plant to process such beds is not feasible.

(viii) A list of all major equipment.

(ix) A description of the method of operation and measures by which the operator plans to comply with the obligations and requirements set forth in § 211.4 and § 211.40 of this part and any special terms and conditions of the lease or license.

(x) The anticipated starting and termination dates of each phase of the mining operation and number of acres of land to be affected.

(xi) The method of mineral abandonment proposed to protect the unmined coal deposits and other mineral resources.

(xii) The hydrology of the area as it may relate to the mining operations and recovery of the coal resource.

(xiii) Plans for protecting oil and gas wells as well as oil and gas resources when encountered. Plans should include any facilities for collection and use of gas from the coal seam or immediate overlying or underlying strata. When mining operations are conducted in areas of known wells or bore holes that may liberate oil, gas, water, or other fluid substances, the operator shall include in the proposed plan all measures determined necessary by the Mining Supervisor in consultation with the appropriate Oil and Gas Supervisor of the GS to protect wells or bore holes and obtain maximum recovery of the coal resource.

(5) Maps and cross sections.

(i) General. Plan map of the area to be mined on a suitable topographic base showing: (A) Lease boundaries and numbers.

(B) Boundaries of non-Federal coal.

(C) LMU boundaries.

(D) Surface ownership boundaries.

(E) Coal outcrop showing dips and strikes.

(F) Locations of abandoned surface and underground mines.

(ii) Structural contour map of coal bed(s) to be mined.

(iii) Isopach map of coal bed(s) to be mined.

(iv) Isopach map of overburden of surface mines on 20-foot intervals. If several seams are involved, interburden isopach map(s) on 10-foot intervals.

(v) Isopach map of overlying strata over underground mines on 250-foot intervals.

(vi) Drill hole location map showing elevations of collar and top of coal bed(s).

(vii) Cross-section showing thickness of any coal, any rider seams above coal to be mined, location of next known deeper coal seam below deepest coal to be mined, and nature of strata beneath the coal for 20 meters.

(viii) General layout of proposed surface or strip mine showing: (A) Planned sequence of mining by year for first 5 years, thereafter in 5-year increments for the remainder of mine life.

(B) Location and width of box cut(s).

(C) Location of main haulroads.

(D) Location and width of coal fenders.

(ix) General layout of proposed underground mine(s) showing: (A) Planned sequence of mining by year for first 5 years and by number in 5-year increments for the remainder of mine life.

(B) Location of shafts, slopes, main haulage entries, main return air courses, bleeder entries, and permanent barrier pillars.

(C) Sketch of typical panel showing width and length.

(D) Sketch showing typical entry system with centerline distances between entries and crosscuts.

(E) Sketch showing typical panel recovery, i.e., room and pillar, longwall, or other mining method which shows, by numbering such mining, the sequence of development and retreat.

(F) Sketch showing shaft and slope plan where applicable.

(x) Copy of any subsidence control plan required by 30 CFR 784.20.

(xi) Map showing location of surface building, tipple, coal storage area, load-out facilities, and railroad right-of-way.

(xii) Cross-section maps through mine area showing nature and thickness of overburden strata and the coal seam(s) involved.

(xiii) For auger mining, a plan map showing: (A) Area to be auger mined and the location of pillars to be left for access to deeper coal.

(B) Cross sections through area to be mined showing overburden strata and coal seam.

(C) Sketch showing details of operations including coal seam thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(6) Map and coal reserve base estimate of that coal within the LMU which is left in the ground due to designation of lands as unsuitable for all or certain types of surface coal mining operations or because of alluvial valley floor provisions.

(d) *Action on plans.* (1) *Exploration plans.* The Mining Supervisor, after evaluating a proposed exploration plan outside of an approved OSM permit area for surface mining and reclamation operations and all comments received thereon, and after consultation with the appropriate authorized officer, and the Regional Director when over 250 tons of coal are to be removed by means other than drilling, or where OSM has identified special data needs shall, in writing, promptly approve or disapprove such a plan. In approving such a plan, the Mining Supervisor shall determine that such a plan complies with all requirements of this part, 30 CFR 815.15, OSM Permanent Program Performance Standards Coal—Exploration, and any lease, or license terms or conditions. Reclamation must be accomplished as set forth in the exploration plan. The Mining Supervisor may impose additional conditions to conform to the provisions of this part. In disapproving such a plan, the Mining Supervisor shall indicate what modifications, if any, are necessary to achieve such conformity. No such plan may be approved unless a bond, executed pursuant to the provisions of 43 CFR Part 3474 and conditioned upon compliance with all of the provisions of such a plan, has been furnished to and approved by the appropriate authorized officer. When the land involved in the exploration plan is under the surface jurisdiction of an agency other than the DOI, that other agency must consent to the terms of the approval of the exploration plan.

(2) *Mining and operations plan.* (i) The Mining Supervisor, after evaluating the initial mining plan submitted to the Regional Director, shall report to the Regional Director on completeness in regard to compliance with requirements of the MLA, as amended, and this part.

(ii) The Mining Supervisor, after evaluating the mining and operations plan submitted for approval as part of the final mine plan, shall in writing concur with the mining and operations plan for compliance with the requirements of MLA, or specify objections in writing to the Secretary.

(3) No mining plan or modification shall be approved which is not found to achieve the MER of the coal within an LMU, including leases which were issued or readjusted after August 4, 1976. The determination of MER shall be made by the Mining Supervisor based on review of the mining and operations plan.

(4) No mining plan containing a mining and operations plan may be approved unless a bond executed pursuant to the provisions of 43 CFR Part 3474 and conditioned upon compliance with the provisions of the mining and operations plan has been furnished to and approved by the appropriate authorized officer, in consultation with the Mining Supervisor.

(e) *Changes in plans by Mining Supervisor.* (1) Approved exploration plans may be required to be reasonably revised or supplemented at any time by the Mining Supervisor, after consultation with the operator and the appropriate authorized officer, to adjust to changed conditions to correct oversights, or to reflect changes in statutory requirements.

(2) The Mining Supervisor may require approved mining and operations plans for underground mines to be reasonably revised or supplemented for minor modifications after consultation with the operator, to adjust to changed conditions, to correct oversights, or to adapt to new laws and regulations. Such revisions shall be made in writing, as appropriate, and copies submitted to the Regional Director.

(3) The Mining Supervisor may require approved mining and operations plans for surface mines to be reasonably revised or supplemented for minor modifications, after consultation with the operator and concurrence of the Regional Director, to adjust to changed conditions, to correct oversights, or to adapt to new laws and regulations.

(4) The Mining Supervisor shall promptly approve or disapprove in writing any such modifications, or specify conditions under which it would be accepted.

(f) *Changes by the operator.* (1) The operator may propose changes to an approved exploration plan outside the approved OSM permit area, and shall submit a written statement of any such proposed change and the justification therefor to the Mining Supervisor. The Mining Supervisor shall, after consultation with the appropriate authorized officer, in writing promptly approve or disapprove any such proposed change, or specify the modifications thereto under which it would be acceptable.

(2) The operator may propose minor modifications to the mining and operations plan for underground mines, and shall submit a written statement of such proposed change and the justification to the Mining Supervisor, with a copy to the Regional Director.

(3) The operator may propose minor modifications to the mining and operations plan for surface mines and shall submit a written statement of such proposed change and the justification to the Mining Supervisor who shall consult with and obtain the concurrence of the Regional Director.

(4) The Mining Supervisor shall promptly approve or disapprove in writing any such proposed modification, or specify the conditions under which it would be acceptable.

(g) *By petition.* Any interested person who is or may be adversely affected may petition the Mining Supervisor to exercise the authority set forth in paragraph (e) for the mining and operations plan. Any such petition shall be in writing; shall set forth the proposed modification; and shall state with reasonable particularity facts which demonstrate changed conditions, laws, or regulations or that oversights occurred at the time of approval which make modification necessary to bring the operations and plan into conformity with the obligations and requirements of §§ 211.2 through 211.80 of this part. Upon receipt of any such petition, the Mining Supervisor shall promptly decide whether the facts set forth are sufficient to warrant exercise of his authority pursuant to paragraph (e).

§ 211.12 Operation mine maps.

(a) *General requirements.* The operator shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the Mining Supervisor. All maps shall be appropriately marked with reference to Government landmarks or lines and elevations with reference to sea level. Before a mine, or section of a mine, is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on such maps, and a copy shall be furnished to the Mining Supervisor. All excavations in each separate bed shall be shown in such a manner that the production of coal for any royalty period can be accurately ascertained. Additionally, the maps shall show the name of the mine; the name of the lessee; the lease or license serial number; the lease boundary lines; surface buildings; dip of the bed(s); true north; map scale and explanatory legend; location, surface elevation, depth, and thickness of the coal, and total depth of each drill hole; auger holes; improvements; topography, including subsidence resulting from mining; the geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, unusual splits, unusual water occurrences, or other conditions that may have an influence on the MER; and such other information as the Mining Supervisor may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Mining Supervisor annually, or at such other times as he may request.

(b) *Underground mine maps.* Underground mine maps shall, in addition to the general requirements of paragraph (a) of this section, show all mine workings; the date of extension of the mine workings; and a coal section at the face of each working unit; the location of all surface mine fans; the position of all fire walls, dams, main pumps, fire pipelines, permanent ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; the direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in or above the workings of the mine; areas affected by squeezes; the elevations of surface and underground levels of all shafts, slopes, or drifts, and the elevation of the floor, bottom of the mine workings, or mine survey stations in roof at regular intervals in main entries, panels, or sections, and sump areas. Any maps submitted to the MHSA which show any of the specific data required by this subparagraph shall be acceptable in fulfillment of the requirements hereof. Any maps submitted to the OSM to show subsidence shall also be submitted to the Mining Supervisor.

(c) *Surface mine maps.* Surface mine maps shall, in addition to the general requirements of paragraph (a) of this section, include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved mining and operations plan. Such maps shall show the highwall; all worked-out and reclaimed areas; the uncovered, but unmined, coal beds; the elevation of the top of the coal beds; and known bodies of standing water.

(d) *Vertical projections and cross sections of mine workings.* When required by the Mining Supervisor, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet acceptable standards and shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

(f) *Liability of lessee for expense of survey.* If the operator fails to furnish a required or requested map, the Mining Supervisor, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator.

(g) *Incorrect maps.* If any map submitted by an operator is believed to be incorrect, the Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the operator to be substantially incorrect, in whole or in

part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator.

Performance Standards

§ 211.40 Exploration, surface mining, and underground mining standards.

The following performance standards shall apply to exploration, development, production, mineral resource recovery and protection, MER, preparation and handling of coal under Federal coal leases, coal licenses, exploration licenses, and approved LMU's.

(a) *Performance standards for exploration outside of an approved OSM permit area are:* (1) The operator shall comply with all applicable environmental and reclamation performance standards of 30 CFR 815.15, OSM's Permanent Program Performance Standards—Coal Exploration.

(2) The operator shall, when required by the Mining Supervisor, set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or potentially valuable for oil and gas or geothermal resources.

(3) Exploration drill holes will be conditioned as required by this section and 30 CFR 815.12(g). In addition, all exploration drill holes will be required to be plugged and capped with at least 10 feet of cement or other permanent plugging material which is unaffected by water and hydrocarbon gases and which under normal hole pressures will prevent the migration of gases and water in the drill hole, or shall be managed to prevent water pollution and mixing of ground and surface waters and to ensure the safety of people, livestock, wildlife, and machinery.

For exploration holes drilled deeper than stripping limits, the operator shall plug, using cement or other suitable plugging material approved by the Mining Supervisor, the hole through the thickness of the coal seam(s) or other mineral deposit(s) for a distance of at least 50 feet above and below the coal seam(s) or mineral deposit(s) or to the bottom of the drill hole, unless otherwise specified in writing by the Mining Supervisor.

(4) The operator shall retain, unless otherwise authorized by the Mining Supervisor, representative samples of all drill cores or cuttings for 1 year and shall make such cores or cuttings available for inspection or analysis by the Mining Supervisor, if requested. Confidentiality of such information will be accorded pursuant to the provisions of § 211.6 of this part.

(5) The operator may utilize exploration drill holes as surveillance wells for the purpose of monitoring subsequent operations upon the quantity, quality, or pressure of ground water or mine gases only with the written approval of the Mining Supervisor, in consultation with the Regional Director. The operator may utilize exploration drill holes for further use as water wells only after approval of the operator's written request by the Mining Supervisor and the surface owner or appropriate authorized officer, in consultation with the Regional Director. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging.

Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer.

(b) *General performance standards for surface and underground mines.* (1) *Maximum Economic Recovery (MER).* The operator shall conduct operations to achieve the MER of the coal. A formal MER determination will be made at the time of mine plan approval. To gain the MER of the coal seam(s), the following conditions and factors would have to be considered and evaluated by the Mining Supervisor:

(i) Method of mining and recovery rate.

(ii) Thickness of all coal seams encountered by drilling.

(iii) Coal quality and value.

(iv) Access to the coal.

(v) Mine equipment.

(vi) Sequence of mining.

(vii) Thickness and characteristics of the interburden and overburden.

(viii) Condition of immediate floor and roof rock.

(ix) Geologic conditions such as faults, dikes, and other adverse conditions.

(x) Distance from market.

(xi) Method of transportation to market.

(xii) Estimated costs of mining (including reclamation and opportunity costs) and estimated revenues.

(xiii) Estimated costs of coal preparation plants.

(2) *Diligent development.* The operator is required to meet the diligent development requirements of 43 CFR 3475.4.

(i) Diligent development for coal leases issued prior to August 4, 1976, must be met between June 1, 1976, and June 1, 1986.

(ii) If a lease(s) issued prior to August 4, 1976, is consolidated into an enlarged LMU, the LMU is required to meet diligent development between the effective date of the enlarged LMU and June 1, 1986, except that lease production between June 1, 1976, and the effective date of the enlarged LMU may be applied toward the diligence requirement of the enlarged LMU.

(iii) If Federal coal leases with different issue dates are included in the same LMU, the date for achievement of diligent development of the LMU shall be based on the date of the Federal lease with the earliest issue date. If a lease(s) issued after August 4, 1976, is included in an LMU with a lease(s) issued prior to August 4, 1976, the LMU must meet the diligent development requirements between the effective date of the LMU and June 1, 1986.

(iv) For leases issued after August 4, 1976, the lease must meet the diligent development requirements within 10 years after the effective date of the lease.

(v) The time to achieve diligent development on a lease cannot be extended solely by inclusion of that lease in an LMU with other leases.

(vi) Diligent development requirements for leases issued prior to August 4, 1976, may be extended in accordance with 43 CFR 3475.4(b).

(vii) When an approved LMU meets the diligent development requirements for commercial quantities, each Federal lease in the LMU is considered to have complied with the diligent development.

(viii) Applications for extension of the requirement for meeting diligent development shall be submitted in triplicate to the Mining Supervisor for review and for recommendation to the Secretary.

(3) *Continued operations.* After meeting diligent development, operators are required to comply with the continued operations requirements of 43 CFR 3475.4. The operator shall meet continued operations by the following:

(i) When diligent development has been achieved on a lease or LMU, the lease or LMU is subject to continued operations in the next lease or LMU year and each year thereafter, unless the Mining Supervisor authorizes the payment of advance royalty in lieu of continued operations.

(ii) Continued operations means production of coal equal to 1 percent of the LMU reserves for each of the first 2 years following the achievement of diligent development, and an average annual amount of 1 percent thereafter based on a 3-year period.

(iii) When an approved LMU meets continued operations, each Federal lease in the LMU is considered to have complied with the continued operations.

(iv) If an LMU fails to meet continued operations in any year, the operator may request the Mining Supervisor to authorize the payment of advance

royalty in lieu thereof in accordance with 43 CFR 3473.3–2(b).

(v) When the payment of advance royalty is authorized, it is paid in advance for the year following the year in which the continued operations requirement was not met.

(vi) The lessee's requests for authorization of advance royalty payments shall include the reasons the lease or LMU did not meet continued operations and show that the authorization to pay advance royalty in lieu of continued operations is in the public interest.

(vii) Advance royalty payments for each lease or LMU will be based on a percentage of the value of a minimum number of tons which shall not be less than lease terms for production. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the lease reserve on that portion of reserves applicable to Federal leases in an LMU in 40 years from approval date of the mining plan. For any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves from June 1, 1976. The Mining Supervisor will establish a value for the coal to calculate the advance royalty owing.

(viii) Advance royalty payments made in the first 20 years of a lease issued or readjusted after August 4, 1976, can be credited against production royalty in that 20-year period only. Advance royalty paid after the first 20 years can be credited on production royalty during an extended or continued period of the lease.

(ix) The use of advance royalties in lieu of continued operation shall not be permitted for more than a total of 10 years during the life of any lease, including the life of the lease after readjustment.

(4) *Recoverable coal waste.* The operator shall store waste containing coal in such quantity that it may be later separated by washing or other means in a manner approved by the Mining Supervisor.

(5) *Unsuspected wells.* The operator shall promptly notify the Mining Supervisor if operations reveal unsuspected wells or drill holes which could affect mining operations and take no further actions which would disturb such wells or drill holes without his prior approval.

(6) *Mineral resource recovery and protection.* The operator shall conduct operations to efficiently recover the coal resources to avoid waste or loss of coal or other mineral resources; to prevent damage or degradation to coal-bearing or other mineral-bearing formation; and to insure that all mineral resources are protected upon abandonment.

Release of lease bond. Subsequent to temporary or permanent abandonment of mining operations, the Mining Supervisor will determine if the lessee has met obligations required under the lease bond for mineral resource recovery and protection, rentals, and royalties. The Mining Supervisor will make appropriate recommendations to the appropriate authorized officer for reduction or termination of the lease bond.

(8) *Preparation plants.* The operator shall conduct coal preparation operations to avoid coal waste and to encourage maximum economic recovery. The operator shall consider utilization of coal washing or cleaning techniques in order to meet requirements for the maximum economic recovery of the coal on the LMU.

(c) *Performance standards for underground mines.*—(1) *Maximum economic recovery (MER).* Underground mining operations shall be conducted so as to yield the MER of the coal deposits consistent with the protection and use of other natural resources, sound economic and mining practice, and the protection of the environment. No entry, room, or panel working in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the Mining Supervisor.

(2) *Subsidence.* The operator shall adopt mining methods which insure MER, as determined by the Mining Supervisor, except in those areas where it is determined that a degree of subsidence is not permissible. Where recovery of the coal deposit must be limited to protect surface values, it shall be restricted after consultation with the Regional Director, OSM, according to 30 CFR 817.121 through 817.126, provided that nothing in this Section shall be construed to prohibit the general use of standard method of room and pillar mining.

Each operator of an underground coal mine shall adopt measures consistent with known technology in order to prevent or, in those instances where the mining method used requires planned subsidence in a predictable and controlled manner, control subsidence, maximize mine stability, and maintain the value and use of surface lands consistent with 30 CFR 817.121, 817.122, 817.124, and 817.126.

Where pillars are not removed and controlled subsidence is not part of the mining plan, pillars of adequate dimensions shall be left for surface stability, giving due consideration to the thickness and strength of the coal beds and of the strata above and immediately below the coal bed.

(3) *Top coal.* Top coal will not be used for primary roof support in underground mines. Where technically feasible, mining will be conducted to the roof rock, and the roof rock shall be secured as primary roof support. Mining in thick seams will recover coal to a nominal mining height in the top part of the seam. The determination of mining height will take into consideration safety factors, available equipment, and the overall seam thickness. The bottom coal left will be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow. Provided, however, if the operator can demonstrate to the Mining Supervisor that some top coal must be left to protect the roof rock from rapid deterioration or the top part of the seam is not marketable because of distinct quality deficiencies, top coal may be left when approved in writing by the Mining Supervisor.

(4) *Multiple seam mining.*—(i) *Sequence of mining.* In general, the available coal in the upper beds shall be worked out before the coal in the lower beds is mined, and simultaneous workings in an upper coal bed shall be kept in advance of the workings in each lower bed. The Mining Supervisor may authorize mining of any lower beds before mining the available coal in each known upper bed only after a technical justification has been submitted to the Mining Supervisor by the operator and has shown that recovery of the upper coal will not be adversely affected.

(ii) *Protective barrier pillars in multiple seam mining.* In areas subject to multiple seam extraction, the protective barrier pillars for all main and secondary slope entries, main haulageways, primary aircourses, bleeder entries, and manways in each seam shall be superimposed regardless of vertical separation of rock competency; however, modifications, exceptions, or variations of this requirement may be approved in advance by the Mining Supervisor.

(5) *Advance workings.* Where the room-and-pillar or other system of mining requires advance workings in solid coal, including entries, room, or crosscuts, the lessee shall leave sufficient pillars to ensure the MER of the coal deposits upon retreat.

(6) *Pillars left for support.*—(i) *Barrier pillars.* The operator shall not, without the prior consent of the Mining Supervisor, mine any coal, drive any underground workings, or drill any lateral bore holes within 50 feet of any

of the outside boundary lines of the leased lands, or within such greater distance of said boundary lines as the Mining Supervisor may prescribe with consideration for State law. The operator may be required to pay for unauthorized mining of barrier pillars. The Mining Supervisor may require that payment shall be up to and including the full value of the coal mined from the pillars.

(ii) *Barrier pillars on adjacent unleased Federal lands.* If the coal beyond any barrier pillar has been worked out and the water level beyond the pillar is below the lessee's adjacent operations, the operator shall, on the written order of the Mining Supervisor, mine out and remove all available Federal coal in such barrier, if it can be mined without undue hardship to the lessee and with due consideration for safety and pursuant to existing surface mining, reclamation, and environmental rules.

(iii) *Privately or Indian-owned coal on adjoining premises.* If the coal in adjoining premises is privately or Indian owned and this coal has been worked out, an agreement may be made with the coal owner for the extraction of the coal remaining in the barrier pillars which otherwise may be lost.

(7) *Development of leased tract through adjoining mines.* An operator may, with the approval of the Mining Supervisor, mine leased lands from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, subject to the right of free access to the Federal premises by the Mining Supervisor.

(d) *Performance standards for surface mines.*—(1) *Maximum economic recovery (MER).* The operator shall conduct surface mining operations so as to yield the MER of the coal deposits consistent with the protection and use of other natural resources, sound economic and mining practice, and the protection of the environment.

(2) Pit widths for each seam shall be so engineered and designed as to minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(3) The amount of bottom or rider coal seams wasted in each pit will be minimized consistent with the coal quality standards that must be maintained by the operation.

(4) The abandonment of a mining area due to thinning of coal beds or reduction in the quality of the coal shall require the approval of the Mining Supervisor.

(5) If a coal seam exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(6) The Mining supervisor will approve the conditions under which a surface mine will be temporarily abandoned, pursuant to the requirements of development, production, resource recovery and protection, and royalties.

(7) *Barrier or boundary coal.* The operator may be required by the Mining Supervisor, in the interest of conservation of natural resources, to mine coal up to the lease boundary line; provided that the mining does not violate State law, the mining is in compliance with existing Federal environmental and reclamation laws and rules, the mining does not conflict with the existing surface rights, and the mining is carried out without undue hardship to the lessee and with due consideration for safety.

(e) *Performance standards for auger mines.* (1) If auger mining is proposed, the Mining Supervisor shall take into account the percentage of recovery, which in general shall exceed 30 percent; and the probable effects on recovering the remaining adjacent coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved since underground mining will assure greater recovery of the unmined reserves. Where auger mining is authorized, the Mining Supervisor will require leaving sufficient pillars at regular intervals along the highwall or outcrop to assure access to the unmined reserve. The size of pillars to be left will be determined by the Mining Supervisor and will be of sufficient size to accommodate the necessary underground development entries with sufficient barrier pillars to protect the development entries.

(2) A plan for recovery of coal by auger methods shall be designed to achieve MER.

(3) Auger mining must comply with the provisions of this part and 30 CFR 741.14(i), 30 CFR 785.20, and 30 CFR Part 819.

§ 211.41 Completion of operations and abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operation, or any deposit of oil, gas, other mineral resources, or ground water. Areas disturbed by exploration operations outside the approved OSM permit area will be graded, drained, and revegetated in accordance with the approved plan.

(b) Upon permanent abandonment of any mining operation, the Mining Supervisor will require that the unmined coal and other mineral resources will be adequately protected.

Reports, Records, Royalties, and Audits

§ 211.62 Reports.

(a) *Exploration reports.* The operator shall file, in duplicate, with the Mining Supervisor the information required in paragraph (b):

(1) Within 30 days after the end of each calendar quarter.

(2) Promptly upon request.

(3) Promptly upon completion or suspension of exploration operations.

(4) As provided in the lease or exploration license.

(b) *Report content.* The exploration report shall contain the following information:

(1) Identity and location of the lease or exploration license lands.

(2) Nature of exploration operation.

(3) Number of completed holes drilled and/or other work performed during the quarter.

(4) Total footage drilled during the quarter or other period as determined by the Mining Supervisor.

(5) Map showing all drill holes or other excavation locations and the coal outcrop.

(6) Analyses of coal and other pertinent tests of information on overburden characteristics obtained from the activity during the quarter. Coal analyses includes any tests for methane or other gaseous hydrocarbons.

(7) Signed copies of records and geological interpretation of all exploration operations performed on the lease or licensed lands, including recoverable reserve calculations along with vertical cross sections through the land.

(8) Copies of all in-hole mechanical or stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs produced. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(9) Reclamation employed on the disturbed areas.

(10) A statement on availability and location of the representative samples of all drill holes, cores, or cuttings retained by the operator pursuant to § 211.40(a).

(11) Any other information requested by the Mining Supervisor, or requested by the Regional Director through the Mining Supervisor.

(c) *Production reports and payments.* (1) Operators shall report on the form provided, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing royalty, and make all payments due.

(2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(d) *Penalty.* If an operator records or reports less than the true weight or value for coal mined, the Secretary may impose a penalty equal to either double the amount of royalty due on the shortage, or the full value of the shortage. If, after notice, a lessee or permittee maintains false records or files false reports, the Mining Supervisor may recommend that action be initiated to cancel the lease or permit, in addition to the imposition of any penalties.

(e) *Confidentiality.* Confidentiality of any information required under this Section shall be determined in accordance with § 211.6 of this part.

§ 211.63 Royalties.

(a) Lessees shall submit, unless otherwise provided for in the lease, royalty payments on a monthly basis. The payment shall be made within 30 days after the end of the calendar month for which the royalty is owed.

(b) Royalty paid on a cents-per-ton basis or gross value basis shall be paid on the coal sold, used, or placed in inventory, where the inventory exceeds that which the Mining Supervisor determines to be in excess of that required for mining and processing operations

(c) Where royalty is based on a percentage basis, the value of coal for royalty purposes shall be the gross value at the point of sale. For captive operations or other than arms-lengths transactions, the Mining Supervisor will determine the point for gross value determination and gross value.

(d) The gross value shall be the sale or contract unit price times the number of units sold. If the Mining Supervisor determines:

(1) That a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the coal produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the coal; or

(2) That no consideration is received from some or all of such coal because the lessee is consuming such coal for his own use or adding it to inventories, and for which royalty is due and payable in accordance with § 211.62(c), the Mining Supervisor shall determine the gross value of such coal taking into account:

(i) Any consideration received by the lessee in other related transactions.

(ii) The highest price paid for coal of like quality produced from the same general area during the lease month.

(iii) Contracts or other business arrangements between coal producers and purchasers for the sale of coal other than coal produced under such lease, which are comparable in terms, volume, time of execution, area of supply, and other circumstances; and

(iv) Such other relevant factors as the Mining Supervisor may deem appropriate.

(e) If additional processing of the coal is performed prior to sale, such as washing to remove waste, bone, or other impurities, the processing costs above the cost of primary crushing, storing, and loading may be deducted from the gross value in determining value for royalty purposes. The Mining Supervisor will allow such deductions only when, in his judgment and subject to his audit, the lessee provides an accurate account of the costs incurred and the operation meets maximum economic recovery of the coal.

(f) If a Federal coal lease is developed by in situ technology, the gross value of production, for the purpose of computing royalty, shall be the sale or contract unit price of liquid and/or gaseous products times the number of units sold; provided, however, that where the Mining Supervisor determines:

(1) That a contract of sale of other business arrangement between the lessee and a purchaser of some or all of the products from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the products; or

(2) That no consideration is received for some or all of such products because the lessee is consuming them, the Mining Supervisor shall determine the gross value of the products taking into account:

(i) Any considerations received by the lessee in other related transactions.

(ii) The highest price paid for production of like quality produced from the same general area during the lease month.

(iii) Contracts or other business arrangements between producers and purchasers for the sale of like products which are comparable in terms, volume, time of execution, area of supply, and other circumstances.

(iv) Such other relevant factors as the Mining Supervisor may deem appropriate.

(g) If a coal lease that provides for a cents-per-ton royalty is developed by in situ technology, the Mining Supervisor will establish a procedure for calculating tonnage for royalty purposes.

(h) The royalty shall be paid on the actual weight of the coal sold, used, or placed in inventory.

(i) In the event waste piles or slurry ponds are reworked to recover coal, or if a market becomes available to sell the waste products containing coal, the lessee shall pay royalty at a rate specified in the lease at the time of recovery. The lessee shall make payment based on the Federal share of the coal when the coal is recovered during the term of the lease whether or not it is stored on Federal lands. Where such waste containing coal from a Federal lease is commingled with similar reject from private lands, the lessee shall maintain adequate records from which Federal ownership of coal in the waste may be determined.

(j) Applications for reduction of royalty shall be filed in triplicate with the Mining Supervisor in accordance with 43 CFR 3473.3–2 and this part. The Mining Supervisor shall review and process such application in the interest of conservation of natural resources and for the purpose of encouraging the greatest ultimate recovery of coal.

(1) If the application does not meet the criteria of 43 CFR 3473.3–2 or this part, the Mining Supervisor may reject such application or request more data from the operator.

(2) If the application meets the criteria of 43 CFR 3473.3–2 and this part, the Mining Supervisor shall act upon the application.

§ 211.65 Audits.

An audit of the accounts and books of lessees for the purpose of determining compliance with lease terms relating to royalties may be required annually or at other such times as may be directed by the Mining Supervisor. Such audit shall be performed by a qualified independent certified public accountant or by an independent public accountant licensed by a State, territory, or insular possession of the United States or by the District of Columbia, and at the expense of the lessee. The lessee shall furnish, free of cost, duplicate copies of audit reports which express opinions on such compliance to the Mining Supervisor within 30 days after the completion of each audit. Where such audits are required, the Mining Supervisor will specify the purpose and scope of the

audit and the information which is to be verified or obtained.

§ 211.66 Maintenance of and access to records.

(a) Lessees shall maintain current and accurate records showing: (1) The weight of all coal mined, sold, used on the premises, or otherwise disposed of, and all coal in storage (remaining in inventory).

(2) The prices received for all coal sold and to whom and when sold.

(b) The Mining Supervisor, or his designee, shall have access to all records of the lessees pertaining to compliance with lease terms relating to royalties, including, but not limited to: (1) Quantities mined, processed, sold, delivered, or used by the lessee.

(2) Prices received for mined or processed products, prices paid for like or similar products, and internal transfer prices.

(3) Costs of mining, processing, handling, and transportation.

(c) Licensees must maintain a current record of all coal mined and removed.

Inspection, Issuance of Orders, Enforcement, and Appeals

§ 211.70 Inspections.

The operator shall provide access at all reasonable times for the Mining Supervisor to inspect or investigate the operation to determine whether it is in compliance with all applicable laws, rules, and orders; the terms and conditions of the lease or license; and the requirements of any approved exploration or mining and operations plan for:

(a) Production practices;

(b) Development;

(c) Mineral resource recovery and protection;

(d) Diligent development and continued operations;

(e) Royalty and rental audits;

(f) Mineral abandonment;

(g) MER determinations; and,

(h) Environmental and reclamation practices and protection for exploration activities outside an approved OSM permit area.

§ 211.71 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator shall inform the Mining Supervisor in writing of the operator's temporary and permanent post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator. Thereafter, the Mining Supervisor shall be informed of any change of such address.

(b) *Receipt of notices and orders.* The operator shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, posted at the mine or mine office or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine or exploration site for transmittal to the operator or his local representative.

§ 211.72 Enforcement.

(a) If the Mining Supervisor determines that an operator, subject to the provisions of this part, has failed to comply with the rules of § 211.2 through 211.80 in this part, the terms and conditions of the lease or license, the requirements of an approved exploration or mining and operations plan, or orders of the Mining Supervisor, and such noncompliance does not threaten immediate and serious damage to the mine or the deposit being mined, or other valuable mineral deposits or other resources or royalty provisions, the Mining Supervisor shall serve a notice of noncompliance upon the operator by delivey in person to him or his agent, or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with notice of noncompliance within the time limits specified by the Mining Supervisor, or to initiate an appeal pursuant to Part 290 of this title, shall be grounds for suspension of operations upon notice by the Mining Supervisor, or his recommendations for the initiation of action for cancellation of the lease or license and forfeiture of any lease bonds. A suspension of operations and production shall not preclude the OSM from requiring the operator to continue to comply with the reclamation requirements of 30 CFR Subchapter K and this part.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the provisions of applicable rules, the terms and conditions of the lease or license, the requirements of an approved exploration or mining and operations plan, or the orders of the Mining Supervisor, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action must be taken. A written report shall be submitted by the operator to the Mining Supervisor when such noncompliance has been corrected.

(c) If, in the judgment of the Mining Supervisor, an operator is conducting activities which fail to comply with the provisions of §§ 211.2 through 211.80 of this part, the terms and conditions of the lease or license, the requirements of approved exploration or mining and operations plans, or the Mining Supervisor's orders, and which threaten immediate and serious damage to the mine, the deposit being mined or other valuable ore-bearing mineral deposits, or in instance of exploration outside of an OSM permit area, serious environmental or reclamation damage, the Mining Supervisor shall order the immediate cessation of such activities, without prior notice of noncompliance. Such order may be appealed as provided in Part 290 of this title. Compliance with such order shall not be suspended by reason of the taking of such an appeal, unless such suspension is ordered in writing by the official before whom such appeal is pending, and then only upon a determination by such official that such suspension will not be detrimental to the lessor or adversely affect the public interest, or upon submission of a bond deemed adequate to indemnify the lessor from any resulting loss or damage.

(d) The Mining Supervisor shall enforce requirements of the SMCRA including §§ 211.81 through 211.98 only if he finds a violation, condition, or practice for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12.

(e) The Mining Supervisor is responsible for enforcing the regulations issued by the DOE relating to the leasing of mineral resources under the Department of Energy Organization Act, 42 U.S.C. 7152 and 7153.

§ 211.73 Appeals.

(a) Orders, determinations, decisions, and notices issued pursuant to the provisions of §§ 211.2 through 211.80 of this part may be appealed as provided in Part 290 of this title.

(b) Decisions issued by the Mining Supervisor under § 211.72(d) for environment and reclamation requirements may be appealed pursuant to 43 CFR Part 4.

Logical Mining Units

§ 211.80 Logical Mining Units.

General. Every Federal coal lease is considered to be an LMU on the effective date of the lease or June 1, 1976, whichever is later. Any LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. Any LMU may be diminished by creation of other separate leases or LMU's. An LMU containing any interest (Federal or non-

Federal) other than a single Federal lease shall become effective or may be enlarged only at the direction of the Mining Supervisor, or upon approval by the Mining Supervisor when requested by the lessee or operator. An LMU combining only Federal coal leases issued after August 4, 1976, may be established at the initiative of the lessee or operator, or by order of the Mining Supervisor. The Mining Supervisor may not direct the establishment of an LMU containing leases issued prior to August 4, 1976, until the terms of the leases are readjusted to include the requirements of the FCLAA. Leases issued or readjusted prior to August 4, 1976, but not since readjusted to conform to the requirements of the FCLAA may only be included in an enlarged LMU upon an operator's application and the Mining Supervisor's approval. Any lease included in such an LMU shall be amended so that its terms and conditions are consistent with the requirements imposed on the LMU of which it has become a part.

(a) Criteria for approving or directing the establishment of an LMU. An LMU shall be approved by the Mining Supervisor if the following criteria are met:

(1) The LMU consists of one or more Federal coal leaseholds, and may include intervening or adjacent non-Federal lands.

(2) The LMU is contiguous and under the effective control of a single operator. (For purposes of this Part, "contiguous" shall mean having at least one point in common.)

(3) The LMU does not exceed 25,000 acres, including Federal and non-Federal coal deposits.

(4) The LMU can be developed as a single operation in an efficient, economical, and orderly manner with MER of the coal with due regard for: (i) Conserving the coal and other resources.

(ii) Minimizing surface occupancy and disturbance.

(iii) Minimizing the impact on the environment.

(5) The LMU reserves shall be exhausted within 40 years of the approval of the first mining plan for the LMU, or within 40 years from the effective date of an enlarged LMU if all the lands of the LMU are already contained within an approved mining plan.

(6) Only reserves shown by drilling or other exploration methods to be recoverable are included.

(7) Geologic and geographic features, where applicable, are adequately considered in establishing the LMU.

(8) The applicant agrees not to surrender rights to a deposit if it would interfere with or preclude MER of the coal.

(9) If a single lease is included in more than one LMU, it will be segregated into two or more leases.

(10) If only a portion of a lease is included in an LMU, the remaining land will be segregated into another lease or be relinquished.

(b) *Criteria for administration of LMU operations.* An LMU will be administered in accordance with the following criteria: (1) Mining plans for LMU's will be required in accordance with §§ 211.10(b) and 211.10(c) of this part.

(2) The amount of production required to meet diligent development or continued operation in an LMU shall be based on the LMU reserves; for leases consolidated into an enlarged LMU, lease production between June 1, 1976, and the effective date of the enlarged LMU may be applied toward the diligence requirement of the LMU.

(3) The achievement of diligent development and continued operation requirements anywhere within the LMU, on either Federal or non-Federal coal deposits or a combination thereof, shall be deemed to satisfy the diligent development and continued operation requirements for each Federal lease in the LMU.

(4) Where production from non-Federal lands is the basis, in whole or in part, for satisfaction of the requirement that the lessee achieve diligent development or continued operation, the lessee must provide a certified report of such production annually, which shall include a map showing the area mined and the coal thickness mined.

(5) The rental and royalty payments on all Federal leases in an LMU will be combined, and advance royalties paid on any Federal lease in that LMU may be credited against the combined Federal production royalties.

(6) An LMU shall not provide for apportionment of production or royalties among the separate tracts based upon the coal reserves included in an LMU. Royalty will be paid only to the lessors from whose lands the coal is produced in the LMU. Royalty will be paid at the rate specified in the individual leases from which coal is produced.

(7) The boundaries of an LMU may later be modified either upon application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer or by direction of the Mining Supervisor after consultation with the authorized officer.

(c) *Contents of an application.* An operator must submit seven copies of the application containing the following information to the Mining Supervisor if the operator is applying on his own initiative to combine lands into an LMU, or if he is directed to do so by the Mining Supervisor, in accordance with § 211.80, General:

(1) Name and address of the designated operator of the LMU.

(2) Description of the land and all known coal beds within an LMU. Identification of those beds proposed to be excluded from any Federal lease which would be a part of the LMU.

(3) Location map of the LMU to the scale of not smaller than 1"=1,000' which shows: (i) Proposed boundaries of the LMU.

(ii) Lease designation and numbers.

(iii) Surface and mineral ownership.

(iv) Legal land subdivision lines.

(v) Significant geologic and geographic features and cultural and natural resources which may influence mining methods, mining limits, and coal recovery.

(vi) Locations and surface elevations of drill holes that penetrate coal deposits.

(vii) Any lands designated as unsuitable for mining by the surface managing agency or the Regulatory Authority under the SMCRA.

(4) Evidence of ownership or control of all the coal land in the LMU, together with a statement showing ownership or control by the applicant of any other coal contiguous to the LMU.

(5) Typical stratigraphic sections showing all coal beds.

(6) Coal analyses by coal beds where available.

(7) Coal isopach maps on all beds of minable thickness.

(8) Overburden isopach maps for surface minable areas only.

(9) Recoverable reserves for each coal bed within the LMU by individual lease for Federal lands and in aggregate for non-Federal lands that are included in the LMU proposal.

(10) General plan of development, including: (i) Narrative describing the proposed development schedule.

(ii) Type and schedule of proposed development expenditures.

(iii) Area to be covered by the mining plan.

(iv) Area to be mined and projected mining sequence in at least 5-year intervals.

(v) Market for anticipated production.

(11) Statement of the advantages accruing to lessee and lessor by LMU establishment.

(12) Explanation of how MER of all coal in the lands will be achieved by establishment of the LMU.

(13) Royalty and rental rates and the issuance and/or readjustment date of each lease to be included in the application.

(d) *Confidentiality.* If any confidential information is included in a request to establish an LMU and identified as such by the operator, it shall be treated in accordance with 43 CFR Part 2 and 30 CFR 211.6.

Initial Regulatory Program on Federal Lands of the Surface Mining Control and Reclamation Act of 1977

§ 211.81 Applicability.

(a) All surface coal mining operations on Federal lands shall comply with the General Performance Standards of 30 CFR Part 715, the Special Performance Standards of 30 CFR Part 716, and the performance standards for underground mines in 30 CFR Part 717.

(b) All surface coal mining operations on Federal lands in Alaska from which coal has been mined on or after August 3, 1977, shall comply with all performance standards in 30 CFR Parts 715, 716, and 717 subject to the procedures in § 716.6.

(c) The requirements of §§ 211.81 through 211.99 are applicable on Federal lands until such time as they are superseded by the implementation of the permanent Federal lands program in a State in accordance with the provisions of 30 CFR Chapter VII, Subchapter D.

§ 211.82 Definitions.

(a) As used in §§ 221.81 through 211.99, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage. See § 710.5 of this title.

Acid forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

Act. See § 700.5 of this title.

Alluvial valley floors means unconsolidated streamlaid deposits holding streams where water availability is sufficient for subirrigation or floor irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by concentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

Approximate original contour means that surface configuraton achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general suface configuration of the land prior to mining and blends into and complements the drainage pattern of the Water impoundments may be permitted where the regulatory authority determines that they are in compliance with § 715.17.

Aquifer. See § 710.5 of this title.

Auger mining. See § 700.5 of this title.

Authorized State regulatory authority means any State regulatory authority exercising authority to regulate surface coal mining operations on Federal lands pursuant to a State/Federal Cooperative Agreement which has been modified to comply with the requirements of section 523(c) of the Act.

Combustible materials. See§ 710.5 of this title.

Compaction means the reduction of pore spaces among the particles of the earth materials.

Disturbed area. See § 700.5 of this title.

Diversion. See § 710.5 of this title.

Downslope. See § 710.5 of this title.

Embankment. See § 710.5 of this title.

Federal lands. See § 700.5 of this title.

Groundwater. See § 710.5 of this title.

Highwall. See § 710.5 of this title.

Hydrologic balance. See § 710.5 of this title.

Hydrologic regime. See § 710.5 of this title.

Impoundment means a closed basin formed naturally or artificially built which is damned or excavated for the retention of water, sediment, or waste.

Intermittent or perennial stream. See §710.5 of this title.

Leachate. See § 710.5 of this title.

Noxious plants. See § 710.5 of this title.

Office. See § 710.5 of this title.

Operator means a lessee, licensee, or one conducting operations on lands under the authority of the lessee or licensee. In addition, the term "operator" includes a *person* holding a permit as these terms are defined in § 700.5 of this title. During the initial regulatory program applicable to this part, the term "operator" includes the term "permittee" as used in Parts 715, 716, and 717 of this title.

Outslope. See § 710.5 of this title.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Permit. See § 700.5 of this title.

Person. See § 700.5 of this title.

Productivity. See § 710.5 of this title.

Recharged capacity. See § 710.5 of this title.

Recurrence interval. See § 710.5 of this title.

Regional Director means a Regional Director of the OSM or his authorized representative.

Regulatory Authority means the Secretary, acting by and through the Director, OSM: the Regional Directors of the OSM, when authorized by this part; and an authorized State Regulatory Authority.

Roads means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including roads used by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds, such as all Federal, State, and country roads, are excluded.

Runoff water. See § 710.5 of this title.

Sediment. See § 710.5 of this title.

Sedimentation pond. See § 710.5 of this title.

Slope. See § 710.5 of this title.

Soil horizons. See § 710.5 of this title.

Soil means overburden that has been removed during surface mining.

Stabilize. See § 710.5 of this title.

Surface coal mining operations. See § 700.5 of this title.

Surface coal mining and reclamation operation. See § 700.5 of this title.

Surface managing agency means a Federal agency having administrative jurisdiction over the surface of Federal lands or over Federal minerals.

Surface water. See § 710.5 of this title.

Suspended solids. See § 710.5 of this title.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, or weathering processes, may produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic mine drainage. See § 710.5 of this title.

Waste means earth materials, which are combustible, physically unstable, acid-forming or toxic-forming, wasted or otherwise separated from product coal, and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

Water tables. See § 710.5 of this title.

§ 211.83 Responsiblities.

(a) Subject to the supervisory authority of the Secretary, the regulations in §§ 211.81 through 211.99 shall be administered as follows:

(1) The mining Supervisor, acting under the supervision of the Director, Division Chief, and Conservation Manager, is empowered to oversee

prospecting, exploration, testing, and development operations and shall be responsible for operator compliance with the royalty, development, and resource recovery aspects of approved mining and exploration plans in accordance with 30 CFR 211.2 through 211.80.

(2) The Regional Director is empowered to recommend to the Director, OSM, approval, disapproval, or approval upon condition of major modifications of mining plans previously approved under this part pursuant to the provisions of this part and 30 CFR Parts 715, 716, and 717.

(3) The Regional Director, acting under the supervision and control of the Director, OSM, is empowered to regulate surface coal mining and reclamation operations and abandonment operations subject ot the provisions of this part and the regulations in 30 CFR Parts 715, 716, and 717 of this title. The Regional Director, in the performance of his duties, may consult with and solicit the views of the Mining Supervisor, other appropriate Federal, State, and local agencies, and other interested parties and shall:

(i) *Inspection of operations.* Examine, as frequently as necessary, but not less than one partial inspection per month and one complete inspection per calendar quarter, the Federal lands where surface coal mining operations are conducted, or land which may be affected by such operations; inspect such operations for the purpose of determining whether all provisions of applicable performance standards in this Part and orders relating to the conduct of operations and reclamation of affected lands, and all environmental and reclamation requirements of approved mining plans are being complied with.

(ii) *Compliance.* Require operators to conduct surface coal mining and reclamation operations on Federal lands in compliance with all provisions of the applicable performance standards in this Part and in 30 CFR Parts 715, 716, and 717; all orders; all terms and conditions of leases, permits or licenses; and all requirements of an approved mining plan.

(iii) *Manner and form of records, reports, and notices.* Recommend to the Director, OSM, the manner and form in which records of mining and reclamation operations, reports, and notices shall be made to comply with the Act.

(iv) *Cessation and abandonment of operations.* Upon receipt of notice of proposed abandonment of operations or relinquishment of a lease, permit, or license, inspect and determine whether the operator has completed his operations in accordance with all applicable requirements and report to the appropriate authorized officer of the surface managing agency whether the lands have been properly conditioned for abandonment, and recommend that the period of liability under the appropriate bond or bonds be terminated. Before making his recommendation to the surface managing agency, the Regional Director shall consult with and, where required, obtain the concurrence of the Mining Supervisor. When the surface of the lands in a lease, permit, or license is not owned by the United States, the Regional Director shall, in addition, notify the surface owner and take into account his comments and recommendations when making his recommendations to the surface managing agency.

(v) *Trespass.* Report to the appropriate authorized officer any trespass that involves removal of coal.

(vi) *Compliance or performance bonds.* Determine whether the total amount of any bond or bonds furnished with respect to operations subject to this part is at all times adequate to satisfy the estimated costs of completion of remaining reclamation requirements of the approved mining plan and notify the appropriate authorized officer in the event of any inadequacies.

§ 211.84 General obligations of the operator.

(a) All operations involving the development, mining, preparation, handling of coal, and the reclamation and abandonment of affected lands shall be conducted pursuant to the obligations and applicable performance standards in this Part and in 30 CFR Parts 715, 716, and 717 and shall conform to the provisions of all other applicable laws and regulations, including effluent and emission limitations; the terms and conditions of any applicable lease, permit, or license; the requirements of any applicable approved exploration or mining plan; and any notices or orders issued by the Regional Director or the Mining Supervisor.

(b) The operator shall take such action as may be needed to minimize, control, or prevent (1) soil erosion; (2) pollution of air; (3) pollution of surface or ground water; (4) serious diminution of the normal flow of water; (5) adverse impact upon fish and wildlife, especially threatened or endangered species, and their habitat; (6) permanent damage to vegetative growth, crops, or timber; (7) creation of unsafe or hazardous conditions; (8) damage to improvements, whether owned by the United States, its permittees, licensees, lessees, or by others; (9) damage to the recreational, cultural, scientific, historical, and known or suspected archeological and paleontological values of the land; and (10) adverse impacts upon adjacent land uses. Good housekeeping practices shall be observed at all times. Where any question arises as to the necessity for or the adequacy of an action to meet the requirements of this paragraph, the determination of the Regional Director shall be final, subject to the right of appeal as provided in 43 CFR Part 4.

(c) The operator shall promptly report to the Regional Director or the Mining Supervisor, as appropriate, by telephone, accidents threatening damage to the mine, the lands or other resources, or accidents which could cause air or water pollution, along with corrective actions initiated. Within 30 days after any such accident, the operator shall submit a detailed report to the appropriate official, as requested, of any damage caused by such accident and any corrective actions taken. The obligation set forth in this paragraph shall be in addition to any obligations which may arise pursuant to the Federal Mine Safety and Health Act of 1977 and any regulations promulgated thereunder.

(d) The operator shall submit to the Mining Supervisor the reports required by Part 211 of this Chapter.

§ 211.85 Procedures and public participation.

(a) *Written findings.* Except as may be otherwise expressly set forth in this Part, all major decisions and determinations of any Regional Director or Mining Supervisor acting pursuant to this part and 30 CFR Chapter VII shall be in writing, shall set forth with reasonable specificity the facts and the rationale upon which such decisions or determinations are based, and shall be available for public inspection during normal business hours at the offices of such Regional Director or Mining Supervisor.

(b) *Availability of proposed plans and major modifications of plans.* All proposed mining plans and major modifications thereof, submitted under § 211.86 of this part, shall be available for public inspection in the office of the appropriate Regional Director subject to the restrictions contained in § 211.6. To allow for such public inspection, a notice of availability of any such plan or modification shall be prepared by the Regional Director and promptly posted at his office and mailed to the surface owner, if other than the United States, to appropriate Federal and State agencies, and to the clerk or other appropriate

officer in the county in which the proposed operations are located for posting or publication in accordance with the procedures of that office. A copy of the notice shall be published by the Regional Director in the **Federal Register.** No action with respect to approval of any such plan or modification shall be taken by the Regional Director for a period of 30 days after publication in the **Federal Register.** A copy of such notice shall be published by the operator in a local newspaper of general circulation in the locality of the proposed operation at least once a week for 4 consecutive weeks.

(c) *Public participation.* (1) Upon the timely written request to the appropriate Regional Director of any person having an interest which is or may be adversely affected, a public meeting shall be conducted with respect to any of the following actions:

(i) Release of any substantial portion of a bond submitted pursuant to this Part covering obligations of performance or reclamation, including revegetation.

(ii) Approval of final abandonment of any operation or portion thereof.

(iii) Approval of a new mining plan or any major modification thereof.

(2) Prior to the making of any decision or the taking of any of the actions described in paragraph (1) hereof, a notice of availability of such proposed decision or action shall be published in a newspaper of general circulation in the geographical area involved at least once in each of 2 consecutive weeks. In addition, not less than 20 days prior to the making of any such decision, such notice shall be posted at the appropriate State or regional offices of the Bureau of Land Management, the GS, and OSM; mailed to the operator, to all appropriate Federal and State agencies, including all agencies whose concurrence or consultation is sought or required, and to the surface owner if other than the United States; and published in the **Federal Register.** Such notice shall set a reasonable time period, not less than 20 days from the date of publication in the **Federal Register,** within which any person having an interest which is or may be adversely affected may, in writing, request a public meeting thereon.

(3) A complete transcript of any such public meeting, including any written comments submitted for the record, shall be kept and maintained available to the public during normal business hours at the appropriate Federal office under whose auspices such meeting is conducted, and shall be furnished at cost to any interested party. In making any decision or taking any action subject to any such public meeting, the Regional Director shall take into account all testimony submitted at such meeting, including any written comments submitted for the record.

§ 211.86 Exploration and mining plans.

(a) Before conducting exploration operations, other than casual use, within an area for which a mining permit has been approved by the Regulatory Authority or within an area of land on which mining and reclamation operations are occurring or are expected to occur prior to the time a permit is approved pursuant to 30 CFR Part 741, the operator shall submit to the Regional Director and obtain approval of an exploration plan under 30 CFR Part 211. Casual use, as used in this subsection, means activities which do not cause significant surface disturbance or damage to lands, resources, and improvements, such as activities which do not include use of heavy equipment, explosives, or vehicles off established roads and trails.

(b) Before conducting any surface coal mining operation on Federal lands, the operator shall submit to the Regional Director, and obtain approval of, a mining plan in accordance with this part. On any lease issued or readjusted after August 4, 1976, the first mining plan shall be submitted to the Regional Director not later than 3 years after the effective date of the lease or 3 years after the date of readjustment, whichever is later.

(c) The operator shall submit seven copies of the mining plans to the Regional Director. All such mining plans shall be identified by the name, address, and permit or lease number(s) of coal permits or leases, fee interest and State-owned tracts included in the plan, and shall show in detail the proposed exploration, testing, development, mining, preparation, environmental protection, monitoring, reclamation, abandonment methods, procedures, and operations to be conducted during the life of the mine. Mining plans shall be consistent with the requirements of the lease, permit, or license for maximizing recovery of mineral resources, for the protection of nonmineral resources, for the protection of land, air, and water resources during and after mining, and for the reclamation of the surface of the lands affected by the operations. The mining plans shall show that environmental protection and reclamation are an integral part of the proposed operations, will progress as contemporaneously as practicable with such operations, and shall provide sufficient information to substantiate the effectiveness of the proposed reclamation method as required by this Part and 30 CFR Parts 715, 716, and 717.

(d) *Mining plans.* A mining plan shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations under the plan to whom notices and orders are to be delivered, and the names and addresses of surface owners of record, and owners of record of subsurface minerals, if other than the United States.

(2) A description, with maps and tables where appropriate, of the environment within the area where mining is to be conducted. Such description shall include, as a minimum, geologic conditions, including potential geologic hazards; types, depths, and distribution of soils; types, density productivity, dominance, and distribution of vegetation; climatological data, including a monthly range of temperatures, precipitation and average direction and velocity of prevailing winds; and distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species.

(3) A description of the condition of the land covered by the mining plan, including:

(i) The uses existing at the time the mining plan is submitted for approval; and

(ii) The capability of the land, immediately prior to any mining, to support alternative uses, giving consideration to soil characteristics, including series, types, depths and distribution, topography, annual precipitation, and vegetative cover, including identification of dominant species.

(4) A description of the use which is proposed to be made of the land following reclamation which shall take into account all applicable land-use plans and programs.

(5) A description of how the proposed postmining land use is to be achieved, including any necessary support activities and facilities.

(6) A description of the proposed operations, including:

(i) The nature and extent of the coal deposit in terms of Btu content, ash, water, sulphur, volatile matter, and carbon content and including estimated recoverable reserves.

(ii) The method of mining, including mining sequence and proposed production rate.

(iii) The nature and timing of measures to be taken for surface reclamation, including as appropriate:

(A) A reclamation schedule, including the estimated timetable for each phase of the work and for final completion of the program.

(B) The method of grading, backfilling, soil stabilization, and compacting and contouring.

(C) The method of soil preparation and fertilizer application.

(D) The type and mixture of shrubs, trees, grasses, forbes, or other vegetation to be planted.

(E) The method of planting, including approximate quantity and spacing.

(iv) The engineering techniques proposed to be used in mining and reclamation, including the design and construction of roads, ditches, water retention facilities, dams, or settling ponds, and the control of water drainage and accumulation.

(v) A list of all major equipment.

(vi) An estimate of the cost per acre of reclamation including a separate breakdown for the cost of backfilling and grading, replacement of topsoil, seeding and/or planting, irrigation, fertilizing, and maintenance.

(vii) The method of operation and measures by which the operator plans to comply with the obligations and requirements set forth in § 211.84 and § 211.94 of this part and any special terms and conditions of the lease, permit, or license.

(viii) The anticipated starting and termination dates of each phase of the mining operation and number of acres of land to be affected.

(ix) The steps to be taken to comply with all applicable air and water quality laws and regulations.

(x) The measures for ensuring the maximum practicable recovery of the mineral resources.

(xi) The method of abandonment.

(xii) Logs and analyses of overburden samples of each stratum from a number of drill holes sufficient to obtain a representative sample of the overburden overlying the coal and the stratum immediately below the coal to be mined, which, unless specifically authorized by the Regional Director based upon date already known to the GS or OSM or upon the nature of the coal seam and geological inferences which may be drawn therefrom, shall be not less than one hole on each 40 acres. Such logs and analyses shall identify each stratum penetrated, and shall contain an analysis of each such stratum for at least the following: nitrogen, phosphorus, potassium, pH, specific conductance, exchangeable sodium percentage, and sodium absorption ratio. Such analyses will be used to determine which materials shall be buried and which materials are suitable for placement near the surface for favorable propagation of vegetation.

(xiii) The hydrology of the area, including quantity and quality of water in surface and ground water systems, water levels and water table measurements, data regarding dissolved and suspended solids under seasonal flow conditions, and an assessment of the probable impacts of the anticipated mining operation upon the hydrology of the area.

(xiv) Plans for protecting oil, gas, and water wells, as well as oil, gas, and underground water resources, when encountered.

(xv) Any justification for not recovering any coal deposits that may be detrimentally affected in terms of future recovery by the coal development operations proposed.

(xvi) If auger mining is proposed, the location and diameter of auger holes, the depth to be drilled, and the estimated percentage of recovery. In determining whether or not to approve proposed auger mining, the Mining Supervisor shall take into account the percentage of recovery, which shall in general exceed 30 percent, and the Regional Director shall take into account the probable adverse effects upon water quality.

(7) Suitable topographic maps or aerial photographs showing: (i) Topographic, cultural, archaeological, and natural drainage features, roads, and vehicular trails.

(ii) The name of the watershed and location of the surface stream or tributary into which mine waters will be discharged, if applicable.

(iii) Cross sections and plan views of the land to be affected, including the actual area to be mined, showing elevation and location of drill holes and depicting the following information: the nature and depth of the various strata of overburden; the nature, thickness, and extent of any coal or rider seams, if above the specific coal proposed to be mined; the nature of the strata beneath the coal to be mined for a vertical distance of at least 20 meters beneath the base of the coal seam; the location of the next known deeper coal seam below the deepest seam to be mined and representative characteristics thereof; the location of any other mineral values encountered; hydrologic data and other information relevant to the mining plan; all mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected; location and extent of known surface and underground mine workings, oil or gas wells, and water wells within ¼ mile of the affected lands, the location of aquifers; the estimated elevation of the water table, and potentiometric surface; the location of spoil, waste, or refuse areas, and sequence of placement and topsoil preservation area; the location of all impoundments or water treatment facilities; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation activities.

(iv) Locations of surface structures and facilities, including loading facilities.

(v) For an underground mine, in addition, the planned mine layout, including location and dimensions of shafts, slopes, drifts, crosscuts, rooms, haulageways, aircourses, entries, and barrier pillars.

(e) *Action on plans.* The Regional Director, after reviewing and considering a proposed mining plan and all comments received thereon and after consultation with the appropriate authorized officer of the surface managing agency, shall, in writing, promptly recommend to the Director, OSM, approval or disapproval of such plan, and such recommendation shall include the review and recommendation of the Mining Supervisor and the authorized State Regulatory Authority. In recommending approval of such a plan, the Regional Director and the Mining Supervisor, in accordance with the division of responsibilities in § 211.83, shall determine that such plan complies with all requirements of this part, 30 CFR Parts 715, 716, and 717, or the requirements of State law in effect pursuant to a State/Federal Cooperative Agreement and any lease, permit, or license, and that reclamation as required thereby can be accomplished under the method, procedures, and operations set forth in such plan. The Regional Director and the Mining Supervisor may recommend such conditions upon such approval as may be necessary for the plan and operations to conform to the provisions of this part and the terms and conditions of the lease, permit, or license. In recommending disapproval of a plan, the Regional Director shall indicate what modifications, if any, are necessary to achieve such conformity. No such plan may be approved unless a bond, executed pursuant to the provisions of 43 CFR Subpart 3504 and conditioned upon compliance with all of the provisions of such plan, has been furnished to and approved by the appropriate authorized officer. When some or all of the proposed area is under the jurisdiction of an Agency other than the DOI, such other Agency must consent in writing to the terms of the mining plan prior to its approval. When some or all of the proposed area

of surface coal mining operations is on Indian lands, the mine plan must also be approved in accordance with 25 CFR Part 177.

(f) *Changes in plans.*—(1) *By Regional Director.* Approved plans may be required to be revised or supplemented at any time by the Regional Director after consultation with the operator and the Mining Supervisor; the appropriate authorized officer; the authorized State Regulatory Authority, if appropriate, to adjust to changed conditions; changed regulations; or statutory requirements and to require monitoring or to correct oversights. The Mining Supervisor may request the Regional Director to require changes in mining plans in connection with Geological Survey responsibilities in this part relating to diligent development, production, and resource recovery requirements. Significant revisions or supplements must be approved by the Director, OSM.

(2) *By the operator.* The operator may propose changes to an approved mining plan and shall submit a written statement of any such proposed change and the justification therefore to the Regional Director. The Regional Director shall, after consultation with the authorized State Regulatory Authority, the appropriate authorized officer, and the Mining Supervisor, in writing, promptly recommend approval, disapproval, or approval upon condition to the Director, OSM, of any such proposed change, or specify the modifications thereto under which it would be acceptable.

(3) *By petition.* Any interested person may petition the Regional Director to exercise the authority set forth in subparagraph (1) hereof. Any such petition shall be in writing, shall set forth the proposed revision, and shall state with reasonable particularity facts which demonstrate adequate justification for revision of the plan or that oversights occurred at the time of approval which make modification necessary to bring the operation and the plan into conformity with the obligations and requirements of this part. Upon receipt of any such petition, the Regional Director shall promptly decide whether the facts set forth are sufficient to warrant exercise of his or her authority pursuant to paragraph (1) above.

(4) *Public Notice.* If any change proposed under this subsection would constitute a major modification of an approved plan, the Regional Director shall follow the procedures provided in § 211.85 of this part, and shall take any comments received into account in his decision.

(g) States with § 211.99(c) agreements.

(1) *Wyoming.* A Federal coal lessee in the State of Wyoming who must submit a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.86(d).

(2) *Utah.* A Federal coal lessee in the State of Utah who must submit a mining plan or permit under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of the submission required in this Section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, the statement required by paragraph B2 of Article IV of the modified Cooperative Agreement, and the information required by:

(i) Utah Code Ann. 1953, as amended, Section 40–8–13;

(ii) Rule M–3 of the Utah Division of Oil, Gas, and Mining, except the paragraph following (h) due to the confidentiality provision which is not in conformity with the Surface Mining Control and Reclamation Act of 1977; and

(iii) 30 CFR 211.86(d); and

(iv) Any final action by the State Regulatory Authority or the Secretary with respect to a mining plan or revision or modification submitted for approval shall be in accordance with Article IV of the modified Cooperative Agreement.

(3) *New Mexico.* A Federal coal lessee in the State of New Mexico who must submit a mining plan or permit under both State and Federal law shall submit in lieu of the mining plan required in this Section, a mining plan containing the information required by:

(i) New Mexico Stat. Section 63–34–1 et seq. NMSA 1953;

(ii) New Mexico Coal Surface Mining Commission Regulations;

(iii) 30 CFR 211.86(d); and

(iv) A statement certifying that a copy of the plan or permit application has been given to both the New mexico Coal Surface Mining Commission and Secretary.

(4) *North Dakota.* A Federal coal lessee in the State of North Dakota who must submit a mining plan or permit application under both State and Federal law shall submit to the State Regulatory Authority and the Denver Regional Office, Office of Surface Mining, in lieu of submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory, and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement, and that statement required by paragraph B2 of Article IV of the modified Cooperative Agreement and requirements of 30 CFR 211.86(d).

(5) *Montana.* A Federal coal lessee in the State of Montana who must submit a mining plan under both State and Federal law shall submit to both the State Regulatory Authority and the Denver Regionl Office, Office of Surface Mining, in lieu of the submission required in this section, a mining plan or revision or modification to an approved plan containing the information required by or necessary for the State Regulatory Authority and the Secretary to determine compliance with the statutory, regulatory, and other requirements identified in paragraph B1 of Article IV of the modified Cooperative Agreement and the requirements of 30 CFR 211.86(d).

§ 211.87 Approaching oil, gas, or water wells.

When mining operations are conducted in areas of known wells or bore holes that may liberate oil, gas, water, or other fluid substances, the lessee shall include in his proposed plan all measures determined necessary by the Mining Supervisor in consultation with the Regional Director and the appropriate Oil and Gas Supervisor of the GS to protect wells or bore holes and obtain maximum recovery of the coal resource. If operations reveal unsuspected wells or bore holes, the operator shall promptly notify the Regional Director and take no further actions which would disturb such wells or bore holes without the Regional Director's prior approval after consultation with the Mining Supervisor.

§ 211.88 Mine maps.

(a) *General requirements.* The operator shall maintain accurate and up-to-date maps of the mine, drawn to scales acceptable to the Director, OSM. All maps shall be appropriately marked with reference to Government landmarks or lines, and elevations with reference to sea level. Before a mine or section of a mine is abandoned, closed, or made inaccessible, a survey of such mine or section shall be made and recorded on such maps and a copy shall be furnished to the Regional Director and the Mining Supervisor. Additionally, the maps shall show the name of the mine; the name of the lessee; the lease, permit, or license serial number; the lease boundary lines; surface buildings; dip of the bed; true north; map scale and explanatory legend; location, surface elevation, depth and thickness of the coal, and total depth of each borehole; auger holes; improvements; reclamation completed; topography, including subsidence resulting from mining; and the geologic and hydrologic conditions as determined from outcrops, drill holes, exploration or mining; and water monitoring stations and such other information as the Regional Director may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the Regional Director annually or at such other times as he or she may request.

(b) *Vertical projections and cross sections of mine workings.* When required by the Regional Director, vertical projections and cross sections shall accompany plan views.

§ 211.89 Failure of lessee to furnish maps.

(a) *liability of lessee for expense of survey.* If the operator fails to furnish a required or requested map, the Regional Director shall consult with the operator to determine the cause of the failure. If the operator refuses or cannot supply the required or requested map, the Regional Director shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator.

(b) *Incorrect maps.* If any map submitted by an operator is believed to be incorrect, the Regional Director or the Mining Supervisor, as appropriate, shall consult with the operator to determine the cause of the deficiency. If the operator refuses to correct the error or deficiency in the map, the Regional Director or Mining Supervisor may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator.

§ 211.90 Core and test holes.

(a) *Surveillance wells.* With the approval of the Mining Supervisor, after consultation with the Regional Director, drill holes may be utilized as surveillance wells for the purpose of monitoring the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(b) *Use of wells by others.* Upon receipt of a written request from the surface owner or the appropriate authorized officer, the Mining Supervisor, in consultation with the Regional Director, may approve the transfer of an exploratory well for further use as a water well. Approval of such well transfer will be accompanied by a corresponding transfer of responsibility for any liability for damage and eventual plugging. Nothing in this paragraph shall be deemed to supersede or affect the applicability of any State law requirements with respect to such transfer.

§ 211.91 Maximum recovery for underground mining.

Underground mining operations shall be conducted so as to yield the maximum recovery of the coal deposits consistent with the protection and use of other natural resources, sound economic practice, and the protection of the environment—land, water, and air. No entry, level, or panel workings in which the pillars have not been completely extracted within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the Mining Supervisor and with the concurrence of the Regional Director.

§ 211.92 Subsidence.

The Mining Supervisor, in consultation with the Regional Director, may require the operator to install a subsidence monitoring system consisting of elevation stations and tiltmeters in a number sufficient to determine the extent of any area that may be affected. All records of such surveys shall be accessible for review by the Mining Supervisor and the Regional Director.

§ 211.93 Development of leased tracts through adjoining mines.

An operator may, with the approval of the Mining Supervisor, mine leased lands from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, subject to the right of free access to the Federal premises by the Regional Director.

§ 211.94 Operating and reclamation standards.

(a) *Performance standards for surface mines.* The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations on the surface of land subject to this part:

(1) The operator shall reclaim affected lands pursuant to his approved plan as contemporaneously as practicable with operations.

(2) The operator shall comply with the requirements of § 715.13 of this title for reclaiming the land to an approved land use.

(3) The operator shall comply with the requirements of § 715.14 of this title for backfilling, grading, and restoring approximate original contour.

(4) The operator shall stabilize and protect all surface areas, including spoil piles, affected by the coal mining and reclamation operation, to effectively control slides, erosion, subsidence, and attendant air and water pollution.

(5) The operator shall comply with the provisions of § 715.15 of this title for disposal of spoil in areas other than the mine workings or excavations.

(6) The operator shall comply with the provisions of § 715.16 of this title for replacing topsoil.

(7) The operator shall utilize water impoundments, water retention facilities, dams, or settling ponds only pursuant to an approved plan, and in compliance with the requirements of § 715.17 and § 715.18 of this title, if a permanent impoundment, and shall ensure that:

(i) Such facility is adequate for its intended purposes, and the quality and quantity of impounded water will be suitable for its intended use.

(ii) Such facility is designed, located, built, used, and maintained in accordance with sound engineering standards and practices, and applicable Federal and State laws and regulations to ensure that such facilities will have necessary stability with an adequate margin of safety.

(iii) Final grading will provide adequate safety and access for proposed or reasonably anticipated water users.

(iv) Such facilities will not have a significant adverse impact on the water resources utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses: Provided, however, that this subparagraph shall not be deemed or construed to increase or diminish any

property rights to any water held by any person.

(v) No mine or processing waste is used in the construction of such facilities unless authorized in the approved plan and in compliance with § 715.17 and § 715.18 of this title.

(8) The operator shall cover or plug all auger mine holes with noncombustible and impervious material and where necessary to minimize, control, or prevent harmful drainage.

(9) The operator shall comply with the requirements of § 715.17 of this title relating to the protection of the hydrologic system.

(10) The operator shall:

(i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control, or prevent air and water pollution and the hazards of ignition and combustion; and,

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution. Waste containing coal in such quantity that it may later be separated from the waste by washing or other means shall be stored separately.

(11) Except as provided herein, the operator shall not conduct excavation or drilling operations within 500 feet of an active or abandoned underground mine. Where it can be established, by certified maps or inspection of such an underground mine, that such activities may be conducted without danger or interference with, or penetration of, an underground mine, they may be authorized in an approved plan, subject to the concurrence of the MHSA where blasting is involved, to be conducted up to but not less than 25 feet from such underground mine: Provided, however, that, nothing in this paragraph shall preclude daylighting or similar surface coal mining activities intended to improve resource recovery, abate water pollution, or eliminate public hazards resulting from such underground mines.

(12) The operator shall comply with the blasting requirements of § 715.19 of this title.

(13) The operator shall design to applicable standards, construct, maintain, and, when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines, and similar utility access facilities, associated bridges, culverts, and ditches into and across the site of operations, in a manner that will minimize, control, or prevent erosion, siltation, and pollution of water pursuant to the requirements of § 715.17(1)(1) through (3) of this title, and minimize, control, or prevent fugitive dust, and damage to fish and/or wildlife or their habitat and public or private property.

(14) The operator shall comply with the requirements of § 715.17(1)(2) of this title for surfacing and constructing roads.

(15) No access roads will be constructed unless:

(i) The operator shall have first submitted a surveyed profile accompanied by typical cross sections of the road and ditches, showing pipe, entrance and exit channels, and sediment control structures or configurations to be used on the road to meet performance standards; and

(ii) The location shall have been marked, inspected, and approved by the appropriate surface managing agency and the Regional Director, and in consultation with the surface owner, if other than the United States.

(16) The operator shall comply with the revegetation requirements of § 715.20 of this title.

(17) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Regional Director and the surface owner, if other than the United States, determines that successful revegetation in compliance with § 715.20 of this title has occurred: Provided, however, that this period shall extend for a minimum of 5 full years after the first planting and for a total period of liability not to exceed 10 years from the first planting; and further provided, that,

(i) Where the appropriate authorized officer, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions, such as annual precipitation, soil characteristics, and native vegetation, are stable and favor rapid revegetation and that revegetation pursuant to paragraph (i) of this Section is likely to occur before the expiration of such minimum period. Such minimum period will not apply with respect to some or all of the lands included in such lease, permit, or license; and

(ii) Where during any such minimum period such authorized officer, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as anual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Regional Director that the liability of the operator be extended for a period up to 5 years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(iii) During the relevant period of liability, the Regional Director and the appropriate authorized officer shall jointly inspect and evaluate the revegetated area.

(18) The operator shall:

(i) Except as provided in paragraph (ii) hereof, alow public access to and upon Federal lands subject to his lease, permit, or license only under the presence of and the control, direction, and supervision of an agent of the Regional Director, authorized officer, or their authorized representative, for any lawful and proper purposes under the Act, except where such access would unduly interfere with his authorized use.

(ii) Provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary to regulate public access, vehicular traffic, and wildlife or livestock grazing in all areas of active operations, including lands undergoing reclamation:

(A) To protect the public, wildlife, and livestock from hazards associated with such operations; and

(B) To protect revegetated areas from unplanned and uncontrolled grazing.

(19) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam, exposed by surface mining or an accumulation of slack coal or combustible waste, becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(20) Upon the completion of temporary or permanent abandonment of mining operations in all or any part of a strip pit, the face of the coal shall be covered with a minimum of 4 feet of nontoxic and noncombustible material or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion.

(21) The driving of any underground opening by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Regional Director in an approved plan.

(22) The operator shall comply with provisions of § 715.11 and § 715.12 of this title for availability of authorizations to operate and location of markers and signs.

(23) Operators of surface coal mining operations which are conducting mining operations on natural slopes that are defined as steep slopes shall comply with the regulations of § 716.2 of this title.

(24) Operators of surface coal mining operations that remove entire coal seams running through the upper fraction of a mountain ridge or hill (mountaintop removal) shall comply with the requirements of § 716.3 of this title.

(25) Operators of special bituminous surface coal mining operations that are located west of the 100th meridian west longitude as defined under § 716.4(a) shall comply with the requirements of § 716.4 of this title.

(26) Operators of anthracite coal mine operations must comply with the requirements of § 716.5 of this title.

(27) Operators of surface coal mining operations conducted on land that is considered to be prime farmland pursuant to § 716.7(b) shall comply with the special requirements of § 716.7 of this title. The Regional Director, in consultation with the surface management agency, shall obtain a determination of prime farmlands pursuant to § 716.7 of this title for operations on Federal lands.

(28) Operators of surface coal mining operations conducted on lands with alluvial valley floors shall comply with the applicable provisions of § 716.17(j) of this title.

(b) *Performance standards for underground mines.* The following performance standards shall be applicable to all coal exploration, development, mining, preparation, handling, and reclamation operations for the surface effects of underground mines on land subject to this Part. These standards, in addition to § 211.90, § 211.91, § 211.92, and § 211.93, shall apply to underground mining operations on Federal lands.

(1) Operators shall comply with the requirements of § 717.11 of this title, Authorization to Operate.

(2) Operators shall comply with the requirements of § 717.12(a) of this title, Sign and Marker Specifications; and § 717.12(b), Mine and Permit Identification Signs.

(3) Operators shall comply with the requirements of § 717.14 of this title, backfilling and grading or Road Cuts, Mine Entry Area Cuts, and Other Surface Work Areas. These requirements apply only to the surface area disturbed to provide access to the mine and such surfaces disturbed during the mining operation as are identified by the regulatory authority.

(4) Operators shall comply with the requirements of § 717.15 of this title for Disposal of Excess Rock and Earth Materials on Surface Areas.

(5) Operators shall comply with the requirements of § 717.17 of this title, Protection of the Hydrolegic System, in regard to surface discharges and surface areas that are disturbed.

(6) Operators shall comply with the requirements of § 717.18 of this title, Dams Constructed of or Impounding Waste Material.

(7) Operators shall comply with § 717.19 of this title, Use of Explosives, in regard to the use of explosives used during surface operations.

(8) Operators shall comply with the requirements of § 717.20 of this title, Topsoil Handling and Revegetation of Surface Areas Disturbed.

(9) The operator shall reclaim affected lands, pursuant to his approved plan, to a condition capable of supporting all practicable uses which such lands were capable of supporting immediately prior to any exploration or mining, or equal, better, or higher uses that have been approved in accordance with this part.

(10) The operator shall stabilize and protect all surface areas affected by the coal mining and reclamation operations to effectively control slides, erosion, subsidence, and attendant air and water pollution. The operator shall remove topsoil separately for replacement on the area pursuant to the approved plan.

(11) Coal storage areas shall be designed and maintained so as to eliminate fire hazards from spontaneous combustion and other accidental ignition. If a coal seam, exposed by surface mining, an accumulation of slack coal, or combustible waste, becomes ignited during the term of a lease, the operator shall immediately take all necessary steps to extinguish the fire.

(12) The operator may construct, if authorized in an approved plan, permanent water impoundments on mining sites as a part of reclamation activites only when they are adequately demonstrated to be in compliance with § 715.13 and § 715.14 of this title, in addition to the following requirements.

(i) The size of the impoundment is adequate for its intended purposes.

(ii) The impoundment dam is constructed with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83–566 (16 U.S.C. 1006).

(iii) The quality of the impounded water will be suitable on a permanent basis for its intended uses, and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable State and Federal law.

(iv) Final grading will comply with the provisions of § 715.14 of this title and will provide adequate safety and access for proposed water uses.

(v) Water impoundments will not result in the diminution of the quality and quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(13) The operator shall:

(i) Except as provided in paragraph (ii) hereof, allow public access to and upon Federal lands subject to the lease, permit, or license for all lawful and proper purposes, except where such access would unduly interfere with his authorized use.

(ii) Provide warning signs, fencing, flagmen, barricades, and other safety and protective measures as may be necessary to regulate public access, vehicular traffic, and wildlife grazing in all areas of active operations, including lands undergoing reclamation.

(A) To protect the public, wildlife, and livestock from hazards associated with such operations; and

(B) To protect revegetated areas from unplanned and uncontrolled livestock grazing.

(14) The driving of any underground openings by auger or other methods from any strip pit shall not be undertaken except as specifically approved by the Regional Director.

(15) The operator shall:

(i) Treat or dispose of all rubbish and noxious substances in a manner designed to minimize, control, or prevent air and water pollution and the hazards of ignition and combustion.

(ii) Dispose of all waste resulting from the mining and preparation of coal in a manner designed to minimize, control, or prevent air and water pollution and hazards of ignition and combustion. Where surface disposal of solid wastes in areas other than the mine workings or other excavations has been authorized in the approved plan, stabilize such waste, including, where necessary, constructing waste piles in compacted layers with the use of incombustible and impervious materials; shape waste piles to be compatible with the natural surroundings and terrain; cover with topsoil or other suitable material in accordance with this section, and revegetate in accordance with this section. Waste containing coal in such quantity that it may be later separated from the waste by washing or other means shall be stored separately.

(16)(i) The operator shall design to applicable standards, construct,

maintain, and, when no longer necessary and unless otherwise authorized in an approved plan, remove all roads, pipelines, powerlines, and similar utility access facilities and associated bridges, culverts, and ditches, into and across the site of operations, in a manner that will minimize, control, or prevent erosion, siltation, and pollution of water pursuant to the requirements of section 717(j) (1) through (3) of this title and minimize, control, or prevent fugitive dust, damage to fish or wildlife or their habitat, and public or private property.

(ii) No access roads will be constructed unless:

(A) The operator shall have first submitted a surveyed profile accompanied by typical cross sections of the road and ditches, showing pipe, entrance and exit channels, and sediment control structures and other structures or configurations to be used on the road to meet performance standards; and

(B) The location shall have been marked, inspected, and approved by the Regional Director in consultation with the appropriate authorized officer and the surface owner, if other than the United States.

(17)(i) The operator shall comply with the revegetation requirements of § 715.20 of this title.

(ii) The operator's responsibility and liability under his performance bond for revegetation of each planting area shall extend until such time as the appropriate authorized officer, in consultation with the Regional Director and the surface owner, if other than the United States, determines that successful revegetation in compliance with § 715.20 of this title has occurred; provided, however, that this period shall extend for a minimum of 5 full years after the first planting and for a total period of liability not to exceed 10 years from the first planting; and further provided, that,

(iii) Where the appropriate authorized officer of the surface managing agency, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation, soil characteristics, and native vegetation are stable and favor rapid revegetation and the revegetation pursuant to paragraph (i) of this section is likely to occur before the expiration of such minimum period, such minimum period will not apply with respect to some or all of the land included in such lease, permit, or license; and,

(iv) Where during any such minimum period such authorized officer of the surface managing agency, in consultation with the Regional Director, the surface owner, if other than the United States, and the operator, determines that natural conditions such as annual precipitation and soil characteristics are sufficiently unstable so as to favor only slow and uncertain revegetation, he may recommend to the Regional Director that the liability of the operator be extended for a period up to 5 years beyond the period initially established, if the financial liability that would be incurred by the operator as a result is reasonably commensurate with the increased probability of successful revegetation.

(v) During the relevant period of liability, the Regional Director and the appropriate authorized officer shall jointly inspect and evaluate the revegetated area.

§ 211.95 Completion of operations and abandonment.

(a) *Grading and backfilling.* Upon completion of backfilling and grading, as required by the approved plan and prior to replacing topsoil and revegetation, the operator shall submit a report thereon, in duplicate, to the Regional Director and request inspection for approval. Whenever it is determined by such inspection that the backfilling and grading has met the requirements of the approved plan, the Regional Director shall recommend to the appropriate authorized officer release of an appropriate amount of the compliance bond for the area to be satisfactorily backfilled and graded.

(b) *Permanent abandonment.* Before permanent abandonment of mining operations, all openings and excavations, including water discharge points, shall be closed or backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved plan. Drill holes, trenches, and other excavations for exploration, development, or prospecting shall be abandoned in such a manner as to protect the surface and not to endanger any present or future underground operations or any deposit of oil, gas, other mineral resources, or ground water. Methods of abandonment shall be approved in advance as required in an approved plan, and may include backfilling, regrading, revegetating, cementing, and capped casing, or combinations of these, or other methods. Reclamation and cleanup of permanently abandoned underground or surface areas around and near permanently abandoned underground or surface mines, including, except where otherwise expressly provided in an approved plan, removal of equipment and structures related to the mining operation, shall commence without delay following cessation of mining operations. Areas affected by access roads will be graded, drained, and revegetated in accordance with the approved mining plan and the approved postmining land use prior to bond release. In the event that access or haul roads are intended to remain after abandonment of the operation, pursuant to § 211.94 of this part, they must be designed and constructed so as to be permanently stabilized, using adequate drains, water barriers, and other practices.

(c) *Notice of abandonment; release of bond.* (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall submit to the Regional Director, in duplicate, a notice of his intention to cease or abandon operations, together with a statement of the exact number of acres affected by his operations, the extent and kind of reclamation accomplished, and a statement as to the structures and other facilities that are to be removed from or remain on the leased, permitted, or licensed lands.

(2) Upon receipt of such notice, the Regional Director, the Mining Supervisor, and the appropriate authorized officer or officers shall promptly make a joint inspection to determine whether all operations have been completed in accordance with the terms and conditions of all leases, permits, or licenses, and with the requirements of the approved mining plan. Where the operator has complied with all such terms, conditions, and requirements, and the regulations of this part, the Regional Director shall recommend to the appropriate authorized officer that the appropriate period of bonded liability to be terminated.

(3) When the surface of lands in a lease, permit, or license is not owned by the United States, the Regional Director shall notify the surface owner and solicit and take into account his comments before recommending to the appropriate authorized officer that the period of such bond liability be terminated.

§ 211.96 Reports.

(a) *Operations.* The operator shall file with the Regional Director within 30 days after the end of each calendar year and within 30 days after any temporary or permanent abandonment of operations, a report, in duplicate, containing the following with respect to

his operations or the operations subject to such abandonment:

(1) Serial number of the lease, permit, or license and description of the affected lands.

(2) The number of acres disturbed and the number of acres reclaimed, including areas on which revegetation is being conducted.

(3) A description of the reclamation work remaining to be done on lands disturbed.

(b) *Revegetation.* (1) The operator shall file a report, in duplicate, with the Regional Director within 30 days after each planting is completed. The report shall:

(i) Identify the lease, permit, or license.

(ii) Show the types of planting or seeding, including mixtures and amounts.

(iii) Show the date of planting or seeding.

(iv) Identify or describe the planted or seeded lands.

(v) Describe any surface manipulation, mulching, fertilization, and irrigation procedures, if any, and contain such other information as may be considered relevant.

(c) The Regional Director and the authorized officer of the Federal surface managing agency shall, as soon as possible after each full growing season, inspect and evaluate the revegetated areas to determine, in consultation with the surface owner if other than the United States, whether satisfactory vegetative growth is being established, or whether additional revegetation efforts should be ordered by the Regional Director.

§ 211.97 Inspections, enforcement, and civil penalties.

(a) *Applicability.* The provisions of this Section shall apply to all activities subject to this subpart.

(b) The operator shall provide access for any authorized representative of the regulatory authority to inspect and investigate the operation without advance notice to determine whether it is in compliance with: all applicable laws, regulations, notices, and orders; the terms and conditions of the lease, permit, or license; and the requirements of any approved mining plan.

(c) Any authorized representative of the regulatory authority or the Mining Supervisor may, at reasonable times and without delay, have access to copy any records, and inspect any monitoring equipment or method of operations required under the regulations of an approved mining plan.

(d) The operator shall provide access at all reasonable times to any authorized representative of the regulatory authority to inspect or investigate the operation pursuant to § 721.13 of this title to determine whether it is in compliance with the Act.

(e) Violations of the Act, the applicable performance standards in this part and in Parts 715, 716, and 717 of this title or the requirements of State law in effect pursuant to a State/Federal Cooperative Agreement contained in this Part or pursuant to § 211.75(a) of this part, the terms and conditions of the lease, permit or license, the requirements of an approved mining plan, or notices or orders of the regulatory authority acting pursuant to section 521 of the Act shall be subject to the enforcement procedures set forth in Part 722 of this title.

(f) If the Director or his authorized representative determines in accordance with § 722.16 of this title that a pattern of violations of any requirement of the Act, the performance standards in this part and in Parts 715, 716, and 717 of this title or the requirements of State law in effect pursuant to a State/Federal Cooperative Agreement contained in this Part or pursuant to § 211.75(a) of this part, the terms and conditions of the lease, permit or license, the requirements of an approved plan, he shall issue an order to show cause why the permit and right to mine should not be suspended or revoked in accordance with the procedures of § 722.16 of this title. The issuance of such an order to show cause shall not diminish the power of the Secretary to seek cancellation of the lease, permit, or license and forfeiture of any compliance bonds under other laws or regulations.

(g) The appropriate authorized officer of the surface managing agency and the Mining Supervisor shall have the right to enter upon the lands subject to this Subpart under lease or license at any reasonable time.

(h) If the appropriate authorized officer or the Mining Supervisor discovers that an operator is conducting activities on lands subject to this part which are not in compliance with the requirements of a lease or licensee, applicable regulations, or an approved plan, and such activities create an imminent danger to the health or safety of the public, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, such authorized officer or the Mining Supervisor may, upon consultation with an authorized representative of the Regulatory Authority, order the immediate cessation of such activities pursuant to section 521 of the Act and shall promptly notify the Regional Director. Upon receipt of such notification, the Regional Director will exercise jurisdiction to review the order pursuant to section 521 of the Act and determine whether other immediate remedial action is necessary.

(i) If, in the judgment of the Regional Director, the ordered cessation of surface coal mining and reclamation activities, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant, imminent environmental harm to land, air, or water resources, he shall by order impose any affirmative remedial action on the operator which he deems necessary to abate the imminent danger or environmental damage. A written report shall be submitted by the operator to the Mining Supervisor and Regional Director when noncompliance has been corrected.

(j) Failure of the operator to take action, in accordance with an order for cessation of activities, to comply with an order of the Regional Director to take affirmative remedial action to abate an imminent danger or imminent environmental harm issued pursuant to paragraph (f) of this section, or with a written notice of noncompliance issued by an appropriate authorized officer or by the Mining Supervisor in accordance with the provisions of paragraph (h) of this section, shall be grounds for suspension of the operation and for possible cancellation of the lease, permit, or license in accordance with the regulations in 43 CFR Part 3500.

(k) *Civil penalties.* The operator of any coal mining operation subject to the provisions of this part may be assessed civil penalties by the OSM for violations of the Act, the applicable performance standards in this part and the performance standards in Parts 715, 716, and 717 of this title, or any State laws or regulations adopted as Federal law as part of a State/Federal Cooperative Agreement in effect pursuant to this part, or any State standard adopted pursuant to Part 718 of this title, and the terms, conditions, or requirements of an approved mining and reclamation plan or permit in accordance with the procedures in Part 723 of this title. Violations found on Federal lands by an authorized State Regulatory Authority shall be considered by the office when determining whether to assess a civil penalty under Part 723 of this title.

§ 211.98 Appeals.

Orders, determinations, decisions, and notices issued by the Regional Director pursuant to this part may be appealed pursuant to 43 CFR Part 4.

§ 211.99 Applicability of State law.

(a)(1) Any State law or regulation of any State that did not have an approved State/Federal Cooperative Agreement on or before August 3, 1977, which is determined by the Secretary under the procedures in this Section to be a more stringent performance standard for the regulation of surface coal mining and reclamation than that provided under a performance standard in this part or in 30 CFR Parts 715, 716, and 717, shall be adopted by the Secretary and applied in that State as a condition for approval of any proposed exploration or mining plan relating to the mining and reclamation of Federal lands in such State, unless the Secretary determines that the law or regulation is inconsistent with the Act.

(2) A State may request the Secretary to review the provisions of any State law or regulation to determine whether such law or regulation provides a more stringent performance standard than comparable provisions in this part. No particular form of request is required. However, the request shall be in writing and shall include the text of the State law or regulation, identification of the comparable performance standard in this part, and an analysis of the reasons why the State law or regulation is a more stringent standard.

(3) If the Secretary determines that the requirements of State law or regulation may be more stringent than the comparable performance standard in this Part or in 30 CFR Parts 715, 716, and 717, rulemaking shall be initiated under the procedures of section 501 of the Act and 30 CFR part 718 for adoption of the standard.

(b) The Secretary will direct representatives of the Department to consult with appropriate representatives of each State or a number of States for the purpose of modifying cooperative agreements which existed on August 3, 1977, to provide for a joint Federal/State program with respect to the regulation of surface coal mining reclamation operations under the initial regulatory program of this Part. Such agreements shall, at a minimum, provide for:

(1) The cooperative review and approval of mining plans and permits for surface coal mining and reclamation operations on Federal lands;

(2) Enforcement by the Secretary and the authorized State Regulatory Authority of State environmental protection and reclamation standards if such standards are as stringent or more stringent than Federal environmental protection and reclamation standards adopted under the Act;

(3) Enforcement procedures by the State which are as effective as those required by section 502 of the Act; and,

(4) The timely reporting of all violations found by the authorized State Regulatory Authority to the Regional Director. Any such agreement shall be entered into by rulemaking and shall have as its principal purpose the cooperative administration and enforcement of a uniform regulatory program governing surface coal mining and reclamation operations on both Federal and State regulated lands.

(c)(1) Pursuant to section 523 of the Surface Mining Control and Reclamation Act of 1977, any State with a cooperative agreement existing on August 3, 1977, may elect to continue regulation of surface coal mining and reclamation operations on Federal lands within the State prior to approval or disapproval by the Secretary of its State Program pursuant to section 503 of the Act, provided that such existing cooperative agreement is modified to fully incorporate the initial regulatory procedures set forth in section 502 of the Surface Mining Control and Reclamation Act of 1977.

(2) Following promulgation of the Federal lands program pursuant to section 532(a) of the Act, the Secretary will review any cooperative agreements then in effect to determine whether the authorized State regulatory authority has the authority and and resources necessary to implement said program. Upon a determination by the Secretary that the authorized State regulatory authority does not have the necessary authority or resources, the cooperative agreement shall be terminated.

(3) The governor of any State that wishes to modify the cooperative agreement existing on August 3, 1977, shall notify the Secretary in writing of the State's intent to modify the cooperative agreement. The notice of intent to modify the cooperative agreement must have been received by the Secretary prior to December 31, 1977, and the modification to the existing cooperative agreement agreed to within 60 days of the date of publication of these regulations. Failure to give notice or to timely complete the modification shall result in termination of any cooperative agreement executed prior to August 3, 1977.

[FR Doc. 80-15259 Filed 5-16-80; 8:45 am]

BILLING CODE 4310-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(FRL 1494-2)

Approval and Promulgation of Implementation Plans—Rhode Island Receipt of Implementation Plan Revisions: Public Participation and Impact Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Submittal to Satisfy Conditions of Plan Approval.

SUMMARY: This notice is to announce the receipt of State Implementation Plan (SIP) revisions for Rhode Island. The revisions were submitted on March 31, 1980 to satisfy two of the conditions of EPA's proposal of Rhode Island's Attainment Plan SIP revisions, which were required under Part D of the Clean Air Act. Rhode Island's submittal amends the narrative portion of the SIP by adding public participation provisions and an analysis of the effects of the Attainment Plan on air quality, health, welfare, the economy, energy supply, and the social environment.

ADDRESSES: Copies of the Rhode Island submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; and Rhode Island Department of Environmental Management, Air Resources Division, 75 Davis Street, Providence, Rhode Island 02908.

FOR FURTHER INFORMATION CONTACT: Gail Petersen, Office of Public Awareness, EPA Region I, Room 2203, JFK Federal Building, Boston, Massachusetts 02203, (617)223-0967.

SUPPLEMENTARY INFORMATION: EPA published a proposed rulemaking notice in the **Federal Register** on December 7, 1979 (44 FR 70486), proposing conditional approval of Rhode Island's Attainment Plan SIP revisions submitted on May 14, June 11, and August 13, 1979. These revisions were submitted to comply with the requirements of Part D of the Clean Air Act by implementing new measures for controlling air pollution, which are designed to achieve attainment of the National Ambient Air Standards by the required deadlines.

However, EPA's proposed approval is based on a commitment by the state to meet several conditions. One of the conditions was that by January 1, 1980 the state must submit a long-term public

participation and consultation program in compliance with grant conditions contained in Rhode Island's FY-1980 program grant under Section 105 of the Act; a second condition was that the state must submit an expanded analysis and summary of public comments on the effects of the SIP revisions, also by January 1, 1980. Although the submittal date agreed to at the time of the proposal was January 1, 1980, EPA and the state agreed that the plan would be submitted on March 31, 1980 due to unavoidable delays in the state's hiring of a public participation staff person. Additionally, although EPA had intended to hold a training course for public participation staff people during the summer of 1979, it was held in December. Since the change is not significant and the deadline was short, EPA did not repropose this condition before today's announcement of the receipt of the submittal.

Rhode Island has submitted SIP revisions, adding public participation provisions and an impact analysis of the Attainment Plan provisions, by the new deadline. EPA is presently reviewing the state's submittal to determine compliance with Clean Air Act requirements, and intends to publish a proposed rulemaking notice in the **Federal Register** by May 30, 1980.

Dated: May 6, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-15276 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

---

40 CFR Part 180

[FRL 1495-3; PP 9E2261/P133]

Prometryn; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the herbicide prometryn on pigeon peas at 0.25 part per million (ppm). The proposal was submitted by Interregional Research Project No. 4. This regulation would establish a maximum permissible level for residues of the herbicide on pigeon peas.

DATE: Comments must be received by June 18, 1980.

ADDRESS COMMENTS TO: Mrs. Patricia Critchlow, Office of Pesticide Programs, Registration Division (TS-767), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, (202-426-0223).

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow at the above address.

SUPPLEMENTARY INFORMATION: Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Puerto Rico, has submitted a pesticide petition (PP 9E2262) to the EPA under the provisions of the Federal Food, Drug, and Cosmetic Act. This petition requests that the Administrator propose that 40 CFR 180.222 be amended by the establishment of a tolerance for combined residues of the herbicide 2,4-bis(isopropylamino)-6-methylthio-*s*-triazine in or on the raw agricultural commodity pigeon peas at 0.25 ppm.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerance included a two-year chronic dog feeding study with a no-observed-effect level (NOEL) of 150 ppm; a two-year chronic rat feeding study with an NOEL of 250 ppm; a reproduction and teratology study in the rat indicating no teratogenic effects at the highest level tested (250 milligrams (mg)/kilogram (kg) of body weight (bw); a three-generation rat reproduction study with no adverse effect noted in three generations at the highest dose tested (100 ppm). Currently, a second oncogenicity study in a second mammalian species is lacking. Mutagenicity testing indicates the subject herbicide is not mutagenic.

The acceptable daily intake (ADI) for this chemical is calculated to be 0.0375 mg/kg body weight bw/day, based on the two-year dog feeding study. Established tolerances use only 0.54% of the ADI. The proposed tolerance will contribute an insignificant amount to the ADI. The theoretical maximum residue contribution (TMRC) from currently established tolerances is calculated to be 0.0121 mg/day/1.5-kg daily diet. The maximum permissible intake (MPI) of this chemical is calculated to be 2.25 mg/day/60-kg human. Since the theoretical increment in exposure is very small (less than 1 percent), it is concluded that the present toxicity data are sufficient to determine that the proposed tolerance will protect the public health.

The metabolism of the subject herbicide is adequately understood, and an adequate analytical method (spectrophotometry) is available for enforcement purposes. There is no reasonable expectation of residues in meat and milk as delineated in 40 CFR 180.6(a)(3). There will be no problem of secondary residues in poultry tissue and eggs. There are presently no actions pending against the continued registration of this chemical, and no other considerations are involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which a tolerance is being sought. Based on the above information and the insignificance of pigeon peas in the diet, it is concluded that the tolerance of 0.25 ppm on pigeon peas established by amending 40 CFR 180.222 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before June 18, 1980, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. The comments must bear a notation indicating both the subject and the petition/document control number, "PP 9E2261/P133". All written comments filed in response to this notice of proposed rulemaking will be avaiable for public inspection in the office of Patricia Critchlow, Room 107, East Tower, from 8:30 a.m. to 4 p.m. Monday through Friday.

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". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

[Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e))]

Dated: May 7, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

It is proposed that Part 180, Subpart C, § 180.222 be amended by alphabetically adding pigeon peas at 0.25 ppm to the end of the table to read as follows:

§180.222 Prometryn; tolerances for residues.

* * * * *

Commodity	Parts per million
* * *	* * *
Pigeon peas	0.25

[FR Doc. 80-15275 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1069

Grantee Personnel Management Policies for Programs Funded Under Titles II, IV, and VII of Economic Opportunity Act of 1964

Correction

In FR Doc. 80-14567, appearing on page 31133 in the issue of Monday, May 12, 1980, the subject heading is corrected to read as shown above.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-270]

Providing Optimum Conditions for Utilization of New Jersey Television Channel Assignments; Order Extending Time for Filing Comments and Reply Comments

Adopted: May 6, 1980;

Released: May 9, 1980.

AGENCY: Federal Communications Commission.

ACTION: Extension of Comment deadline of a notice of proposed rulemaking.

SUMMARY: At the request of the National Broadcasting Co., Inc., an extension of time for the filing of comments and reply comments in BC Docket No. 79-270 45 FR 16222, Providing Optimum Conditions for Utilization of New Jersey Television Channel Assignments, has been issued.

DATES: Comments must be filed on or before July 8, 1980, and reply comments on or before August 8, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Israel Teitelbaum, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: In the Matter of providing optimum conditions for utilization of New Jersey televison channel assignments.

By the Chief, Policy and Rules Division:

1. On April 23, 1980 at 45 FR 16222, the National Broadcasting Company, Inc. (NBC) submitted a request for extension of time to file comments in the above-captioned proceeding. On April 30, 1980, CBS filed a pleading supporting NBC's request. Comments are due May 8, 1980.

2. In support of its request, NBC contends that the studies and analysis necessary to support meaningful comments require substantially more than 60 days of preparation. Also, many of the personnel needed to prepare its comments were involved in conducting affiliate relations at the recently concluded National Association of Broadcasters Convention. NBC therefore urges that a grant of its request is warranted.

3. NBC has demonstrated good cause for a grant of its request. Therefore, IT IS ORDERED, pursuant to delegated authority, That the time for filing comments and reply comments in this proceeding IS HEREBY extended to and including July 8, and August 8, 1980, respectively.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 80-15245 Filed 5-16-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[No. 37436]

Consolidated Rail Corporation To Furnish Equipment for Certain Unit Train Shippers; Order To Show Cause

April 23, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Show Cause Order.

SUMMARY: This decision orders Consolidated Rail Corporation (ConRail) to show cause why a cease and desist order should not be entered restraining ConRail from the practice of not providing unit-grain-trains to shippers not owning destination terminal export elevators.

DATE: Interested parties may file comments within the time allowed for respondents (10 days from date of service (May 13, 1980)) by filing 15 copies with the Secretary of the Commission and by serving contemporaneously on respondents by first class mail.

ADDRESS: Send comments to Interstate Commerce Commission, Office of the Secretary, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

By Petition filed October 30, 1979, Coshocton Grain Company (Coshocton), Coshocton, OH, requests the issuance of an Order requiring Consolidated Rail Corporation (ConRail) to show cause why a cease and desist order should not be issued, restraining ConRail from the practice of not providing unit-grain-trains to shippers not owning destination terminal export elevators.

The questions raised by Coshocton relate not only to Coshocton's situation, but also to other grain shippers not having on-line destination terminal export elevators.

There is reason to believe that ConRail's decision not to assign unit-grain-trains to Coshocton was based on a ConRail study regarding unit train turnaround time conducted January, 1979, through July, 1979. ConRail denied unit trains to Coshocton and certain other grain shippers on the basis that these shippers did not have on-line terminal elevators and were therefore less efficient than those shippers having on-line terminal elevators.

For the 1979-1980 shipping season, ConRail implemented the practice of assigning unit trains to those shippers having on-line terminal elevators. ConRail now purportedly assigns unit trains to shippers based upon the average unit train turnaround time of the shippers.

There is good cause to believe that the assignment of unit trains by ConRail solely to shippers having on-line terminal elevators is a practice which may be improper in that there may be no relationship between having on-line terminal elevators and unit train turnaround time. Our independent study of the matter which is attached hereto indicates no such relationship exists.

It appears to the Commission that good cause may exist for entering a service order requiring Consolidated Rail Corporation (ConRail) to furnish unit-grain-trains to all applicants on a fair and equitable basis who can comply with the load and unloading requirements of unit-grain-train tariffs, regardless of the ownership of the terminal elevators.

Accordingly ConRail is ordered to show cause why a service order should not be entered by filing with the Secretary of the Commission within 10 days from the service date of this order 15 copies of its comments setting forth all facts within its knowledge and any arguments which might tend to show that entry of any further order is unnecessary or would be inappropriate.

More specifically, the Commission is interested in obtaining specific information with regard to the following areas of inquiry:

1. The system which ConRail uses to determine which shippers receive unit-grain-trains, and which shippers are denied these trains.

2. Any other information which ConRail believes would be helpful to the Commission in determining the necessity and appropriateness of entering the proposed order. In this connection, ConRail is specifically requested to supply to the Commission the following:

a. A listing of all unit-grain-train shippers who ordered unit-grain-trains for the 1979–80 season. A full explanation, including documentation, describing which shippers will receive trains; which shippers will not receive trains, the reason for excluding trains to shippers not owning terminal elevators; and the method of notification to these shippers.

The Bureau of Investigations and Enforcement is directed to participate in this show cause proceeding for the purpose of developing the record.

A copy of this order shall be served upon the Washington agent for ConRail, and on David Henderson, Worthington, OH, for Coshocton Grain Company. Notice shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D. C., and by publication in the **Federal Register.**

Any interested person may file comments or provide information and argument relating to the necessity and appropriateness of entering the proposed order within the time allowed for respondents to show cause (10 days from service date) by filing 15 copies with the Secretary of the Commission. Copies of any materials filed shall be served contemporaneously upon respondent by first-class mail, postage prepaid.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, and Alexis.

Agatha L. Mergenovich,

Secretary.

Investigation to determine if the unit trains assigned to Coshocton Grain experience a slower turnaround time than those assigned to other shippers having on-line port elevators, and if delays existed, were they attributable to Coshocton Grain or to the carriers involved.

All unit-grain-trains moving in ConRail unit train service for the grain year October 1978 through September 1979, were surveyed. During this period (32) 100 car unit-grain-trains from six shippers made 534 trips between various origin elevators in Illinois, Indiana, Kentucky and Ohio to the ports of Albany, New York, Philadelphia, Pennsylvania, and Baltimore, Maryland.

Exhibit A—Summarizes the average movement cycle time for each Unit Train.

Coshocton Grain Company had the best average turnaround time of the 6 shippers checked. Also, their trains were 3rd in unloading efficiency at destination and 3rd in loading efficiency at origin.

ConRail's decision to assign trains to those shippers having on-line terminal elevators was based on a study made by them for period January 1979 through July 1979. This study determined overall turnaround time, but did not reflect the factors influencing the total figure. At that time, according to ConRail computations, Coshocton trains averaged 13.1 days per trip, but did not reflect if that time was railroad delay, origin delay, or destination delay. Another factor that could influence the overall movement cycle is mileage between origin and destination.

Coshocton Grain is 70 miles nearer destination than any other point from which surveyed unit-grain-trains originate, yet transit time, which is in the control of the carrier, in many cases is greater.

BILLING CODE 7035-01-M

EXHIBIT A

CONRAIL UNIT-GRAIN-TRAIN ANALYSIS - MOVEMENT CYCLE
Period-October 1978 through September 1979 (Grain Year)

Unit Train Identifying Symbol (100 Cars Sets)	Car Ownership Private (P) Railroad (R)	No. Of Round Trips Completed	Average Loading Time Per Train Days	Hours	Average Transit Time Origin To Destination Days	Hours	Average Unloading Time Per Train Days	Hours	Average Time Per Train Days	Hours	Average Movement Cycle Time Days	Hours
CENTRAL SOYA CO., INC.												
S	P	26	1	20	3	13	2	18	3	15	11	18
O	P	25	2	12	4	5	2	14	3	13	12	20
P	R	17	1	19	3	8	2	23	3	8	11	10
P	P	26	2	4	3	19	2	19	4	3	12	21
J	R	6	2	8	3	1	3	16	2	17	11	18
N	P	27	2	7	3	12	2	13	3	7	11	15
D	R	5	1	14	2	23	1	19	2	20	9	4
A	R	7	1	11	3	10	2	-	3	7	10	4
B	R	6	1	17	2	23	2	21	3	11	11	0
C	R	5	1	7	2	11	3	-	3	2	9	20
Q	R	14	1	13	4	7	2	22	4	6	13	0
CARGILL, INC.												
C	R	22	1	9	3	11	1	18	4	23	11	13
D	R	11	1	20	3	17	2	12	4	-	12	1
A	R	20	1	10	4	10	1	22	4	14	12	8
E	R	3	2	-	3	13	1	15	2	20	10	0
LANDMARK INC.												
A	R	17	1	20	4	2	3	18	4	10	14	2
B	R	18	1	22	3	5	3	10	3	13	12	2

Unit Train Identifying Symbol (100 Cars Sets)	Car Ownership Private (P) Railroad (R)	No. Of Round Trips Completed	Average Loading Time Per Train Days	Hours	Average Transit Time Origin To Destination Days	Hours	Average Unloading Time Per Train Days	Hours	Average Time Per Train Days	Hours	Average Movement Cycle Time Days	Hours
COSHOCTON GRAIN CO.												
B	R	19	1	18	3	12	2	7	3	20	11	9
INDIANA GRAIN COOPERATIVE												
B	R	1	4	22	4	16	11 terminated		-	-	-	-
D	P	10	1	11	5	19	2	6	6	1	15	13
E	P	17	1	22	5	9	2	2	6	8	15	17
F	R	21	1	3	5	1	2	1	7	9	15	14

[FR Doc. 80-15265 Filed 5-16-80; 8:45 am]
BILLING CODE 7035-01-C

Notices

Federal Register
Vol. 45, No. 98
Monday, May 19, 1980

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.

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Jersey Advisory Committee (SAC) of the Commission will convene at 6:00 p.m. and will end at 8:30 p.m., on June 12, 1980, at the Ramada Inn, Schoolhouse Lane, New Brunswick, New Jersey.

Persons wishing to attend this open meeting should contact the Committee Chairperson or the Eastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program projects.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., May 13, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-15248 Filed 5-16-80; 8:45 am]
BILLING CODE 6335-01-M

New York Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New York Advisory Committee (SAC) of the Commission will convene at 3:00 p.m. and will end at 7:00 p.m., on June 11, 1980, at 26 Federal Plaza, Room 1639, New York, New York 10007.

Persons wishing to attend this open meeting should contact the Committee Chairperson or the Eastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss the Yonkers, New York project, Yonkers subcommittee meeting.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., May 13, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-15249 Filed 5-16-80; 8:45 am]
BILLING CODE 6335-01-M

Ohio Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a planning meeting of the Ohio Advisory Committee (SAC) of the Commission originally printed as Illinois scheduled for June 7, 1980, Cleveland, Ohio (FR Doc. 80-14432 on page 31148) is hereby changed to read Ohio Advisory Committee.

Dated at Washington, D.C., May 14, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-15250 Filed 5-16-80; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Dept. Org. Order 25-5B; Amdt. 6; Transmittal 492]

National Oceanic and Atmospheric Administration; Department Organization Order Series

Subject: This order effective April 2, 1980 further amends the material appearing at 43 FR 41538 of the National Oceanic and Atmospheric Administration, November 3, 1978, 44 FR 3303 of January 16, 1979, 44 FR 15522 of March 14, 1979, 44 FR 24623 of March 26, 1979, 44 FR 63128 of November 2, 1979, 45 FR 19292 of March 25, 1980, Department Organization Order 25-5B, dated October 16, 1978, is hereby further amended as shown below. The purpose of this amendment is to: abolish the Marine Ecosystems Analysis Program Office and the Outer Continental Shelf Environmental Assessment Program Office, and establish the Office of Marine Pollution Assessment under the Assistant Administrator for Research and Development.

1. *Section 11. Assistant Administrator for Research and Development.*

a. In pen and ink, delete the last sentence of subparagraph .04a. and, in subparagraph .04b., delete the "Marine Ecosystems Analysis Program Office" and the "Outer Continental Shelf Environmental Assessment Program Office."

b. A new paragraph .05 is added to read as follows:

".05 The *Office of Marine Pollution Assessment* provides the focus for and coordinates NOAA's programs and activities in marine pollution research and development, monitoring and assessment, and provides the interface between NOAA marine pollution related programs and the NOAA staff office charged with developing the Comprehensive Federal Plan Relating to Ocean Pollution. It develops and implements comprehensive, integrated and continuing programs to assess short-term and long-term impacts of pollution and other people-induced changes of marine ecosystems; disseminates results developed from such programs to appropriate agencies and persons, and provides advice upon request; and ensures that information regarding ocean pollution research and development and monitoring programs are disseminated in a timely manner and useful form. It implements research necessary to design monitoring programs in marine environments, and provides information on pollution impacts, alternatives, and mitigating measures for resource management decisions when marine ecosystems are subjected to pollution or people-induced alterations. It recommends and advises the Assistant Administrator for Research and Development on policy, programmic priorities, emphasis and direction, and other issues concerned with marine pollution and its effects."

2. The organization chart, Exhibit 1, attached to this amendment supersedes the chart dated September 27, 1979. A copy of the organization chart is on file with the original of this document in the Office of the Federal Register.

Richard A. Frank,
Administrator, National Oceanic and Atmospheric Administration.

Elsa A. Porter,
Assistant Secretary for Administration.

Approved:

Guy W. Chamberlin, Jr.,
Deputy Assistant Secretary for Administration.

[FR Doc. 80-15239 Filed 5-16-80; 8:45 am]
BILLING CODE 3510-17-M

International Trade Administration

Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee will be held on Wednesday, June 4, 1980, at 9:30 a.m. in Room 1851, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Semiconductor Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Assistant Secretary for Industry and Trade established the Discrete Semiconductor Device Subcommittee on February 9, 1979, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductor products including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The discrete Semiconductor Device Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, P.L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Semiconductor Technical Advisory Committee and of any subcommittee thereof was published in the **Federal Register** on December 21, 1978 (43 FR 59536).

For further information contact Mrs. Margaret Cornejo, Room 1617M, Office of Export Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202–377–2583.

Dated: May 14, 1980.

Kent Knowles,

Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80–15306 filed 5–16–80; 8:45 am]

BILLING CODE 3510–25–M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 10(a)(2) (1976), notice is hereby given that a meeting of the Electronic Instrumentation Technical Advisory Committee will be held on Tuesday, June 3, 1980, at 9:30 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, October 21, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls.

The Committee meeting agenda has five parts:

General Session

(1) Opening remarks by the chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of ATE in the infrastructure of manufacturing.

(4) Technology in the ATE system.

Executive Session

(5) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

With respect to agenda item (5), the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical Advisory

Committee and of any subcommittees thereof was published in the **Federal Register** on December 27, 1978 (43 FR 60328).

Copies of the minutes of the open portions of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, International Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–2583.

For further information, contact Mrs. Cornejo, either in writing or by phone at the address or number shown above.

Dated: May 14, 1980.

Kent N. Knowles,

Director, Office of Export Administration, Department of Commerce.

[FR Doc. 80–15307 Filed 5–16–80; 8:45 am]

BILLING CODE 3510–24–M

Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee; Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee will be held on Wednesday, June 4, 1980, at 9:30 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Semiconductor Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Assistant Secretary for Industry and Trade established the Semiconductor Manufacturing Materials and Equipment Subcommittee on February 9, 1979, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductor products, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Semiconductor Manufacturing Materials and Equipment Subcommittee was formed to study the technical and strategic value of semiconductor device production equipment and materials for the purpose of maintaining a continuous review of the export control technical parameters, and the formulation of recommendations to the Commerce Department for parameter updating as appropriate for reasons of national security.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Semiconductor Technical Advisory Committee and of any subcommittee thereof was published in the **Federal Register** on December 21, 1978 (43 FR 59536).

For further information contact Mrs. Margaret Cornejo, Office of Export Administration, International Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, Phone (202) 377–2583.

Dated: May 14, 1980.

Kent Knowles,

Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80–15302 Filed 5–16–80; 8:45 am]

BILLING CODE 3510–25–M

Minority Business Development Agency

Financial Assistance Application Announcement

The Minority Business Development Agency (MBDA), formerly the Office of Minority Business Enterprise, announces that it is seeking applications under its program to operate one project for a 12 month period beginning July 1, 1980, within the Borough of Queens. The cost of the project is estimated to be $229,200 and the Project Number is 02–10–45323–00.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. This proposed project is specifically designed to provide business information, counseling, financial packaging assistance, and assistance in identifying and exploiting business opportunities and new and/or expanding markets.

Eligibility Requirements: There are no restrictions. Any for-profit or non-profit institution is eligible to submit an application.

Application Materials: An application kit for this project may be requested by writing to the following address: New York Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 26 Federal Plaza, Rm. 3707, New York, NY 10007.

In requesting an application kit, the applicant must specify its profit status (i.e., a State or local government, federally recognized Indian tribunal unit, educational institution, hospital, other type of non-profit organization, or if the applicant is a for-profit firm). This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked according to the capability of the staff assigned to the project, the management

capability of the applicant, the proposed program plan, the budget allocation plan, and the applicant's knowledge of the area to be served. Specific criteria will be included in the application kit.

Renewal Process: If an award is made, continuation awards for up to two additional years may be made to the successful recipient without competition, provided that funds have been appropriated for a project of this kind, and MBDA has determined that such funds are available, there is a continuing need for a project of this kind, and the recipient has performed satisfactorily.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of June 5, 1980. Detailed submission procedures are outlined in each application kit.

11.800 Minority Business Development.
(Catalog of Federal Domestic Assistance)

Dated: May 13, 1980.

Allan A. Stephenson,

Deputy Director.

[FR Doc. 80-15287 Filed 5-16-80; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Receipt of Petition for Amendment of Rule

Notice is given that on April 3, 1980, the National Oceanic and Atmospheric Administration (NOAA) received a petition, from the Edison Electric Institute, for the reconsideration of a petition, denied on December 6, 1979, for the amendment of a rule. Petitioner request that NOAA amend certain regulations pertinent to the implementation of Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)(3)(A)).

The cited section of the Act requires that any activity which requires a Federal license or permit and which affects land or water uses in the coastal zone of a State must be conducted in a manner consistent with the State's approved coastal management program. The pertinent regulations declare this consistency requirement to apply to any such activity for which an *initial* application for a Federal license or permit is made and, under certain circumstances, to any such activity for which a *renewal* application is made. With regard to a renewal application, Petitioner seeks to restrict the application of the consistency requirement to a renewal only if the "affected State demonstrates that changes in the construction or operation of this facility or activity will cause *new* land or water use coastal zone effects substantially different than those originally authorized" (emphasis supplied). The pertinent regulations appear in 15 CFR Part 930, Subpart D (44 FR 37150, June 25, 1979).

Pursuant to § 14.03 of NOAA Directive 21-24, the petition has been referred to the Assistant Administrator for Coastal Zone Management for consideration. Pursuant to § 14.06 of the Directive, the Assistant Administrator must notify the Petitioner of a decision to proceed or not to proceed with the amendment within 120 days of receipt of the petition.

Questions with regard to this notice may be asked of Ms. Jane Rogers, Acting Chief, Policy and External Relations, NOAA, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235 (202-634-4245).

Dated: May 9, 1980.

Michael Glazer,

Assistant Administrator for Coastal Zone Management.

[FR Doc. 80-15273 Filed 5-16-80; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1980 a commodity to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: May 19, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 15, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (45 FR 10394) of proposed addition to Procurement List 1980, Novembert 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodity is hereby added to Procurement List 1980: *Class 8315,* Buckle, Belt, Trousers, 8315-00-543-3724.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 80-15251 Filed 5-16-80; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Review Panel on ASW; Advisory Committee Meeting

An ASW Review Panel under the Defense Science Board will meet in closed session on 6 June 1980 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The ASW Review Panel will review the technical aspects of ASW programs in the 6 June meeting.

In accordance with 5 U.S.C. App 1 § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

May 13, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-15252 Filed 5-16-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Public Utility Regulatory Policies Act; Hearings

AGENCY: Department of Energy, Bonneville Power Administration.

ACTION: Notice of hearings respecting standards for utility practices.

SUMMARY: Bonneville Power Administration (Bonneville) will hold hearings on Wednesday, June 18, 1980, to consider and determine whether or not it is appropriate to implement standards for utility practices concerning master metering, automatic ajustment clauses, information to consumers, procedures for termination of electric service, and advertising, as provided by Section 113 of the Public Utility Regulatory Policies Act (PURPA, Pub. L. 95-617). Written data, views, and

comments on the standards are requested from any interested person.

DATES: Public hearings concerning the adoption of the utility practices will be held on Wednesday, June 18, 1980, in the Auditorium, Bonneville Power Administration headquarters building, 1002 NE. Holladay Street, Portland, Oregon, commencing at 9 a.m. and at 7 p.m.

SUPPLEMENTAL INFORMATION: The Public Utility Regulatory Policies Act (PURPA), Section 113, requires certain nonregulated electric utilities to consider certain specified standards for utility practices and to make a determination concerning whether or not it is appropriate to implement such standards for its practices. The consideration is required to be after a public hearing; the announced hearing is the public hearing for such purpose. Written and oral evidence will be accepted at the hearing. The determination concerning whether to implement standards must be based upon such evidence.

Bonneville already has considered ratemaking standards, as required by Section 111 of PURPA, and has adopted such standards as are appropriate for Bonneville.

SUBJECT OF HEARINGS: The Federal standards which must be considered and which define the scope of this hearing are specified by Section 113(b) of the Public Utility Regulatory Policies Act. Bonneville, after considering the evidence, may adopt or reject any one or more of the standards or may adopt any standard in part.

The electric consumers with which these standards are concerned include any person, State agency, or Federal agency to which electric power is sold by Bonneville.

The standards proposed by PURPA raise issues which are required to be considered and determined as a result of these hearings. The proposed standards generally provide that:

(1) *Master Metering*—Master metering of electric service in the case of new buildings shall be prohibited or restricted if

(a) there is more than one unit in the building,

(b) the occupant of each such unit has control over a portion of the electric energy used in such unit, and

(c) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

Master metering refers to, although is not defined as, the use of a single meter to measure electric energy consumed by a group of electricity customers. It is frequently found in apartment and office buildings. Bonneville does not directly serve any individual buildings.

(2) *Automatic Adjustment Clauses*—No electric utility may increase any rate pursuant to an automatic adjustment clause unless:

(a) such clause is determined to provide incentives for efficient use of resources (including incentives for economical purchases and use of fuel and electric energy) by such electric utilities. Such determination shall be made at least once every 4 years. And,

(b) such clause insures the maximum economy in those operations and purchases which affect the rates to which such clause applies. The clause will be reviewed at least once every 2 years.

The term "automatic adjustment clause" means a provision of a rate schedule which provides for increases or decreases, without prior hearing, in rates reflecting increases or decreases in costs incurred by an electric utility. The term does not include interim rates. Bonneville does not currently, nor does it plan to, have automatic adjustment clauses in its contracts.

(3) *Information to Consumers*—Each electric utility shall transmit to each of its electric consumers a clear and concise explanation of the existing rate schedule, and any rate schedule applied for, which is applicable to such consumer. Such statement shall be transmitted to each such consumer—

(a) not later than 60 days after the date of commencement of service to such consumer or 90 days after the standard is adopted with respect to such electric utility, whichever last occurs, and

(b) not later than 30 days after such utility's proposal for any change in a rate schedule applicable to such consumer.

Each electric utility shall transmit to each of its electric consumers not less frequently than once each year—

(a) a clear and concise summary of the existing rate schedules applicable to each of the major classes of its electric consumers for which there is a separate rate, and

(b) an identification of any classes whose rates are not summarized.

Each electric utility, on request of an electric consumer of such utility, shall transmit to that consumer a clear and concise statement of the actual consumption (or degree-day adjusted consumption) of electric energy by such consumer for each billing period during the prior year.

An electric utility means any person, State agency, or Federal agency which sells electric energy.

Electric consumer means any person, State agency, or Federal agency to which electric energy is sold other than for purposes of resale.

(4) *Procedures for Termination of Electric Service*—No electric utility may terminate electric service to any electric consumer unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination; and during any period when termination of service to an electric consumer would be especially dangerous to health and such consumer establishes that—

(a) it is unable to pay for such service in accordance with the requirements of the utility's billing, or

(b) it is able to pay for such service but only in installments,

such service may not be terminated. Electric consumer means any person, State agency, or Federal agency to which electric energy is sold other than for purposes of resale.

(5) *Advertising*—No electric utility may recover from any person other than shareholders or other owners of such utility any direct or indirect expenditure by such utility for promotional or political advertising.

Political advertising means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

Promotional advertising means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility, or the selection for installation of any appliance or equipment designed to use such utility's service.

PROCEDURE OF HEARING: All interested persons are invited to participate in this hearing. Persons desiring to appear and make statements shall present themselves, in person or by counsel, at the beginning of the hearing at 9 a.m. or 7 p.m. on June 18, 1980.

The hearing will be presided over by a hearing officer designated by the Bonneville Administrator. The hearing will be informal. Everyone who wishes to present his material, orally or in writing, will be permitted to do so. Those who make a presentation may be asked to clarify any part of that presentation upon inquiry by any other participant. Anyone wishing further information with respect to the

procedures may contact the Hearing Officer, Robert L. Jones, at the General Counsel's Office, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, or at telephone number (503) 234–3361, extension 4208. The Hearing Officer will determine the order in which statements shall be made. If a large number of persons ask to speak, the time allowed each speaker may be limited. This will not be a judicial or evidentiary type hearing. Questions may be asked only by or with the permission of the Hearing Officer; and there will be no cross-examination of the persons presenting statements. Rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any decision made by Bonneville with respect to the matters to be considered at the hearing will be based on the official record of the proceedings.

The Hearing Officer will disclose at the beginning of the hearing any additional rules necessary for insuring orderly procedure.

The hearing will be transcribed. Copies of the transcript may be ordered at the cost of reproduction from the Office of General Counsel, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, or directly from the reporter.

Interested persons have an additional 30 days from the date of the hearing to submit written comments.

All written material received by Bonneville before 4:30 p.m. on July 18, 1980, will be made part of the official record and will be considered by Bonneville.

The Bonneville Branch of Rates has prepared written statements concerning the PURPA standards. The statements include information and analysis of each standard to be considered. The statements are now available to the public; and they will be made part of the official record.

Copies of the staff statement will be available at the hearings and are now available by contacting Mrs. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, or from Bonneville's Area and District Offices, located as follows: Spokane Area Office, Room 561, U.S. Court House, Spokane, Washington 99201; Kalispell District Office, Box 758, Kalispell, Montana 59901; Wenatchee District Office, Room 314, U.S. Federal Building, 301 Yakima Street, P.O. Box 741, Wenatchee, Washington 98801; Portland Area Office, 1500 NE. Irving Street, Room 288, P.O. Box 3621, Portland, Oregon 97208; Eugene District Office, U.S. Federal Building, Room 206, 211 East 7th Street, Eugene, Oregon 97401; Seattle Area Office, 415 First Avenue North, Room 250, Seattle, Washington 98109; Walla Walla Area Office, West 101 Popular, P.O. Box 1518, Walla Walla, Washington 99362; Idaho Falls District Office, 531 Lomax Street, P.O. Box 2558, Idaho Falls, Idaho 83401.

The official record of the proceedings will consist of the verbatim transcript of the hearings and copies of all written material submitted within the time set forth above. The summary of the record will be prepared by the Hearing Officer and will be transmitted to the Bonneville Administrator along with the complete official record. The record will be used by the Administrator in making the determinations required by Section 113 of PURPA.

Individual copies of the record will be available to the public at cost of reproduction. Copies will be also be kept on file for public inspection at the Office of the Public Involvement Coordinator, Bonneville Power Administration Building, 1002 NE. Holladay Street, Portalnd, Oregon.

WRITTEN COMMENTS: Written comments will be accepted before the hearing and until 4:30 p.m., July 18, 1980, and may be delivered or mailed to Mrs. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

CONSUMER REPRESENTATION: Any person may appear at this hearing either in person or by an attorney or both.

As provided by Section 122 of PURPA, if no alternative means for assuring representation of electric consumers is provided, and if an electric consumer of Bonneville substantially contributes to the approval, in whole or in part, of a position advocated by such consumer at these hearings and relating to any of the subjects of this hearing, Bonneville will compensate such consumer for reasonable attorney fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in this hearing.

A notice of intention to claim such fees and costs shall be presented in writing before the close of the oral hearing. Those electric consumers of Bonneville who are found to be entitled to such fees and costs under Section 122(a) of PURPA will be so notified and required thereafter to file a written claim. The written claim shall be on oath and shall state (1) the names and addresses of the consumer and of his attorney, (2) a recitation of the entire fee contract made between the consumer and his attorney and witness, (3) a detailed statement of the time and charges of the attorney or witness or both for which reimbursement is sought, (4) an itemization of any other costs for which reimbursement is sought, and (5) information as to the financial situation of the consumer.

The determination as to what, if any, attorney fees, witness fees, and costs will be reimbursed by Bonneville will be included in the final order or determination in these proceedings. Payment to be made will be processed in due course thereafter and mailed to the consumer, or his attorney, or both.

FURNISHING INFORMATION: Bonneville will furnish information on the PURPA standards in accordance with the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; (503) 234–3361, extension 4261. Toll-free number for Oregon callers 800–452–8429; for callers from Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California 800–547–6048.

Dated: May 9, 1980.

H. J. Durocher,

Acting Administrator.

[FR Doc. 80-15200 Filed 5-16-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Niagara Mohawk Power Corp.; Powerplant and Industrial Fuel Gas Act of 1978 Withdrawal of Acceptance of Petition for Exemptions; Withdrawal of Order Improvidently Issued

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice (1) that it has withdrawn its acceptance of a petition filed by Niagara Mohawk Power Corporation (Niagara) for special temporary public interest exemptions, pursuant to Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* and 10 CFR Part 508, and (2) that it has withdrawn an order improvidently issued February 27, 1980, and published in the **Federal Register**, March 10, 1980 (45 FR 15253), to Delmarva Power and Light Company (Delmarva) pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR 508.

(1) The petition filed by Niagara for which ERA has withdrawn acceptance sought exemptions from the natural gas use prohibitions of Sections 301(a) (2) and (3) of the Act for the following units:

Docket No.	Petitioner	Generating station	Unit identification
52053-2539-01-41	Niagara Mohawk Power Corp	Albany Steam (Bethlehem, N.Y.)	No. 1.
52053-2539-02-41			No. 2.
52053-2539-03-41			No. 3.
52053-2539-04-41			No. 4.

(2) The order improvidently issued to Delmarva, which ERA has withdrawn, purported to grant exemptions from the natural gas use prohibitions of Sections 301(a) (2) and (3) of the Act to the following units:

Docket No.	Petitioner	Generating station	Unit identification
5769-0593-01-41	Delmarva Power and Light Co.	Edge Moor (Wilmington, Del.)	No. 1.
5769-0593-03-41			No. 3.
5769-0593-04-41			No. 4.

Both petitioners, Niagara and Delmarva, have been sent letters by certifiied mail informing them of the withdrawals.

SUPPLEMENTARY INFORMATION: (1) ERA published a notice of acceptance of Niagara's petition for special temporary public interest exemptions for the units listed in item (1), above, on March 21, 1980 (45 FR 18523). Niagara had filed for these exemptions pursuant to 10 CFR 508.

(2) ERA improvidently issued the order which purported to grant special temporary public interest exemptions to the units listed in item (2), above, on February 27, 1980, which was published in the **Federal Register**, March 10, 1980 (45 FR 15253).

Section 702(b) of the Fuel Use Act indicates that the provisions of Title III of FUA shall not apply to powerplants for which an order issued pursuant to Section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), before the effective date of the Fuel Use Act, was pending on that date (May 8, 1979). Each of the above listed Niagara and Delmarva units were issued orders under the authority of Section 2(a) of ESECA. Since these units are not subject to the prohibitions of Sections 301(a)(2) and (3), of Title III of the Fuel Use Act, ERA has withdrawn its acceptance of the Niagara petition and the order issued improvidently to Delmarva.

Any questions regarding this action should be directed to Mr. James W. Workman, Acting Director, Existing Facilities Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, NW., Washington, D. C. 20461, (202) 653-3637.

Issued in Washington, D. C. on May 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-15255 Filed 5-16-80; 8:45 am]

BILLING CODE 6450-01-M

Refiners Crude Oil Allocation Program; First Supplemental Notice for Allocation Period of April 1, 1980, Through September 30, 1980 and Issuance of Emergency Allocations for March, April, May and June 1980

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, 1980, through September 30, 1980, was issued March 21, 1980 (45 FR 21010, March 31, 1980). The ERA hereby issues a first supplemental buy/sell list for the allocation period of April 1, 1980, through September 30, 1980, which sets forth new emergency allocations for the months of March, April, May, and June 1980, 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, 1980, through September 30, 1980, is set forth as an appendix to this notice. The list includes the names of the small refiners granted emergency allocations for the months of March, April, May, and June 1980, and their eligible refineries; the quantity of crude oil each refiner is eligible to purchase; the fixed percentage share for each refiner-seller; and the additional sales obligation of each refiner-seller, which reflects each refiner-seller's sales obligation for the emergency allocations listed herein.

The allocations for the small refiners on the supplemental buy/sell list were 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-seller 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 211.65(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 June 9, 1980. 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 § 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 ERA:

(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 he 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.

Note the change of address. All reports and applications made under this notice should be addressed to: Chief, Crude Oil Allocation Branch, 2000 M Street, N.W., Room 6128, Washington, D.C. 20461. TWX's may be sent to 710–822–9454 (answerback EVFTJ WSH).

Also note that the phone number for the Crude Oil Allocation Branch has been changed to 202–653–3459.

Section 211.65(c)(2)(ii), as amended on March 27, 1980, (45 FR 21196, March 31, 1980), states in part that applications for emergency allocations "must be submitted by the first day of the month prior to the month(s) for which an allocation is sought but not before the 20th day of the second month prior to the month(s) for which an allocation is sought." This provision is intended to permit ERA to receive applications and issue emergency allocations in a timely fashion.

Section 211.65(c)(2)(ii)(B), as amended, requires all applicants for emergency allocations to serve copies of their applications on refiner-sellers. Comments regarding an application will be accepted if received within eight days of receipt of the application. Applicants are required to mail copies of their application (and any amendments thereto) to refiner-sellers on the same date the application is mailed or delivered to ERA. Refiner-sellers must mail their comments on the applications to the Crude Oil Allocation Branch within eight days of the refiner-sellers' receipt of the application. The name and address of the contact for each refiner-seller is included in the appendix to this notice.

As has been stated in previous notices, if an applicant claims confidentiality for any of the information contained in its application, *the basis for the claim must be clearly stated.* ERA does not consider the names of potential suppliers contacted in unsuccessful attempts to obtain crude oil or offers of crude oil that the applicant has rejected to be proprietary.

Finally, ERA emphasizes that an application for an emergency allocation *must contain a detailed statement* as to why the applicant believes it has exhausted *all* supply possibilities, as required in § 211.65(c)(2)(ii)(D)(7). *Applications which fail to make this statement will be dismissed with prejudice.*

Copies of the decisions and orders assigning the emergency allocations listed herein may be obtained from: Economic Regulatory Administration, Public Information Office, 2000 M Street, NW., Rm. B110, Washington, D.C. 20461, (202) 634–2170.

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 June 18, 1980.

Issued in Washington, D.C., on May 13, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Appendix

The Buy/Sell list for the period April 1, 1980, through September 30, 1980, is hereby amended to reflect new and amended emergency allocations, allocations made pursuant to recent decisions of the Office of Hearings and Appeals, and an amendment to a regular allocation. The amended list sets forth the name of each refiner-seller and the additional volumes of crude oil that each such refiner-seller is required to offer for sale to small refiners.

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 FEX–0185 and FEX–0184). While the refiner-sellers' percentage shares displayed are rounded to three decimal places, six decimal places have been utilized to establish actual sales obligations.

Also included in the appendix is a list of the names and addresses of the persons designated by refiner-sellers to receive service of copies of applications for emergency crude oil allocations.

Crude Oil Allocation (Buy/Sell) Program Sales Obligations, April 1, 1980–September 30, 1980

Refiner-seller	Share	Additional sales obligation (Bbls) [1]	Total sales obligations (Bbls)
Amoco Oil Co.	.105	23,373	2,552,590
Atlantic Richfield Co.	.077	17,164	3,008,026
Chevron U.S.A., Inc.	.101	22,664	1,906,715
Cities Service Co.	.025	5,489	1,309,219
Continental Oil Co.	.004	893	155,538
Exxon Co., U.S.A.	.089	19,860	2,144,841
Getty Refining & Marketing Co.	.021	4,734	499,746
Gulf Refining & Marketing Co.	.091	20,331	2,723,418
Marathon Oil Co.	.022	5,100	537,286
Mobil Oil Corp.	.094	20,995	2,597,976
Phillips Petroleum Co.	.041	9,233	1,086,441
Shell Oil Co.	.113	25,353	3,431,406
Sun Co.	.055	12,384	1,959,401
Texaco Inc.	.114	25,374	2,540,248
Union Oil Co. of California	.046	10,200	2,324,294
Total sales obligations		223,147	28,777,135

[1] On September 13, 1979, OHA issued a Decision and Order (applications for temporary exception and for stay; case numbers DEL–8020 and DES–8020) in which six refiner-sellers were directed to sell crude oil to Commonwealth Oil Refining Co., Inc. (Corco) in late 1979. The refiner-sellers will receive credit for half their sales to Corco during the April–September 1980 allocation period. In the Buy/Sell list issued on March 21, 1980, it was noted that the six refiner-sellers had sold 3,668,026 bbls, resulting in total additional sales obligations for all refiner-sellers and credits for the six refiner-sellers of half that volume, or 1,834,013 bbls. The total sales obligation listed in this supplemental notice has been increased by half of additional sales made by Shell Oil Company but not previously reported to ERA. Shell made additional sales to Corco of 231,000 bbls, with a total additional sales obligation and credit against sales obligation of half that volume, or 115,500 bbls. The total additional sales obligation is, therefore, the sum of half of Shell's additional sales to Corco (115,500 barrels) plus additional allocations and adjustments (107,647 barrels), which are described below, or 223,147 barrels.

Office of Hearings and Appeals (OHA) Decisions

On March 17, 1980, OHA issued a Decision and Order (Case No. DMR–0054) to Sigmor Refining Company, directing Cities Service Company to make available to Sigmor 289,600 barrels of crude oil under the Buy/Sell Program within sixty days for Sigmor's Three Rivers, Texas, refinery.

On March 24, 1980, OHA issued a Decision and Order (Case Nos. BEA–0194; BES–0194; BST–0194; BEL–0962) to Industrial Fuel and Asphalt of Indiana (IFAI), in which OHA directed ERA to issue an emergency allocation to IFAI's Hammond, Indiana, refinery for 1,300 B/

D during the period March 1, 1980, through June 30, 1980. ERA issued such an Order on March 31, 1980.

Amended Regular Buy/Sell Allocation

On April 29, 1980, ERA issued a Decision and Order to Pride Refining, increasing Pride's April–September 1980 regular Buy/Sell allocation for its Abilene, Texas, refinery by 212,194 barrels, from 346,287 barrels to 558,481 barrels. The adjustment to Pride's allocation was made to account for a reduction in crude oil runs to stills due to unusual or nonrecurring operating conditions.

Amended Emergency Buy/Sell Allocations

On March 19, 1980, ERA issued an Amended Decision and Order to Allied Materials Corporation, in which ERA determined that Allied's Stroud, Oklahoma, refinery was eligible for an emergency allocation of 95,903 barrels for the month of February 1980 by reason of Allied's loss of at least 25 percent of its runs to stills.

On April 9, 1980, ERA issued an Amended Decision and Order to Hunt Oil Company, reducing Hunt's April 1980 emergency allocation for its Tuscaloosa, Alabama, refinery by 244,110 barrels, from 269,190 barrels to 25,080 barrels to reflect the regular Buy/Sell allocation issued to Hunt for the April–September 1980 period.

On April 23, 1980, ERA issued an Amended Decision and Order to OKC Corporation, reducing OKC's April 1980 emergency allocation for its Okmulgee, Oklahoma, refinery by 30,150 barrels, from 30,150 barrels to zero barrels, to reflect the regular Buy/Sell allocation issued to OKC for the April–September 1980 period.

On April 29, 1980, ERA issued an Amended Decision and Order to Energy Cooperative Inc. (ECI), reducing ECI's April 1980 emergency allocation for its East Chicago, Indiana, refinery by 417,090 barrels, from 2,008,800 barrels to 1,591,710 barrels. The amendment was issued to account for an increase in ECI's projected crude oil supply for April.

New Emergency Buy/Sell Allocation

On April 30, 1980, ERA issued a Decision and Order to Caribou Four Corners, Inc., granting Caribou's Woods Cross, Utah, refinery emergency allocations of crude oil of 21,000 barrels for April 1980 and 21,700 barrels for May 1980.

Additional Allocations and Adjustments for the April 1, 1980–September 30, 1980, Allocation Period

Refiner-buyer	Refinery	Volume (barrels)
Allied Materials	Stroud, OK	95,903
Caribou Four Corners	Woods Cross, UT.	42,700
Commonwealth Oil	Ponce, P.R	115,500
Energy Coop	E. Chicago, IN.	(417,090)
Hunt Oil	Tuscaloosa, AL.	(244,110)
Industrial Fuel and Asphalt	Kalamazoo, MI.	158,600
OKC Corp	Okmulgee, OK.	(30,150)
Pride Ref., Inc	Abilene, TX	212,194
Sigmor Ref. Co	Three Rivers, TX.	289,600
Total		223,147

Contact List for Refiner-Sellers

Matthew J. Gallo, Esq., Amoco Oil Co., 200 E. Randolph Drive, P.O. Box 5910–A, Chicago, IL 60680.

J. J. Hur, Atlantic Richfield Co., 515 South Flower St., P.O. Box 2679TA, Los Angeles, CA 90071.

Frank W. Bradley, Chevron U.S.A., Inc., 1700 K Street NW., Suite 1204, Washington, DC 20006.

W. C. McCollough, Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102.

Mike McNeese, Conoco, P.O. Box 2197, Houston, TX 77001.

Barbara Finney, Exxon, U.S.A., P.O. Box 2180, Houston, TX 77001.

Eugene F. Gervino, Esq., Getty Refining & Marketing Co., P.O. Box 1650, Tulsa, OK 74102.

L. G. Armel, Gulf Oil Corp., Gulf Bldg., P.O. Box 2001, Houston, TX 77001.

Victor Beghini, Vice President, Marathon Oil Company, 539 South Main Street, Findlay, OH 45840.

W. L. Fanning, Jr., Mobil Oil Corp., 150 East 42d St., New York, NY 10017.

A. L. Hobbs, Phillips Petroleum Co., Phillips Bldg., Bartlesville, OK 74004.

G. E. Carnahan, Shell Oil Co., P.O. Box 2463, Houston, TX 77001.

C. Steven LeBaron, Esq., Sun Petroleum Products Company, 9th Floor, Law Department, 1608 Walnut St., Philadelphia, PA 19103.

Paul D. McNaughton, Texaco, Inc., P.O. Box 52332, Houston, TX 77052.

Howard Johnson, Texaco, Inc., c/o Legal Department, 2000 Westchester Ave., White Plains, NY 10650.

Gus Williams, Union Oil Company of California, 1650 East Golf Road, Schaumburg, IL 60196.

[FR Doc. 80–15256 Filed 5–16–80; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Advisory Committee on Revision of Rules of Practice and Procedures, Subcommittee on Review of Commission Decisional Process; Meeting

May 13, 1980.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given that the Subcommitee on Review of the Commission Decisional Process of the Advisory Committee on Revision of Rules of Practice and Procedure will meet Wednesday, June 4, 1980, from 2:00 p.m. to 5:00 p.m., at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 9306, Washington, D.C.

The purpose of the meeting is to continue discussions of the Subcommittee's work on the procedures for obtaining certificates under the Natural Gas Act.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–15216 Filed 5–16–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ER80–375]

Arizona Public Service Co.; Filing

May 13, 1980.

The filing Company submits the following:

Take notice that Arizona Public Service Company on May 9, 1980, tendered for filing as an initial rate schedule a Firm Transmission Service Agreement between the Department of Water and Power of the City of Los Angeles (Los Angeles) and Arizona Public Service Company (Company) dated March 20, 1980.

Los Angeles requests waiver under the provisions of Section 35.11 so that service could be commenced on March 21, 1980.

A copy of this filing was served upon the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington,

DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 6, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-15219 Filed 5-16-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER78-414]

Delmarva Power & Light Co.; Compliance Filing

May 13, 1980.

The filing Company submits the following:

Take notice that on May 7, 1980, Delmarva Power and Light Company (Delmarva) submitted for filing a Report of Compliance pursuant to the Commission's letter order of March 24, 1980 in the above-referenced proceeding.

Copies of this filing have been sent to the Mayor and Council of Middletown, Delaware Public Service Commission.

Any person to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before June 6, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-15220 Filed 5-16-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-380]

Utah Power & Light Co.; Tariff Change

May 13, 1980.

Take notice that Utah Power & Light Company (Utah Power) on May 9, 1980, tendered for filing proposed changes in its FERC Electric Tariff, Volume No. 1, together with the Electric Service Agreement to serve a number of municipal and cooperative customers, through their agent, Deseret Generation & Transmission Co-Operative (Deseret).

Most of these customers have for some time been purchasing power and energy requirements in excess of their own resources (principally from the U.S. Bureau of Reclamation—CRSP) from Utah Power, through Intermountain Consumers Power Association (ICPA). Two customers previously served directly by Utah Power are included in the proposed new Service Agreement (Murray City, Utah and Moon Lake Electric Association).

This new arrangement is the result of a pending agreement under which Deseret will purchase an undivided 49% interest in Utah Power's Hunter II Generating Unit for approximately $115,000,000. The unit, located in Emery County, Utah, will have a capacity of 400 Megawatts. It is scheduled to go in commerical operation on June 1, 1980, and it is proposed that the Service Agreement be accepted for filing by the Commission as of that same date. The Service Agreement will remain in effect until March 25, 1985. On or before that date the Moon Lake Plant is expected to go into commercial operation, making the member customers self-sufficient in generating capacity, and they would cease to be customers of Utah Power as of March 25, 1985.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8, 1.10) of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 6, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-15221 Filed 5-16-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-379]

Utah Power & Light Co.; Rate Filings

May 13, 1980.

Take notice that Utah Power & Light Company (Utah Power), on May 9, 1980, tendered for filing two new rates for sales and wheeling services to a number of municipal and cooperative customers, through their agent, Deseret Generation & Transmission Co-Operative (Deseret).

These new filings result from pending agreement under which Deseret will purchase an undivided 49% interest in Utah Power's Hunter II Generating Unit for approximately $115,000,000. The unit, located in Emery County, Utah, will have a capacity of 400 Megawatts. It is scheduled to go in commercial operation on June 1, 1980, and it is proposed that the new rates be accepted for filing by the Commission as of that same date. The two rates cover:

1. Wheeling services from Hunter II unit to Deseret's customers.

2. Replacement power and energy to be supplied by Utah Power on a non-firm basis when the Hunter II unit is out of service.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 6, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-15222 Filed 5-16-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements Under Additional Agreements Between Government of the United States of America and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangements to be carried out under the above mentioned

agreement involve approval of the following sales:

S–EU–643, United States to United Kingdom, 1 gram of Uranium 238, containing 2.4 parts per million U–235, to be used as standards for mass spectrographic measurements for isotopic mass and cross section measurements.

S–EU–644, United States to United Kingdom, 10 grams of Uranium 238, containing less than 10 parts per million U–235, to be used as standards for mass spectrographic measurements for isotopic mass and cross section measurements.

S–EU–645, United States to United Kingdom, 1.25 grams of Plutonium, enriched to greater than 90% in Pu–242, to be used for measurement of tritium fission yields in both fast and thermal reactors, and for dilution mass spectrometric measurements.

S–EU–646, United States to United Kingdom, 10 grams of uranium, enriched to greater than 99.9% U–235, to be used as standards for mass spectrometric measurements for isotopic mass and cross section measurements.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than June 3, 1980.

Dated: May 13, 1980.

For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80–15257 Filed 5–16–80; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of April 4 Through April 11, 1980

Notice is hereby given that during the week of April 4, 1980 through April 11, 1980 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

May 8, 1980.

List of Cases Received by the Office of Hearings and Appeals

[Week of Apr. 4 through 11, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 4, 1980	Exxon Co., U.S.A., Houston, Tex	BEX–0039	Supplemental order. If granted: The February 15, 1980 Interim Decision and Order issued to Petroleum Products Corporation would be modified with respect to Exxon Company, U.S.A.'s supply obligations to the firm.
Apr. 4, 1980	Gas del Oro, Inc., *et. al., Washington, D.C.*	EJ–0078	Motion for protective order. If granted: Gas del Oro, Inc. would enter into a protective order with Coastal Corporation and Valero Energy Corporation regarding the release of proprietary information to Gas del Oro, Inc. in connection with Coastal Corporation's Application for Exception (Case No. DEE–1479).
Apr. 4, 1980	Goodwin, Procter, & Hoar, Boston, Mass	BFA–0313	Appeal of information request denial. If granted: The March 4, 1980 Information Request Denial issued by the Northeast Deputy District Manager, Office of Enforcement, would be rescinded, and Goodwin, Procter, & Hoar would receive access to certain DOE information.
Apr. 4, 1980	Missouri Terminal Oil Co., Wahsingotn, D.C	BED–0013	Motion for discovery. If granted: Discovery would be granted to Missouri Terminal Oil Company in connection with the Statement of Objections submitted by the firm in response to the December 14, 1979 Proposed Decision and Order (Case No. BEE–0013) issued to Onyx Corporation by the Office of Hearings and Appeals.
Apr. 4, 1980	Plateau, Inc., Washington, D.C	BEE–1049	Exception from the entitlements program. If granted: Plateau, Inc. would receive an exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements purchase obligations.
Apr. 4, 1980	Southern Natural Resources, Inc., Houston, Tex	BEE–1045; BEL–0046.	Exception from the reporting requirements; temporary exception. If granted: Southern Natural Resources, Inc. would not be required to file Form ERA–69 ("Crude Oil Reseller's Self-Reporting Form").
Apr. 4, 1980	Van Wert Manufacturing Co., Inc., Peckville, Pa	BEE–1051	Exception from the Energy Conservation Program for Consumer Products. If granted: Van Wert Manufacturing Co., Inc. would not be required to perform energy efficiency tests of its combination fuel boilers as required under 10 C.F.R. Part 430.
Apr. 7, 1980	Exxon Co., U.S.A., Washington, D.C	BEA–0315	Appeal of redirection order. If granted: The March 4, 1980 Redirection Order issued to Exxon Company, U.S.A. by the Economic Regulatory Administration, Region IV, regarding the firm's supply obligations to Major Oil Company of Georgia would be rescinded.
Apr. 7, 1980	Gulf Oil Corp., Houston, Tex	BEA–0316	Appeal of designation order. If granted: The February 27, 1980 Order issued to Arizona Chemical Company by the Economic Regulatory Administration designating Arizona Chemical Company as a producer of a petroleum substitute and assigning entitlements benefits to the firm would be rescinded.
Apr. 7, 1980	John R. Morris, Richland, Wash.	BFA–0314	Appeal of information request denial. If granted: The March 14, 1980 Information Request Denial issued by the Richland Operations Office would be rescinded, and John R. Morris would receive access to certain DOE information.
Apr. 7, 1980	Sun Oil Co. of Pennsylvania, Washington, D.C	BEL–0047	Temporary price exception. If granted: Sun Oil Company of Pennsylvania would receive a temporary exception from the provisions of 10 C.F.R. § 212.83 which would permit the firm to pass through incremental expenses relating to the blending, storage, distribution and marketing of gasohol.
Apr. 8, 1980	Aztex Energy Co., Washington, D.C	BES–0065	Request for stay. If granted: Aztex Energy Company would receive a stay of the March 21, 1980 Temporary Assignment Order issued to Murphy Oil Corporation and Cities Service Company by the Economic Regulatory Administration, Region IV, regarding the firms' supply obligations to Sexton Oil Company, pending a final determination on the Appeal which the firm intends to file.
Apr. 8, 1980	Marathon Oil Co., Washington, D.C	BST–0299	Request for temporary stay. If granted: Marathon Oil Company would receive a temporary stay of the February 19, 1980 Assignment Order issued by the Economic Regulatory Administration, Region IV, regarding the firm's supply obligations to Publix Oil Company, pending a final determination on its Appeal. (Case No. BEA–0299).
Apr. 8, 1980	Ron Clancy's Inc., Brookline, Mass	BEE–1059	Allocation exception. If granted: Ron Clancy's, Inc. would receive an exception from the provisions of 10 C.F.R. § 211 which would permit the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Apr. 4 through 11, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 8, 1980	Sun Oil Co. of Pennsylvania, Washington, D.C.	BED-0080; DEJ-0080.	Motion for discovery and protective order. If granted: discovery would be granted to Sun Oil Company of Pennsylvania in connection with the Statement of Objections submitted in response to the January 16, 1980 Proposed Decision & Order (Case No. DEE-7203) issued to American Motohol supply Corporation. Sun Oil Company would enter into a protective order with American Motohol Supply Corporation regarding the release to Sun Oil Company of proprietary information relating to American Motohol Supply Corporation's Application for Exception.
Apr. 9, 1980	Casson, Callegro & Mutryn, Washington, D.C.	BFA-0318	Appeal of information request denial. If granted: The April 9, 1980 Information Request Denial issued by the Office of Enforcement would be rescinded, and Casson, Callegro & Mutryn would receive access to certain DOE information.
Apr. 9, 1980	Cities Service Co., Washington, D.C.	DEA-0317	Appeal of buy/sell order. If granted: The February 5, 1980 Buy/Sell Order issued to Commonwealth Oil Refining Company by the Economic Regulatory Administration granting the firm an emergency allocation of crude oil would be rescinded.
Apr. 9, 1980	Elm City Filling Stations, Inc., New Haven, Conn	BEE-1060; BEL-1060.	Allocation exception; temporary exception. If granted: Elm City Filling Stations, Inc. would receive and exception from the provisions of 10 C.F.R. § 211 which would permit the firm to receive an increased allocation of unleaded gasoline for the purpose of blending gasohol.
Apr. 9, 1980	Exxon Co., U.S.A., Washington, D.C	BEA-0319	Appeal of assignment order. If granted: The March 10, 1980 Assignment Order issued to Exxon Company, U.S.A. by the Economic Regulatory Administration, Region III, regarding Exxon's supply obligations to Petroleum Products Corporation, would be rescinded.
Apr. 9, 1980	Marathon Oil Co./Edgington Oil Co., Findlay, Ohio	BEJ-0079	Motion for protective order. If granted: Edgington Oil Company and Marathon Oil Company would enter into a Protective Order regarding the release of proprietary information in connection with Edgington Oil Company's Application for Exception (Case No. BEE-0832).
Apr. 9, 1980	Welsch Oil & LP Gas, Inc., Bellevue, Iowa	BEE-1057	Allocation exception. If granted: Welsch Oil & LP Gas, Inc. would receive an exception from the provisions of 10 C.F.R. § 211 which would permit the firm to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol.
Apr. 10, 1980	Charter Oil Co., Jacksonville, Fla.	BEE-1062	Price exception. If granted: Charter Oil Company would receive an exception from the provisions of 10 C.F.R. § 212.83 which would permit the firm to pass through incremental expenses relating to the blending, storage, distribution and marketing of gasohol.
Apr. 10, 1980	Getty Refining & Marketing Co., Tulsa, Okla.	BEN-0022	Request for interim order. If granted: Getty Refining and Marketing Company would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. DEE-2098).
Apr. 10, 1980	Little America Refining Co., Washington, D.C.	BEE-1064	Allocation exception. If granted: Little America Refining Company would receive an exception from the provisions of 10 C.F.R. § 211.67 which would modify its entitlements purchase obligations.
Apr. 11, 1980	Shepherd Oil, Inc., Washington, D.C.	BEE-1065; BEL-1065.	Price exception and temporary exception. If granted: Shepherd Oil, Inc. would receive an exception and temporary exception from the provisions of 10 C.F.R. §§ 212.94 and 211.65 which would modify the price of crude oil allocated to the firm under the Buy/Sell Program.
Apr. 11, 1980	Yukon Industries, St. Paul, Minn	BEE-1066	Exception from the energy conservation program for consumer products. If granted: Yukon Industries would not be required to perform energy efficiency tests of its multi-fuel furnaces as required under 10 C.F.R., Part 430.

List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline

Week of April 4, 1980 to April 11, 1980

If Granted: The following firms would receive an increase in their base period allocation of motor gasoline.

Name, Case No., and State

April 7, 1980

Bartlett Auto, Inc., BEE–1046 New Hampshire.

April 8, 1980

DeLuca Importing, Co., BEE–1056 Nevada.
Denny's Marine, Inc., BEE–1055 Wisconsin.

April 7, 1980

Department of the Army, Fort Rucker, AL, BEE–1061 Alabama.
Devosts Marina, BEE–1047 New Hampshire.
Gasamat Oil Corp. of Colorado, BEE–1048 Colorado.

April 9, 1980

Highway 269 Kwik Stop, BEE–1053 Alabama.

April 20, 1980

Service Oil Company, BEE–1063 North Carolina.

April 9, 1980

Small, Charles S., BEE–1058 Maryland.

April 4, 1980

Summitt Associates, Ltd., BEE–1050 Florida.
Whistle Stop, BEE–1040 Maryland.

Notices of Objection Received

Week of April 4, 1980 to April 11, 1980

Name and location of applicant, Case No.

April 7, 1980

Champion Oil Company, Washington, D.C., BEE–0619.
Connecticut General Life, Hartford, Connecticut, DEE–7599.

April 8, 1980

Frankfort Fuels, Inc., Frankfort, Illinois, DEE–8306.

April 9, 1980

Grundset, Kenneth W., Brooksville, Florida, BEO–1159.

April 4, 1980

Hartley Company, Cambridge, Ohio, BEE–0417.
Navajo Refining Company, Dallas, Texas, BXE–0811.
North Side Services, Washington, D.C., DEE–7601.

April 8, 1980

Red Rock Petroleum Company, Washington, D.C., BEE–0337.

[FR Doc. 80–15258 Filed 5–16–80; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51056, FRL 1485–6]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 80–13883 appearing on page 30127 in the issue of Wednesday, May 7, 1980, make the following correction:

On page 30129, the fifth line from the top of the third column, change "*PMN 80–76*" to read "*PMN 80–77*".

BILLING CODE 1505–01–M

[FRL 1495–4]

Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction of April 17, 1980, Federal Register notice.

SUMMARY: The following Characterization Report supporting the Administrator's decision denying Beker Industries, Inc.'s request for a waiver for crude methanol pursuant to section 211(f) of the Clean Air Act (Act), as amended, 42 U.S.C. 7545(f) was inadvertently omitted when the Administrator's decision was published in the **Federal Register** (45 FR 26122, April 17, 1980).

FOR FURTHER INFORMATION CONTACT: Thomas E. Moore, Attorney/Advisor, Field Operations and Support Division (EN–397), Environmental Protection Agency, 401 M Streeet, SW., Washington, DC 20460, (202) 472–9367.

Dated: May 9, 1980.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

CHARACTERIZATION REPORT

Executive Summary

This paper presents a summarization and analysis of the data relevant to the request from Beker Industries Corp. for a waiver of the limitation and prohibition from use of crude methanol (by weight, 75% methanol (methyl alcohol), 5.0% ethanhol, 7.5 n-proponal, and 12.5% i-butanol) in a 0–15% concentration (by volume) in unleaded fuel. Note that crude methanol is not identical to methyl (wood) alcohol, although it is a major constituent, but also contains additional alcohols, as specified. Included in this report are a description of the sources of the data, the analysis of the data, and conclusions. No specific testing information was available for crude methanol and therefore no statistical analysis was possible. Information on blends of gasoline and methanol suggests that evaporative emissions, materials compatibility, and driveability problems can be expected. Our analysis shows that Beker has not demonstrated that use of crude methanol will not cause or contribute to a failure of any emission control device or system to meet emission standards.

Sources of Data

Data were received from Beker Industries, Ford Motor Company, Chrysler Corporation, General Motors Corporation, and American Motors Corporation. The Agency assembled additional information that was available.

1. Beker Industries

The applicant submitted data from two Department of Energy Reports, "Status of Alcohol Fuels Utilization Technology for Highway Transportation," (1), and "Methanol Fuel Modification for Highway Vehicle Use." (2) (Numbers in parentheses refer to references listed at the end of this report.) The data were as follows:

(a) Average Federal Test Procedure (FTP) exhaust emission test results for two 1974 model year vehicles and eight 1975 vehicles operating on gasoline, 5% methanol/gasoline, and 10% methanol/gasoline. (1)

(b) Grams per test results of a 1.5 liter engine dynamometer simulation of the European cycle for gasoline, 15% methanol/gasoline, and 100% methanol. (1) These data are not suitable for comparison with FTP data.

(c) Data derived from the operation of a dynamometer mounted 151 CID Pontiac engine on 20% methanol-Indolene and Indolene. These data also are not suitable for comparison with FTP data. (1)

(d) Water tolerance data for methanol/gasoline and methanol/higher alcohols/gasoline mixtures. (2)

(e) Data pertinent to vapor-lock for methanol/gasoline and methanol/higher alcohols/gasoline mixtures. (2)

(f) Data on driveability with methanol/gasoline. (2)

(g) Data on materials compatibility with methanol/higher alcohols/gasoline mixtures. (2)

(h) Statement on Toxicity. (2)

(i) Statements on evaporative emissions with respect to charcoal canisters and vapor recovery distribution systems. (2)

2. Ford Motor Co.

The Ford Motor Company submitted two papers detailing work done with 20% methanol/gasoline, neat (100%) methanol, 20% methanol/gasoline with higher alcohols comprising a portion of the 20%, and a dual-fuel configuration. (3)(4) Only the methanol/gasoline data were applicable and included the following:

(a) Exhaust emission data.
(b) Fuel economy data.
(c) Motor oil economy data and used oil analyses.
(d) Driveability data.
(e) Vapor-lock data.
(f) Engine deposits and wear data.
(g) Materials compatibility data.
(h) Phase stability data.

3. Chrysler Corp.

The Chrysler Corporation submitted the following:

(a) A list of problems that can be expected to occur from the use of methanol/gasoline as an automotive fuel.

(b) A phase diagram showing the phase separation of methanol/gasoline with respect to water.

(c) Data on the rate of swell for carburetor elastomers in methanol/gasoline.

(d) Corrosion information.

(e) Statements on evaporative emissions, driveability, and vapor-lock potential.

4. General Motors Corporation

General Motors submitted comments, recently developed data, and five technical papers relevant to the emissions, volatility, fuel economy, driveability, materials compatibility, and durability of alcohol/gasoline. (17) (18) (19) (20) (21) (22)

5. American Motors Corporation

American Motors submitted comments on effects on materials, engine wear, and emissions. (23)

EPA has reviewed the reports referenced or submitted by Beker, Chrysler, Ford, General Motors, and American Motors. In addition, other information pertinent to methanol/gasoline mixtures has been obtained and reviewed. (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) Not all of the data are presented in the following analysis. Only the significant portions necessary to arrive at a conclusion are discussed.

Analysis of the Data

Tailpipe emissions

The addition of alcohol(s) to gasoline produces a fuel with characteristics significantly different from those of gasoline. Because alcohol contains oxygen, the use of alcohol(s)/gasoline mixtures in a carburetor calibrated for gasoline results in enleanment of the air/fuel ratio (A/F). Theory and experience predict that as a result of this enleanment carbon monoxide (CO) tailpipe emissions will decrease, hydrocarbon (HC, or unburned fuel, UBF) tailpipe emissions will decrease (although not to as great an extent as CO, and only if enleanment has not extended into the lean misfire region) and oxides of nitrogen NO_x may decrease or increase depending on the initial air-fuel ratio. Closed-loop (feedback) air/fuel ratio control systems will at least partially compensate for the enleanment and changes in tailpipe emissions will be less than for non-feedback systems.

Data from (1) indicate that for a group of ten 1974–75 49-state light duty vehicles operated on 10% methanol/gasoline that average emissions for the group decreased for CO (13.5 to 8.2 grams per mile-gpm) and NO_x (2.1 to 1.9 gpm) and increased for HC (1.1 to 1.5 gpm). See Figure 1. Note that while data are given for operating temperatures of

20 degrees F., 75 degrees F., and 100 degrees F., that only the 75 degree F data are applicable as FTP results. Also note that intermediate results were obtained for 5% methanol/gasoline at 75 degrees F.

Data from (8) for a 10% methanol/gasoline show that for a four vehicle 1977 49-state fleet, average CO emissions decreased significantly. See Figure 2. For a three vehicle 1978 California fleet (in which two vehicles had closed-loop A/F control) CO decreased only slightly. NO_x decreased slightly for the 1977 fleet and increased slightly for the 1978 fleet. See Figure 3. Tailpipe HC (or unburned fuel) increased slightly for both fleets. (DOE attributes at least part of this increase to the higher vapor pressure of the blend). See Figure 4.

Figures 5 and 6 present data on methanol and aldehyde emissions, respectively. In general, "emission rates of methanol from 1977 and 1978 vehicles operating on Indolene were an order of magnitude lower than when operating on the blend." (8) Aldehyde emissions for the 1977 fleet were an average of 75% higher with the blend while there was insignificant difference between the blend and gasoline for the 1978 fleet.

Figure 7 presents deterioration factors (DF) for the 1977 fleet compared to certification values. The deterioration factors for HC (UBF) and NO_x are not identical, but comparable. The DF for CO is higher for the blend, but due to the initial decrease in CO it has been calculated that over 50,000 miles the net CO emissions will be comparable.

Figure 8 presents DF data for the 1978 fleet. HC (UBF) factors are comparable. CO and NO_x are not comparable, with CO lower and NO_x higher for the blend.

No data for 1979–80 vehicles operated on methanol/gasoline blends were available.

No data for crude methanol/gasoline blends were available. Methanol/gasoline blends are an approximation and are expected to behave similarly for equivalent enleanments for oxidation catalyst vehicles.

However, General Motors has shown that three-way catalyst conversion efficiencies are not the same (particularly for NO_x), for different blends of alcohol and gasoline, even though air/fuel ratios are almost identical. (17) See Figure 9.

GM states: "In the exhaust gas environment, variations in the concentration of some species, as can occur when the fuel composition is changed as it is when oxygenated species are blended with gasoline, may have a significant effect on the oxygen sensor response characteristics. In these situations, exhaust gas stoichiometry may not be the sole determining factor in sensor response. The variations in exhaust gas composition produced by changes in the fuel composition may also affect the oxidation-reduction reactions occurring on the catalyst surface. It is apparent that the explanation for the observations shown in Figure 9 are not fully understood." (17)

Evaproative Emissions

Due to its polar nature, as measured by its dipole moment and dielectric constant, the addition of methanol to gasoline (which is non-polar) increases front-end volatility (as measured by ASTM D–86 or D–216 distillation), Reid Vapor Pressure (RVP) and vapor/liquid ratio (V/L). Increases in front-end volatility and RVP have correlated with increased evaporative hydrocarbon emission. This was particularly evident from the 1978 Gasohol (10% ethanol/gasoline) testing done by the Agency and others (15) where evaporative losses increased approximately 50%. Methanol increasses volatility and RVP to a greater degree than a comparable concentration of ethanol in gasoline, and thus a 10% crude methanol/gasoline blend would be expected to produce higher evaporative losses than Gasohol.

Data in (4) show that the addition of 2% methanol gives approximately a 3 psi RVP increase. Data submitted by GM show an approximate 0.9 psi RVP increase with 10% ethanol, 3.1 psi RVP increase for 15% crude methanol, over the base gasoline. This intermediate effect on RVP by crude methanol is to be expected because of the higher molecular weight alcohols content of the crude methanol. These other alcohols have a tendency to reduce the evaporative loss of methanol because they have chemical and physical properties similar to both methanol and gasoline. These similarities then act as a "bridge" to retain the methanol in the gasoline. Therefore, evaporative emissions for crude methanol in gasoline are expected to be less than for a comparable concentration of methanol in gasoline.

Methanol also affects charcoal adsorption. Data in (2) indicate that the adsorptive capacity of charcoal from canisters used by General Motors for evaporative emissions control was reduced approximately 10%–15% for a 20% methanol/gasoline mixture (with respect to gasoline), based on 1½ cycles of operation (loading with vapor, stripping, and reloading with vapor). However, similar tests for 4 cycles show the average adsorptive capacity to be about the same for 20% methanol/gasoline and gasoline. Thus, the authors of (2) state "We conclude that carbon canisters presently in use should be adequate to control evaporative emissions from blends but perhaps not from neat methanol, which is adsorbed less strongly than gasoline by the non-polar charcoal."

However, the Federal Test Procedure is the only test that can determine if charcoal adsorption is sufficient, and none were performed.

No vehicular data of any kind were submitted or obtained to evaluate the change in evaporative emissions resulting from the addition of methanol or crude methanol to gasoline.

Materials Compatibility

Materials compatibility is of concern (2) with alcohol and alcohol(s)/gasoline blends, with methanol being less compatible with the usual materials found in fuel systems than ethanol. As with evaporative emissions, the effects on automotive materials of crude methanol in gasoline would be expected to be between those for ethanol/gasoline and methanol/gasoline.

Beker cited for from (2) for blends similar to 18% crude methanol/gasoline. (75% wt % methanol and 25% C_2-C_4 Alcohols) Accelerated corrosion tests on brass, zinc, terne alloy, steel, magnesium, and aluminum indicated corrosion comparable to, but in general, more severe than that encountered with gasoline. Prolonged exposure of a variety of non-metals (Buna-N, Delrin acetal, a commercial fuel paper, high density polyethylene, Nylon 616, polypropylene, cork gasketing material, leather, neoprene, and viton) indicated no additional problems. Softening, swelling, blistering, and signs of delamination were encountered with polyester bonded fiberglass laminate, a material used for underground fuel tanks and tank linings. Polyurethane softened and swelled much more for the blend than for gasoline. The authors in (2) state: "It is concluded that some materials used successfully with gasoline deteriorate seriously in methanol containing fuels and that careful selection of suitable materials would be required to provide trouble-free fuel systems."

Purolator (12) reported that "in general filter components [gasoline filters] exhibited poor compatibility for 10% methanol blends."

Chrysler submitted data (5) showing a 35.1% increase in volume for a 1200 hour exposure of fluoroelastomer (accelerator pump cup for current Chrysler products) to a 10% methanol blend. A similar test for nitrite rubber (accelerator pump cup for older Chrysler products) resulted in a

40.9% increase in volume. For a 10% ethanol blend the changes were 15.4% and 18.5% respectively. Chrysler concludes "that compatibility of these materials with ethanol blends is marginally acceptable, but that compatibility with methanol blends is unacceptable."

For a 5.5% methanol blend the increases (500 hour exposure) for polysulfide, fluoroelastomer (high fluorine content), and fluorosilicone, (possible replacements for fluoroelastomer), were 25.2%, 8.75%, and 20.7% respectively. Chrysler states that the high fluorine content fluoroelastomer "would appear to be a viable candidate based on its resistance to swell. This material, however, has less retention of flexibility at low temperature than is desirable in a carburetor elastomer." Chrysler also believes that there will be corrosion problems with zinc alloy, alluminum alloy, and terne plate. While the Chrysler data are not for crude methanol, they are comparable to what can be expected.

Ford (4) presented data showing increased corrosion of copper and brass in the presence of methanol, especially with water, and this could impact fuel distribution systems.

Department of Energy testing (8) attributed the swelling and failure of a Chrysler accelerator pump cup and possibly the failure of a Volvo line pressure regulator o-ring to exposure to 10% methanol/gasoline.

General Motors listed sixteen automotive elastomers and found that "most of the elastomers are severly affected by the mixtures of the gasoline and methanol rather than the pure components." (22)

The cleansing effect of methanol can be expected to loosen fuel tank deposits with their resultant transfer to fuel filters and carburetors. (2)

No vehicular data on the materials compatibility of crude methanol/gasoline were submitted or obtained.

Chrysler and General Motors are concerned about materials compatibility problems to the extent that they will not extend warranty coverage to vehicles fueled with methanol blends, while they do cover Gasohol. (10% ethanol) (5) (10) (11)

Driveability

Driveability will be adversely affected by the addition of methanol or crude methanol to gasoline. It is well known that if water enters the blend then phase separation is likely and that operation on the lean lower phase of water, alcohol, and some gasoline is impossible or extremely poor, especially in cold climates. Phase separation is most severe with methanol/gasoline but the higher molecular weight alcohols in crude methanol will lessen the problem somewhat, but it will still be more of a problem than for Gasohol. (10% ethanol)

Also, too much enleanment from alcohol addition will result in hard starting and poor running. The current consensus is that the enleanment of a 10% ethanol/gasoline blend is the approximate maximum that should be allowed before encountering a significant number of driveability problems. However, DOE test vehicles were operated on 10% methanol/gasoline and only encountered driveability problems as a result of phase separation, or materials compatibility problems, not enleanment. (8)

It is also well known that vapor-lock correlates with vapor/liquid ratio (2) and since V/L increases with methanol addition, vapor-lock would be more frequent than with gasoline, especially in warm climates and at high altitudes.

Again, the applicant has not provided any specific vehicular data from which the maximum concentration of crude methanol for acceptable driveability can be determined. Beker concludes that for an engine with an equivalence ratio of 1.0 (Actual A/F divided by stoichiometric A/F) for operation on gasoline, then its equivalence ratio for 15% crude methanol would be .93. For one car GM reported a .90 limit before driveability deteriorated, and Beker concludes that for cars operating at 1.0 equivalence ratio, 15% crude methanol would be acceptable. It is true that three-way catalyst cars operate at or near 1.0 and that many new cars in the near future will have three-way catalyst, closed-loops systems. However, as Beker notes, current cars without three-way catalysts operate around 0.9, and the effect of the enleanment from a 15% methanol blend on these cars is not addressed.

Toxicity

The applicant presented the conclusion from (2) that the toxicity of methanol/gasoline blends would not be a problem. Ferry, et al (9) conclude that "the immediate risks of acute intense exposure to a methanol/petrol mixture are probably no greater than that to petrol alone."

Conclusions

The tailpipe emission impact of a specific concentration of crude methanol can probably be predicted from testing or comparing the test results of a known blend of alcohol/gasoline with an equivalent enleanment for oxidation catalyst vehicles. However, Beker has submitted no crude methanol vehicular FTP data for comparison with known data to support (or contradict) such an engineering judgement. This assumption is not applicable to three-way catalyst vehicles.

Evaporative emissions may increase with crude methanol in gasoline. No FTP data were presented to gauge the magnitude of the increase, beyond the inferred prediction of a larger increase than with a comparable concentration of ethanol.

Data suggest that in-use vehicles would experience excessive swelling of carburetor elastomers, especially Chrysler accelerator pump cups.

Crude methanol addition to gasoline may also increase the probability of phase separation and vapor lock.

No data were presented to support any specific concentration of crude methanol, much less the entire 0%–15% range. Volkswagon (13) has run cars on 15% methanol/gasoline, but the carburetors were modified, some standard non-metallic components were replaced with metal components, and isopropanol was added to prevent phase separation.

In summary there are insufficient data to conclude that 0–15% methanol as a fuel additive will not cause or contribute to the failure of vehicles to meet emission standards. Furthermore the data which are available for similar alcohol blends would tend to indicate that there will be evaporative emission problems with the use of 0–15% methanol blend.

References

(1) "Status of Alcohol Fuels Utilization Technology for Highway Transportation," Mueller Associates, Inc., Baltimore, Md., DOE Contract No. EC–77–X–01–2923, June 1978.

(2) "Methanol Fuel Modification for Highway Vehicle Use," Final Report for DOE contract No. EY–76–C–04–3683, Union Oil of California, Keller, J. L., et al, July 1978.

(3) "Utilization of Methanol as an Automotive Fuel—A Report from ITEC–2, The Inter–Industry Emission Control Program," International Symposium on Alcohol Fuel Technology—Methanol and Ethanol, Wolfsburg, W. Germany, November 21–23, 1977. Ford submittal to USEPA Public Docket No. EN–79–20 (I–4). Baker, R. E., et al.

(4) "Methanol-Gasoline Blends, Performance in Laboratory Tests and in Vehicles," A. W. Crowley, et al., Ford submittal to USEPA Public Docket No. EN–79–20, (I–4).

(5) Chrysler submittal to USEPA Public Docket No. EN–79–20, (I–5).

(6) "Exhaust Emissions, Fuel Economy, and Driveability of Vehicles Fueled with Alcohol-Gasoline Blends," General Motors, Binkman, N. D., et al, SAE Technical Paper 750120, (1975).

(7) "Experimental Results Using Methanol and Methanol/Gasoline Blends as

Automotive Engine Fuel," Allsup, J.R., Bartlesville Energy Research Center, United States Energy Research and Development Administration, (BERC/RI-76/15), January 1977.

(8) "50,000 Mile Methanol/Gasoline Blend Fleet Study—A Progress Report," Stamper, Ken R., U.S., Department of Energy, Proceeding of the Alcohol Fuels Technology Third International Symposium, Asilomar, California May 28–31, 1979. Vol. I.

(9) "Toxicity of Methanol/Petrol Mixtures." Ferry, D.G., et al., New Zealand National Poisons Information Centre, Proceedings of the Alcohol Fuels Technology Third International Symposium, Asilomar California, May 28–31, 1979 Vol. III.

(10) "Statement of General Motors Corporation to the Subcommittee on Energy Research and Development of the Senate Committee on Energy and National Resources on Title VIII of S. 1308—Gasohol," Colucci, Joseph M., General Motors Research Laboratories, Washington D.C., July 19, 1979.

(11) Chevrolet Dealer Service Information Bulletin No. 80–I–3, Section VIm, July 1979, Subject: Gasohol—All Vehicles equipped with Gasoline Engines.

(12) Purolator, Inc. handout at D.O.E. roundtable discussion, October 23, 1979, Detroit, Michigan, "Gasohol/Filter Compatibility Study," Molinaro, R.A.

(13) "Alcohol fuels—can they replace gasoline?" Hill, Ray, *Popular Science*, March 1980. pp 25–34.

(14) February 7, 1980 memorandum from Charles Gray, Director, Emission Control Technology Division, OMSAPC, OANR, USEPA, to Richard G. Kozlowski, Director, Field Operations and Support Division, OMSNE, OE, USEPA. Subject: ECTD Comments on use of Methanol as fuel additive.

(15) Characterization Report, Analysis of Gasohol Fleet Data to Characterize the Impact of Gasohol on Tailpipe and Evaporative Emissions, December 1978, Technical Support Branch, Mobile Source Enforcement Division, Office of Mobile Source and Noise Enforcement, U.S. EPA.

(16) Conversation with E.E. Ecklund, Chief, Alternate Fuels Branch, Department of Energy, 3–20–80.

(17) Comments, General Motors submission to Public Docket EN–79–20, 3–19–80, (I–7).

(18) Same as (6). Attachment 1 to (17)

(19) Attachment 2 to (17), "Exhaust and Evaporative Emissions from a Brazilian Chevrolet fueled with Ethanol-Gasoline Blends," Research Publication GMR–2403, Furey, R.L., Jackson, M.W., General Motors Research Laboratories, Warren Michigan, 48090, June 28, 1977.

(20) Attachment 3 to (17), "Evaportive and Exhaust Emissions from Cars Fueled with Gasoline containing Ethanol or Methyl tert-Butyl Ether," Furey, R.L., King, J.B., SAE Technical Paper 800261, 1980.

(21) Attachment 4 to (17), "Performance of Late Model Cars with Gasoline-Methanol Fuel," Publow, b., Guinberg, L., SAE Technical Paper 780948, (1978).

(22) Attachment 5 to (17), "Effects of mixtures of gasoline with Methanol and with Ethanol on Automotive Elastomers," Research Publication GMR–3137, Abu–Isi, I., General Motors Research Laboratories, Warren Michigan, 1979.

(23) American Motors Submission to Public Docket EN–79–20, 3–18–80, (I–6).

BILLING CODE 6560-01-M

FIGURE 1

TABLE V-1: DESCRIPTION OF TEST VEHICLES OPERATED ON METHANOL/GASOLINE FUEL BLENDS
(Ref. 3, Bartlesville ERC (U.S. DOE))

VEHICLE DESIGNATION	YEAR AND MAKE	ENGINE SIZE, CID	TRANSMISSION	CARBURETOR
A	1974 Chevelle	350	Automatic	2 bbl
B	1974 Ford Torino	351	Automatic	2 bbl
C	1975 Maverick (non-catalyst)	250	Automatic	1 bbl
D	1975 Vega	140	Automatic	1 bbl
E	1975 Chevelle	350	Automatic	2 bbl
F	1975 Granada (non-catalyst)	351	Automatic	2 bbl
G	1975 Dodge Dart (non-catalyst)	318	Automatic	2 bbl
H	1975 Impala	454	Automatic	4 bbl
I	1975 Monza	262	Automatic	2 bbl
J	1975 Plymouth (non-catalyst)	318	Automatic	2 bbl
K	1972 Buick	350	Automatic	4 bbl

TABLE V-2: AVERAGE EXHAUST EMISSIONS AND ENERGY CONSUMPTION OF TEST VEHICLES A THROUGH J OPERATING ON COMMERCIAL GASOLINE BASE FUEL AND METHANOL BLENDS AT 20°, 75°, AND 100°F AMBIENT TEMPERATURES
(Ref. 3, Bartlesville ERC (U.S. DOE))

	Ambient Temperature, °F								
	20			75			100		
	Indolene Clear	5% MeOH	10% MeOH	Indolene Clear	5% MeOH	10% MeOH	Indolene Clear	5% MeOH	10% MeOH
Emissions (g/mile)									
CO	40.3	35.7	29.2	13.5	10.1	8.2	13.2	18.3	13.2
HC	2.5	2.6	2.8	1.1	1.3	1.5	1.2	1.6	1.8
NO_x	1.9	2.1	2.0	2.1	2.0	1.9	2.0	1.8	1.8
Aldehydes	0.11	0.13	0.16	0.10	0.11	0.12	0.09	0.10	0.12
Methanol	0.01	0.08	0.15	0.02	0.07	0.13	0.02	0.08	0.14
Fuel Economy (miles/10^5 BTU)									
EPA CVS cycle	9.3	9.1	8.9	10.0	9.7	9.7	10.4	10.0	10.0
EPA Highway cycle	15.8	15.3	14.8	15.9	15.2	14.8	16.0	15.9	15.7

Included in Baker submission. Taken from References (1) and (7).

From Reference (8).

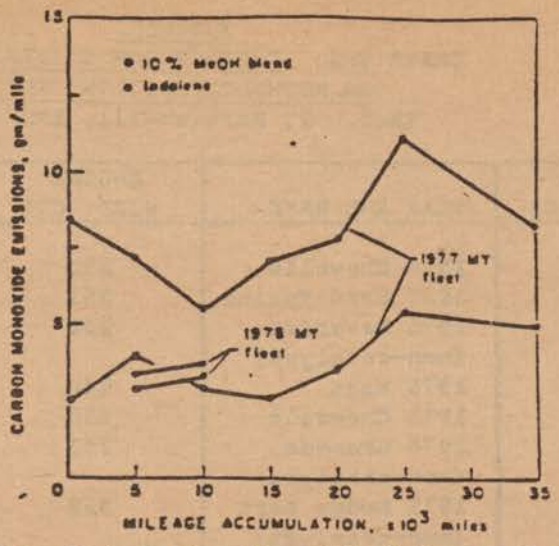


Fig. 2. - Carbon Monoxide Emission Rates from the 1975-78 FTP Cycle, 1977 and 1978 MY Vehicles

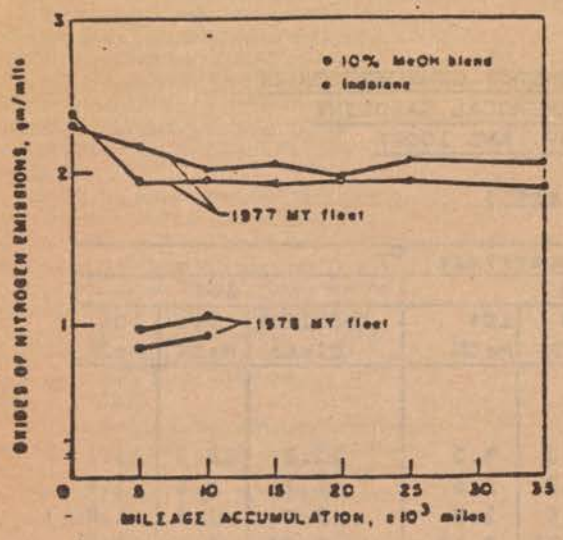


Fig. 3. - Oxides of Nitrogen Emission Rates from the 1975-78 FTP Cycle, 1977 and 1978 MY Vehicles

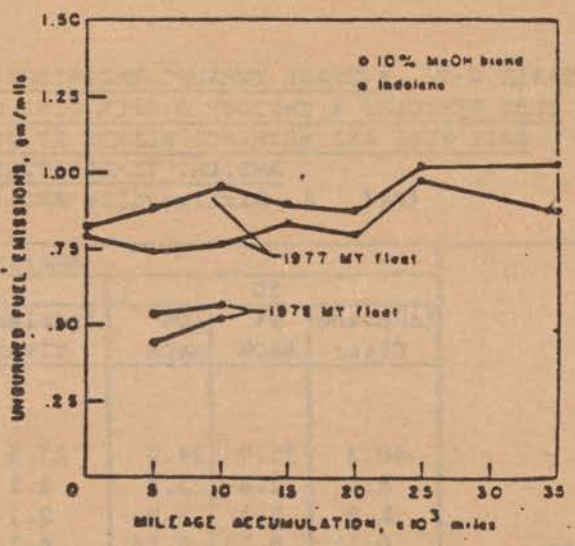


Fig. 4. - Unburned Fuel Emission Rates from the 1975-78 FTP Cycle, 1977 and 1978 MY Vehicles

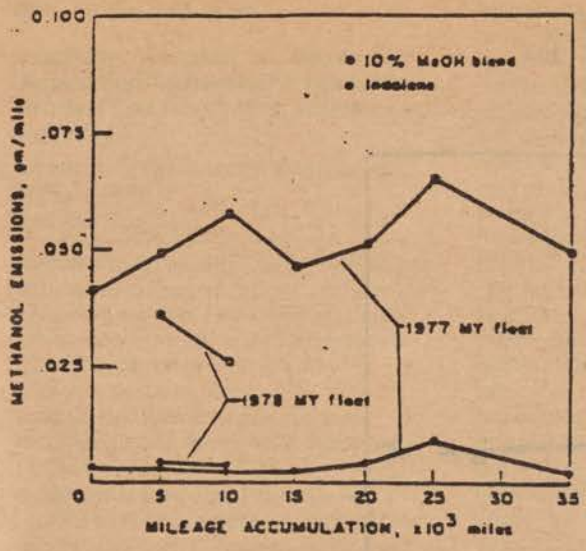


Fig. 5. - Methanol Emission Rates from the 1975-78 FTP Cycle, 1977 and 1978 MY Vehicles

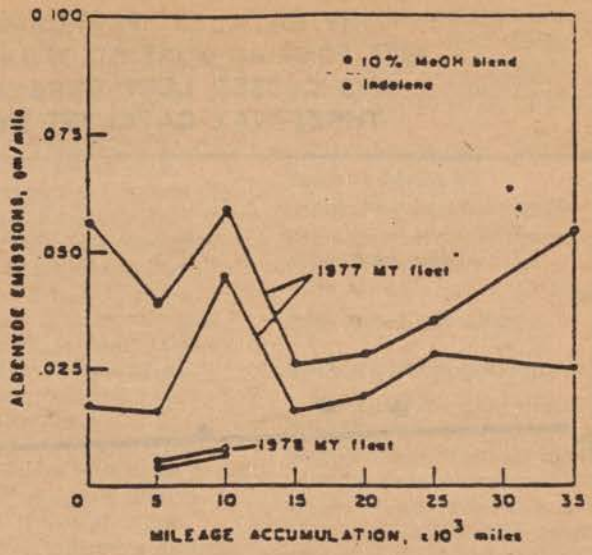


Fig. 6. - Aldehyde Emission Rates from 1977 and 1978 MY Vehicles Operated over the 1975-78 FTP Cycle

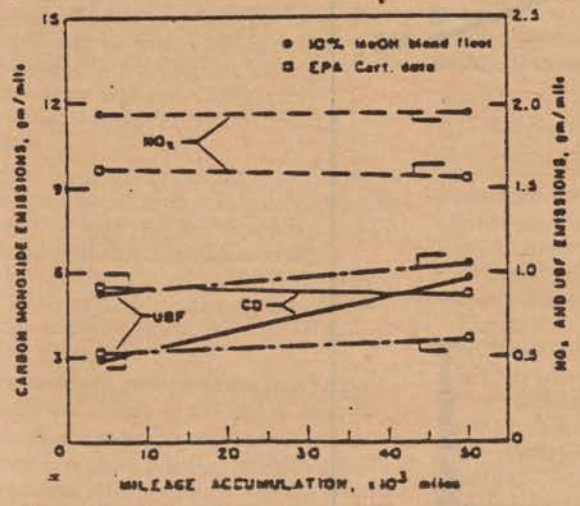


Fig. 7. - Comparison of Deterioration Factors Projected from 1977 MY Vehicles Operating on 10% Methanol Blend and from Certification Tests (References 6 and 8)

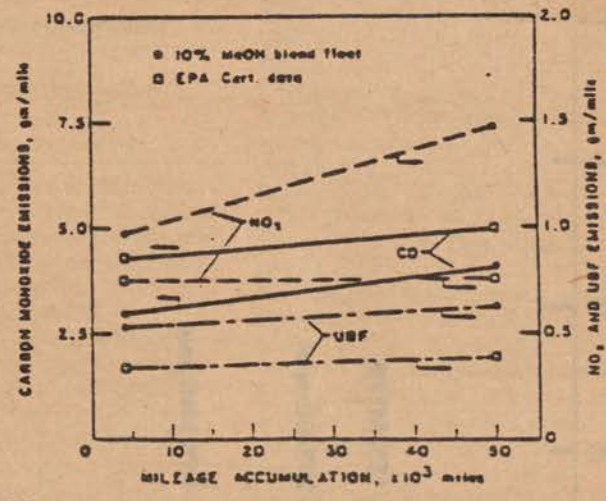
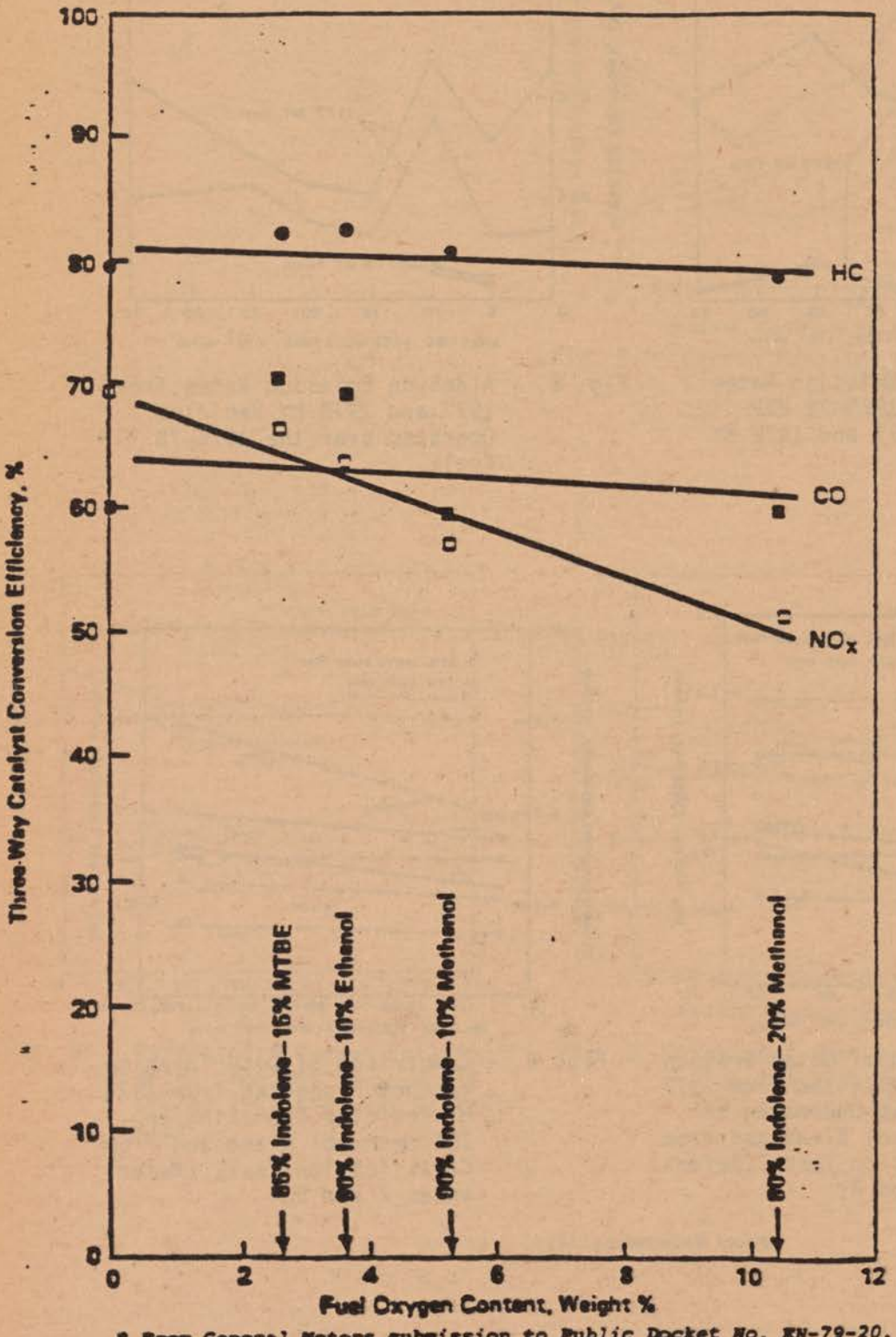


Fig. 8. - Comparison of Deterioration Factors Projected from 1978 MY Vehicles Operating on 10% Methanol Blend and from Certification Tests (References 7 and 9)

From Reference (8).

FIGURE 9

FTP CATALYST PERFORMANCE
1978 PONTIAC SUNBIRD WITH 2.5L L-4
AND CLOSED LOOP CARBURETOR,
THREE-WAY CATALYST SYSTEM



* From General Motors submission to Public Docket No. EN-79-20.

[FR Doc. 80-15284 Filed 5-16-80; 8:45 am]
BILLING CODE 6560-01-C

[FRL 1494-6; OPP-30189]

American Cyanamid Co.; Receipt of Application To Register a Pesticide Product Containing New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: American Cyanamid Co. has submitted an application to register the pesticide product Pay-Off Insecticide, which contains the active ingredient cyano(3-phenoxyphenyl)methyl-4-(difluoromethoxy)-alpha-(1-methylethyl)benzeneacetate not included in any previously registered pesticide product.

COMMENTS: Interested persons are invited to submit written comments on this application. Comments submitted should bear a notation indicating the EPA "File Symbol 241-ELO". Comments may be submitted, and inquiries directed, to: Mr. Franklin Gee, Product Manager (PM), 17, (TS-767), Room E-341, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202-426-9417.

The label furnished by American Cyanamid as well as all written comments filed in connection with 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, excluding holidays.

DATE: Comments must be received by June 18, 1980. Comments received by the specified date will be considered before a final decision is made; comments received after the specified date will be considered only to the extent possible without delaying processing of the application.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin Gee at the above address.

SUPPLEMENTARY INFORMATION: American Cynamid Co., PO Box 400, Princeton, NJ 08540, has submitted an application to EPA to register the pesticide product PAY-OFF INSECTICIDE (EPA File Symbol 241-ELO) containing 30% of the active ingredient cyano(3-phenoxyphenyl)methyl-4-(difluoromethoxy)-alpha-(1-methylethyl)-benzeneacetate, which has not been included in any previously registered pesticide product. The application proposes that the pesticide be classified for restricted use on cotton. A pesticide petition and a food additive petition proposing establishment of tolerances for residues of the active ingredient in or on cottonseed and cottonseed oil have been submitted by the company and are currently pending. Notice of approval or denial of this application to register Pay-Off Insecticide will be announced in the **Federal Register.** Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136), and the regulations thereunder (40 CFR Part 162), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved. Notice of receipt of this application does not indicate a decision by the Agency on the application.

(Sec. 3(c)(4), 86 Stat. 972, (7 U.S.C. 136)).

Dated: May 12, 1980.

Herbert Harrison,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-15282 Filed 5-16-80; 8:45 am]

BILLING CODE 6505-01-M

[FRL 1494-4]

Environmental Impact Statement; Public Hearings

AGENCY: Environmental Protection Agency, Region IX.

ACTION: Notice of public hearings.

SUMMARY: EPA proposes to offer grant assistance for the recovery of resources from municipal wastewater sludges and to minimize the public health risks and environmental degradation.

In accordance with 40 CFR 1506.6(b)(2) notice is hereby given that public hearings will be held to consider a Draft Environmental Impact Statement for the Los Angeles/Orange County Metropolitan Area (LA/OMA) for the Proposed Sludge Management Program.

PUBLIC PARTICIPATION: To encourage and facilitate public participation in the decisions to be made on the proposed project, public hearings will be held in the localities as follows: on July 8, 1980 beginning at 7:30 PM at Board Room of the Hyperion Treatment Plant (City of Los Angeles), 12000 Vista del Mar, Playa del Rey, Los Angeles, CA; on July 9, 1980 beginning at 7:30 PM at Board Room of the Joint Water Pollution Control Plant, 24501 S. Figueroa Street, Carson, CA; on July 10, 1980 beginning at 7:30 PM at Board Room of the Orange County Sanitation Districts' Offices, 10844 Ellis Avenue, Fountain Valley, CA.

FOR FURTHER INFORMATION CONTACT: Ann Godfrey, Water Division (W-3), EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 556-8037.

Dated: May 8, 1980.

Sheila M. Prindiville,

Acting Regional Administrator.

[FR Doc. 80-15277 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1495-2; OPP-50479]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 524-EUP-30. Monsanto Agriculture Products Co., St. Louis, Mo 63166. This experimental use permit allows the use of the remaining 1,560 pounds of the herbicide butachlor on rice to evaluate control of weeds. A total of 560 acres are involved. The program is authorized only in the States of Arkansas, Louisiana, Texas; and Puerto Rico. The program was previously effective from April 1, 1979 to April 1, 1980. It is now effective from April 23, 1980 to April 23, 1981. Temporary tolerances for residues of the active ingredient in or on rice, rice bran, rice straw, and rice hulls have been established. (PM-25, Robert J. Taylor Room: E-301, Telephone: 202-755-2196).

No. 2724-EUP-20. Zoecon Industries, Dallas, TX 75234. This experimental use permit allows the use of 0.3 pounds of the insecticides methoprene and resmethrin on or in homes to evaluate control of fleas. A total of 45 homes are involved. This program is authorized only in the States of California, Florida, and Texas. This permit is issued with the limitation that none of the material will enter the food chain. The experimental use permit is effective from April 1, 1980 to April 1, 1981. (PM 17, Franklin D. R. Ge, Room: E-341, Telephone: 202-426-9417).

Interested persons wishing to review the experimental use permits are referred to the designated Product Manger (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. Inquiries regarding these permits should be directed to the contact persons given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made

conveniently available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 189 as amended (7 U.S.C. 136))

Dated: May 12, 1980.

Herbert Harrison

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-15278 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1495-1; OPTS-59022]

Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA issue a notice of receipt of any such application for publication in the **Federal Register.** This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATES: The Agency must either approve or deny this application by June 12, 1980. Persons should submit written comments on the application no later then June 3, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. George Bagley, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, D.C. 20460, (202-426-3936).

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 before manufacture or import begins. 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. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of section 5(b). Section 5(d)(1) defines the contents of a PMN. Section 5(b)(1) contains additional reporting requirements for chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonble risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register.**

EPA has proposed Premanufacture Notificaton Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMNs submitted prior to promulgation of the rules and notice forms.

Interested persons may, on or before June 3, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW., Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-59022]". Comments received may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: May 13, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

TM 80-22.

Close of Review Period. June 12, 1980.

Manufacturer's Identity. Claimed confidential.

Specific Chemical Identity. Claimed confidential. Generic name provided: Copolymer of substituted ethenylbenzene and substituted ethenylheterocycle.

The following summary is taken from data submitted by the manufacturer in the test marketing exemption application.

Use. Claimed confidential. No more than 200 kilograms (kg) of this substance, with a molecular weight in excess of 10,000, will be manufactured for test marketing purposes. This material will be incorporated into a manufactured article.

Physical/Chemical Properties. No physical/chemical properties were provided in the application.

Toxicity Data:

Acute oral toxicity (male and female rats) $LD_{50} > 5$ g/kg;

Primary eye irritation (rabbit), Mild irritant (no rinse);

Primary skin irritation (rabbit), Non-irritant;

Mutagenicity-Ames (*Salmonella*), Negative.

Exposure:

During Manufacturing. A total of 20 people will work in the area where this chemical will be manufactured, but generally no more than two, at any time, will be working on the production of this chemical. The only potential for human contact with the new chemical substance is skin contact with a solution containing this chemical. Where there is such potential during cleaning, packaging, and filter changes, industrial hygiene requirements include workers' use of chemical goggles and rubber gloves. Duration of production operations is estimated to be 34 eight-hour shifts.

During Processing and Use. A total of 26 people will work in the areas where this chemical will be processed and used, but no more than three will work on processing this polymer at any time. The only potential for human contact with the new chemical substance is skin contact with solutions containing this chemical. Where there is such potential during transfer, cleaning, and filter changes, industrial hygiene requirements include workers' use of safety glasses and rubber gloves. Duration of all processing operations is estimated to total 56 eight-hour shifts. During the processing and use steps, small quantities of the new chemical substance, along with other materials, become an integral part of an article.

[FR Doc. 80-15279 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51064]

Premanufacture Notice

AGENCY: Environmental Protection Agency (PA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATES: Written comments by June 29, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Work, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-426-2601.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before June 29, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51064]" and the PMN number "PMN-80-92". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: May 13, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

PMN 80-92.

Close of Review Period. July 29, 1980.

Manufacturer's Identity. Claimed confidential. The submitter intends to produce the substance at a plant in the east-north central region of the country whose 3-digit Standard Industrial Classification Code is 285.

Specific Chemical Indentity. Polymer of: Tall oil fatty acid, styrene-allyl alcohol copolymer, acrylic acid, and styrene.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential. The substance will be used in an open use that will release less than 50 kilograms (kg) of the substance to the environment per year. As a small component of a final formulation, the use may possibly involve potential exposure to skin and eyes without causing harmful effects.

Production Estimates

Production year	Minimum (kg/yr)	Maximum (kg/yr)
First year	45,000	113,000
Second year	45,000	682,000
Third year	45,000	682,000

Physical/Chemical Properties

	Polymer solution	Dried polymer
Solid content	72.8	
Viscosity	Z_4-Z_7	
Density	8.28 lb/gal	8.74 lb/gal
Solubility in water		0.01g/100g H_2O
Average molecular weight	11,400–11,600	
Flash point (closed cup)	112°F (44°C)	
Residual monomer	≤ 1%	
Elemental analysis		%C = 78.36 %H = 9.82 %O = 11.82
Chemical oxygen demand	2,338,000 $\mu gO_2/g$	

Toxicity of Raw Materials. No test data were submitted on the PMN substance. Toxicity data were provided on the individual monomers.

Exposure

Occupational activity and exposure route	Maximum number exposed	Maximum duration Hr/Da	Maximum duration Da/Yr	Concentratrion Average	Concentratrion Peak
Manufacturing—Inhalation	3	2	66	0–1ppm	1–10ppm
(dermal)					
Disposal—Inhalation	2	2	10	0–1ppm	0–1ppm
(dermal)					

Physical state of the substance to which workers may be exposed: Solid.

Environmental Release/Disposal: Manufacturing media: Air

Amount/Duration of Chemical Release (kg/yr): 10–100, 24 hr/da; 66 da/yr.

Each reactor at the manufacturing plant is equipped with an exhaust and fume condenser. The effluent (air borne) is also treated by an exhaust fume scrubber. Scrubber water goes to biological treatment lagoons with a sixty day retention period. Sludge is transported by state licensed carriers to a state licensed landfill.

[FR Doc. 80-15280 Filed 5-16-80; 8:45 am]

BILLING CODE 656-01-M

[FRL 1494-7; OPTS-51063]

Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of three PMN's and provides a summary of each.

DATES: Written comments by:
PMN 80–83—June 28, 1980.
PMN 80–88—June 23, 1980.
PMN 80–91—June 29, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202–755–8050.

FOR FURTHER INFORMATION CONTACT:

Notice Manager, PMN No. Telephone

George Bagley, 80–83, 202–426–3936.
Kirk Maconaughey, 80–88, 202–426–3936.
Rick Green, 80–91, 202–426–2601.

Mail Address for Notice Managers: Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice

indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the date shown under "DATES" for each specific PMN, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St. SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51063]" and the specific PMN number. Comments received may be seen in the above office between 8 a.m. and 4 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604).)

Dated: May 13, 1980.

John P. DeKany,

Deputy Assistant Administrator for Chemical Control.

PMN 80–83

Close of Review Period: July 27, 1980.

Manufacturer's identity: Claimed confidential. The submitter has annual sales in excess of $500,000,000. The 3-digit Standard Industrial Classification Code is 385.

Specific Chemical Identity. Claimed confidential. Generic name provided: Unsaturated polyester resin based on six monomers, including maleic anhydride, phthalic anhydride, an alkylene glycol, and an alkylene ether glycol.

The following summary is taken from data submitted by the manfuacturer in the PMN.

Use. Claimed confidential. The substance will be used in an open use that will release more than 5,000 kilograms (kg), but less than 50,000 kg, of the substance to the environment per year. The use may involve potential exposure to non-chemical industrial employees more than five times per week with potential skin, eye, oral, and inhalation contacts.

Production Estimates. Claimed confidential.

Physical/Chemical Properties—

Non/Volatile: 60%

Weight/gallon: 9 pounds

Molecular weight (estimate): 1,400–1,800

Acid value: 15–20

Flash point (reduced): 90°F

Boiling range: Above 145°C

Viscosity (reduced): 350–550 cps

Solubility (polymer)—

Water: Insoluble.

Alcohol: Partially soluble.

Ketones: Soluble.

Aliphatic hydrocarbons: Partially soluble.

Aromatic hydricarbons: Soluble.

Toxicity Data. No toxicity data were submitted with the PMN.

Exposure

Activity	Exposure route	Max. No. exposed	Max. duration Hr./Da.	Da./Yr.
Manufacture	Skin	15	24	260

Workers will not be exposed to the new polymer under normal operations since manufacture will be carried out in a closed system. The only exposure possible would be incidental skin contact during sampling for chemical analysis, accidental spillage (*e.g.,* valve leakage or line rupture) which would require cleanup procedures typical for chemical spills, and during infrequent periodic plant shutdowns for general maintenance and cleaning.

Exposure

Activity	Exposure route	Max. No. exposed	Max. duration Hr./Da.	Da./Yr.
Processing	Skin Inhalation...	6	24	260

During normal operations, contact is only incidental and accidental. However, workers may be exposed to the new chemical substance and to the diluent during blending, sampling, and transfer out of the system. Skin contact is minimized by use of protective gloves, and inhalation of diluent fumes is minimized by effective ventilation and by providing workers with respiratory equipment during loading and filling of drums, tankwagons and railcars.

Physical states of the chemical substance to which workers may be exposed in the work place: Solid or liquid solution.

Use. Workers will be exposed to the polymer solution and to the cured polymer. Exposure includes accidental skin contact which is minimized by use of protective equipment, eye contact with dust or aerosols, and inhalation of mist or aerosols. Eye, nose and mouth contact is minimized by use of protective equipment.

PMN 80–88

Close of Review Period: July 23, 1980.

Manufacturer's Identity: Ciba-Geigy Corp., PO Box 114222, Greensboro, NC 27409.

Specific Chemical Identity. Claimed confidential. Generic name provided: Cyanalkyl carbomonocyclicsulfonate.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Use will be 100% as a process intermediate and will be site limited.

Production Estimates. Claimed confidential.

Physical/Chemical Properties—

Melting point: $< -96°C$

Boiling point: 42–44°C

Vapor density: 2.93 (air=1)

Specific gravity: 1.31

Volatility: 80%

Vapor pressure: 380 min. at 22°C

Solubility—

Water: Nil

Soluble in other solvents: Acetone, ether, alcohol.

Appearance: Clear yellowish liquid.

Odor: Methylene chloride.

Toxicity Data

Acute oral LD_{50} (rats): 1.07 g/kg

Acute dermal LD_{50} (rabbits): >5.0 g/kg

Eye irritation (rabbits): Moderately irritating. Range: 17.3–17.7/110

Primary skin irritation (rabbits): Moderately irritating. Range: 4.79/8.0

Exposure.

Manufacture will take place in a closed system. During manufacture, the only exposure would be during the sampling of the reaction mixture. Traces of the new chemical substances will

possibly be in the effluent streams from its manufacture and from the subsequent reaction step. However, the effluent from the new chemical substance is handled in a closed system and the effluent from the subsequent reaction step is an open system only when dumped into a sump to be pumped to an incinerator.

During early work with this material, a few workers developed skin rashes. The animal studies confirmed the material is moderately irritating to the eye and skin. Goggles and gloves are now required when working with the material.

Environmental Release/Disposal. Claimed confidential.

PMN 80-91

Close of Review Period: July 29, 1980.

Manufacturer's Identity: American Color & Chemical Corp., Mt. Vernon St., PO Box 88, Lock Haven, PA 17745.

Specific Chemical Identity. Claimed confidential. Generic name provided: 1,3-Naphthalenedisulfonic acid, 6,6'-[1,2-ethenediylbis[(3-sulfo-4,1-phenylene)azo]]bis[4-amino-3-hydroxy,-compounded with tris (2 substituted ethyl) ammonium hydroxide.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Paper tinting by paper maker.

Production Estimates. Claimed confidential.

Toxicity Data. Dermatological tests performed on paper dyed with the PMN substance produced no irritation or sensitization.

Exposure

Occupational Activity and Exposure Route	Max No. Exposed	Max Duration Hr/Da	Max Duration Da/Yr	Concentration Average	Concentration Peak
Manufacture— Skin contact....	4	4	20	0-1 ppm	0-1 ppm

Workers will normally not touch any of the product. Splashes due to handling may occur at drumming station. Physical state of the substance to which workers may be exposed: Liquid.

Exposure

Occupational Activity and Exposure Route	Max No. Exposed	Max Duration Hr/Da	Max Duration Da/Yr	Concentration Average	Concentration Peak
Use: Coloring paper.	Unknown	8	200	0-1 ppm	0-1 ppm

Product is pumped in enclosed systems from drums, tanks, or other storage vessels to pulp make-up tanks. There is normally no worker contact with it.

Commercial User

External contact is in handling of paper; concentration in paper is exceedingly small and the color does not come off on handling.

Possibility of internal contact is remote. Concentrations extremely small.

Environmental Release/Disposal

Manufacturing—

Media: Amount/Duration of Chemical Release (kg/yr).

Water: Less than 10. 1 hr/da; 10 da/yr.

All waste streams namely-filtrates, wash water, and clean up solutions are confined within internal lines for pretreatment prior to transmission to the city publicly owned treatment works (POTW).

Pretreatment consists of collection, equalization, oxidization, and reduction treatment steps which reduces color and organics to levels acceptable at the city treatment plant.

[FR Doc. 80-15281 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-28]

Furnishing Container Chassis; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by Delaware River Port Authority, Maryland Port Administration, Massachusetts Port Authority and Virginia Port Authority. Petitioners seek an order of the Commission declaring that common carriers by water must tender cargo containers mounted on a chassis for removal of the cargo from the pier to the ultimate consignee at an interior point and that this apply at all ports within the United States.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101 or may inspect the petition at the Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested persons may submit replies to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before June 15, 1980. An original and fifteen copies of such replies shall be submitted and a copy thereof served on petitioners. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Francis C. Hurney,

Secretary.

[FR Doc. 80-15216 Filed 5-16-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-27]

Connell Bros. Co., Ltd. v. Lykes Bros. Steamship Co., Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Connell Bros. Company, Ltd. against Lykes Bros. Steamship Co., Inc. was served May 9, 1980. The complaint alleges that respondent has assessed charges for ocean transportation which are so unreasonably high as to be detrimental to commerce in violation of section 18(b)(5) of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Paul J. Fitzpatrick. Hearing in this matter, if any is held, shall commence on or before November 9, 1980. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-15271 Filed 5-16-80; 8:45 am]

BILLING CODE 6730-01-M

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, N.W., 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 May 29, 1980. 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.: T-1768-14.

Filing Party: Dorothy L. Vecchiarelli, Supervising Paralegal, Law Department, Sea-Land Industries, Inc., P.O. Box 900, 10 Parsonage Road, Edison, New Jersey 08817.

Summary: Agreement No. T-1768-14, between the City of Oakland (City) and Sea-Land Service, Inc. (Sea-Land) modifies the parties' basic agreement which provides for the preferential assignment of certain facilities to Sea-Land. The purpose of the modification is to: (1) extend the time within which Sea-Land may exercise its right to terminate said agreement for an additional two month period to and including the 31st day of May, 1980; and (2) extend the period in which the current minimum and maximum compensation amounts will apply under said agreement for 2 months from and after the 1st day of June, 1980, to and including the 31st day of July, 1980.

By Order of the Federal Maritime Commission.

Date: May 14, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-15270 Filed 5-16-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Blue Hill Agency, Inc.

Blue Hill Agency, Inc., Blue Hill, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its general insurance activities in Blue Hill, Nebraska, a community with a population not exceeding 5,000.

Applicant states that it would engage in the activities of a general insurance business, including the sale of property, casualty, life, health, fidelity and surety, and other types of insurance usually offered by a general insurance agency. These activities would be performed from an office of Applicant in Blue Hill, Nebraska, and the geographic areas to be served are Blue Hill and the surrounding area. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 9, 1980.

Board of Governors of the Federal Reserve System, May 12, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15206 Filed 5-16-80; 8:45 am]

BILLING CODE 6210-01-M

Meader Insurance Agency, Inc.; Proposed Retention of General Insurance Activities

Meader Insurance Agency, Inc., Waverly, Kansas, has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its general insurance activities. These activities would be performed from offices of Applicant's subsidiary, The First National Bank of Waverly, in Waverly, Kansas, and the geographic area to be served is Coffey County. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 9, 1980.

Board of Governors of the Federal Reserve System, May 12, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15207 Filed 5-16-80; 8:45 am]

BILLING CODE 6210-01-M

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 application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased of unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests

a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

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, except as noted, received by the appropriate Federal Reserve Bank not later than June 12, 1980.

A. *Federal Reserve Bank of Kansas City* (John F. Zoellner, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

First Midwest Bancorp, Inc., St. Joseph, Missouri (agricultural financing; Missouri) to engage, through First AgCorp, Inc., in the following activities: all aspects of the business of agricultural finance, including the making and servicing of loans to individuals, partnerships, corporations and other business entities, the proceeds of which are to be used for the purpose of engaging in the production of livestock and other agricultural activities. Such activities will be conducted at offices in the following location: Fourth and Felix Streets, St. Joseph, Missouri and will service Missouri, Kansas, Iowa and parts of the states of Illinois and Colorado.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94210:

Seafirst Corporation, Seattle, Washington (leasing activities; Nationwide): to engage through its subsidiary, SF Leasing Corporation, in leasing real and personal property as permitted by Regulation Y, owning stock of special-purpose corporations which are so engaged, and acting as agent, broker, and adviser in leasing such property. These activities would be conducted from an office in Seattle, Washington, and the area to be served is nationwide. Comments on this application must be received by June 11, 1980.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 12, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15243 Filed 5-16-80; 8:45 am]

BILLING CODE 6210-01-M

Illinois State Bancorp, Inc.; Formation of Bank Holding Company; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 80-14548) published at page 31204 of the issue for Monday, May 12, 1980. The final date for receipt of comments is corrected to read May 29, 1980.

Board of Governors of the Federal Reserve System, May 13, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15242 Filed 5-16-80; 8:45 am]

BILLING CODE 6210-01-M

Stamford Banco, Inc.; Proposed Retention of General Insurance Activities

Stamford Banco, Inc., Stamford, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain general insurance activities.

These activities would be performed from offices of Applicant's subsidiary, The Stamford Bank, in Stamford, Nebraska, and the geographic areas to be served are Stamford, Nebraska, and areas within a 10-mile radius thereof. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 12, 1980.

Board of Governors of the Federal Reserve System, May 12, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15244 Filed 5-16-80; 8:45 am]

BILLING CODE 6210-01-M

T E A, Inc.; Formation of Bank Holding Company

T E A, Incorporated, Shullsburg, 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 71 percent or more of the voting shares of Farmers and Merchants Bank, Shullsburg, 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)).

T E A, Incorporated, Shullsburg, Wisconsin, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage in the activity of acting as general insurance agent in a community that has a population under 5,000. These activities would be performed from offices of applicant in Shullsburg, Wisconsin, serving Shullsburg, Wisconsin and surrounding areas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 13, 1980.

Board of Governors of the Federal Reserve System, May 13, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-15241 Filed 5-16-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Committee Vital Health Statistics, Subcommittee on Environmental Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Environmental Health Statistics of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k), Paragraph (4) of the Public Health Service Act (42 U.S.C. 242(k)), will convene on Tuesday, May 27, 1980 at 9:00 a.m., Conference Room 1001, Johns Hopkins School of Hygiene, 615 North Wolfe Street, Baltimore, Maryland.

The Subcommittee will discuss the development of guidelines for environmental health data collection; NCHS staff will report on their activities in developing an outline for health effects guidelines; and the Subcommittee will present the environmental exposure component of the guideline outline.

Agenda items are subject to change as priorities dictate.

Further information regarding this meeting of the Subcommittee or matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting Samuel P. Korper, Ph.D., M.P.H., Executive Secretary, National Committee on Vital and Health Statistics, Room 17A-55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301-443-2660.

Dated: May 12, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-15204 Filed 5-16-80; 8:45 am]

BILLING CODE 4110-85-M

Health Resources Administration Advisory Council and Subcommittees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1980:

Name: National Guidelines, Goals, Priorities, and Standards Subcommittee of the National Council on Health Planning and Development
Date and Time: Thursday, June 12, 1980; 9:00 a.m.-12:00 Noon
Place: Conference Room 525A-529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201
Open for entire meeting.

Purpose: The objectives of the National Guidelines, Goals, Priorities, and Standards Subcommittee are to study the experience nationwide in the public and private sectors with the adoption and/or adjustment of the National Guidelines for Health Planning and their impact and recommend changes as appropriate; study the experience of the Health Systems Agencies and State Health Planning and Development Agencies nationwide in implementation of high priority goals and sub-goals and their impact; advise the Council in identifying additional high priority goals and sub-goals; investigate and coordinate information on demonstrations underway by provider, reimbursement, regulatory, labor, industry, and community groups on sub-goals, such as those on alcoholism and prevention; study, investigate and identify research needs appropriate to the formulation, adjustment and refinement of the National Guidelines, and study and develop improved indicators to assess the impact of the Guidelines or the need for revisions; and recommend to the Council on the need for further development and/or revision of the National Guidelines.

Agenda: Briefing on National Health Planning Goals; Update on CT Scanner Standard; Consideration of Institute of Medicine Report on "Health Planning in the United States: Issues in Guidelines Development"; and Guideline Development in Rural Areas; and Follow-up to March 13, 1980 meeting.

Name: Technology and Productivity Subcommittee of the National Council on Health Planning and Development
Date and Time: Thursday, June 12, 1980, 3:00 p.m.-5:00 p.m.
Place: Conference Room 337A-339A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose: The objective of the Technology and Productivity Subcommittee is to advise the full Council on matters related to the productivity of the health care delivery system and to the implications of new medical technology for the organization, delivery and equitable distribution of health care services. "Technology" includes the drugs, devices and medical and surgical procedures used in medical care and the organizational and supportive systems within which such care is delivered. "Productivity" is the efficiency with which health care is delivered.

The Subcommittee is to deliberate and to make recommendations to the full Council on matters chosen from among those brought to it by Council members, HHS staff and advisory committees, other Federal departments, congressional committees and staff, provider groups and the public at large. The Subcommittee in addition will study and investigate the current needs for assistance of HSAs and SHPDAs in the area of evaluating productivity improvement and new medical technology, help transmit concerns of HSAs and SHPDAs to appropriate Federal agencies, and review the current resources both within the Federal Government and among the educational, research and other developmental agencies for providing needed assistance to HSAs and SHPDAs. In addition, it will review technology assessment activities within the Department in order to assure they are relevent to the needs of the HSAs and are useful in the development and implementation of national standards, goals, and guidelines, and for the establishment of priorities with those goals.

Agenda: Discussion of overview paper and policy recommendations; discussion of subcommittee's full report on productivity; proceedings of the Conference on Incentives for Improving Productivity; and public comment.

Name: Implementation and Administration Subcommittee of the National Council on Health Planning and Development
Date and Time: Thursday, June 12, 1980; 5:00 p.m.-7:00 p.m.
Place: Conference rooms 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose: The objective of the Implementation and Administration Subcommittee is to study and make recommendations on the implementation and administration of Titles XV and XVI of the Public Health Service Act. Specific areas for the Subcommittee's consideration are (1) the impact of HHS's implementation/administration on the effectiveness of Health Systems Agencies and State Health Planning and Development Agencies; (2) the effectiveness of the interrelationships between health planning agencies and HHS, Central and Regional Offices; (3) the timing and strategy of implementation and of the dissemination and distribution of regulatory and technical material; (4) how to better meet the needs of HSAs and SHPDAs; and (5) the review of the Council's responsibilities under section 1122 of the Social Security Act.

Agenda: Presentation on the Evaluation of the Health Planning Program, four section 1122 cases, and subcommittee consideration on the following staff reports: 1) Analysis of Issues in the section 1122 Program, 2) Federal-State-Local Relationships, and 3) Consumer Participation in the Health Planning Program.

Name: National Council on Health Planning and Development
Date and Time: Friday, June 13, 1980; 8:45 a.m.–3:30 p.m.
Place: Auditorium, Hubert H. Hunphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.
Open for entire meeting.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Public Law 93–641, (2) the implementation and administration of Title XV and XVI of Public Law 93–641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: Introduction of new Council members; Status Reports from Administrator, Health Resources Administration and Directors of Bureau of Health Planning and Bureau of Health Facilities; discussion of subcommittee draft on Incentives for Improving Health Care Production; reports from subcommittees on Guidelines, Goals, Priorities, and Standards and Implementation and Administration; discussion of Council consultation role in termination of HSAs and SHPDAs and evaluation study; and report on Chronic Disease and Disability Activities in Health Systems Agencies.

Anyone requiring information regarding the subject Council should write to or contact Mrs. S. Judy Silsbee, Executive Secretary, National Council on Health Planning and Development, Health Resources Administration, Room 10–27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782. Telephone (301) 436–7175.

Agenda items are subject to change as priorities dictate.

Dated: May 13, 1980.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 80–15224 Filed 5–16–80; 8:45 a.m.]

BILLING CODE 4110–83–M

Health Professions and Nursing Student Loans; "Low-Income Levels" for Loan Repayment, Start-Up Assistance Grants, Health Careers Opportunity Grants, Nursing Capitation Grants and Nursing Special Project Grants

This Notice updates the income levels that are used to define a "low income family" for purposes of repayment of educational loans and for the support of training for individuals from disadvantaged backgrounds as provided for under sections 787 and 798, Health Careers Opportunity Grants; section 788(a), Start-Up Assistance Grants; section 810, Nursing Capitation Grants; and section 820, Nursing Special Project Grants of the Public Health Service Act.

Under sections 741(l) and 836(j) and the applicable program regulations, the Secretary of Health and Human Services may repay all or part of an individual's educational loan made after November 17, 1971, to meet the costs of attending a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, or nursing if the Secretary determines that the individual:

(1) Failed after November 17, 1971, to complete the health professions studies leading to the individual's first professional degree or to complete the specified nursing studies for which the loan(s) was made,

(2) Is in exceptionally needy circumstances;

(3) Is from a low-income or disadvantaged family; and

(4) Has not resumed or cannot reasonably be expected to resume the course of study within two years following the date the individual ended the studies.

Sections 57.214(c) and 57.317(c) of the applicable program regulations (42 CFR Part 57, Subparts C and D) require the Secretary to publish annually in the **Federal Register** the low-income levels which will be used in determining an applicant's eligibility for this repayment program. Aside from their use in determining whether an individual comes from a "low-income family," these income levels, together with other relevant factors such as value of assets, unusual expenses, income available to the individual, etc., are also considered in determining whether an individual is "in exceptionally needy circumstances" or is from a "disadvantaged family."

The income figures below were taken from low-income levels, published by the U.S. Bureau of Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to the Health Professions and Nursing Student Loan Programs and other designated grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1979.

Size of parents' family (includes only dependents listed on Federal income tax forms):	*Income level* (adjusted gross income for calendar year 1979)*
1	$4,900
2	6,300
3	7,500
4	9,700
5	11,400
6 or more	12,800

* Rounded to $100.

Dated: May 13, 1980.

Henry A. Foley, Ph. D.,

[FR Doc. 80–15223 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–83–M

National Institutes of Health

Aging Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging, on June 26–27, 1980, in Building 31, Conference Room 4, National Institutes of Health, Bethesda, Md.

The meeting will be open to the public from 9:00 a.m. to 10:00 a.m. on June 26, for introductory remarks. Attendance by the public will be limited to space available.

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 Pub. L. 92–463, the meeting will be closed to the public on June 26, from 10:00 a.m. to adjournment on June 27, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C–05, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–5345 will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes)

Dated: May 13, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–15212 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee, Division of Research Resources, June 9, 1980, Conference Room 6, Bldg. 31, National Institutes of Health, Bethesda, Maryland 20205.

This meeting will be open to the public from 9:00 a.m. to approximately 2:30 p.m. to discuss the current status of the Chemical/Biological Information-Handling Project and guidelines for review of PROPHET sites, and to discuss future Committee activities in connection with planning and new initiatives in the Biotechnology Resources Program. Attendance by the public will be limited to space available.

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 Pub. L. 92–463, the meeting will be closed to the public from approximately 2:30 p.m. to adjournment for the review of PROPHET contract RFP notices and the review, discussion and evaluation of individual research prospectuses submitted by organizations seeking access to PROPHET System services. These prospectuses and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the prospectuses, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Chief, Office of Science and Health Reports, Division of Research Resources, Bldg. 31, Rm. 5B–13, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301 496–5545, will provide summaries of meetings and rosters of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg., 31, Rm. 5B–41, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301 496–5411, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.371, National Institutes of Health)

Dated: May 13, 1980.

Mrs. Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–15209 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Board of Scientific Counselors, NEI; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 9 and 10, 1980, Building 31, Room 6A–35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 9 from 8:30 a.m. until approximately 2:30 p.m. for general remarks by the Institute's Acting Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 9 from approximately 2:30 p.m. until adjournment and the entire day on June 10 for review, discussion, and evaluation of individual projects conducted by the Laboratory of Vision Research, NEI. This evaluation and discussion could reveal personal information concerning individuals associated with the projects, the disclosure of which would consitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Mr. Julian Morris, Chief, Office of Program Planning and Scientific Reporting, National Eye Institute, Building 31, Room 6A–25, National Institutes of Health, Bethesda, Maryland 20205 (telephone 301/496–5248), will furnish summaries of the meeting and rosters of committee members.

Substantive program information may also be obtained from Dr. Jin Kinoshita, Acting Scientific Director, National Eye Institute, Building 6, Room 222–A, National Institutes of Health, Bethesda, Maryland 20205 (telephone 301/496–3552).

Dated: May 13, 1980.

Suzanne L. Fremeau,

Commitee Management Officer, National Institutes of Health.

[FR Doc. 80–15210 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Vision Research Program Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Program Committee, National Eye Institute, June 27, 1980, Building 31, C Wing, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on Friday, June 27, from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. 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 Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on June 27 until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Julian Morris, Chief, Office of Program Planning and Scientific Reporting, National Eye Institute, Building 31, Room 6A–25, National Institutes of Health, Bethesda, Maryland 20205 (telephone: 301/496–5248) will furnish summaries of the meeting and rosters of committee members.

Dr. Catherine Henley, Review and Special Projects Officers, Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A–06 (telephone 301/496–5561) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, 13.868, 13.869, 13.870, and 13.871, National Institutes of Health)

Dated: May 13, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–15211 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Genetic Basis of Disease Review Committee; National Institute of General Medical Sciences; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Genetic Basis of Disease Review Committee, National Institute of General Medical Sciences on June 23, 1980, 9 a.m., conference Room 7, Building 12C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 23, 1980, from 9:00 a.m. until 10:00 a.m. for background information and discussion of issues relevant to the National Institute of General Medical Sciences and its National Research Service Award training activities and research programs. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately six hours for the review, discussion, and evaluation of institutional training grant applications in genetics. It is anticipated that this will occur June 23, from approximately 10:00 a.m. until adjournment. These applications and the discussion could disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Mr. Paul Deming, Public Information Officer, NIGMS, Westwood Building, Room 9A10, Bethesda, Maryland 20205, Telephone (301) 495–7301, will furnish summary minutes of the meeting and a roster of committee members.

Mrs. Mary L. Wolff, Executive Secretary, Genetic Basis of Disease Review Committee, NIGMS, Westwood Building, Room 953, Telephone (301) 496–7585, will furnish substantive program information.

Dated: May 13, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–15214 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Access to Research Careers Review Committee, National Institute of General Medical Sciences, on June 26–27, 1980, 8:45 a.m., National Institutes of Health, Federal Building, Conference Room 6001.

This meeting will be open to the public on June 26, 8:45 a.m., to 12:00 a.m. The meeting will consist of opening remarks and discussion of procedural matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately the last four hours of the day on June 26, and approximately four hours on June 27. It is estimated that this will occur from 1:00 p.m. on June 26, and on June 27 from 8:45 a.m., until noon for the review, discussion and evaluation of institutional and individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Paul Deming, Public Information Officer, NIGMS, Westwood Building, Room 9A–10, 5333 Westbard Avenue, Bethesda, Maryland 20205, telephone (301) 496–7301, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Mrs. Dolores Lowery, Acting Executive Secretary, Westwood Building, Room 950, Bethesda, Maryland 20205, telephone (301) 496–7941.

(Catalog of Federal Domestic Assistance Program 13.880, General Medical Sciences)

Dated: May 13, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–15215 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Population Research Committee, National Institute of Child Health and Human Development; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, on June 23–24, 1980 in the Landow Building, Conference Room "A," 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on June 23 from 9 a.m. to 10:30 a.m. to discuss the program status, new developments and projections for population research centers, program projects and institutional fellowships. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Title 5, U.S. Code section 552b(c)(4) and 552b(c)(6) and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 23 from 10:30 a.m. to adjournment on June 24 for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personnel imformational concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 7C–09, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members. Dr. Dinesh C. Sharma, Executive Secretary of the Population Research Committee, NICHD, Landow Building, Room 6C–03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will furnish other information.

(Catalog of Federal Domestic Assistance Program No. 13.864, National Institutes of Health)

Dated: May 13, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–15213 Filed 5–16–80; 8:45 am]

BILLING CODE 4110–08–M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for May through July 1980, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to Study Section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter 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 Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Marian Oakleaf, Acting Chief, Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone area code 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time. All times are A.M. unless otherwise specified.

Study section	May–July 1980 meetings	Time	Location
Allergy and Immunology, Dr. Morton Reitman, Rm. 320, Tel. 301–496–7380.	June 5–7	8:30	Linden Hill, Bethesda, MD.
Applied Physiology and Orthopedics, Ms. Ileen E. Stewart, Rm. 350, Tel. 301–496–7581.	June 5–7	8:30	Room 4, Bldg. 31A, Bethesda, MD.
Bacteriology and Mycology, Dr. Milton Gordon, Rm. 304, Tel. 301–496–7340.	June 5–7	8:30	Holiday Inn, Chevy Chase, MD.
Bioanalytical and Metallobiochemistry, Dr. Marjam Behar, Rm. 310, Tel. 301–496–7733.	June 19–21	9:00	Holiday Inn, Chevy Chase, MD.
Biochemical Endocrinology, Dr. Norman Gold, Rm. A–17, Tel. 301–496–7430.	June 15–17	8:30	Inn Town Motel, Chevy Chase, MD.
Biochemistry, Dr. Adolphus P. Toliver, Rm. 318, Tel. 301–496–7516.	May 27–31	9:00	Marriott Hotel, New Orleans, LA.
Biophysics and Biophysical Chemistry A, Dr. James C. Cassatt, Rm. 236, Tel. 301–496–7060.	May 30–June 1.	9:00	International Hotel, New Orleans, LA.
Biophysics and Biophysical Chemistry B, Dr. John B. Wolff, Rm. 236, Tel. 301–496–7070.	May 29–31	8:30	International Hotel, New Orleans, LA.
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301–496–7058.	June 30–July 3.	9:00	Annapolis Hilton, Annapolis, MD.
Cardiovascular and Pulmonary, Dr. Constance E. Weinstein, Rm. 2A–04, Tel. 301–496–7316.	June 18–20	8:30	Georgetown Inn, Washington, DC.
Cardiovascular and Renel, Dr. Rosemary S. Morris, Rm. 321, Tel. 301–496–7901.	June 4–6	8:30	Holiday Inn, Bethesda, MD.
Cell Biology, Dr. Gerald Greenhouse, Rm. 306, Tel. 301–496–7681.	June 6–8	8:30	Place D'Arms, New Orleans, LA.
Chemical Pathology, Dr. Edmund Copeland, Rm. 353, Tel. 301–496–7078.	May 25–27	8:00	Summer House Inn, LaJolla, CA.
Communicative Sciences, Dr. Michael Halasz, Rm. 321, Tel. 301–496–7550.	June 18–20	8:30	Holiday Inn, Bethesda, MD.
Diagnostic Radiology and Nuclear Medicine, Dr. Catharine Wingate, Rm. 219, Tel. 301–496–7650.	June 16–18	8:30	Linden Hill, Bethesda, MD.
Endocrinology, Mr. Morris M. Graff, Rm. 333, Tel. 301–496–7346.	June 15–18	7:00 p.m.	Linden Hill, Bethesda, MD.
Epidemiology and Disease Control, Dr. Ann Schlueder-berg, Rm. 234, Tel. 301–496–7246.	June 16–18	8:30	Minneapolis Hilton, Minneapolis, MN.
Experimental Therapeutics, Dr. Anne R. Bourke, Rm. 319, Tel. 301–496–7839.	June 18–21	1:00 p.m.	Kenwood Country Club, Bethesda, MD.
Experimental Virology, Dr. Eugene Zebovitz, Rm. 206, Tel. 301–496–7474.	June 9–11	8:00	Room 8, Bldg. 31C, Bethesda, MD.
General Medicine A, Dr. Harold Davidson, Rm. 354, Tel. 301–496–7797.	June 23–24	8:30	Room 10, Bldg. 31C, Bethesda, MD.
General Medicine B, Dr. William Davis, Jr., Rm. 322, Tel. 301–496–7730.	June 25–28	8:30	Marriott Hotel, Bethesda, MD.
Genetics, Dr. David Remondini, Rm. 349, Tel. 301–496–7271.	June 9–11	9:00	Room 10, Bldg. 31C, Bethesda, MD.
Hematology, Dr. Clark Lum, Rm. 355, Tel. 301–496–7508.	May 29–31	8:00	Inn Town Motel, Chevy Chase, MD.
Human Development, Dr. Miriam Kelty, Rm. 303, Tel. 301–496–7025.	June 8–10	8:30	Best Western Executive, Washington, DC.
Human Embryology and Development, Dr. Arthur Hoversland, Rm. 221, Tel. 301–496–7597.	June 25–28	8:30	Linden Hill, MD.

Immunobiology, Dr. William Stylos, Rm. 226, Tel. 301-496-7780.	June 25-27	8:30	K-L Ranch, Augusta, MT.
Immunological Sciences, Dr. Lottie Kornfeld, Rm. 233 Tel. 301-496-7179.	June 4-6	8:30	Linden Hill, Bethesda, MD.
Mammalian Genetics, Dr. Halvor Aaslestad, Rm. 349 Tel. 301-496-7271.	June 9-11	9:00	Room 9, Bldg 31C, Bethesda, MD.
Medicinal Chemistry A, Dr. Ronald Dubois, Rm. A-27, Tel. 301-496-7108.	June 11-14	9:00	Marriott Hotel Bethesda, MD.
Metabolism, Dr. Robert Leonard, Rm. 334 Tel. 301-496-7091.	June 26-28	8:30	Room 6, Bldg 31C, Bethesda, MD.
Microbial Chemistry, Dr. Eileen Raizen, Rm. 357, Tel. 301-496-7130.	June 12-13	8:30	Ramada, Inn, Falls Church, VA
Molecular Biology, Dr. Donald Disque, Rm. 328 Tel. 301-496-7830.	June 6-8	8:30	Marriott Hotel, New Orleans, LA
Molecular Cytology, Dr. Ramesh Nayak, Rm. 233, Tel. 301-496-7149.	May 29-31	8:30	Marriott Hotel, New Orleans, LA
Neurological Sciences, Dr. Edwin Bartos, Rm. 207 Tel. 301-496-7000.	June 12-14	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Neurology A, Dr. William Morris, Rm. 326 Tel. 301-496-7095.	June 11-14	9:00	Room 7, Bldg. 31C, Bethesda, MD.
Neurology B, Dr. Willard McFarland, Rm. A-25, Tel. 301-496-7422.	June 17-20	8:30	Wellington Hotel, Washington DC.
Nutrition, Dr. John R. Schubert, Rm. 204 Tel. 301-496-7178.	June 25-27	8:30	Room 9, Bldg 31C, Bethesda, MD.
Oral Biology and Medicine, Dr. Thomas Tarpley, Jr., Rm. 325 Tel. 301-496-7818.	June 3-6	8:30	Linden Hill, Bethesda, MD.
Pathobiological Chemistry, Dr. Asher Hyatt, Rm. A-26, Tel. 301-496-7820.	June 6-8	8:30	Marriott Hotel, New Orleans, LA.
Pathology A, Dr. Harold Waters, Rm. 337 Tel. 301-496-7305.	June 10-13	8:00	Linden Hill, Bethesda, MD.
Pathology B, Dr. Earl Fisher, Rm. 352 Tel. 301-496-7244.	June 18-20	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Pharmacology, Dr. Joseph Kaiser, Rm. 206 Tel. 301-496-7408.	June 3-5	8:30	Holiday Inn, Bethesda, MD.
Physiological Chemistry, Dr. Harry Brodie, Rm. 440, Tel. 301-496-7837.	May 30-June 1.	8:30	Marriott Hotel, New Orleans, LA.
Physiology, Dr. Martin Frank, Rm. 209, Tel. 301-496-7878.	May 29-31	9:00	International Hotel, New Orleans, LA.
Radiation, Dr. Robert L. Straube, Rm. 219 Tel. 301-496-7073.	June 9-11	9:00	Holiday Inn, Chevy Chase, MD.
Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318.	June 14-17	8:30	Ramada, Inn, Bethesda, MD.
Social Sciences and Population, Ms. Carol Campbell, Rm. 210 Tel. 301-496-7906.	June 9-11	9:00	Shoreham Hotel, Washington, DC.
Surgery, Anesthesiology and Trauma, Dr. Keith Kraner, Rm. 336 Tel. 301-496-7771.	June 5-6	8:30	Airport Holiday Inn, Arlington, VA.
Surgery and Bioengineering, Dr. Joe Atkinson, Rm. 348, Tel. 301-496-7506.	June 12-13	8:30	Georgetown Holiday Inn, Washington, DC.
Toxicology, Dr. Raymond Bahor, Rm. 205 Tel. 301-496-7570.	June 11-13	8:30	Holiday Inn, Washington, DC.
Tropical Medicine and Parasitology, Dr. Betty June Myers, Rm. 203 Tel. 301-496-7494.	June 5-7	8:30	Connecticut Inn, Washington, DC.
Virology, Dr. Claire Winestock, Rm. 2A-03, Tel. 301-496-7605.	June 12-14	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Visual Sciences A, Dr. Orvil E. A. Bolduan, Rm. 439, Tel. 301-496-7251.	June 18-20	9:00	Quality Inn Pentagon City, Arlington, VA.
Visual Sciences B, Dr. Luigi Giacometti, Rm. 325 Tel. 301-496-7251.	June 12-15	9:00	Georgetown Holiday Inn, Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.333, 13.337, 13.349, 13.393-13.396, 13.386-13.844, 13.846-13.876, National Institutes of Health, HEW)

Dated: May 13, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-15208 Filed 5-16-80; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of BLM Maps of Public Lands and Minerals; Michigan and Wisconsin

Notice is hereby given that five new Bureau of Land Management (BLM) maps showing the location of public lands and Federal mineral rights in northern Wisconsin and western Upper Michigan are now available to the public. The maps, prepared as a result of a Bureau-wide program to map areas of mineral interests, are published at the scale 1:100,000 (one centimeter = one kilometer) in a format of 1° longitude by 30′ latitude (34 x 60 miles). They are sold for $2.00 each.

The maps now available cover the areas around Ashland, Merrill and Rhinelander, Wisconsin; and Iron River and L'Anse, Michigan. Ultimately, more maps will be printed covering all of northern Wisconsin and parts of east central Minnesota and Upper and Lower Michigan. BLM maps covering northern Minnesota have already been printed and are available to the public.

For further information, contact the Bureau of Land Management, Lake States Office, 125 Federal Building, Duluth, Minnesota 55802, (218) 727-6692; or Bureau of Land Management, Eastern States Office, 350 South Pickett Street,

Alexandria, Virginia 22304, telephone (703) 235–2840.

Roger L. Hildebeidel,

Eastern States Director.

[FR Doc. 80–15272 Filed 5–16–80; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Cleveland Metroparks Zoological Park, Brookside Park, Cleveland, Ohio 44109.

The applicant requests a permit to purchase and import 2 male and 2 female cheetahs (*Acinonyx jubatus*) from a zoo in southwest Africa for enhancement of propagation and educational display.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–6406. Interested persons may comment on this application on or before June 18, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: May 13, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80–15283 Filed 5–16–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Salisbury Zooligical Park, 750 South Park Drive, Salisbury, MD 21801.

The applicant requests a permit to take 1.1 Delmarva Peninsula fox squirrels (*Sciurus niger cinereus*) from the wild for propagation purposes.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington D.C. 20240.

This application has been assigned file number PRT 2–7040. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before June 18, 1980. Please refer to the file number when submitting comments.

Dated: May 13, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80–15284 Filed 5–16–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Woodland Park Zoological Gardens, 5500 Phinney Avenue North, Seattle, WA 98103.

The applicant requests a permit to import a pair of brown-eared pheasants *(Crossoptilon mantchuricum)* from Mr. Bert Willemsen, 14891 72nd Ave., Surrey, B.C. Canada for propagation purposes.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington D.C. 20240.

This application has been assigned file number PRT 2–7031. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before June 18, 1980. Please refer to the file number when submitting comments.

Dated: May 13, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80–15285 Filed 5–16–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Worcester State College, Department of Biology, Worcester, MA 01602

The applicant requests a permit to take (capture, photograph, mark, and measure) Plymouth red-bellied turtles (*Chrysemys rubriventris bangsi*) for scientific purposes.

Humane care and treatment during transport has been indicated by the applicant

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–7038. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before June 18, 1980. Please refer to the file number when submitting comments.

Dated: May 13, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office U.S. Fish and Wildlife Service.

[FR Doc. 80–15286 Filed 5–16–80; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Zapata Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2713, Block A–562, High Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53658). Those practices and

procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 9, 1980.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-15225 Filed 5-16-80; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Feral Burro Management and Ecosystem Restoration Plan for Grand Canyon National Park; Implementation of Plan and Availability of Analysis of Public Comments, Decision Document, and Guidelines for Live Capture Proposals

After considering public comments on the Draft and Final Environmental Statement for the Feral Burro Management and Ecosystem Restoration Plan for Grand Canyon National Park, the National Park Service has determined that burro management in Grand Canyon National Park should be conducted as proposed in the Final Environmental Statement. In keeping with this determination, the National Park Service today is implementing the proposed burro mangement program, which consists of a combination of live removal of burros by the public, herding of some burros out of the park followed by fencing to keep them from returning to the park, and if necessary, shooting of any remaining, uncapturable burros. Starting today, the Superintendent of Grand Canyon National Park will accept applications for Special Use Permits from people or groups who wish at their own expense and effort to capture and remove burros from Grand Canyon National Park. Persons or groups wishing to apply for such Special Use Permits must ensure that their burro collection proposals are made, received, approved, and satisfactorily implemented within the next 60 days, or within a 30 day extension period, if conditions outside their control justify a longer time period. If it is demonstrated that burros are being removed a rate determined to be suitable by the Park Superintendent, the program will be allowed to continue until live removal efforts are no longer effective. Guidelines for development of proposed live capture programs appear as Appendix H of the Final Environmental Statement. Special Use Permit applications and proposals for live removal of burros should be sent to the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023.

Copies of the Decision Document, the Analysis of Public Comments, and the Guidelines may be obtained from the Superintendent of Grand Canyon National Park at the above address or from the following locations:

Natural Resources Management Division, Western Regional Office, National Park Service, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102; Natural Resources Division, National Park Service, DOI, Washington, D.C. 20240.

Dated: May 13, 1980.

Ira J. Hutchison

Acting Director, National Park Service.

[FR Doc. 80-15240 Filed 5-16-80; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date 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 ICC Regional 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

[Notice No. 26]

May 12, 1980.

MC 148250 (Sub-1TA), filed September 10, 1979. Applicant: BARON TRANSPORT, INC., P.O. Box 1311, Battle Creek, MI 49016. Representative: Donald B. Levine, 39 S. LaSalle Street, Chicago, IL 60603. *Automotive parts for off-highway vehicles, and materials equipment and supplies* (except commodities in bulk) used in the manufacture of automotive parts; between Battle Creek, MI, on the one hand and on the other, points in IL, IN, OH, PA and WI. For 180 days. Supporting shipper(s): Rockwell International Corporation, 2135 W Maple Road, Troy, MI 48084. An underlying ETA seeks 90 days authority. Send protests to: C. R. Flemming, District Supervisor, I.C.C., 201 Corr Building, 300 East Michigan Avenue, Lansing, MI 48933.

MC 148531 (Sub-TA), filed October 4, 1979. Applicant: WILLIAM BARNHART TRUCKING CO., INC., Box 245A, Highway 34, Farmingdale, NJ 07727. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Contract, irregular. *Scrap metals.* Between Farmingdale, NJ and points in the United States east of the Mississippi River, for 180 days. Supporting shipper(s): Trojan Tube Co., Inc., Emil A. Schroth, Inc., Yellow Brook Road and Copper Avenue, Farmingdale, NJ 07727. Send protests to: Robert J. Latarewicz, TR&TS, ICC, 744 Broad St., Room 522, Newark, NJ 07102.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[Notice No. F-27]

The following applications were filed in Region I. Send protests to Regional Authority Center, Interstate Commerce Commission, 150 Causway St., Rm. 501, Boston, MA 02114. The following applications were filed in Region I. Send protests to Regional Authority Center, Interstate Commerce Commission, 150 Causway St., Rm. 501, Boston, MA 02114.

MC 138016 (Sub-1–TA), filed May 9, 1980. Applicant: MENANTICO TRANSPORT CO., INC., Sharp Road, P.O. Box 248, Tuckahoe, New Jersey 08250. Attorney: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, New Jersey 07006. Contract carrier,

irregular routes: Commodities as are sold, dealt or utilized by construction and road building companies, and supply companies (except cement in bulk), between points in New Jersey on the one hand, and, on the other, points in Delaware, Maryland, New York, Pennsylvania and Virginia. Supporting shipper(s): Tuckahoe Sand & Gravel Company, Inc., Sharp Road, Tuckahoe, NJ 08250.

MC 143127 (Sub-1–7TA), filed May 8, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). *Corn flour, corn meal and corn grits* (except in bulk), from Milwaukee, WI to all points in the United States in and east of MN, IA, MO, AR, and LA. Supporting shipper: Krause Milling Co., 611 E. Wisconsin Ave., Milwaukee, WI 53201.

MC 59655 (Sub-1–1TA), filed May 8, 1980. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Containers, Container ends and closures, and materials, equipment, and supplies used in the manufacture and distribution of Containers, Container ends and closures (except commodities in bulk),* Between the plant and warehouse sites of American Can Co. at Whitehouse and Maumee, OH, on the one hand, and, on the other, points in the New York, NY and Boston, MA Commercial Zones, and Edison, NJ. Supporting shipper(s): American Can Company, 915 Harger Road, Oak Brook, IL 60521.

MC 105607 (Sub-1–1TA), filed May 9, 1980. Applicant: CON. WEIMAR CORP., P.O. Box 434, 401 Commerce Road, Linden, NJ 07036. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07394. *Chemicals,* (1) Between the facilities of Stephan Chemical Company, locateed at or near Fieldsboro, NJ, on the one hand, and, on the other, points in NY, PA, CT, MA MD, DE, RI, VA, NC, SC, FL, GA, OH, WV, VT, ME, NH, and DC; and (2) From Elwood, IL, To the piers in New York Harbor, NY. Supporting shipper(s): Stephan Chemical Company, Edens and Winnetka, Northfield, IL 60093.

MC 7680 (Sub-1–1TA), filed May 8, 1980. Applicant: BOWMAN BROS. TRUCKING CO, INC., P.O. Box 624, West Paterson, N.J. 07424. Representative: John J. Veteri, P.O. Box 624, West Paterson, N.J. 07424. Contract, Irregular *Construction equipment, construction equipment parts and the materials* in the manufacturing of construction equipment, Between points and places in the United States to Miami, FL and New York, N.Y. and, on the other hand, Miami, FL and New York, N.Y. to points and places in the United States. Supporting shipper: Earthworm Tractor Company of Ardsley, New York.

MC 148678 (Sub-1–1TA), filed May 8, 1980. Applicant: McGRATH TRUCKING INC., 229 Old Elm Street, Mansfield, MA 02048. Representative: Ronald M. McGrath, 229 Old Elm Street, Mansfield, MA 02048. *Contract carrier,* irregular routes, *commodities and merchandise regularly dealt in by retail department stores* under a continuing contract with Zayre Corporation, Framingham, MA, between points in the states of AL, FL, GA, MA, NC, SC, TN, VA.

MC 98589 (Sub-1–1TA), filed May 5, 1980. Applicant: WORLD TRANSPORT, INC., 56 Oak Hill Way, Brockton, MA 02403. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. (1) *General commodities* (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or trailers, restricted to traffic having a prior or subsequent movement by water, between Brockton, MA, Elizabeth Port, Newark, Union, and Weehawken, NJ, New York, NY, Alexandria, VA, Atlanta, GA, and Jacksonville, FL, and (2) *empty containers, trailers, and trailer chassis,* between Brockton, MA, Elizabeth Port, Newark, Union, and Weehawken, NJ, New York, NY, Alexandria, VA, Atlanta, GA, and Jacksonville, FL. Restricted in (1) and (2) above to traffic originating at or destined to the facilities of Dolphin Forwarding, Inc. Supporting shipper: Dolphin Forwarding, Inc., 56 Oak Hill Way, Brockton, MA 02403.

MC 142314 (Sub-1–1TA), filed May 5, 1980. Applicant: EVANS TRUCKING, INC., 89 Leetes Island Road, Branford, CT 06405. Representative: William J. Meuser, Esquire, 86 Cherry Street, P.O. Box 507, Milford, CT 06460. Contract, irregular: powdered shale (aggregate) between Plainville, MA and Westbrook, CT. Supporting shipper: Westbrook Concrete Block Co. Inc., Cold Springbrook Industrial Area, Westbrook, CT 06498.

MC 59640 (Sub-1–3TA), filed May 7, 1980. Applicant: PAULS TRUCKING CORPORATION, Three Commerce Drive, Cranford, New Jersey 07016. Respresentative: Michael A. Beam, 301 Blair Road, Woodbridge, New Jersey 07095. *Contract carrier:* irregular routes: *Such merchandise as is dealt in and sold by supermarkets and home center stores, and equipment, materials and supplies used in the conduct of such businesses (except commodities in bulk),* between points in CO, KS, MI, and NB, on the one hand, and, on the other, facilities of Supermarkets General Corporation in CT, DE, NJ, NY, and PA. Supporting shipper: Supermarkets General Corporation, 301 Blair Road, Woodbridge, New Jersey 07095.

MC 15075 (Sub-1–1TA), filed May 7, 1980. Applicant: HAROLD A. YOUNG, d.b.a. YOUNG'S EXPRESS, 21 Glenwood Avenue, Southbridge, MA 01550. Represenative: Russell S. Callanhan, P.O. Box 1806, Brockton, MA 02403. *Welding rods, wire and welding compounds; welding machines and parts; and electric motors,* from the facilities utilized by Lincoln Electric Co. at Waltham, MA to points in Rhode Island. Supporting shipper: Lincoln Electric Co., 411 Waverly Oaks Road, Waltham, MA 02154.

MC 150640 (Sub-1–2TA), filed May 8, 1980. Applicant: EMERSON EXPRESS CO., INC., 545 Lyell Avenue, Rochester, NY 14606. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier,* irregular routes *Scrap Materials and metals; non-ferrous metals; stainless steel; batteries; reconditioned steel containers, including tubs:* Between points in Monroe County, NY on the one hand, and, on the other, points in CT, MA, MI, and TN.

MC 48017 (Sub-1–1TA), filed May 6, 1980. Applicant: CAMEL TRUCKING, INC., 7 Nay Street, P.O. Box 55, East Boston, MA 02128. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Logan International Airport at Boston, MA, on the one hand, and, on the other, Hopkins International Airport at Cleveland, OH, Lunkin Airport at Cincinnati, OH, and Detroit Metropolitan Airport at Detroit, MI restricted to the transportation of shipments having an immediately prior or subsequent movement by air. Supporting Shipper: Swissair Transport Co. Ltd., Logan International Airport, East Boston, MA 02128.

MC 139349 (Sub-1–4TA), filed May 8, 1980. Applicant: E Z FREIGHT LINES, 70 Gould Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier,* over irregular routes: transporting such commodities as are dealt in by retail department stores (except foodstuffs and commodities in bulk) between the facilities of Zayre Corp., located at

Alsip, IL, and other points in IL (except Chicago Commercial Zone), IN, MI, WI, IA, KY and OH. Supporting shipper: Zayer Corp. 235 Connecticut Path, Framingham, MA 01701.

MC 150758 (Sub-101TA), filed May 5, 1980. Applicant: B. J. TRANSPORTATION, INC., 208 Jamestown Road, Stratford, CT 06497. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *General Commodities*, between points in the New York, NY Commercial Zone, as defined by the Commission, on the one hand, and, on the other hand, all points in NY State. Supporting Shipper: Five supporting shippers.

MC 148793 (Sub-1–2TA), filed May 7, 1980. Applicant: M & L MESSENGER SERVICE, INC., Jewel Lane, New Farifield, CT 06810. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. (1) *Various paper documents*, between Danbury, CT and New York, NY, restricted to transportation of packages not exceeding 50 pounds per package, originating to the facilities of the Gold Standard Collection, Danbury, CT. (2) *Electronic equipment and related papers*, between Bethel, CT and New York, NY, restricted to transportation of packages not exceeding 50 pounds per package originating at or destined to the facilities of Rupert Neve, Inc. Bethel, CT. (3) *Chemicals, metals, repair parts and packaging materials*, between Danbury, CT and Boston, MA, Bethlehem, PA, Easton, PA, Parsippany, NJ, Moorestown, NJ, and New York, NY, restricted to transportation of packages not exceeding 50 pounds per package, originating at or destined to the facilities of National Semiconductor Corporation, Danbury, CT. Supporting shippers: Gold Standard Collection, Danbury, CT, Rupert Neve, Inc. Bethel, CT and National Semiconductor Corporation, Danbury, CT.

MC 138304 (Sub-1–2TA), filed April 28, 1980. Applicant: NATIONAL PACKERS EXPRESS, INC., 1600 Clinton Street, Hoboken, NJ 07030. Representative: Craig B. Sherman, Attorney at Law, Broad and Cassel, Barnett Bank Building, 1108 Kane Concourse, Bay Harbor Islands, FL 33154. *Steel nuts, bolts, screws and metal fasteners, nails, wire rod and metals* from New Orleans, LA, and Houston, TX, Chicago, IL, to all points in the United States. *Restriction:* Restricted to transportation of traffic for the account of Allied International—American Eagle Trading Corp., 77 Purchase Street, Rye, NY 10580. Supporting shipper: Allied International—American Eagle Trading Corp., 77 Purchase Street, Rye, NY 10580.

MC 150742 (Sub-1–1TA), filed May 7, 1980. Applicant: ROBERT G. BUSKARD, d.b.a. DOME TRANSPORT COMPANY, 114 Park Avenue, Manhasset, New York 11030. Representative: Robert G. Buskard (same address as applicant). Contract, Irregular, *Plastic bags, film and sheeting and supplies* used in the sale, distribution and manufacture of foregoing commodities (except in bulk, and those requiring use of special equipment). Between Edison, NJ and CT, DC, DE, Louisville, KY, MA, Bangor, Biddeford, Caribou, Fairfield, Portland, ME, Manchester, Salem, NH, MD, NY, PA, Cranston, RI and Fairfax, VA. Supporting shipper: American Cellophane & Plastic Films of 1313 Boylston Street, Boston, MA.

MC 150526 (Sub-1–2TA), filed May 5, 1980. Applicant: YARMOUTH LUMBER, INC., Box 46, Yarmouth, ME 04096. Representative: William H. Phipps, North Street, Yarmouth, ME 04096. Contract, Irregular, *Canned fish*, for Stinson Canning Company, from their facilities located in Maine to all points in: MA, NY, NJ, PA, DE, MD, VA, WV, NC, SC, MI, GA, FL, OH, IN, KY, TN, MS, AL, IL, and LA. Supporting shipper: Stinson Canning Company, Prospect Harbor, ME 04669.

MC 150725 (Sub-1–1TA), filed May 5, 1980. Applicant: CROSS COUNTRY FARMING COOPERATIVE, INC., P.O. Box 134, Pine Island, NY 10969. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* Irregular routes: *Paper and Paper Articles, and materials, equipment, and supplies used in the manufacture and sale of Paper and Paper Articles*, Between Norwalk, CT; Boston and Springfield, MA; West Caldwell, NJ; and Syracuse, NY, on the one hand, and, on the other, points in the states of CT, DE, GA, MA, MD, NJ NY, PA, SC, VA, NC, and WV. Supporting shipper(s): Deluxe Check Printers, Inc., 1080 W. Co. Rd, F, Saint Paul, MN 55112.

MC 150731 (Sub-1–1TA), filed May 5, 1980. Applicant: JEFFREY D. EDMISTON TRUCKING, 73 Sunny Brae Boulevard, Yardville, N.J. 08620. Representative: Art Steel Co, Inc., 170 West 233rd Street, Bronx, N.Y. 10463. Contract, Irregular *Steel office furniture*, From Bronx, N.Y. to points in NJ, PA, DE, MD and VA. Supporting shipper(s): Art Steel Co, Inc. of Bronx, N.Y. 10463.

MC 149185 (Sub-1–1TA), filed May 5, 1980. Applicant: TRANSPORT E. J. BOURQUE, LIMITEE, P.O. Box 488, 1230 Industrial Blvd., Mont-Joli, Quebec, Canada, G5H 3L3. Representative: William H. Shawn, Suite 501, 1730 M Street, N.W., Washington, D.C. 20036. Contract, Irregular, *Frozen foodstuffs*, from ports of entry on the International Boundary Line between United States and Canada located in Maine to points in ME, NH, MA, RI, CT, NY, NJ, PA, OH, DC, DE, MD, VA, TN, NC, SC, GA, AL and FL. Supporting shipper(s): C. M. McLean, Inc., of Edward Island, Canada C1N 2V5.

MC 150718 (Sub-1–2TA), filed May 5, 1980. Applicant: K. B. TRUCKING, d.b.a., KENDE LEASING CORP., 2 Terry Lane, Clark, NJ 07066. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410. Contract, irregular (a) *fire extinguisher shells, parts thereof and ingredients therefor*, from Attleboro and Dighton, MA, Scotch Plains, NJ, and Warren and Youngstown, OH, to Trussville, AL. From Attleboro, MA to Scotch Plains, NJ. (b) *Fire extinguishers*, from Trussville, AL to Hartford, Plainville and New Haven, CT; North Chicago, IL; Baltimore, MD; Boston and Attleboro, MA; Manahawkin, Jackson, and Dover, NJ; New York, Newburgh, Plattsburgh, Brewster, Copiague and Port Jervis, NY; Philadelphia and Bethlehem, PA; Providence, RI; and points in their respective commercial zones. Supporting shipper: Amerex Corp. of Trussville, AL 35173.

MC 149367 (Sub-1–2TA), filed May 5, 1980. Applicant: TRAFIK SERVICES, INC., 11 Newark Street, Providence, RI 02908. Representative: A. Joseph Mega (same address as applicant). Contract, irregular, *hose, garden or water plastics, pellets, plastic granule, treads, tire rubber, tire repair material, soling, rubber composition; blocks, rubber cutting, rubber mats or parts; plastic tubing, other than flexible, paint, dry or wet*, from the facilities of Teknor Apex Co. at or near Pawtucket, RI and Hebronville, MA to all points in NY State on and north of United States Highway 84. Restriction: The shipments are restricted to a transportation service to be provided under a continuing contract or contracts with the Teknor Apex Company of Pawtucket, RI. Supporting shipper: Teknor Apex Company of Pawtucket, RI 02862.

MC 22988 (Sub-1–1TA), filed May 5, 1980. Applicant: K. G. MOORE, INC., 9 Park Avenue, Hudson, NH 03051. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *Corrugated boxes*, from Mansfield, MA to points in ME and NH. Supporting shipper: Champion International Corporation, Container Division, 47 Maple Street, Mansfield, MA 02048.

MC 113843 (Sub-1–5TA), filed May 5, 1980. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MA 02210. Representative: Lawrence T. Sheils, 316 Summer Street, Boston, MA 02210. (1) *Such Commodities as are dealt in by retail department stores (2) materials, equipment and supplies used in the distribution of the commodities named herein.* Between the facilities of Child World, Inc. at Avon, MA, Obetz, OH and Kansas City, MO on the one hand and on the other hand, points in CT, DE, IA, IN, IL, KS, KY, MA, MD, ME, MI, MN, MO, NE, NH, NJ, NY, PA, RI, VA, VT, WI, WV, and DC. Supporting shipper: Child World, Inc., 25 Littlefield St., Avon, MA 02322.

MC 84428 (Sub-1–1TA), filed May 5, 1980. Applicant: CHESTER JACKSON CO., 475 Schuyler Avenue, Kearny, N.J. 07032. Representative: Charles J. Irwin, Esq., 744 Broad Street, Newark, N.J. 07102. *Aqua-ammonia solution,* in bulk, in rubber-lined tank vehicles; spent *aqua-ammonia solution,* in bulk, in rubber-lined tank vehicles, from Long Island City, N.Y. to Richmond, VA, spent aqua-ammonia solution from Richmond, VA to Long Island City, N.Y. and Joliet, IL. Supporting shipper: P. A. Hunt Chemicals Corp, Roosevelt Pl, Palisades Park, N.J. 07650

MC 112750 (Sub-1–5TA), filed May 5, 1980. Applicant: PUROLATOR COURIER CORP., 3333 Hew Hyde Park Road, New Hyde Park, N.Y. 11042. Representative: Elizabeth L. Henoch (same address as applicant). Contract carrier, over irregular routes, *Commercial Papers, documents and written instruments* (except currency and negotiable securities) as are used in the business of banks and banking institutions, 1. Between Kingsport, TN, on the one hand, and, on the other, points in Lee, Russell, Smyth, Washington, Wise and York Counties, VA. 2. Between Middlesboro, KY, on the one hand, and, on the other, Knoxville, TN. Supporting shippers: There are 14 supporting shippers and their statements may be examined at the ICC office in Boston, MA.

MC 150196 (Sub-1–2TA), filed March 3, 1980. Applicant: AUTO CITY, INC., 440 McClellan Hwy., E. Boston, MA 02128. Representative: John A. Maiona, Esq., 294 Washington St., Boston, MA 02108. *Used leased motor vehicles,* over irregular routes, from and to Boston, MA, to points and places east of the Mississippi River, i.e. each State, including all capital and principal cities, towns, including major air, rail and bus terminals, in the following States: ME, NH, VT, MA, RI, CT, NY, PA, NJ, DE, MD, OH, MI, WI, IL, IN, WV, VA, KY, TN, NC, SC, GA, AL, MS, FL, LA, DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers are (1) Dollar Rent-a-Car, E. Boston, MA, (2) The Hertz Corp, Peabody, MA, (3) Local Car Rental, E. Boston, MA.

MC 143127 (Sub-1–6TA), filed May 1, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). *Household cleaning products* (except in bulk), from Brockport, NY to Atlanta, GA; Auburndale, FL; Bristol, PA; Chicago, IL; Dallas, TX; New Orleans, LA; Roanoke, VA; St. Louis, MO; and Toledo, OH. Supporting shipper: Purex Corporation, 1414 N. Radcliffe St., Bristol, PA 19007.

MC 145829 (Sub-1–2TA), filed May 1, 1980. Applicant: ETI CORP., P.O. Box 1, Keasbey, NJ 08832. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *Household Cleaning Products, Bleaches, and Cleaning Compounds, and materials, equipment, and supplies used in the manufacture, sale, or distribution of the foregoing commodities (except commodities in bulk),* Between Bristol and Cromwell Heights, PA, on the one hand, and, on the other, points in CT, MD, MA, NJ, NY, RI, VA, and DC. Supporting shipper(s): Purex Corporation, Ltd., Radcliffe Street, Bristol, PA.

MC 142452 (Sub-1–5TA), filed May 1, 1980. Applicant: RIMAR TRANSPORT, INC., 850 Curie Road, North Brunswick, NJ 08902. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street, NW, Washington, DC 20001. *Contract; irregular. Expanded plastic foam insulating materials,* from Linden, NJ to points in WV, NC, SC, GA, FL, TN, KY, AL, and MS. Restricted to service performed under continuing contract with Apache Foam Products Division of Millmaster Onyx Corp. Supporting shipper: Apache Foam Products, Division of Millmaster Onyx Corp., 2025 East Linden Ave., Linden, NJ 07036.

MC 127955 (Sub-1–1TA), filed May 5, 1980. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Avenue, Pomona, NJ 08240. Representative: J. Raymond Clark, Suite 1150, 600 New Hampshire, N.W., Washington, DC 20037. *Malt beverages in containers* from Rochester, NY to Pleasantville, NJ. Supporting shipper: Harrison Beverage Co., 850 W. Delilah Road, Pleasantville, NJ 08232.

MC 143246 (Sub-1–3TA), filed May 5, 1980. Applicant: LAND TRANSPORT CORPORATION, 24 Sabrina Road, Wellesley, Massachusetts 02181. Representative: James E. Mahoney, 148 State Street, Boston, Massachusetts, 02109. *Contract carrier* irregular routes, *such commodities as are dealt in or used by manufacturers of glass and glass products (except commodities in bulk, in tank vehicles)* between the facilities of Anchor Hocking Corporation, Shenango China Company and Phoenix Glass Company, located in Lancaster, OH, Canal Winchester, OH, Bremen, OH, Clarksburg, WV, Chester, WV, Monaca, PA and New Castle, PA on the one hand, and, on the other, points in ME, NH, VT, MA RI, and CT. Restriction: The authority granted herein is limited to transportation services to be performed under continuing contracts with Anchor Hocking Corporation, Shenango China Company, and Phoenix Glass Company; all of Lancaster, OH. Supporting shippers: Anchor Hocking Corporation, Lancaster, OH; Shenango China Company, Lancaster, OH; Phoenix Glass Company, Lancaster, OH.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 138438 (Sub-II–8TA), filed May 2, 1980. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Cabinets, and materials, supplies and accessories used in the manufacture and distribution thereof,* between Williamsport, MD, and its commercial zone, on the one hand, and, on the other, points in and east of WI, IL, KY, TN and MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Atlantic Cabinet Corporation, P.O. Box 100, Williamsport, MD 21795.

Note.—Dual operations may be involved.

MC 146676 (Sub-II–4), filed May 2, 1980. Applicant: BURKS TRUCKING, INC., P.O. Box 37, Old Fort, OH 44861. Representative: E. H. van Deusen, P.O. Box 97, Dublin, OH 43017. (1) *Sodium Bicarbonate* (Except in bulk), from Seneca County, OH to points in AR, DE, IN, IL, IA, KY, MD, MI, MO, NJ, NY, PA, TN, VA, WV, and WI and (2) Materials and Supplies used in the manufacture and distribution of Sodium Bicarbonate (Except in bulk) from points in AR, DE, IN, IL, IA, KY, MD, MI, MO, NJ, NY, PA, TN, VA, WV, and WI, to Seneca County, OH. An underlying ETA seeks 90 days authority. Supporting shipper: Church & Dwight Co., Inc., 20 Kingsbridge Rd., Piscataway, NJ 08854.

MC 14252 (Sub-II–1TA), filed May 2, 1980. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Rd., Columbus, OH 43227.

Representative: William C. Buckham (same as applicant). *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* to serve Louisville, KY and its commercial zone as an off route point in connection with our established regular route operation. An underlying ETA seeks 90 days authority. Supporting shipper(s): Devoe & Raynolds Co., 400 Dupont Cr., Louisville, KY 40207; American Cellophane & Plastics, 7641 National Turnpike, Louisville, KY 40214; Reichhold Chem, Inc., 3001 Watterson Trail, Jeffersontown, KY 40299.

MC 125813 (Sub-II–3TA), filed May 2, 1980. Applicant: CRESSLER TRUCKING, INC., 691 Orrstown Rd., P.O. Box 312, Shippensburg, PA 17257. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., N.W., Washington, DC 20004. *Shafting pulleys and sheaves, shaft collars, shaft couplings and o/t clutch couplings,* from the facilities of T. B. Wood's Sons Co. at or near Chambersburg, PA, and Trenton, TN, to Atlanta, GA, Chicago, IL, Dallas, TX, San Leandro, CA, and Tulsa, OK, for 180 days. Supporting shipper(s): T. B. Wood's Sons Co., 440 N. 5th St., Chambersburg, PA 17201.

MC 126320 (Sub-II–2TA), filed May 2, 1980. Applicant: DETTINBURN TRUCKING, INC., Rt. 3, Box 24, Petersburg, WV 26847. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. *Lime, limestone, and limestone products* (1) from Saltville, VA, to AL, GA, KY, MD, NC, OH, SC, TN, WV, and DC; and (2) from Pendleton County, WV, to points in AL, GA, KY, MD, OH, SC, TN, and DC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): McCabe-Woody & Co., P.O. Box 895, Kingsport, TN 37662.

MC 150715 (Sub-II–1TA), filed May 2, 1980. Applicant: DONALD BAILEY, JUDY BAILEY & MICHAEL BAILEY, d.b.a. DJM BAILEY TRUCKING, Box 43, Gaines, PA 16921. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Foundry Sand,* from Oregon, IL to NY and PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Martin Marietta, Acme Resin Co., A Unit of CPC International, Inc., Pines Rd., Box 130, Oregon, IL 61061.

MC 148121 (Sub-II–1TA), filed April 25, 1980. Applicant: DANIEL P. MATELSKE, d.b.a., 4–D TRANSFER & TRUCKING, 14540 Indian Creek Trail, Middleburg Hts. OH 44130. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Hardgoods,* from the facilities of Independent Hardgoods, Inc., located at Cleveland, OH to points in PA, MI, IN, IL, WV, KY and MD. Supporting shipper: Independent Hardgoods, Inc., 1700 London Rd., Cleveland, OH 44112.

MC 150160 (Sub-II–1TA), filed April 4, 1980. Applicant: J & B TRUCKING, INC., 15411 Chatfield Ave., Cleveland, OH 44111. Representative: Kevin R. Reichley, 50 W. Broad St., Columbus, OH 43215. *Automobiles, trucks, tactical vehicles; set up or knocked down,* between the facilities of AM General Corporation, at South Bend, IN, on the one hand, and, on the other, points in Baltimore, MD, NJ, NY, Toledo, OH, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): AM General Corporation, 701 W. Cheppewa Ave., South Bend, IN 46624.

MC 102295 (Sub-II–1TA), filed April 30, 1980. Applicant: GUY HEAVENER, INC., 480 School Lane, Harleysville, PA 19438. Representative: Gerald Heavener (same address as above). *Sand* from Philadelphia, PA to Guadalupe County, TX, for 180 days. Supporting shipper(s): MDC Industries, Inc., Collins & Willard Sts., Philadelphia, PA.

MC 100439 (Sub-II–1TA) filed April 23, 1980. Applicant D. W. HASSLER, INC., R.D. No. 8, York, PA. 17342. Applicant's representative: Harold G. Hernly, Jr., Hernly & Booker, P.C., 110 S. Columbus St., Alexandria, VA 22314. (1) *asphalt,* in bulk, in tank vehicles, from Baltimore, MD, to points in PA, located on and east of the eastern boundaries of Warren, Forest, Jefferson, Indiana, Westmoreland and Fayette Counties, PA, excluding Adams, Cumberland, Dauphin, Lancaster and York Counties, PA, and (2) *asphaltic products,* in bulk, in tank vehicles from Baltimore, MD, to points in PA, located on and east of the eastern boundaries of Warren, Forest, Jefferson, Indiana, Westmoreland and Fayette Counties, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Bituminous Emulsion Co., P.O. Box 2799, Baltimore, MD 21225; Bituminous Paving Materials of York, Inc., 1300 Zims Quarry Rd., York, PA 17404; Warden Asphalt Co., P.O. Box 2235, 4670 Fritchey St., Harrisburg, PA 17107.

MC 150693 (Sub-II–1TA), filed April 28, 1980. Applicant: GENERAL MOTOR LINES, INC., P.O. Box 9583, Baltimore, MD 21237. Representative: Edward N. Button, 580 Northern Avenue, Hagerstown, MD 21740. Contract; irregular; *Lubricating oils and greases; carbon, gum or sludge removing compounds; automotive filters, valves, and parts, fender covers; brake fluids and compresor oils; antifreeze and engine coolant preparations; cleaning, scouring, washing, buffing, or polishing compounds (except commodities in bulk), and materials, equipment and supplies used in the manufacture and distribution thereof,* between points in the US, in and east of MN, IA, MO, AR, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: STP Corporation, 1400 W. Commercial Blvd., Ft. Lauderdale, FL 33310.

MC 45194 (Sub-II–1TA), filed April 28, 1980. Applicant: LATTAVO BROTHERS, INC., 2230 Shepler Church Ave, SW, Canton, OH 44706. Representative: Boyd B. Ferris, 50 W Broad St., Columbus, OH 43215. *Iron and steel articles, and materials, equipment, and supplies used in the manufacture of iron and steel articles, except in bulk,* between the facilities of Northstar Steel Co., at or near Monroe, MI, on the one hand, and, on the other, points in DE, IL, IN, KY, MD, MI, NJ, NY, OH, PA, VA and WV. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Northstar Steel Co., 2901 Metro Dr., Minneapolis, MN 55420.

MC 4963 (Sub-II–11TA), filed April 30, 1980. Applicant: JONES MOTOR CO., INC., Bridge St. & Schuylkill Rd., Spring City, PA 19475. Representative: William H. Peiffer, (same as above). *General commodities (except those of unusual value, Classes A and B explosives, commodities in bulk, household goods as defined by the Commission and those requiring special equipment)* between points in IN: Louisville, KY commercial zone; Owensboro, KY commercial zone, for 180 days. An underlying ETA seeks 90 days authority. The right to tack is requested. Applicant intends to interline at Indianapolis, Evansville and Fort Wayne, IN. Supporting shipper(s): Varified statement prepared by applicant.

MC 100439 (Sub-II–2TA), filed May 1, 1980. Applicant: D. W. HASSLER, INC., R.D. No. 8, York PA. Applicant's representative: Harold G. Hernly, Jr., 110 S. Columbus St., Alexandria, VA 22314. *Lime* in bulk, from Strasburg, VA, and points in its commercial zone or terminal area to Spring Grove, PA; Bridgeport, NJ and Edgemoor, DE, and points in their commercial zones or terminal areas for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Engelhard Minerals & Chemical Corporation, Menlow Park, Edison, NJ 08817.

MC 150524 (Sub-II–2TA), filed May 1, 1980. Applicant: EAGLE CONTRACT CARRIERS, INC., Box 188D, R.D. 4, Lake

Ariel, PA 18436. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Chain, supplies & accessories, used in connection with chain* from the facilities of Atlas Chain & Precision Products, Inc., at W. Pittston, PA to all points in the US (except AK & HI) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Atlas Chain & Precision Products, Inc., 4th & Pacific Ave., W. Pittston, PA 18643.

MC 150468 (Sub-II–1TA), filed April 28, 1980. Applicant: MOBILE TRANSPAK SYSTEMS, INC., 1226 Leopard St., Phila., PA 19125. Representative: Joseph V. DeFusco (same as applicant). *Contract; iregular: Frozen food (except in bulk)* from Abbotts Dairies at Phila., PA to Woonsocket, RI; Suffolk and Norwich, CT; and return for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Abbotts Dairies, 33rd & Arch St., Phila., PA 19101.

MC 147681 (Sub-II–6TA), filed April 28, 1980. Applicant: HOYA EXPRESS, INC., P.O. Box 543, West Middlesex, PA 16159. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. (1) *Equipment, materials and supplies used in the manufacture and installation of equipment used by banks and financial institutions;* (2) *Equipment, materials and supplies used in the construction of banks and financial institutions;* (3) *Office furniture, decorations, and materials and supplies used by banks and financial institutions;* Between the facilities used by Diebold, Inc. at Canton, Hebron, Wooster and Hamilton, OH; Syracuse, NY; Columbia, MD; Elizabeth, NJ; and Livonia, MI; and between the facilities used by Diebold, Inc. at the above-named points on the one hand, and, on the other, points in CT, DE, DC, IN, KY, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Diebold, Inc., 818 Mulberry Rd., Canton, OH 44711. The purpose of resubmitting this summary is to show "Between the facilities *used by* Diebold, Inc." instead of "Between the facilities *of* Diebold, Inc."

MC 142559 (Sub-II–14TA), filed May 5, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Clay tile, glazed and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk)* between Lawrenceburg, KY, on the one hand, and, on the other, pts in the US (except AK and HI) for 180 days. Supporting shipper: Sikes Corp., P.O. Box 447, Lakeland, Fl 33802.

MC 150737 (Sub-II–ITA), filed May 5, 1980. Applicant: BRAMCO TRANSPORT, INC., P.O. Box 154, Hartfield, VA 23071. Representative: Richard J. Lee, Suite 1222, 700 Bldg., 700 E. Main St., Richmond, VA 23219. *(1) Drugs, toilet preparations, animal feeds, animal supplies, glassware, light bulbs, abrasive cloth, paper and paper articles, notions, shells, thermometers, adhesives, wheat germ, plastic and rubber articles, toys, displays, materials, supplies and equipment used in the manufacture, sale or distribution thereof,* between the facilities of A. H. Robins Co., its wholly owned subsidiaries, Miller Morton, Co., Chap Stick Co., and Elkins-Sinn, Inc., at or near Richmond, VA, on the one hand, and, on the other, Chicago and Des Plains, IL; San Francisco, Gardon Grove and Los Angeles, CA; Las Vegas, NV; Houston and Dallas, TX; Cherry Hill, NJ; Denver, CO; Jacksonville, Miami and Orlando, FL; and Atlanta, Ga. *(2) Assemblies, journal roller railway car or locomotive and materials, supplies and equipment used in the manufacture and sale thereof,* between the facilities of Bramco Transport, Inc., at or near Petersburg, VA, on the one hand, and, on the other, pts. in Corsicann, Larado, Sheldon and Fort Worth, TX; Springfield and St. Louis, MO; Bessemer and Mobile, AL; Greenville and Pickens, SC; Clinton, IA; Huntington, WV; Atlanta and Augusta, GA; Lincoln, ME; Masury, OH; Renton, WA; Richmond, VA; Portland, OR; Bensonville, Centralia, Chicago Ridge, IL; Russel and Louisville, KY; Berwick, Burnham, Butler, Greenville, Holidaysburg, Johnston, Milton, New Castle and Renovo, PA. *(3) Paper and paper articles, wood pulpboard, woodpulp, and materials, supplies and equipment used in the manufacture thereof,* between the facilities of Chesapeake Corp., of VA, at or near West Point, VA, on the one hand, and, on the other, pts. in MD, DE, NJ, NY, CT, RI, MA, ME, NC, SC, GA, OH, PA and DC. Supporting shipper(s): Chesapeake Corp., West Point, VA; Bremco, Inc., P.O. Box 389, Petersburg, VA 23803; A. H. Robins Co., P.O. Box 7672, Richmond, VA 23231.

MC 113106 (Sub-II–4TA), filed May 5, 1980. Applicant: THE BLUE DIAMOND CO., 4410 E. Fairmont Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW, Wash., DC 20005. *Flour in bags* from Buffalo, NY, to pts. in DE, MD, NJ, PA, VA, WV and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Seaboard Allied Milling Corp., Kansas City, MO 64108.

MC 119118 (Sub-II–2TA), filed May 5, 1980. Applicant: MC CURDY TRUCKING, INC., P.O. Box 388, Latrobe, PA. 15650. Representative: Craig B. O'Rourke (same address as applicant). *Plastic products and related material used in the sale and manufacture of same,* between in Latrobe, PA., on the one hand, and, on the other, points in RI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Classic Industries, Inc., Latrobe Industrial Park, Center Dr., Latrobe, PA 15650.

MC 107012 (Sub-II–27TA), filed May 5, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *(1) Luggage, (2) parts and accessories for luggage and (3) materials and supplies used in the manufacture of (1) and (2) above,* between denver, CO and Nogales, AZ on the one hand, and on the other, El Paso, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Samsonite Corp., 11200 E. 45th Ave., Denver, CO 30239.

Note.—Common control may be invoved.

MC 145203 (Sub-2–1TA), filed May 5, 1980. Applicant: REITZEL TRUCKING CO., INC., 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. (1) *containers, container ends, and accessories;* and (2) *equipment, materials, and supplies used in the manufacture of the commodities as specified in (1) above* (except commodities in bulk), between points in IN, KY, MI, WV, PA, MD, NY, IL, WI, NJ, MO, DE, and OH. Restricted to transportation from and to the facilities of American Can Co. Supporting shipper(s): American Can Co., 915 Harger Rd., Oak Brook, IL 60521.

MC 117883 (Sub-2–3TA), filed May 5, 1980. Applicant: SUBLER TRANSFER, INC., 1 Vista Drive, P.O. Box 62, Versailles, OH 45380. Representative: Rob't Von Aschen (same as applicant). *Dairy products and yogurt* from Frederick, MD to points in IL, IN, KY, MI, OH, WI, and points in PA on and west of U.S. Hwy 15, for 180 days. Supporting shipper(s): SugarLo Co., 3540 Atlantic Ave., Atlantic City, NJ 08401.

MC 116763 (Sub-2–10TA), filed May 5, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Foodstuffs (except commodities in bulk, in tank vehicles)* from the facilities of

Hunt-Wesson Foods, Inc. at or near Bayonne and Jersey City, NJ, to points in CT, for 180 days. Restricted to traffic originating at the named origins and destined to the indicated destinations. Supporting shipper(s): Hunt-Wesson Foods, Inc., 160 E. 22nd St., Bayonne, NJ 07002.

MC 150733 (Sub-2–1TA), filed May 5, 1980. Applicant: WILHOITE, INC., P.O. Box 29544, Richmond, VA 23229. Representative: Calvin F. Major, 200 W. Grace St., Richmond, VA 23220. *Contract; irregular: Soap Stone* from Schuyler, VA to Houston, TX, for 180 days. Supporting shipper(s): Alberene Stone Co., Box 98, Schuyler, VA 22969.

MC 135511 (Sub-2–1TA), filed May 5, 1980. Applicant: VIRGINIA APPALACHIAN LUMBER CORP., 9640 Timberlake Rd., Lynchburg, VA 24502. Representative: Lester R. Gutman, 666—11th St., Suite 805, Washington, D.C. 20001. *Frozen hamburger meat* from Folcroft, PA to Greensboro, NC, for 180 days. Supporting shipper: Equity Meat Corp., Div. of Keystone Foods Corp., 600 Kaiser Drive, Folcroft, PA 19032.

MC 61825 (Sub-2–8TA), filed May 5, 1980. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same as applicant). *Canned and preserved foodstuffs,* from the facilities of Heinz USA at or near Pittsburgh, PA to points in AL, GA, LA, MS and TN; and from the facilities of Heinz USA at or near Fremont, OH; Holland, MI; and Muscatine and Iowa City, IA to points in AL, GA, LA, MS, NC, SC, TN and VA, restricted to traffic originating at the named facilities and destined to the named States. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 150642 (Sub-2–1TA), filed May 6, 1980. Applicant: RENNIE & CLARK, INC., 7100 N. Ritchie Hwy, Glen Burnie, MD 21061. Representative: Rob't L. Flanagan, 10 Light St., 20th Flr., Baltimore, MD 21202. *Wrecked, abandoned, disabled and stolen motor vehicles and replacement vehicles in truckaway service by means of wrecker and towing equipment,* between points in MD on the one hand and, on the other, points in CT, NJ, NY, NC, PA, SC, OH, VA, WV, DC, GA, IL, IN, KY, MS, TN, WI, and DE, for 180 days. Supporting shipper: Maryland State Police, Barrack "P", 6601 Ritchie Hwy, Glen Burnie, MD 21061.

MC 117833 (Sub-2–2TA), filed May 2, 1980. Applicant: SUBLER TRANSFER, INC., 1 Vista Drive, Versailles, OH 45380. Representative: Robert Von Aschen (same as applicant). *Package meat products* from Sigourney, IA to Folcroft, PA, for 180 days. Supporting shipper: Goodmark Foods, Inc., 4909 Windy Hill Drive, Raleigh, NC 27609.

MC 138960 (Sub-2–2TA), filed May 7, 1980. Applicant: ROKO EXPRESS, INC., P.O. Box 169, 819 W. 5th St., Columbus, OH 43213. Representative: Thomas M. O'Brien, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Such commodities as are dealt in by wholesale and retail food business houses, and equipment and materials and supplies used by wholesale and retail food business houses,* between the facilities of Savannah Foods and Industries, Inc., and Transales Corp. located in Chatham County, GA on the one hand, and on the other, points in IL, MO and OH. Restricted to traffic originating at or destined to the named facilities of Savannah Foods and Industries, Inc., and Transales Corp. Supporting shipper: Savannah Foods and Industries, Inc., P.O. Box 339, Savannah, GA 31402.

MC 145067 (Sub-2–1TA), filed May 1, 1980. Applicant: LAWRENCE E. SPAIDE, INC., P.O. Box 111, Avoca, PA 18647. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Metal castings* from Bloomsburg, PA to Lone Star Army Ammunition Plant, Defense, TX, and the Kansas Army Ammunition Plant at Parsons, KS, for 180 days. Supporting shipper: Poloron, 6685 Low St., Bloomsburg, PA 17815.

MC 21866 (Sub-2–15TA), filed April 30, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Automotive parts* and *materials and supplies used in the manufacture of automotive parts* (except commodities in bulk), (1) between Seabrook, NH and Hopkinsville, KY; (2) from Louisville, KY and Kingstree, SC, to Seabrook, NH, for 180 days. Restriction: The service authorized herein is restricted to the transportation of traffic originating at or destined to the facilities of USM Corp., Bailey Div. Supporting shipper: USM Corp., Bailey Div., Rte. 1, Seabrook, NH 03874.

MC 146423 (Sub-2–3TA), filed May 1, 1980. Applicant: STEPHEN HROBUCHAK d.b.a. TRANS-CONTINENTAL REFRIGERATED LINES, P.O. Box 1456, Scranton, PA 18503. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. (1) *Rope, synthetic cordage and strapping and tools, seals and buckles used with synthetic strapping, oakum and packing for synthetic twine,* from Honesdale, PA to Emeryville, CA and Seattle, WA; (2) *Chemicals, acids and solvents in containers, materials and supplies and equipment used in the manufacture and distribution of chemicals, acids and solvents, in containers,* between Plainfield, NJ on the one hand and, on the other, CA and TX. Supporting shipper: American Manufacturing Co., 206 Willow Ave., Honesdale, PA 18431.

MC 76262 (Sub-2–1TA), filed May 2, 1980. Applicant: WEIR–COVE MOVING & STORAGE CO., 4224 Freedom Way, Weirton, WV 26062. Representative: William J. Lavelle, David M. O'Boyle, 2310 Grant Bldg., Pittsburgh, PA 15219. *Iron and steel articles, and materials, equipment and supplies used in the manufacture and distribution of iron and steel articles* (except commodities in bulk), between the facilities of Newark Steel Co., at or near Newark, OH, on the one hand, and, on the other, points in IL, IN, IA, KS, KY, MD, MI, MO, NJ, NY, NC, PA, SC, TN, VA, WV, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Newark Steel Co., 550 Wehrle Ave., Newark, OH 43055.

MC 138180 (Sub-2–1TA), filed April 30, 1980. Applicant: VALLEY TRUCKING CO., P.O. Box 176, Corriganville, MD 21524. Representative: Dave Bennett Assoc., Inc., 129 Edgington Lane, Wheeling, WV 26003. *Bituminous concrete and crushed stone* from Corriganville and Cumberland, MD to points in PA. Applicant intends to tack authority sought herein with authority held under MC 138180. Supporting shipper: Interstate Amiesite Corp., Cumberland Contracting Co., Div., P.O. Box 507, Cumberland, MD 21502.

MC 52861 (Sub-2–3TA), filed May 2, 1980. Applicant: WILLS TRUCKING, INC., 3185 Columbia Rd. Richfield, OH 44286. Representative: Beery & Spurlock Co., 275 E. State St., Columbus, OH 43215. *Sand,* from Akron, OH to points in IL, IN, MI, NY, PA, WV, and WI, for 180 days. Supporting shipper: Manley Bros. of Indiana, Inc., P.O. Box 538, Chesterton, IN 46304.

MC 145067 (Sub-2–2TA), filed May 2, 1980. Applicant: LAWRENCE E. SPAIDE, INC., P. O. Box 111, Avoca, PA 18647. Representative: Joseph F. Hoary,121 S. Main St., Taylor, PA 18517. *Wire used in the manufacture of wire rope* from Exeter and Kingston, PA to Atlanta, GA, Tulsa, OK, Houston, TX, Denver, CO, New Orleans, LA and Odessa, TX, for 180 days. Supporting shipper: Bridon-American, Inc., Hanover Park, Wilkes-Barre, PA 18702.

MC 109821 (Sub-2–1TA), filed May 2, 1980. Applicant: TAYNTON FREIGHT SYSTEMS, INC., 40 Main St., Wellsboro, PA 16901. Representative: Dewey T. Whitford (same as applicant). *General*

commodities (except those of unusual value, Class A & B explosives, household goods as defined by the Commission) between points in CT, DE, DC, IN, KY, MD, MA, NJ, NY, OH, PA, RI, VA, WV for 180 days. Restricted to shipments having their origin or destination at the facilities of Corning Glass Works, including warehouses used by Corning Glass Works. Supporting shipper: Corning Glass Works, Box 158, Corning, NY 14830.

MC 119632 (Sub-2–7TA), filed May 2, 1980. Applicant: REED LINES, INC., 634 Ralston Ave., Defiance, OH 43512. Representative: Wayne C. Pence (same as applicant). (1) *Containers, containers ends, and closures, (2) Commodities manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers, (3) Materials, equipment, and supplies used in the manufacture and distribution of containers, container ends, and closures,* between all points in the U.S. in and east of MN, IA, MO, AR and LA. Restricted against the transportation of commodities in bulk. Supporting shippers: Glenshaw Glass Co., Inc., lk1101 Wm. Flynn Hwy., Glenshaw, PA 15116; Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721; Plasti-Drum Corp., 1225 Davis St., Lockport, IL 60441.

MC 109443 (Sub-2–1TA), filed May 1, 1980. Applicant: SEABOARD TANK LINES, INC., Monahan Ave., Dunmore, PA 18512. Representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517. *Asphalt emulsion, in bulk, in tank vehicles,* from Whippany and Pequest, NJ, to Bradford, Wayne, Susquehanna, Pike, Luzerne, Lackawanna and Wyoming Counties, PA Supporting shipper: Dosch-King Emulsions, Inc., P.O. Box 2799, Baltimore, MD 21225.

MC 136819 (Sub-2–2TA), filed May 1, 1980. Applicant: SPIVEY, INC., P.O. Box 674, Franklin, VA 23851. Representative Carroll B. Franklin, 1810 Vincennes Rd., Richmond, VA 23229. *Contract; irregular: Lumber; building materials; electrical appliances, equipment and parts* (1) between points in GA, NC, SC, and VA (except Petersburg, VA and points in Dinwiddie County, VA), on the one hand and, on the other, points in CT, DC, DE, GA, IL, IN, KY, MA, MD, ME, MI, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, and WV and (2) between Petersburg, VA and points in Dinwiddie County, VA, on the one hand and, on the other, points in CT, GA, IL, IN, KY, MA, ME, MI, NH, NY, OH, RI, TN, VA, and VT. Supporting shipper(s): Roper Bros. Lumber Co., Inc., 130 Pocahontas St., Petersburg, VA 23803.

MC 119875 (Sub-2–1TA), filed May 7, 1980. Applicant: WAR-HUNT TRUCKING CO., INC., R.D. 8, Box 129, Allentown, PA 18104. Representative: John C. Fudesco, 1333 New Hampshire Ave. NW., Washington, DC 20036. *Confectionery, confectionery products, and materials, supplies, and ingredients used in the manufacture and distribution thereof* (except in bulk), in vehicles equipped with mechanical refrigeration, between points in Dauphin, Lancaster, and Cumberland Counties, PA, on the one hand, and, on the other, points in CT, MA, ME, NH, NJ, NY, and RI. Restricted to the transportation of traffic originating at or destined to the facilities of Hershey Food Corp. Supporting shipper(s): Hershey Chocolate Co./Div. of Hershey Foods Corp., 19 East Chocolate Ave., Hershey, PA 17033.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7520, Atlanta, GA 30357.

MC 148183 (Sub-3–5TA), filed May 2, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline Myers, Suite 348, Penn. Bldg., Pennsylvania & 13th St., NW, Washington, DC 20004. *Frozen foods, in refrigerated vehicles (except in bulk)* from the facilities of Saluto Foods Corp., Montgomery, AL to points in GA, NC, SC, FL, TX and CA. Supporting shipper: Saluto Foods Corporation, P.O. Box 967, Benton Harbor, MI 49022.

MC 121821 (Sub-3–4TA), filed April 28, 1980. Applicant: TENNESSEE MOTOR LINES, INC., 402 Maple Drive, Nashville, TN 37210. Representative: M. Bryan Stanley (same address as applicant). *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment)* between Loudon, TN and Nashville, TN, from Loudon, TN over TN Hwy 72 to its junction with I–75, then over I–75 to I–40, then over I–40 to Nashville, TN and return over the same route serving no intermediate points, serving all points in Loudon County, TN as off-route points. Supporting shipper: There are 15 statements in support attached to this application which may be examined at the I.C.C. Regional Office, Atlanta, GA.

Note.—Applicant intends to tack this authority in MC–121821 and to interline at Nashville, TN.

MC 41635 (Sub-3–1TA), filed May 6, 1980. Applicant: DEALERS TRANSPORT COMPANY, 180 S. Dudley St., Memphis, TN 38101. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. *Automobiles,* in secondary movement, from Little Rock-North Little Rock, AR to points in OK, serving points in the commercial zone of Little Rock-North Little Rock, AR. Authority requested to tack with existing authority and to interline with other carriers at North Little Rock, AR and points in Ok including but not limited to Tulsa and Oklahoma City. Supporting shipper: Fiat Motors of North America, 155 Chesnut Ridge Rd., Montvale, NJ 07645.

MC 145760 (Sub-3–1TA), filed May 7, 1980. Applicant: JOHNSON TRANSPORTATION CO., 1327 Highway 13 North, Columbia, MS 39439. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. (1) *Axles, wheels and tires* from Largo, FL to points in AL, GA, IN, KS, LA, MD, MS, NC, OH, PA, SC, TX and WI; and (2) *Axles* from Denver, CO, Brownsville, Dallas, Ft. Worth, Lufkin and Waco, TX to Largo, FL. Restricted to traffic originating at or destined to the facilities of or utilized by All American Wheel and Axle Co. Supporting shipper: All American Wheel and Axle Co., 6890 142nd Ave. N., Largo, FL 33541.

MC 150747 (Sub-3–1TA), filed May 7, 1980. Applicant: L AND O TRUCKING COMPANY, INC., 2179 Freemont, Memphis, TN 38114. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Pre-cast concrete products and related accessories* from Memphis, TN and its commercial zone to points in AR, MS and points in Stoddard, Mississippi, New Madrid, Dunklin and Pemiscot Counties, MO. Supporting shippers: Featherlite Pre-cast Corp., 2615 Channel Ave., Memphis, TN 38113; Fraser Bldg. Products, 2283 Stateline Rd. W., Southaven, MS 38671; CPI Concrete Products, Inc., 1365 Harbor Ave., Memphis, TN 38113.

MC 98478 (Sub-3–1TA), filed May 7, 1980. Applicant: ROBBINS TRUCK LINE, INC., Rt. 1, Hardinsburg, KY 40143. Representative: Rudy Yessin, 314 Wilkinson St., Frankfort, KY 40601. *Common carrier; regular routes; General commodities* (except those of unusual value, Classes A & B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Louisville, KY and Owensboro, KY, and the intermediate points of Hawesville, KY and Brandenburg, KY, as alternate routes only as a fuel conservative measure, over the following routes: From Louisville, KY to New Albany, IN via I–65; then over I–64 at New Albany, IN to

its junction with U.S. 231 to Owensboro, KY and return; From junction of I–64 and Hwy. 135 to Brandenburg, KY and return; From Junction of I–64 and Hwy. 37 to Hawesville, KY and return.

MC 138308 (Sub-3–7TA), filed May 5, 1980. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Robert L. McArty, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. *Petroleum products,* in packages, from the facilities of Specialty Oil Co. at or near Shreveport, LA to points in AL, FL, GA, MS, and TX. Supporting shipper(s); Specialty Oil Co., P.O. Box 8098, Shreveport, LA 71108.

MC 56679 (Sub-3–13TA), filed May 7, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW, Atlanta, GA 30310. Applicant: David L. Capps, P.O. Box 6985, Atlanta, GA 30315. *Boards, building, wall or insulating and materials and supplies used in the installation thereof,* between Beaver Falls, PA and Baltimore, MD. Supporting shipper: Armstrong Cork Co., P.O. Box 3001, Lancaster, PA 17604.

MC 138687 (Sub-3–1TA), filed February 28, 1980. Applicant: BYNUM TRANSPORT, INC., 4609 Hwy. 92, E. Lakeland, FL 33801. Representative: Thomas F. Panebianco, P.O. Box 1200, Tallahassee, FL 32302. *Dried Citrus Pulp and Citrus Pulp Pellets,* in dump vehicles, from points in Indian River, St. Lucie, Martin, Highlands, Glades and Hendry Counties, FL to Tampa, FL; and from points in Manatee, Lake, Orange, Pasco, Polk, Indian River, St. Lucie, Martin, Highlands Glades and Hendry Counties, FL to Port Manatee, FL. Supporting shipper: Central Sunshine Enterprises, P.O. Box 9491, Winter Haven, FL.

MC 150749 (Sub-3–1TA), filed May 7, 1980. Applicant: DOBSON TRUCKING, INC., P.O. Box 498, Dobson, NC 27017. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW., Washington, DC 20005. *Contract carrier,* Irregular routes: *Steel rods,* from Perth Amboy, NJ, and Fairless Hills, PA, and points in their commercial zones, to Mr. Airy, NC, and points in its commercial zone (under continuing contract(s) with Exposaic Wire Co. of Mt. Airy, NC). Supporting shipper: Exposaic Wire Co., P.O. Box 1122, Mt. Airy, NC 27030.

MC 107515 (Sub-3–18TA), filed May 7, 1980. Applicant: REFRIGERATED TRANSPORT CO, INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Foodstuffs,* in vehicles equipped with mechanical refrigeration (except in bulk, in tank vehicles) from the facilities of Anderson-Clayton Foods at or near Sherman, TX to points in CA, KS, IL, OK, OH and Memphis, TN and its commercial zone. Supporting shipper: Anderson-Clayton Foods, Inc., P.O. Box 226165, Dallas, TX 75266.

MC 145274 (Sub-3–1TA), filed May 7, 1980. Applicant: SERVICEWAY MOTOR FREIGHT, INC., P.O. Box 243, Alcoa, Tennessee 37701. Representative: John G. Hardeman, 618 United American Bank Building, Nashville, Tennesee 37219. (1) *ground clay, crude clay, and floor sweeping compounds (except in bulk)* (2) *materials, equipment, and supplies (except in bulk) used in the manufacture, sale and/or distribution of the commodities in* (1) *above* between the facilities of Maltan, Inc. at or near Middleton, TN, on the one hand, and points in KY, VA, NC, SC, GA, AL, MS, LA, AR, OH, and TX, on the other. Supporting shipper: Maltan, Inc., P.O. Drawer No. 9, Middleton, TN 38052.

MC 138157 (Sub-3–14TA), filed May 6, 1980. Applicant; SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Carpeting from Philadelphia and Willow Grove, PA and points in Dade, Walker, Catoosa, Floyd, Bartow, and Cherokee Counties, GA to points in CA, WA, OR, ID NV, AZ, NM, UT, MT, WY and CO. Restricted to traffic moving for the account of B. R. Funston & Co. Supporting shipper: B. R. Funston & Co., 2045 Evans Ave., San Francisco, CA 94124.

MC 139006 (Sub-3–1TA), filed May 6, 1980. Applicant: RAPIER SMITH, Route 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 W. Main St., P.O. Box 464, Frankfort, KY 40602. *Alcoholic beverages,* except in bulk, from Lawrenceburg, IN and Louisville and Loretto, KY, and commercial zones thereof, to Atlanta, GA and commercial zone thereof. Supporting shipper: McKesson Wine & Spirits Co., 150 Villanova Dr., Atlanta, GA 30336.

MC 144026 (Sub-3–6TA), filed May 7, 1980. Applicant: WILLIAMS CARTAGE COMPANY, INC., P.O. Box 897, Hartsville, SC 29550. Representative: Robert L. McGeorge, Esq., 2550 M St., N.W., Suite 520, Washington, DC 20037. *Contract carrier,* irregular routes, *Iron and steel articles,* between points in the states of AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI and WY under a continuing contract(s) with Kline Iron and Steel Company. Supporting shipper: Kline Iron and Steel Comapny, P.O. Box 1013, Columbia, SC 29202.

MC 147911 (Sub-3–1TA), filed May 7, 1980. Applicant: TILFORD TRUCKING, INC., P.O. Box 34, Readyville, TN 37149. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Malt beverages,* from Detroit, MI, to Bowling Green and Frankfort, KY. Supporting shipper: Clark Distributing Company, Inc., P.O. Box 3390, Bowling Green, KY.

MC 138882 (Sub-3–13TA), filed May 7, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Automotive Service Equipment, and materials, equipment, and supplies used in the manufacture and sale thereof,* between the facilities of Sun Electric Corporation, located at or near Nashville, TN, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Sun Electric Corp., Rutherford Assembly Division, 1000 Sun Park Dr., La Vergne, TN 37086.

MC 45735 (Sub-3–1TA), filed May 7, 1980. Applicant: GUIGNARD FREIGHT LINES, INC., P.O. Box 26067, Charlotte, NC 28213. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Ave. and 13th St., N.W., Washington, DC 20004. *Foodstuffs and such other commodities as are dealt in by wholesale and retail chain and grocery houses, and in connection therewith, equipment, materials, and supplies used in the conduct of such business,* from the facilities of Savannah Foods and Industries, Inc., and TranSales Corporation, located in Chatham County, GA, to Middleport, OH. Supporting shipper: Savannah Foods & Industries, P.O. Box 339, Savannah, GA 31402.

MC 150748 (Sub-3–1TA), filed May 6, 1980. Applicant: K–C TRUCK–IN, INC., 3101 Northwest 16th Terrace, Pompano Beach, FL 33441. Representative: Frank J. Hathaway, Registered Practitioner, 7615 Biscayne Blvd., Miami, FL 33138. *Contract carrier;* irregular routes; *scrap precious metals, scrap plastics, finished plastic products and raw plastic materials,* between points in Dade, Broward and Palm Beach Counties, FL, on the one hand, and, on the other, points in SC, NJ and MI, under continuing contract with Cirello Scrap Metal Co., Deerfield Beach, FL and Detroit Forming, Inc., Fairforest, SC. Supporting shipper: Cirello Scrap Metal Co., P.O. box 555, Deerfield Beach, FL

33441 and Detroit Forming, Inc., P.O. box 368, Fairforest, SC 29336.

MC 146293 (Sub-3–11TA), filed May 7, 1980. Applicant: REGAL TRUCKING CO., INC., 95 Industrial Park Circle, NE, Lawrenceville, GA 30245. Representative: Richard M. Tettelbaum, Esq., 3390 Peachtree Rd., N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Fluorescent lighting fixtures and parts and accessories therefor* from the facilities of Crescent Lighting, Division of Keene Corp., at or near Pennsauken, NJ to points in the U.S. (except AK and HI). Supporting shipper: Crescent Lighting, Division of Keene Corp., 1665 John Tipton Blvd., Pennsauken, NJ 08033.

MC 115654 (Sub-3–4TA), filed May 7, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same as above). *Foodstuffs, except in bulk,* between Nashville, TN, on the one hand, and, on the other, points in AL, GA, LA, MS, MO, and Kansas City, KS. Restricted to traffic originating at or destined to the facilities of Wholesale Pizza Company. Supporting shipper: Wholesale Pizza Company, Inc., P.O. Box 90345, Nashville, TN 37209.

MC 146794, (Sub-3–4 TA), filed: May 7, 1980. Applicant: PACIFIC NORTHWEST CONTRACT CARRIERS, INC., 1135 Hwy. 231 North, P.O. Box 197, Wetumpka, AL 36092. Representative: Ronald L. Stichweh, 727 Frank Nelson Building, Birmingham, AL 35203. *General Commodities (except those of unusual value, Classes A and B Explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* which are at the time moving on bills of lading issued by ABC–TNT, a freight forwarder as defined in Section 10102(8) of the Interstate Commerce Act, points in and between CA, OR, WA, ID, AZ, CO, TX, MT, and UT, and points in and between WI, IL, IN, OH, KY, MO, AR, NJ, PA, NY, VA. Supporting shipper: ABC–TNT, 2110 Alhambra Avenue, Los Angeles, CA 90031.

MC 108651 (Sub-3–3TA), filed: May 7, 1980. Applicant: ROY B. MOORE, INC., P.O. Box 628, Kingsport, TN 37662. Representative: Daniel H. Moore (same address as applicant). *Paper and paper products, materials, and supplies* shipped by or used by distributors and manufacturers of paper products, except commodities in bulk, between Gray and Kingsport, TN, and points in NY on and west of U.S. Hwy I–81. Supporting shipper: The Mead Corporation, Courthouse Plaza, N.E., Dayton, OH 45463.

MC 143621 (Sub-3–10TA), filed: May 7, 1980. Applicant: TENNESSEE STEEL HAULERS, INC., Post Office Box 5748, Nashville, TN 37208. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. *Fabricated structural steel* from the facilities of Volunteer Structures, Inc. at Nashville, TN to points in the U.S. (except AK and HI). Supporting shipper: Volunteer Structures, Inc., 4108 Dakota Avenue, Nashville, TN 37209.

MC 145366 (Sub-3–1TA), filed May 7, 1980. Applicant: VENABLE TRUCKING COMPANY, INC., Route 1, Box 313, Odenville, AL 35120. Representative: John W. Cooper, 200 Woodward Bldg., 1927 1st Ave. North, Birmingham, AL 35203. (1) *sand* from the facilities of Tri-State Sand Company, Inc., in or near Tishomingo, MS, and Camden, TN to all points in the US, in and bounded by MN, IO, MO, KA, OK, TX, PA and DE. (2) *Crushed rock, slag, rip-rap, washed and crushed stone* from points in AL on and north of US Hwy. 80 to points in MS. Supporting shippers: Tri State Sand Co., Inc., Birmingham, AL, Mississippi Aggregate Company, Jackson, MS.

MC 97310 (Sub-3–1TA), filed May 6, 1980. Applicant: SHARRON MOTOR LINES, INC., P.O. Box 5636, Meridian, Mississippi 39301. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, Georgia 30326. *Common carrier:* regular: *General commodities except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading* between Montgomery, AL and Atlanta, GA as follows: From Montgomery over US Hwy 80 to junction US Hwy 29, then over US Hwy 29 to Atlanta and return over the same route serving no intermediate points and from Montgomery, AL over US Hwy 31 to junction US Hwy 78, then over US Hwy 78 to Atlanta and return over the same route serving all intermediate points on US Hwy 31. Joinder with existing authority is requested at Montgomery and Birmingham, AL. Supporting Shippers: There are 66 Statements in Support attached to this application which may be examined in the ICC Office in Atlanta, GA.

MC 103051 (Sub-3–1TA), filed April 30, 1980. Applicant: FLEET TRANSPORT CO., INC., 934—44th Ave. North, P.O. Box 90408, Nashville, TN 37209. Representative: Russell E. Stone (same address as applicant). (1) *Chemicals, in bulk, in tank vehicles* from Miami, FL to points in MI, MN, IL, IN, OH, PA, NJ, MA, MO, TN, GA, AL, MS, LA, TX, OK, MD, and KY. (2) *Materials and supplies used in the productions of chemicals* from MI, IL, LA, TX, and KY to Miami, FL. (3) *Chemicals, in bulk, in tank vehicles,* from Winder, GA to points in MS, FL, IL, NJ, PA, MD and OH. (4) *Materials and supplies used in the production of chemicals, in bulk, in tank vehicles,* from points in WV, LA, TX, IL and OH to Winder, GA. Supporting shipper: Cyclo Chemicals Corp., 7500 N.W. 66th St., Miami, FL.

MC 138882 (Sub-3–14TA), filed April 30, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, Alabama 36081. Representative: John J. Dykema (same address as applicant). *Alcoholic Beverages (except in bulk, in tank vehicles)* from Mobile, AL; Miami, FL; Atlanta, GA; Lawrenceburg, IN; New Orleans, LA; Baltimore and Lansdowne, MD; Boston and Cambridge, MA; Detroit and Farmington Hills, MI; Jackson, MS; Colonial Heights, VA; and their commercial zones and points in the states of CA, IL, KY, NJ, NY, NC, OH, PA, and TN, to Montgomery, AL and its commercial zone. Supporting shipper: State of Alabama Alcoholic Beverage Control Board, P.O. Box 1151, Montgomery, Alabama 36130.

MC 117142 (Sub-3–1TA), filed April 28, 1980. Applicant: AMERICAN TRAILER HAUL, INC., 1257 Piedmont Road, East, Marietta, GA 30062. Representative: Archie B. Culbreth, and John P. Tucker, Jr., Archie B. Culbreth, P.C. Suite 202 2200 Century Parkway, Atlanta, GA 30345. (1) *Trailers designed to be drawn by passenger automobiles, including double-wides, (2) portable buildings travelling on their own on removeable undercarriages which are designed to be joined together to form a complete structure, equipped with hitchball coupler, and (3) new or used house trailers designed to be drawn by passenger automobiles, set up, fitted in whole or in part with accessories, equipment and furnishings,* between points in GA, on the one hand, and, on the other, points in AL, FL, MS, NC, SC and TN. Supporting shippers: Jiffie Manufacturing Company, 145 Autrey Street, Norcross, GA 30091; Barber & Barber, Inc., 2250 E. Wesley Chapel Way, Decatur, GA 30035; C & S Servicing Company, P.O. Box 486, Tucker, GA 30278; Landmark Mobile Homes, Inc., 6729 Tara Boulevard, Jonesboro, GA 30236; and Finance America Credit Corp., 3345 N. Druid Hills Rd., Decatur, GA 30033.

MC 112520 (Sub-3–3TA), filed April 30, 1980. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee,

FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Plastic Pipe* and *Pipe Fittings,* from Thomasville, GA, to points in AL, FL, MS, NC, SC, and TN. Supporting shipper: Ari Product/North America, Inc., P.O. Box 2235, Thomasville, GA 31792.

MC 124887 (Sub-3–5TA), filed May 7, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *(1)(a) Iron and steel articles and pipe* from Bay County, FL to points in the United States (except AK and HI); and *(b) Materials, supplies and equipment used in the manufacture and distribution of commodities named in Paragraph (1)(a) above (except commodities in bulk, in tank vehicles),* from points in the United States (except AK and HI) to Bay County, FL; and *(2) Iron and steel articles and pipe and materials, supplies and equipment used in the manufacture and distribution of iron and steel articles and pipe (except commodities in bulk, in tank vehicles),* betwen points in the United States (except AK and HI). Restriction: Restricted to traffic originating at or destined to the facilities utilized by the Berg Steel Pipe Corp. (Only applies to Paragraph 2). Supporting shipper: Berg Steel Pipe Corp.; P.O. Box 2029; Panama City, FL 32401.

MC 138882 (Sub-3–15TA), filed May 7, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *(1)(a) Iron and steel articles and pipe* from Bay County, FL to points in the United States (except AK and HI); and *(b) Materials, supplies and equipment used in the manufacture and distribution of commodities named in Paragraph (1)(a) above (except commodities in bulk, in tank vehicles),* from points in the United States (except AK and HI) to Bay County, FL; and *(2) Iron and steel articles and pipe and materials, supplies and equipment used in the manufacture and distribution of iron and steel articles and pipe (except commodities in bulk, in tank vehicles),* betwen points in the United States (except AK and HI). Restriction: Restricted to traffic originating at or destined to the facilities utilized by the Berg Steel Pipe Corp. (Only applies to Paragraph 2). Supporting shipper: Berg Steel Pipe Corp.; P.O. Box 2029; Panama City, FL 32401.

MC 110878 (Sub-3–3TA), filed April 30, 1980. Applicant: ARGO TRUCKING COMPANY, INC., P.O. Box 955, Elberton, GA 30635. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Concrete Building and Roofing Slabs,* from Elberton, GA, to points in KY, IN, IL, OH, and MI. Supporting shipper: Martin Fireproofing Company, Inc., P.O. Box 768, Elberton, GA 30635.

MC 11207 (Sub-3–2TA), filed May 7, 1980. Applicant: DEATON, INC., P. O. Box 938, Birmingham, AL 35201. Representative: Robert E. Tate, P.O. Box 517, Evergreen, Alabama 36401. *(1) (a) Iron and steel articles and pipe* from Bay county, FL to points in the United States (except AK and HI); and *(b) Materials, supplies and equipment used in the manufacture and distribution of commodities named in Paragraph (1)(a) above (except commodities in bulk, in tank vehicles),* from points in the United States (except AK and HI) to Bay County, FL; and *(2) Iron and steel articles and pipe and materials, supplies and equipment used in the manufacture and distribution of iron and steel articles and pipe (except commodities in bulk, in tank vehicles),* between points in the United States (except AK and HI). Restriction: Restricted to traffic originating at or destined to the facilities utilized by the Berg Steel Pipe Corp. (Only applies to Paragraph 2). Supporting shipper: Berg Steel Pipe Corp.; P.O. Box 2029; Panama City, FL 32401.

MC 104149 (Sub-3–1TA), filed May 7, 1980. Applicant: OSBORNE TRUCK LINE, INC., P.O. Box 10727, Birmingham, AL 35202. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. *(1) (a) Iron and steel articles and pipe* from Bay County, FL to points in the United States (except AK and HI); and *(b) Materials, supplies and equipment used in the manufacture and distribution of commodities named in Paragraph (1)(a) above (except commodities in bulk, in tank vehicles),* from points in the United States (except AK and HI) to Bay County, FL; and *(2) Iron and steel articles and pipe and materials, supplies and equipment used in the manufacture and distribution of iron and steel articles and pipe (except commodities in bulk, in tank vehicles),* between points in the United States (except AK and HI). Restriction: Restricted to traffic originating at or destined to the facilities utilized by the Berg Steel Pipe Corp. (Only applies to Paragraph 2). Supporting shipper: Berg Steel Pipe Corp.; P.O. Box 2029; Panama City, FL 32401.

MC 112520 (Sub-3–5TA), filed April 30, 1980. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, Tallahassee, FL 32302. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *PVC Resin* and *PVC Compound,* in bulk, in tank vehicles, from Aberdeen, MS, to Thomasville, GA. Supporting shipper: Ari Product/North America, Inc., P.O. Box 2235, Thomasville, GA 31792.

MC 144688 (Sub-3–5TA), filed April 28, 1980. Applicant: READY TRUCKING, INC., 2717 Campbell Blvd. Ellenwood, GA 30049. Representative: Lavern R. Holdeman, Peterson, Bowman & Johanns, P.O. Box 81849, Lincoln, NE 68601. *Scrap plastics and reprocessed resin (except in bulk),* between points in the states of AL, AR, FL, GA, IN, KY, LA, MS, MO, NC, OH, OK, SC, TN, TX, VA and WV. Supporting shipper: ABC Polymers, 2561 S. Ponte Vedra Blvd., Ponte Vedra, 32082.

MC 75840 (Sub-3–2TA), filed April 29, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Frank D. Hall, Postell & Hall, P.C. Suite 713, 3384 Peachtree Rd. N.E., Atlanta, GA 30326. *Iron or steel wire rope, wire or strand, with or without fittings,* between the facilities of Bridon American Corporation located at or near Wilkes-Barre, Kingston, and Exeter, PA, on the one hand, and, on the other, Houston, TX. Supporting shipper: Bridon American Corporation, P.O. Box 6000, Wilkes-Barre, PA, 18773.

MC 145793 (Sub-3–1TA), filed May 7, 1980. Applicant: EMBERS EXPRESS TRUCKING COMPANY, INC., P.O. Drawer 937, Lake City, SC 29560. Representative: William Reynolds Williams, P.O. Box 1909, Florence, SC 29503. *Contract carrier, charcoal briquettes and charcoal supplies,* for the acount of T.S. Ragsdale Company, Inc., from Lake City, SC to points in FL, GA, SC, KY, ME, NJ, WV, AL, NC, DC, PA, IN, MS, VA, DE, OH, TN and NY. Supporting shipper: Thomas S. Ragsdale Company, Inc., P.O. Drawer 937, Lake City, SC 29560.

MC 2900 (Sub-3–3TA), filed May 5, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408–R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). (1) *General Commodities* (except those of unusual value, Class A or B explosives, and commodities in bulk), in containers or trailers restricted to the transportation of shipments having prior or subsequent movement by water, (2) *Empty Containers;* between Tacoma, WA, on the one hand, and, on the other, points and places in the states of AZ, CA, CO, OR, UT, WA. Supporting shipper is Totem Ocean Trailer Express, Inc., P.O. Box 24908, Seattle, WA 98124.

MC 3581 (Sub-3–1TA), filed May 8, 1980. Applicant: THE MOTOR CONVOY, INC., Suite 107, 2175 Parklake Drive, NE., Atlanta, GA 30345. Representative: Paul M. Daniell, Esq., Post Office Box 872, Atlanta, GA 30301. *Automobiles, trucks and tractors* between AR, LA and MS. Supporting shipper: American Motors Corporation, 14250 Plymouth Road, Detroit, MI 48232.

MC 143621 (Sub-3–11TA), filed April 30, 1980. Applicant: TENNESSEE STEEL HAULERS, INC., Post Office Box 5748, Nashville, TN 37208. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. *Untreated cross ties* from Lobelville, Hohenwald, Waverly, McKinnon, Dixon, Tracy City, Perryville, and Scotts Hill, TN to Columbus, MS. Supporting shipper: Kerr-McGee Chemical Corporation, Kerr McGee Center, P.O. Box 25861, Oklahoma City, OK 73125.

MC 111397 (Sub-3–1TA), filed May 5, 1980. Applicant: DAVIS TRANSPORT, INC., 1345 South Fourth St., Paducah, KY 42001. Representative: H. S. Melton, Jr., Attorney, P.O. Box 1407, Paducah, KY 42001. *Empty radioactive material containers* from facilities of United States Dept. of Energy at Sargents, OH and Paducah, KY to facilities of Kerr-McGee Nuclear Corporation at Gore, OK. Supporting shipper: Kerr-McGee Nuclear Corporation, P.O. Box 25861, Oklahoma City, OK 73125.

MC 144069 (Sub-3–6TA), filed May 5, 1980. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: W. T. Trowbridge (same address as applicant). *Iron and steel articles, machinery or machinery parts.* Between the facilities of Commercial Shearing, Inc. at (A) Youngstown and (B) Hicksville, OH; (C) Butler, IN; (D) Berkley Springs, WV; (E) Hagerstown, MD; (F) Benton, AR; (G) Kings Mountain, NC; (H) Allied Metals Division, Niles, OH; (I) Gregory Galvanizing Co. at Canton, OH.; (J) Young Galvanizing Co. at Pulaski, PA; (K) Hanlon-Gregory Co. at Pittsburgh, PA; (L) Commercial Stamping & Forging at Bedford Park, IL; on the one hand and on the other points in the United States in and east of LA, AR, MO, IL, and WI. Supporting shipper: Commercial Shearing, Inc., 1775 Logan Ave., Youngstown, OH 44505.

MC 114391 (Sub-3–1TA), filed March 14, 1980. Republication—originally published in **Federal Register** of April 9, 1980, page 24263, volume 45, No. 70. Applicant: MEADORS MOTOR LINES, INC., 141 West Carolina Avenue, Memphis, TN 38103. Representative: Dale Woodall, 900 Memphis, Bank Building, Memphis, TN 38103. General commodities (except household goods, commodities in bulk, articles which because of size or weight require the use of special equipment, articles of unusual value, and Class A and B explosives) from the junction of TN State Hwys Nos. 57 and 125, over Hwy No. 125 to the MS state line, then over MS Hwy No. 15 to Walnut, MS and return over the same route. Applicant intends to tack authority sought herein with authority held under MC 114391 and Subs thereunder. Applicant intends to interline at Nashville and Memphis, TN. Supporting shipper: Dover Corp., Elevator Division, Horn Lake, MS 38637.

MC 143639 (Sub-3–1TA), Filed March 24, 1980. Republication—originally published in **Federal Register** of April 14, 1980, Page 25174, volume 45, No. 73. Applicant: SMITH AND SMITH, INC., 4361 Headquarters Road, Charleston Heights, SC 29405. Representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, SC 29201. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting *slag, in bulk, in dump vehicles* from points in Charleston County, SC to points in Burke County, NC. Supporting shipper: Coastal Mining Cor., P.O. Box 247, Summerville, SC 29483.

MC 116300 (Sub-3–3TA), filed April 28, 1980. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *Treated poles, post, piling, lumber and timbers, and dragline mats, scaffolds, untreated lumber, and materials and supplies as are dealt in by wood treating, processing and fabricating-assembly plants,* between the facilities of Coastal Timbers, Inc., located in Iberia Parish, LA, and points in AL, LA, MS, and TX. Supporting shipper: Coastal Timbers, Inc., P.O. Box 1210, New Iberia, LA 70560.

MC 140444 (Sub-3–1TA), filed May 5, 1980. Applicant: HIGHLAND TOURS, INC., 8550B Atlantic Blvd., Jacksonville, FL 32216. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. *Passengers and express and baggage when moving on the same vehicle with passengers,* between Nassau and Duval Counties, FL, on the one hand, and, on the other, points in Camden County, GA. Supporting shipper: There are 10 statements in support which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 150664 (Sub-3–1TA), filed April 24, 1980. Applicant: RESIDENTIAL DELIVERY CARRIERS, INC., 1308 E. Lexington Ave., High Point, NC 27262. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204. *New furniture* (restricted to residential delivery only), from all points in NC to all points in the U.S. There are 6 supporting shipper statements which may be examined at the ICC Regional Office in Atlanta, Georgia.

MC 124839 (Sub-3–1TA), filed May 5, 1980. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 2726, Savannah, GA 31402. Representative: B. M. Shirley (address same as applicant). *Contract carrier:* irregular: *Glass fibre mats* from Chester, SC to Mobile, AL, Tampa, FL, Savannah, GA, Mt. Vernon, IN, Baltimore, MD and Dallas, TX. Supporting shipper: GAF Corporation, P.O. Box 7329, Savannah, GA 31408.

MC 121568 (Sub-3–3TA), filed April 28, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37211. Representative: James G. Caldwell (same address as applicant). *Foodstuffs and the materials, supplies, and equipment used in the manufacture and distribution of these commodities,* between the facilities utilized by J. Hungerford Smith located at or near Humboldt, TN, on the one hand, and on the other, points in the states of MT, WY, CO, MN, and all points in the U.S. located East there of. Supporting shipper: J. Hungerford Smith, 1500 N. Central Ave., Humboldt, TN 38343. Applicant intends to tack with existing authority and interline at Memphis, and Nashville, TN and other authorized points.

MC 111936 (Sub-3–1TA), filed: May 6, 1980. Applicant: MURROW'S TRANSFER, INC., Route 5, Turnpike Road, High Point, NC 27263. Representative: Richard A. Mehley, 1000—16th Street, NW., Washington, DC 20036. *Paper Honeycomb—Paper Products,* from St. Claire County, IL and Elkhart, IN, to points in NC, SC, VA, TN, GA, KY, and AL, restricted to traffic moving from the facilities of Hexagon Honeycomb Corp. Supporting shipper: Hexagon Honeycomb Corp., 7803 Clayton Rd., St. Louis, MO 63117.

MC 73165 (Sub-3-1TA), filed: May 6, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd Street, Birmingham, AL 35202. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. (1) *metal fencing, wire and wire mesh, and parts, accessories and attachments therefor* from the facilities of DavisWalker Corporation at or near Memphis, TN to points in KS, NE, SD, ND, MN, IA, MO, IL, WI, MI, IN, KY, OH, WV and (2) *machinery, equipment, materials and supplies used in the*

manufacture of the commodities in (1) above (except commodities in bulk) from points in the United States (except AK and HI) to the facilities of Davis Walker Corporation at or near Memphis, TN. Restricted to the transportation of traffic originating at or destined to the named facilities. Note: Common control is involved. Supporting shipper: Davis Walker Corporation, 6315 Bandini Blvd., Los Angeles, CA 90040.

MC 115654 (Sub-3–6TA), filed: May 2, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same as above). *Chemicals, toilet preparations, personal care items, buffing and polishing compounds, and foodstuffs,* from Atlanta, GA, Chicago, IL, and Memphis, TN, to points in AL, AR, GA, KY, LA, MS, and TN. Supporting shipper: Alberto-Culver Company, 2525 Armitage Ave, Melrose Park, IL 60160.

MC 115654 (Sub-3–5TA), filed May 2, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same as above). *Foodstuffs (except in bulk), and materials, supplies, and equipment moving in conjunction with same,* from Atlanta, GA, Jackson, MS, and Nashville, TN, to points in MS and LA. Supporting shippers: E. J. Brach, 4656 W. Kinzie St., Chicago, IL 60644; Nabisco Confections, 810 Main St., Cambridge, MA 02139; R. M. Palmer Co., 77 Second Ave., W. Reading PA 19611; Acme Bonded Warehouse, 1500 Southland Circle, Atlanta, GA 30325; Standard Candy Company, 715 Massman Dr., Nashville, TN 37210.

MC 106194 (Sub-3–1TA), filed May 7, 1980. Applicant: AMERICAN HOLIDAY VAN LINES, INC., 2323 Chipman St., Knoxville, TN 37917. Representative: Stanley G. Emert, Jr. (same as applicant). *Household goods as defined by the Commission* between AL, CT, DE, FL, GA, IL, IN, KS, KY, LA, MA, ME, MD, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV, WI and DC. Supporting shippers: There are 17 supporting shipper statements which can be examined at the Regional Office in Atlanta, GA.

MC 147474 (Sub-3–3TA), filed May 7, 1980. Applicant: SOUTHWIRE COMPANY, Transportation Div., 126 Fertilla St., Carrollton, GA 30117. Representative: Theodore M. Forbes, Jr., 4000 First National Bank Tower, Atlanta, GA 30303. *PVC Plastic Resin* (except in bulk, in tank vehicles) from Houston and Baytown, TX to the facilities of Sun Products Corp., Carrollton, GA. Supporting shipper: Sun Products Corp., P.O. Box 1280, Carrollton, GA 30117.

MC 75840 (Sub-3–1TA), filed May 8, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. *Plastic articles,* from the plantsite of L. B. Plastics, Inc., at Mooresville, NC, to points in OH, PA, NJ, NY, MD, DE, WV, SC, GA & TN. Supporting shipper: L. B. Plastics, Inc., P.O. Box 907, Mooresville, NC 20115.

MC 146646 (Sub-3–7TA), filed May 7, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same as applicant). *Freight, all kinds, in containers and empty containers* between Mobile, AL and New Orleans, LA. Supporting shipper: Page & Jones, Inc., P.O. Drawer J, Mobile, AL 36601.

MC 42146 (Sub-3–3TA), filed May 7, 1980. Applicant: A. G. BOONE COMPANY, P.O. Box 668126, 1812 W. Morehead St., Charlotte, NC 28266. Representative: Floyd C. Hartsell, (same as applicant). *Contract carrier;* irregular routes; *Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses* and in connection therewith, *equipment, materials, and supplies used in the conduct of such business* between points in NC, SC, GA, WV and VA for the account of North South Beverages, Inc., Charlotte, NC. Supporting shipper: North South Beverages, Inc., 3736 Corporation Circle, Charlotte, NC 28216.

MC 148183 (Sub-3–4TA), filed May 6, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348, Pennsylvania Bldg., Pennsylvania & 13th St., NW., Washington, DC 20004. *Sugar in bags and packages,* except bulk or liquid from the facilities of Godchaux-Henderson Sugar Company, Inc. at Reserve and Kenner, LA to points in VA, WV, NC, SC, GA, FL, AL, MS, TN, KY, OH, IN, MI, WI, IL, IA, MO, AR, NB, KS, OK, and TX. Supporting shipper: Godchaux-Henderson Sugar Company, Inc., P.O. Box AM, Reserve, LA 70084.

MC 114552 (Sub-3–4TA), filed May 7, 1980. Applicant: SENN TRUCKING COMPANY, Post Office Drawer 220, Newberry, SC 29108. Applicant's representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. *Such commodities as are dealt in or used by agricultural equipment manufacturers and dealers (except in bulk),* from the facilities of or utilized by International Harvester Company, at or near Canton and East Moline, IL, and Memphis, TN, to points in AL, FL, GA, NC, SC, and VA. Supporting shipper: International Harvester Company, 401 North Michigan Avenue, Chicago, IL 60611.

MC 116254 (Sub-3–9TA), filed May 7, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: M. D. Miller (same as applicant). *Dry cyanuric acid,* in bulk, in dump vehicles, from the plantsite of Monsanto Co. at Luling, LA, to the plantsite of Monsanto Co., Everett, MA. Supporting shipper: Monsanto Co., 800 N. Lindbergh Blvd., St. Louis, MO 63166.

MC 19105 (Sub-3–2TA), filed May 7, 1980. Applicant: FORBES TRANSFER COMPANY, INC., P.O. Box 3544, Wilson, NC 27893. Representative: Vance T. Forbes, Jr., P.O. Box 3544, Wilson, NC 27893. *Malt beverages in containers,* from Williamsburg, VA to Shelby, NC. Supporting shipper: Fox Distributing Company, P.O. Box 2412, Shelby, NC 28150.

MC 143059 (Sub-3–4TA), filed May 7, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. *Suphur in bags, and bags,* between the facilities of International Chemicals, Inc., at or near Mt. Pleasant, TX and Middleport, OH, on the one hand, and, on the other, points in the United States (except AK and HI). Note: In MC 143059 Sub 42F, applicant now holds permanent authority to transport the involved commodities between the two orgins, on the one hand, and, on the other, points in AL, AZ, AR, IL, IN, IA, KS, KY, LA, MN, NM, NC, OH, OK, PA, TN, TX, UT, VA and WV. Supporting shipper: International Chemicals, Inc., Route 3, Box 270, Mt. Pleasant, TX 75455.

MC 121821 (Sub-3–5TA), filed May 7, 1980. Applicant: TENNESSEE MOTOR LINES, INC., 402 Maple Ave., Nashville, TN 37210. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Common carrier; *regular route; general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): (1) Between Knoxville, TN and Tiptonville, TN: From Knoxville, TN over I–40 to its junction with U.S. Hwy 641, then over U.S. Hwy 641 to Camden, TN, then over U.S. Hwy 70 to Huntington, TN, then over U.S. Hwy 70A to Atwood, TN, then over TN Hwy 104 to Dyersburg, TN, then TN Hwy 78 to Tiptonville, TN serving Camden, Milan,

Trenton, Bradford, Rutherford, Dyer, Dyersburg and Ridgely, TN as intermediate or off-route points; and (2) Between Chattanooga, TN and Nashville, TN: From Chattanooga, TN over I–24, serving Nashville, TN for purpose of joinder with Route 1 only. (No service proposed on traffic moving between Nashville and Chattanooga.) Supporting shipper: There are 7 supporting shippers. Their statements may be examined at the office listed above.

MC 140389 (Sub-3–5TA), filed May 7, 1980. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. *Vegetable oils and vegetable oil shortening,* except in bulk, from the facilities of SCM Corp., Louisville, KY to points in NY and PA. Supporting shipper: SCM Corp., 900 Union Commerce Bldg., Cleveland, OH 44115.

MC 115162 (Sub-3–4TA), filed May 7, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). *(1)(a) Iron and steel articles and pipe* from Bay County, FL to points in the United States (except AK and HI); and *(b) Materials, supplies and equipment used in the manufacture and distribution of commodities named in Paragraph (1)(a) above (except commodities in bulk, in tank vehicles),* from points in the United States (except AK and HI) to Bay County, FL; and *(2) Iron and steel articles and pipe and materials, supplies and equipment used in the manufacture and distribution of iron and steel articles and pipe (except commodities in bulk, in tank vehicles),* between points in the United States (except AK and HI). Restriction: Restricted to traffic originating at or destined to the facilities utilized by the Berg Steel Pipe Corp. (only applies to Paragraph 2). Supporting shipper: Berg Steel Pipe Corp., P.O. box 2029, Panama City, FL 32401.

MC 115654 (Sub-3–7TA), filed May 2, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie Hastings (same as above). *(1) Infant formula and pharmaceutical products and (2) accessories for the commodities listed in (1) above, in vehicles equipped with mechanical refrigeration,* from the facilities of Ross Laboratories at Columbus, OH to points in AL, AR, LA, and MS. Supporting shipper: Ross Laboratories, 625 Cleveland Ave., Columbus, OH 43216.

MC 146352 (Sub-3–1TA), filed May 7, 1980. Applicant: AVERY TRUCKING CO., INC., Post Office Box 426, Dahlonega, GA 30533. Representative: Tom Rainey, 206 Moores Dr., Dahlonega, GA 30533. *Contract carrier,* irregular routes, *corrugated boxes and corrugated sheets manufactured by, distributed by, or utilized by* International Paper Company between the container plant facilities of International Paper Company located at or near Georgetown, SC, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, and VA. Restricted to traffic originating at or destined to the facilities of International Paper Company, except commodities in bulk. Supporting shipper: International Paper Company, 220 E. 42nd St., NY, NY 10017.

MC 150759 (Sub-3–1TA); filed May 8, 1980. Applicant: BIRMINGHAM PARCEL DELIVERY SERVICE, INC., 400 Second Court, N, Birmingham, AL 35203. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Merchandise, equipment and supplies sold, used or distributed by a manufacturer of cosmetics and toilet preparations* from Birmingham, Montgomery, Tuscaloosa, AL (and their respective commercial zones) to points in Marion, Winston, Cullman, Lamar, Fayette, Walker, Jefferson, St. Clair, Cleburne, Randolph, Clay, Talladega, Shelby, Tuscaloosa, Pickens, Sumter, Greene, Hale, Bibb, Perry, Chilton, Coosa, Tallapoosa, Chambers, Lee, Elmore, Autauga, Dallas, Marengo, Choctaw, Wilcox, Lowndes, Montgomery, Macon, Bullock and Russell counties, AL, under a continuing contract or contracts with Avon Products, Inc. Supporting shipper: Avon Products, Inc., 2200 Cotillion Drive, Atlanta, GA 30302.

MC 121396 (Sub-3–1TA), filed May 8, 1980. Applicant: GOGGIN TRUCK LINE CO., INC., Cedar King Road, P.O. Box 1067, Shelbyville, TN 37160. Representative: M. C. Ellis, Practitioner, c/o Chattanooga Freight Bureau, Inc., 1001 Market Street, Chattanooga, TN 37402. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission* (1) between points in Dade, Catoosa, Murray, Walker, Whitfield Counties, GA, on the one hand, and on the other, points in Bedford, Coffee, Davidson, Franklin, Marshall, Moore, Rutherford Counties, TN, and Chattanooga, TN; (2) between points in Bedford, Coffee, Davidson, Franklin, Marshall, Moore, Rutherford Counties, TN, and Chattanooga, TN. Supporting shipper: There are 56 supporting shipper statements which may be examined at ICC Regional Office in Atlanta, GA.

MC 140484 (Sub-3–1TA), filed May 8, 1980. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same as above). *Frozen french fried potatoes,* from the facilities of Ore-Ida Foods, Inc., at or near Plover, WI, to Fort Myers, FL. Supporting shipper: Scott's Wholesale Meats, 2126 Alicia Street, Fort Myers, FL 33901.

MC 147127 (Sub-3–5TA), filed April 17, 1980. Applicant: McLAURIN TRUCKING COMPANY, P.O. Box 26506, Charlotte, NC 28213. Representative: Donald J. Balsley, Jr., Esq., Wick, Vuono & Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. *General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, in containers in trailers, having an immediately prior or subsequent movement by water,* (1) between Wilmington, NC, Charleston, SC and Savannah, GA, on the one hand, and, on the other, Mecklenberg County, NC, and (2) between Wilmington, NC and Amherst, VA. Supporting shippers: Meiwa, U.S.A., Inc., 11600 Westinghouse Blvd., Charlotte, NC; Kanematsu-Gosho, U.S.A., Inc., 11800 Westinghouse Blvd., Charlotte, NC; Crompton, Knowles Corporation, 3001 N. Graham Street, Charlotte, NC; Feibus and Company, Inc., 4933 Brookshire Blvd., Charlotte, NC and Hermle Black Forest Clocks, P.O. Box 670, Amherst, VA 24521.

MC 148710 (Sub-3–1TA), filed April 6, 1980. Applicant: SEABOARD EXPRESS, INC., 5724 New Peachtree Rd., Atlanta, GA 30341. Representative: Michael D. Bromley, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Contract;* irregular *cleaning, buffing, and polishing compounds, textile softeners, lubricating oil, deodorants and disinfactants, except commodities in bulk,* from the facilities of Economics Laboratory, Inc., at or near Joliet, IL, to points in AL, FL, GA, KY, MO, NC, SC, and TN, restricted to transportation conducted under a continuing contract(s) with Economics Laboratory, Inc., of St. Paul, MN. Supporting shipper: Ecomomics Laboratory, Inc., Osborn Bldg., St. Paul, MN 55102.

MC 145476 (Sub-3–1TA), filed April 29, 1980. Applicant: RAY MABRY d.b.a. MABRY TRUCKING SERVICE, 307 Lime St., Auburndale, FL 33823. Representative: John G. Hardeman, 618 United American Bank Bldg., Nashville, TN 37219. *Frozen foods and food products* except commodities in bulk) in vehicles equipped with mechanical refrigeration from Louisville and Brooks, KY to points FL, MI, PA, NC, SC, TX, VA

and WV. Supporting shipper: Frozen Foods Distributors, Inc., 1300 Outer Loop, Louisville, KY 40219.

MC 124154 (Sub-3–2TA), filed: April 28, 1980. Applicant: WINGATE TRUCKING CO., INC., P.O. Box 645, Albany, GA 31703. Representative: W. D. Wingate (same as applicant). *Plant defoliant* between Mt. Pleasant, TN and Fresno, CA. Supporting shipper: Mobile Chemical Co., P.O. Box 26683, Richmond, VA 23261.

MC 144082 (Sub-3–3TA), filed: April 28, 1980. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Blvd., P.O. Box 7191, Charlotte, NC 28217. Representative: Wyatt E. Smith (same as applicant). *Contract Carrier;* irregular routes; *such commodities as are dealt in, distributed or used by auto service stores including but not limited to auto mufflers, tail and exhaust pipes, shock absorbers and straight steel tubing,* from Chicago, IL to Atlanta, GA. Restricted to service performed under a continuing contract on contracts with Midas International Corp. Supporting shipper: Midas International Corp., 4101 W. 42nd Place, Chicago, IL 60632.

MC 107107 (Sub-3–2TA), filed April 28, 1980. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 N.W. 42nd Ave., Opa Locka, FL 33054. Representative: Sidney Alterman (same as applicant). *Foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of General Foods Corp., located at Evansville, IN, to points in AL, FL, GA, MS, SC, NC, and TN. Restricted to traffic originating at the named origin and destined to points in the named destination states. Supporting shipper: General Foods Corp., 250 North St., White Plains, NY 10625.

MC 107107 (Sub-3–2TA), filed April 28, 1980. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 N.W. 42nd Ave., Opa Locka, FL 33054. Representative: Sindney Alterman (same as applicant). *Foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of General Foods Corp., located at Evansville, IN, to points in AL, FL, GA, MS, SC, NC, and TN. Restricted to traffic originating at the named origin and destined to points in the named destination states. Supporting shipper: General Foods Corp., 250 North St., White Plains, NY 10625.

MC 25798 (Sub-3–3TA), filed April 25, 1980. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same as applicant). *Residential steel entrance doors, door lites, door jams, steel garage doors, material used and useful in construction of same,* from the facilities of Taylor Building Products at or near West Branch, MI, to Auburndale, FL. Supporting shipper: Taylor Building Products, P.O. Box 1307, 350 Progress Rd., Auburndale, FL 33823.

MC 111302 (Sub-3–4TA), filed April 25, 1980. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10108, Knoxville, TN 37919. Representative: David A. Petersen (same as applicant). *Liquid solvents,* in bulk, in tank vehicles, from the facilities of Whitaker Oil Co. in Atlanta, GA, Columbus, GA, and Panama City, FL, to points in AL, GA, FL, NC, SC, and TN. Supporting shipper: Whitaker Oil Co., 1557 Marietta Rd., NW, Atlanta, GA 30318.

MC 140123 (Sub-3–1TA), filed April 28, 1980. Applicant: GRAHAM TRANSFER, INC., Rt. 2, Main St., Linden, TN 37096. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. *Rail ties, cross arms and crossing blanks* from points in TN on and west of I–65 (except Memphis and Nashville, TN, Houston and Henry Counties, TN) to Columbus, MS and its commercial zone. Supporting shipper: Kerr McGee Chemical Corp., Kerr McGee Center, P.O. Box 25861, Oklahoma City, OH 73125.

MC 121664 (Sub-3–15TA), filed April 29, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave. S., Birmingham, AL 35233. *Roofing and roofing materials* from Peachtree, GA to KY, TN, AR, AL, MS, and LA. Supporting shipper: Flintkote Co., P.O. Box 800, Dallas, TX 75062.

MC 145722 (Sub-3–TA), filed April 28, 1980. Applicant: REM LEASING, INC., 144 Royal Rd., Jamestown, NC 27282. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005. *Textile products, and materials used in the manufacture thereof* from points in NC and SC to Atlanta, GA, Tulsa, OK and points in CA. Supporting Shipper: Fabricut, Inc., 9303 E. 46th St., Tulsa, OK 74145.

MC 145635 (Sub-3–1TA), filed April 28, 1980. Applicant: THOMAS R. REED d.b.a., RANDLE REED TRUCKING, Rt. 4, Box 50C, Louisville, MS 39339. Representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205. *Contract carrier;* irregular routes; *Brick and structural tile* (1) between the facilities of Delta-Shuqualak Brick & Tile Co., Inc., at or near Shuqualak, MS, and the facilities of Delta-Macon Brick & Tile Company, Inc., at or near Macon, MS, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MO, OK, TN, and TX, and (2) from points in IN to the facilities of Delta-Shuqualak Brick & Tile Co., Inc., at or near Shuqualak, MS, and the facilities of Delta-Macon Brick & Tile Company, Inc., at or near Macon, MS. Restricted to transportation performed under a continuing contract or contracts with Delta Brick & Tile Co., Inc., Indianola, MS. Supporting Shipper: Delta Brick & Tile Company, Inc., Indianola, MS 38751.

MC 146451 (Sub-3–3TA), filed April 24, 1980. Applicant: WHATLEY-WHITE, INC., P.O. Box 6, Dothan, AL 36302. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers S., 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Plumbing fixtures and materials, equipment and supplies used in the manufacture and distribution of plumbing fixtures* between the facilities of Eljer Plumbingware at or near Ford City, PA and Salem, OH and points in AL, GA, FL and MS. Supporting shipper: Eljer Plumbingware, Pittsburgh, PA.

MC 146451 (Sub-3–4TA), filed April 24, 1980. Applicant: WHATLEY-WHITE, INC., P.O. Box 6, Dothan, AL 36302. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers S., 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Plastic articles and such materials, equipment and supplies used or useful in the production and distribution of plastic articles* between Reidsville, NC and points in GA and AL. Supporting shipper: Zarn, Inc., Northeast Market St. Ext., Reidsville, NC 27320.

MC 124154 (Sub-3–1TA), filed April 1980. Applicant: WINGATE TRUCKING COMPANY, INC., P.O. Box 645, Albany, GA 31703. Representative: W. D. Wingate, (same as applicant). (1) *Paper and paper articles and wood pulp* (except in bulk) and (2) *materials, equipment and supplies used in the manufacture and distribution of commodities described in (1) above* (except commodities in bulk and those requiring special equipment) between the facilities of Bowater Southern Paper Corp. at or near Calhoun, TN and points in TX. Supporting shipper: Bowater Southern Paper Corp., Calhoun, TN 37309.

MC 146451 (Sub-3–5TA), filed April 24, 1980. Applicant: WHATLEY-WHITE, INC., P.O. Box 6, Dothan, AL 36302. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers S., 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Polypropylene sheeting and materials, equipment and supplies used in the manufacture and distribution of*

polypropylene sheeting between Moultrie, GA, Indianapolis, IN and Lexington, KY. Supporting shipper: Mining Environments, Inc., P.O. Box 11929, Lexington, KY 40507.

MC 95540 (Sub-3–10), filed April 28, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 W. Griffin Rd., P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) from points in MA and VT to points in CO, FL, GA, IN, IA, KS, MI, MN, MO, NE, NY, NC, OH, OK, SC, TN, TX, and WI. Restricted to the transportation of traffic originating at the facilities of New England Shipping Association Co-Operative or at the facilities of its members originating at the named origins and destined to the indicated destinations. Supporting shipper: New England Shipping Association Co-Operative, 1029 Pearl St., Brockton, MA 02403.

MC 126679 (Sub-3–1TA), filed April 18, 1980. Applicant: DENNIS TRUCK LINES, INC., P.O. Box 189, Vidalia, GA 30474. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. (1) *Concrete pipe, conduits and manholes* from the facilities utilized by the Hermitage Concrete Pipe Co., and Knoxville Concrete Pipe and Products Co. at or near Knoxville, TN to points in AL, FL, GA, DE, MD, MS, NC, SC, TN, and VA; and (2) *Equipment, materials and supplies used in the manufacture of concrete pipe, conduits and manholes* from points in AL, FL, GA, DE, MD, MS, NC, SC, TN, and VA to the facilities utilized by Hermitage Concrete Pipe Co., and Knoxville Concrete Pipe & Products Company at or near Knoxville, TN. Supporting shipper: Hermitage Concrete Pipe Co., P.O. Box 3288, Knoxville, TN 37917.

MC 37896 (Sub-3–1TA), filed April 15, 1980. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW., Washington, DC 20036. *Jute and cotton products* from Boston, MA to points in AL, GA, IL, MD, NJ, NY, PA and OH. Supporting shippers: Farnsworth Fibre Corp., 185 Old Colony Ave., Boston, MA 02127, and Sherman Feinberg Corp., 185 Old Colony Ave., Boston, MA 02127.

MC 109708 (Sub-3–1TA), filed April 16, 1980. Applicant: INDIAN RIVER TRANSPORT, INC., 2580 Executive Rd., P.O. Box AG, Dundee, FL 33838. Representative: Elbert Brown, Jr., registered practitioner, P.O. Box 1378, Altamonte Springs, FL 32701. *Cranberry juice and concentrate* between the facilities of Ocean Spray Cranberries, Inc., and its co-packing facilities now in operation and all future sites in the Continental United States. Supporting shipper: Ocean Spray Cranberries, Inc., 7800 S. 60th Ave., Kenosha, WI 53142.

MC 143059 (Sub-3–3TA), filed April 21, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 34510, Louisville, KY 40232. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. *(1) Carbon wood products, charcoal, lighter fluid, hickory chips, and related items, and (2) equipment, materials, and supplies used in the distribution of the commodities in (1), above,* from Scotia, NY to points in MA, NH, ME, CT, DE, NJ, RI, MD, PA, VA, VT, and WV, restricted to the transportation of traffic originating at the facilities of Husky Industries, at or near Scotia, NY. Supporting shipper: Husky Industries, Inc., 62 Perimenter Center East, Atlanta, GA 30346.

MC 150706 (Sub-3–1TA), filed April 16, 1980. Applicant: NEELY TRANSPORT, INC., 1500 2nd Street, Birmingham, AL 35214. Representative: Thomas R. Neely, III, 1500 2nd Street, Birmingham, AL 35214. *Liquid Asphalt, in bulk, in tank vehicles equipped with burners,* from Birmingham, AL to Memphis, TN. Supporting shipper: Celotex Corporation, 1327 Erie Street, Birmingham, AL 35224.

MC 116300 (Sub-3–3TA), filed April 29, 1980. Applicant: NANCE AND COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *Proppant,* from New Iberia, LA to points in AL, AR, CO, FL, GA, IL, IN, KS, KY, MI, MO, NM, NC, OH, SC, TN, VA, WV, & WY. Supporting shipper: The Carborundum Co., Star Rt. B—Box 390C, New Iberia, LA 70560.

MC 59150 (Sub-3–3TA), filed April 28, 1980. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. *Construction Materials and Equipment, Materials and Supplies used in the manufacture, installation and distribution of Construction Materials,* between Tucker, GA and points in AL, FL, MS, NC, SC, TN and VA. Supporting shipper: Ruco of Atlanta Inc., 2014 Steel Dr., Tucker, GA 30084.

MC 59150 (Sub-3–2TA), filed April 28, 1980. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. *Concrete products,* from Knoxville, TN, to points in FL, AL, GA, NC, SC, LA, MS and VA. Supporting shipper: Hermitage Concrete Pipe Co., P.O. Box 3288, Knoxville, TN 37917.

MC 146233 (Sub-3–1TA), filed April 25, 1980. Applicant: BOBBY REEVES CO., INC., P.O. Box 630, Route No. 3, Adairsville, GA 30103. Representative: Mark S. Gray, P.O. Box 872, Atlanta, GA 30301. *Contract carrier:* irregular routes: *Such commodities as are dealt in by manufacturers of steel wire products,* between the facilities of Bekaert Steel Wire Corp., Rome, GA, on the one hand, and, on the other, Abbeville, SC; Natchez, MS; Hohenwald, Lavergne, and Union City, TN; Danville, VA; Charlotte, Forest City, Haw River and Wilson, NC; Mountain Home and Van Buren, AR; Mayfield, KY; Decatur, Galesburg and Mt. Vernon, IL; Akron, Bucyrus, Findlay, Marion, Ravenna and Youngstown, OH; Carlisle, Oaks and Pottstown, PA; Iowa and Topeka, KS; Lawton and Miami, OK; Waco, TX; Tonawanda, NY; Des Moines, IA; Detroit, MI; and Eau Claire, WI. Restricted to traffic orginating at or destined to the facilities of Bekaert Steel Wire Corp. Supporting shipper: Bekaert Steel Wire Corp., P.O. Drawer G, Rome, GA 30161.

MC 107912 (Sub-3–1TA), filed April 28, 1980. Applicant: REBEL MOTOR FREIGHT, INC., 3934 Homewood, Memphis, TN 38118. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Plastic resins and compounds and materials, equipment and supplies utilized in the production and distribution thereof,* between the facilities of Ethyl Corporation located at or near Baton Rouge, LA, and Gallman, MS. Supporting shipper: Ethyl Corporation, Ethyl Tower, 451 Florida Blvd., Baton Rouge, LA 70801.

MC 120910 (Sub-3–4TA), filed March 21, 1980. Applicant: SERVICE EXPRESS, INC., P.O. Box 1009, Tuscaloosa, AL 35401. Representative: Richard Davis (same address as applicant). (1) *Charcoal briquettes, hickory chips, vermiculite, charcoal lighter fluid, fireplace logs (compressed sawdust wax impregnated), related barbecue items;* and (2) *Materials, equipment and supplies used in the manufacture, sale and distribution of the items in (1),* between points in the United States (except AK and HI), restricted to traffic moving from, to, or between the facilities, warehouses and distribution centers of The Kingsford Company. Supporting shipper: The Kingsford

Company, P.O. Box 1033, Louisville, KY 40201.

MC 85970 (Sub-3–3TA), filed April 21, 1980. Applicant: SARTAIN TRUCK LINE, INC., 1354 N. Second Street, Memphis, TN 38107. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Rubber, rubber products and such commodities as are manufactured, processed or dealt in by manufacturers of rubber and rubber products, and equipment, materials and supplies used in the manufacture of rubber and rubber products, except commodities in bulk,* between the facilities of The Goodyear Tire & Rubber Company located at or near Union City, TN, on the one hand, and, on the other, points in the states of NY, NJ, PA, DE, MD, VA, NC, SC, GA, AL, MS, LA, KY, OH, IN, IL, MI, WI, MN, MO, KS, OK and TX. Supporting shipper: The Goodyear Tire & Rubber Co., 1144 E. Market St., Akron, OH 44316.

MC 146281 (Sub-3–4TA), filed April 28, 1980. Applicant: SILVER FLEET EXPRESS, INC., P.O. Box 6089, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Penn, Bldg., 425 13th St., NW., Washington, DC 20004. *Rubber compound, electrical wire and materials, supplies and equipment used in the manufacture of electrical wire* between the facilities of the Belden Corporation at or near Richmond, IN, on the one hand, and, on the other, its facilities at Jena, LA. Supporting shipper: Belden Corporation, 2000 S. Batavia Ave., Geneva, IL 60134.

MC 127625 (Sub-3–1TA), filed April 28, 1980. Applicant: SANTEE CEMENT CARRIERS, INC., Holly Hill, SC 29059. Representative: Frank B. Hand, Jr., P.O. Drawer C, Berryville, VA 22611. *Lumber, building, and construction board produced from wood or wood residuals or both,* from Holly Hill and Walterboro, SC to Georgetown and Charleston, SC. Supporting shipper: Holly Hill Lumber Co., P.O. Box 128, Holly Hill, SC 29059.

MC 150713 (Sub-3–1TA), filed April 28, 1980. Applicant: U-FILL'ER-UP, INC., P.O. Box 9718, Greensboro, NC 27408. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Gasoline and gasahol,* in bulk in tank vehicles, (1) from Spartanburg County, SC to points in NC, (2) from Mecklenburg and Johnston counties, NC to points in SC. Supporting shippers: Turner Markets, 1500 Second Loop Rd., Florence, SC 29501. Short Stop Food Markets, 1015 Hope Mills Rd., Fayetteville, NC 28304. Ice Service Inc., 237 Valley St., Asheville, NC 28801, Quick Shop Food Stores, 120 E. Butler, Mauldin, SC.

MC 116254 (Sub-3–8TA), filed April 28, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Mr. M. D. Miller (same address as applicant). *Toluenesulfonic Acid* in bulk, in tank vehicles, from Birmingham, AL to Nitro, WV. Supporting shipper: Monsanto Company, 800 North Lindbergh Boulevard, St. Louis, MO 63166.

MC 144069 (Sub-3–5TA), filed April 25, 1980. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: W. T. Trowbridge (same address as applicant). *Iron and steel articles* between the facilities of Oceana Corp. at or near Darlington, SC on the one hand and on the other points in and east of WI, IL, KY, TN and MS. Supporting shipper: Oceana Corp., Hwy. 17, Pawleys Island, SC.

MC 108676 (Sub-3–3TA), filed April 22, 1980. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Ave., N.E., Knoxville, TN 37917. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. *Flat glass,* from Nashville, TN, to points in and west of ND, SD, NE, KS, CO, and NM. Supporting shipper: Ford Motor Co, Nashville Glass Plant, P.O. Box 1355, Nashville, TN 37202.

MC 108370 (Sub-3–1TA), filed April 21, 1980. Applicant: BANANA TRANSPORT, INC., 12712 North Oregon Ave., Tampa, FL 33612. Representative: John G. Hardeman, 618 United American Bank Bldg., Nashville, TN 37219. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the report and description in Motor Carrier Certificate 61–MC209 and 766 (except hides and commodities in bulk) and foodstuffs when moving in mixed loads with articles listed in (1) above* (1) from the facilities of Oscar Mayer & Co. at or near Goodletsville, TN to AL, FL, and GA and (2) from the facilities of Oscar Mayer & Co. at or near Beardstown, IL to facilities of Oscar Mayer & Co. at Goodlettsville, TN and FL. Supporting shipper: Oscar Mayer & Co., P.O. Box 7188, Madison, WI 53707.

MC 146646 (Sub-3–6TA), filed April 28, 1980. Applicant: BRISTOW TRUCKING CO., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Plastic cases and cassettes* from the facilities of Filam National Plastics, Inc. located at or near Los Angeles, CA to Dothan, AL; East Rutherford, NJ; Sarasota, FL; Tulsa, OK; Dallas, Houston, and Laredo, TX. Supporting shipper: Filam National Plastic, Inc., 416 W. El Segundo Blvd., Los Angeles, CA 90061.

MC 124154 (Sub-3–2TA), filed April 28, 1980. Applicant: WINGATE TRUCKING CO., INC., P.O. Box 645, Albany, GA 31703. Representative: W. D. Wingate, P.O. Box 645, Albany, GA 31703. *Agricultural fertilizers, chemicals, and products, supplies and raw materials used in the manufacture, distribution and sale, except in bulk,* between AL, AR, AZ, FL, GA, CA, LA, MD, MS, NC, NY, NJ, OK, PA, SC, TN, KY, TX, VA, WV, IA, KS, MO, IN, SD, ND, WA, WI, OH, NE and MI. Supporting shipper: Helena Chemical Company, 5100 Poplar Avenue, Suite 3200, Memphis, TN 38137.

MC 138882 (Sub-3–12TA), filed April 28, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, Alabama 36081. Representative: John J. Dykema, P.O. Drawer 707, Troy, Alabama 36081. (1) *Plastic containers,* (a) Between the facilities of Sewell Plastics, Inc. located at or near Atlanta, GA, Charlotte, NC, Reserve, LA, Orlando, FL, Hollywood, FL, Collierville, TN, Mableton, GA, Havre de Grace, MD, Kansas City, KS, Stone Mountain, GA, Arlington, TX, Jackson, MS, Dallas, TX, New Stanton, PA, Greenville, SC, Houston, TX and Phoenix, AZ and (b) From the facilities of Sewell Plastics, Inc. named in (a) above to points in AL, AR, CA, FL, DC, GA, KS, KY, IL, IN, IA, LA, MS, MO, MD, NV, NM, NY, NC, OH, OK, SC, PA, TN, TX, UT, VA, and WV. *(2) Plastic preforms or plastic base cups for plastic containers* From the facilities of Sewell Plastics, Inc. at or near Atlanta, GA, the facilities of Coats and Clark, Inc. at or near Seneca, SC, and the facilities of Southeastern Kusan, Inc. at or near Greenville, SC to the facilities of Sewell Plastics, Inc., named in (1)(a) above *(3) Materials, equipment and supplies used in the manufacture and distribution of plastic containers or parts therefor (except commodities in bulk)* From points in the destination states named in (1)(b) above, to the facilities of Sewell Plastics, Inc. named in (1)(a) above. Supporting shipper: Sewell Plastics, Inc., 5111 Phillip Lee Drive, Atlanta, GA 30336.

MC 144027 (Sub-3–2TA), filed April 28, 1980. Applicant: WARD CARTAGE & WAREHOUSING, INC., Route 4, Glasgow, KY 42141. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street, NW., Washington, DC 20004. *Household Appliances, Equipment, Materials and Supplies used in the manufacture and distribution of commodities named* from the facilities of the General Electric Co. at Louisville, KY, to points in FL east of the Apalachicola River. NOTE: Applicant proposes to interline at Miami, Tampa, Jacksonville, and

Orlando, FL. Supporting shipper: General Electric Company, Appliance Park, Louisville, KY 40225.

MC 146646 (Sub-3–5TA), filed April 21, 1980. Applicant: BRISTOW TRUCKING COMPANY, P.O. Box 6355 A, Brimingham, AL 35217. Representative: James W. Segrest (same address as applicant). *(1) Bleach, soap powders; washing powders; liquid detergent; ammonia; soap pads; fabric softener; (2) materials, equipment and supplies used in the manufacture, sales, and distribution of commodities named in (1) above* between Hapeville, GA and points in AL, TN, FL, SC, NC, NJ and TX. Supporting shipper: Purex Corporation, 1414 N. Radcliffe St., Bristol, PA.

MC 114334 (Sub-3–4TA), filed April 28, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY, 3710 Tulane Road, Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Building, Memphis, TN 38103. *Asphalt roofing products* from Stephens, AR and Camden, AR to points in OK, MO, KY, TN, IL, IN, AL, LA, and MS. Supporting Shipper: Elk Corporation, P.O. Box 37, Stephens, AR 71764.

MC 125305 (Sub-3–5TA), filed April 16, 1980. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Cans and can ends, metal and/or aluminum* between plantsites and warehouses of Continental Can Company in Perry, GA and Atlanta, GA and points in FL. Supporting shipper: Continental Can Company, 22 Executive Park, W., NE, Atlanta, GA 30329.

MC 97394 (Sub-3–2TA), filed April 25, 1980. Applicant: BOWLING GREEN EXPRESS, INC., P.O. Box 13303, Louisville, KY 40213. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street, N.W., Washington, DC 20004. *General Commodities (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Bowling Green, KY, and points in its commercial zone, on the one hand, and, on the other, points in AR. Applicant intends to tack and interline. Supporting Shippers: There are fifty one supporting shippers which may be examined at the ICC Regional Office in Atlanta, Georgia.

MC 133917 (Sub 3-2), filed April 28, 1980. Applicant: CARTHAGE FREIGHT LINES, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *(1) Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses* (except frozen commodities and commodities in bulk), from the facilities of The Clorox Company, at or near Atlanta, GA, to points in the States of KY and TN, (2) *Materials, equipment and supplies used in the manufacture, sale and distribution of the commodities listed in part (1) above,* from points in the states of KY and TN to the facilities of the Clorox Company at or near Atlanta, GA. Supporting shipper: The Clorox Company, P.O. Box 24305, 1221 Broadway, Oakland, CA 94612.

MC 144082 (Sub 3-2), filed: April 22, 1980. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a. TAHWHEELALEN EXPRESS, INC., 1333 Nevada Boulevard, Post Office Box 7191, Charlotte, North Carolina 28217. Representative: Wyatt E. Smith, 1333 Nevada Boulevard, Post Office Box 7191, Charlotte, North Carolina 28217. *Contract Carrier, such commodities as are dealt in, distributed or used by auto service stores including but not limited to auto mufflers, tail and exhaust pipes, shock absorbers and straight steel tubing,* from Hartford, Wisconsin to Atlanta, Georgia, restricted to service performed under a continuing contract or contracts with Midas International Corporation. Supporting shipper: Midas International Corporation of Chicago, Illinois.

MC 144827 (Sub 3-1TA), filed April 24, 1980. Applicant: DELTA MOTOR FREIGHT, INC., 2877 Farrisview, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 North Main Building, Memphis, TN 38103. *Television cabinets* from the facilities of Kyowa America Corp. at Atlanta, GA to the facilities of Sharp Manufacturing Company of America at Memphis, TN. Restricted to traffic originating at or destined to the named facilities. Supporting shippers: Sharp Manufacturing Company of America, Sharp Plaza Blvd., Memphis, TN 38193. Kyowa America Corp., 500 Wharton Circle, Atlanta, GA 30336.

MC 125037 (Sub-3–1TA), filed April 29, 1980. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., Attorney at Law, 5506 Crestwood Blvd. Birmingham, AL 35212. *Office futniture, parts, materials and supplies used in the manufacture, sale and distribution of office furniture (except commodities in bulk);* between the facilities of United Chair Co., A Division of U.S.I., Inc., at or near Leeds, AL, on the one hand and on the other, TX, LA, AR, MS, OK and AL commodities are shipped with multi-drop loads bound for TX, LA, MS, AR and OK destinations. Supporting shipper(s): United Chair, Divsion of U.S.I., P.O. Box 96, Leeds, AL 35094.

MC 137836 (Sub-3–1TA), filed April 29, 1980. Applicant: F B M TRUCKING INC., Hwy 54 East, P.O. Box 513, Fayetteville, Ga. 30214. Representative: Mrs. Dorothy Meatows, (same Address as Applicant). *Shears Steel Working Machine; Plate or Sheet Metal Bending; Machine Parts; Machine knives,* from Greensboro, NC to AZ, NV, and CA. Supporting shipper(s): Meyer Machinery, 2528 S. Santa Fe Ave., Los Angles, Ca. 90058.

MC 11220 (Sub-3–3TA), filed April 21, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Houston, TX and Baton Rouge, LA: From Houston over Interstate Hwy 10 to Baton Rouge; also from Houston over U.S. Hwy 90 to junction TX Hwy 12, then over TX Hwy 12 to junction LA Hwy 12, then over LA Hwy 12 to junction U.S. Hwy 190, then over U.S. Hwy 190 to Baton Rouge, and return over the same routes; (2) Between Houston, TX and Texarkana AR–TX: From Houston over U.S. Hwy 59 to Texarkana and return over the same route; (3) Between Texarkana, AR–TX and Greenville, MS: From Texarkana over U.S. Hwy 82 to Greenville, and return over the same route; (4) Between Dallas, TX and Little Rock, AR: From Dallas over Interstate Hwy 30 to Little Rock; also from Dallas over U.S. Hwy 67 to Little Rock, and return over the same routes; (5) Between Dallas, TX and Jackson, MS: From Dallas over Interstate Hwy 20 to Jackson; also from Dallas over U.S. Hwy 80 to Jackson; and return over the same routes; (6) Between Logansport, LA and Mansfield, LA: From Logansport over U.S. Hwy 84 to Mansfield, and return over the same route; (7) Between Texarkana, AR–TX, and junction U.S. Hwys 71 and 190 near Krotz Springs, LA: Texarkana over U.S. Hwy 71 to junction U.S. Hwy 190, and return over the same route; (8) Between Shreveport, LA and Lake Charles, LA: From Shreveport over U.S. Hwy 171 to Lake Charlers, and return over the same route; (9) Between junction U.S. Hwys 165 and 90 near Iowa, LA and Montrose, AR: From junction U.S. Hwys 165 and 90 over U.S. Hwy 165 to Montrose, and

return over the same route; (10) Between Crowley, LA and Turkey Creek, LA: From Crowley over LA Hwy 13 to turkey Creek, and return over the same route; (11) Between Lafayette, LA and El Dorado, AR: From Lafayette over U.S. Hwy 167 to El Dorado, and return over the same route; (12) Between Leesville, LA and Natchitoches, LA: From Leesville over LA Hwy 8 to junction LA Hwy 28, then over LA Hwy 28 to junction U.S. Hwy 84 near Archie, LA, then over U.S. Hwy 84 to junction LA Hwy 6, then over LA Hwy 6 to Natchitoches, and return over the same route; (13) Between Toomey, LA and New Orleans, LA: From Toomey over U.S. Hwy 90 to New Orleans, and return over the same route; (14) Between Lafayette, LA and junction LA Hwy 182 and U.S. Hwy 90 near Jeanerette, LA: From Lafayette over LA Hwy 182 to junction U.S. Hwy 90, and return over the same route. Serving all intermediate points in AR, LA and MS on Routes 1 through 14, inclusive, and serving as off-route points, Camden and East Camden, AR; Colfax, Fort Polk, Haynesville, Lockport, Mathews, and St. Martinsville, LA; and the facilities of International Paper Company at or near Camden, AR and Springhill, LA. (15) Between Fort Smith, AR and Texarkana, AR–TX, serving no intermediate points: From Fort Smith over U.S. Hwy 71 to Texarkana, and return over the same route; (16) Between Little Rock, AR and El Dorado, AR, serving no intermediate points: From Little Rock over U.S. Hwy 167 to El Dorado, and return over the same route; (17) Between Jackson, MS and Brimingham, AL, serving no intermediate points: From Jackson over Interstate Hwy 20 to Birmingham, and return over the same route; (18) Between Bossier City, LA and Hope, AR: From Bossier City over LA Hwy 3 to LA-AR State Line, then over AR Hwy 29 to Hope, and return over the same route; (19) Between Sulphur, LA and DeQuincy, LA: From Sulphur over LA Hwy 27 to DeQuincy, and return over the same route; (20) Between DeQuincy, LA and DeRidder, LA: From DeQuincy over LA Hwy 27 to DeRidder, and return over the same route; (21) Between junction LA Hwy 26 and U.S. Hwy 90 and Oberlin, LA, serving junction LA Hwy 26 and U.S. Hwy 190 and junction LA Hwys 26 and 104 for purpose of joinder only: From junction LA Hwy 26 and U.S. Hwy 90 over LA Hwy 26 to Oberlin, and return over the same route; (22) Between junction LA Hwys 104 and 26 and junction LA Hwys 104 and 13 near Mamou, LA, serving junction LA Hwys 104 and 26 for purpose of joinder only: From junction LA Hwys 104 and 26 over LA Hwy 104 to junction LA Hwy 13, and return over the same route; (23) Between junction LA Hwys 29 and 13 near Eunice, LA and Ville Platte, LA: From junction LA Hwys 29 and 13 over LA Hwy 29 to Ville Platte, and return over the same route; (24) Between LeBeau, LA and junction LA Hwy 10 and U.S. Hwy 167 near Opelousas, LA: From LeBeau over LA Hwy 10 to junction U.S. Hwy 167 and return over the same route; (25) Between Ville Platte, LA and Bunkie, LA: From Ville Platte over LA Hwy 29 to Bunkie, and return over the same route; (26) Between Oberlin, LA and junction LA Hwy 26 and U.S. Hwy 171 near DeRidder, LA: From Oberlin over LA Hwy 26 to junction U.S. Hwy 171 and return over the same route; (27) Between Pickering, LA and Oakdale, LA: From Pickering over LA Hwy 10 to Oakdale, and return over the same route; (28) Between junction LA Hwy 77 and Interstate Hwy 10 near Rosedale, LA and junction LA Hwy 77 and U.S. Hwy 190: From junction LA Hwy 77 and Interstate Hwy 10 over LA Hwy 77 to junction U.S. Hwy 190, and return over the same route; (29) Between Oakdale, LA and junction LA Hwy 10 and U.S. Hwy 167 near Ville Platte, LA, serving junction LA Hwys 10 and 13 for purpose of joinder only: From Oakdale over LA Hwy 10 to junction U.S. Hwy 167, and return over the same route; (30) Between Lecompte, LA and Forest Hill, LA: From Lecompte over LA Hwy 112 to Forest Hill, and return over the same route; (31) Between Pollock, LA and Trout, LA: From Pollock over LA Hwy 8 to junction LA Hwy 772, then over LA Hwy 772 to Trout, and return over the same route; (32) Between Pollock, LA and Bentley, LA: From Pollock over LA Hwy 8 to Bentley, and return over the same route; (33) Between Alexandria, LA and Natchitoches, LA: From Alexandria over LA Hwy 1 to Natchitoches and return over the same route; (34) Between Natchitoches, LA and Coushatta, LA: From Natchitoches over LA Hwy 1 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Coushatta, and return over the same route; (35) Between Natchitoches, LA and Many, LA: From Natchitoches over LA Hwy 6 to Many, and return over the same route; (36) Between Mansfield, LA and Coushatta, LA, serving junction U.S. Hwy 84 and LA Hwy 1 for purpose of joinder only: From Mansfield over U.S. Hwy 84 to Coushatta, and return over the same route; (37) Between Logansport, LA and junction LA Hwy 5 and U.S. Hwy 171 near Gloster, LA: From Logansport over LA Hwy 5 to junction U.S. Hwy 171, and return over the same route; (38) Between Shreveport, LA and junction LA Hwy 1 and U.S. Hwy 84 near Grand Bayou, LA, serving junction LA Hwy 1 and U.S. Hwy 84 for purpose of joinder only: From Shreveport over LA Hwy 1 to junction U.S. Hwy 84, and return over the same route; (39) Between Minden over LA Hwy 7 to junction U.S. Hwy 71 near Coushatta, LA: From Minden over LA Hwy 7 to junction U.S. Hwy 71, and return over the same route; (40) Between Bastrop, LA and junction AR Hwy 81 and U.S. Hwy 82, serving LA Hwys 139 and 142 for purpose of joinder only: From Bastrop over LA Hwy 139 to LA-AR State line, then over AR Hwy 81 to junction U.S. Hwy 82, and return over the same route; (41) Between Crossett, AR and junction LA Hwys 139 and 142, serving junction LA Hwys 139 and 142 for purpose of joinder only: From Crossett over AR Hwy 133 to AR-LA State line, then over LA Hwy 142 to junction LA Hwy 139, and return over the same route; (42) Between Monroe, LA and Jonesboro, LA: From Monroe over LA Hwy 34 to junction LA Hwy 4, then over LA Hwy 4 to Jonesboro, and return over the same route; (43) Between Thibodaux, LA and Houma, LA: From Thibodaux over LA 20 to junction LA Hwy 24, then over LA Hwy 24 to Houma, and return over the same route; (44) Between Gibson, LA and Thibodaux, LA: From Gibson over LA Hwy 20 to Thibodaux, and return over the same route; (45) Between New Iberia, LA and Crowley, LA: From New Iberia over LA Hwy 14 to junction LA Hwy 13, then over LA Hwy 13 to Crowley, and return over the same route. Routes 18 through 45, inclusive, are alternate routes for operating convenience only, serving no intermediate points, but serving for purpose of joinder only those points so specified on routes 21, 22, 29, 36, 38, 40 and 41. Restriction: the authority is restricted against the transportation of shipments by carrier where carrier's origin and carrier's destination are both within TX, or both within LA, or within TX and LA; for 180 days. Applicant intends to serve the commercial zones of all intermediate, termini and off-route points sought, to tack or join with applicant's existing routes at common points in AL, AR, LA, MS, and TX, and to interline with other carriers. There are 61 statements of support attached to this application which may be examined at the Interstate Commerce Commission Regional Complaint and Authority Center, 1252 West Peachtree Street, N.W., Atlanta, GA. Send protests to Interstate Commerce Commission, Regional Complaint/Authority Center, P.O. Box 7520, Atlanta, GA 30309.

MC 144557 (Sub-3–3TA), filed April 24, 1980. Applicant: HUDSON TRANSPORTATION, INC., P.O. Box 847, Troy, AL 36081. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. *Canned and preserved foodstuffs,* from the facilities of Heinz USA, at or near Pittsburgh, PA, Fremont, OH, and Holland, MI, to points in AL, GA, LA, MS, NC, SC, and TN, restricted to traffic originating at the named facilities and destined to the named States. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 121568 (Sub-3–1TA), filed April 28, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37211. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. *Articles made totally or partially of plastic and items utilized in the sale and distribution thereof,* between the facilities of the Tupperware Company, located at or near Halls, TN, on the one hand, and, on the other, points in LA. Supporting shipper: Tupperware Company, Div. of Dart Industries, Inc., P.O. Box 751, Woonsocket, RI 02895.

MC 141859 (Sub-3–3TA), filed May 1, 1980. Applicant: K. B. COMPANY, INC., P.O. Box 931, Winston-Salem, NC 27102. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. *New furniture and new furniture parts* from Dublin, Pulaski and Martinsville, VA, to points in AL, AR, GA, IL, IN, IA, KS, LA, MI, MN, MS, MO, NE, ND, OH, OK, SD, WI, CT and MA. Supporting shipper: Pulaski Furniture Corporation, Box 1731, Pulaski, VA 24301.

MC 106401 (Sub-3–2TA), filed April 24, 1980. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash (same address as applicant). (1) *Plastic bottles* from the facilities of Sewell Plastics, Inc., at or near Mauldin, SC to points in TN on and east of Interstate Hwy. 75 and points in VA on and west of U.S. Hwy. 220; and (2) *Materials, supplies and equipment (except commodities in bulk) used in the manufacturing and distribution of plastic bottles* from points in TN on and east of Interstate Hwy. 75 and points in VA on and west of U.S. Hwy. 220 to the facilities of Sewell Plastics, Inc., at or near Mauldin, SC. Supporting shipper: Sewell Plastics, Inc., P.O. Box 5619 Station B, Greenville, SC 29606.

MC 147127 (Sub-3–6TA), filed April 17, 1980. Applicant: MCLAURIN TRUCKING CO., P.O. Box 26506, Charlotte, NC 28213, Representative: Donald J. Balsley, Jr., 2310 Grant Building, Pittsburgh, PA 15219. (1) *Transformers, motors and motor parts,* between points in Mecklenberg County, NC and points in SC; and (2) *Materials, equipment and supplies* used in the installation, maintenance and repair of transformers, motors and motor parts, between points Mecklenberg County, NC and points in SC. Supporting shipper: Lincoln Electric Company, 11130 Carpet Street, Charlotte, NC and General Electric Company, 3007 Asbury Avenue, Charlotte, NC.

MC143059 (Sub-3–2TA), filed April 24, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, Ky 40202. *Cooling equipment and parts, materials, equipment and supplies used in connection with cooling equipment,* from the facilities of Marley Cooling Tower Co., at Louisville, Ky, to points in the United States (except HI, but including AK). Supporting shipper: Marley Cooling Tower Co., 5800 Foxridge Drive, Mission, KS 66202.

MC 136123 (Sub-3–3TA), filed April 24, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: Raymond P. Keigher, Esq. Lawson & Keigher, 843 Investment Building, 1511 K Street, NW., Washington, DC 20005. (1) *Rubber articles, plastic articles,* and *rubber and plastic articles,* and (2) *materials, equipment and supplies* used in the manufacture or distribution of the commodities named in (1) above, between Irving and Saginaw, TX, on the one hand, and, on the other, points in AL, AR, CT, DE, DC, FL, GA, IL, IN, KY, LA, MD, MS, MO, NJ, NY, NC, OH, PA, SC, TN, and VA. Supporting shipper: Entek Corporation of America, 104 County Line Road, Irving, TX 75060.

MC 116254 (Sub-3–6 TA), filed April 25, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Mr. M. D. Miller (same address as above). *Phosphoric Acid,* in tank vehicles, from Mt. Pleasant, TN, to Los Angeles, CA and Orange County, CA. Supporting shipper: Stauffer Chemical Company, Westport, CT 06880.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 145054 (Sub-6–3TA), filed May 5, 1980. Applicant: COORS TRANSPORTATION COMPANY, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, Jones, Meiklejohn, Kehl & Lyons, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Petroleum products, in packages;* From Wilmington, CA to points in Wyoming, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper is Texaco, Inc., P.O. Box 52332, Houston, TX 77052.

MC 113678 (Sub-6–9TA), filed May 5, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, Colorado 80022. Representative: Roger M. Shanner (same as applicant). *Paper and paper products* (except commodities in bulk) from the facilities of Westvaco, located at or near New Orleans, Louisiana, to points in AL, AZ, CO, GA, IA, KS, MD, NC, SC and TN, for 180 days. Supporting shipper: Westvaco Inc., 1400 Annunciation, New Orleans, LA.

MC 150726 (Sub-6–1TA), filed May 5, 1980. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA 93662. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Molton sulfur,* from points in CA to points in AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers; Seepage Control, Inc., 3306 E. Washington, Phoenix, Arizona 85034, Kerley Chemical—Arizona, a Div. of Kerley Ind., Inc., 2801 W. Osborn Rd., Phoenix, AZ; M & M Chemical Products, Inc., 541 Jefferson Ave., Redwood City, CA 94063.

MC 142664 (Sub-6–1TA), filed May 5, 1980. Applicant: IMPORT DEALERS SERVICE CORPORATION, 2222 East Sepulveda Boulevard, Carson, CA 90744. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. *Trucks, tractors, buses, and chassis for the foregoing, and parts and accessories therefore when transported with the foregoing, in truckaway and driveaway service,* between Los Angeles and Oakland, CA, and points in their respective commercial zones, on the one hand, and, on the other, points in WA, OR, CA, NV, MT, ID, WY, CO, UT, AZ, NM, and El Paso, TX for 180 days. Supporting shipper: Iveco Trucks of North America, Inc., 1730 Walton Road, Post Office Box 1102, Bluebell, PA 19422.

MC 141548 (Sub-6–7TA), filed May 5, 1980. Applicant: INTERIOR TRANSPORT, INC., P.O. Box 3347 TA, Spokane, WA 99220. Representative: George H. Hart, Hart, Allison, Davis & Baldwin, 1100 IBM Building, Seattle, WA 98101. *Wire and wire products* from the facilities of Sumiden Wire Products Corporation in Stockton, CA to points in ID, MT, NV, OR, UT, and WA, for 180 days. Supporting shipper: Sumiden Wire Products Corporation, 1412 El Pinal Drive, Stockton, CA 95205.

MC 145579 (Sub-6–1TA), filed May 5, 1980. Applicant: D. IRVIN TRANSPORT LIMITED, Box 8, Station T, Calgary, Alberta, Canada T2H 2G7. Representative: Charles E. Johnson, P.O. Box 1982, Bismark, ND 58501. Oil Field Chemicals (except in bulk), from Ports of Entry on the International Boundary Line between Canada and the U.S. near Sweetgrass, MT, to Houston, TX, and Denver, CO, for 180 days. Underlying ETA seeks 90 day authority. Supporting Shipper: Turbo Chemicals, a division of Turbo Resources, Bay No. 7, 3401 19th Street NE, Calgary, Alberta, Canada T2E 6S8.

MC 149100 (Sub-6–3TA), filed May 5, 1980. Applicant: JIM PALMER TRUCKING, 9730 Derby Drive, Missoula, MT 59801. Representative: John T. Wirth, 717—17th Street, Suite 2600, Denver, CO 80202. *Cementuous deck,* from Newark, OH to points in OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: I. D. Inc., 2355 NW Quimby, P.O. Box 10124, Portland, OR 97210.

MC 77061 (Sub-6–7TA), filed May 5, 1980. Applicant: SHERMAN BROS., INC., P.O. Box 706, Eugene, OR 97440. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. *Scrap metals, crushed automobile bodies and used automobile parts* (1) from Washington, Payette, Gem, Canyon, Ada, Owyhee, Gooding, Lincoln, Elmore, Twin Falls, Cassia, Bonneville, Jerome, Blaine and Bannock Counties, ID to McMinnville and Portland, OR and Vancouver, Tacoma and Seattle, WA. (2) From Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Tehama, Glenn and Butte Counties, CA to McMinnville and Portland, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Auto Disposal Service, Inc., 427 N. Curtis, Suite 440, Boise, ID 83706; Redler Metals, P.O. Box 1252, Medford, OR 97501.

MC 128246 (Sub-6–2TA), filed May 5, 1980. Applicant: SOUTHWEST TRUCK SERVICE, a Corporation, P.O. Box AD, Watsonville, CA 95076. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Contract carrier,* irregular routes: *Foodstuffs,* from the plant site of The Pillsbury Co. at Denison, TX to the states of AR, AZ, CA, CO, ID, KS, MO, MT, NV, NM, NE, OR, OK, SD, UT and WA, under a continuing contract with The Pillsbury Co. for 180 days; an underlying ETA seeks 90 days authority. Supporting shipper: The Pillsbury Company, 608 Second Ave. So. Minneapolis, MN 55402.

MC 128246 (Sub-6–3TA), filed May 5, 1980. Applicant: SOUTHWEST TRUCK SERVICE, a Corporation, P.O. Box AD, Watsonville, CA 95076. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Contract carrier,* irregular routes: (1) *Foods, foodstuffs, food treating compounds, chemicals, preservatives and additives;* (2) *materials, supplies, equipment and advertising material* used in the manufacture, sale and distribution of the commodities described in (1) above (except in bulk); and (3) *commodities which are otherwise exempt* from economic regulation under Section 10526(a)(6) of the Interstate Commerce Act (49 U.S.C. 10526(a)(6), when moving in mixed loads with the commodities described in (1) and (2) above, between points in the United States, except AK and HI, under a continuing contract or contracts with McCormick & Company, Inc. of Baltimore, MD, for 180 days. Supporting shipper: McCormick & Company, Grocery Products Division, Baltimore, MD 21202.

MC 144577 (Sub-6–1TA), filed May 5, 1980. Applicant: SUNSET TRANSPORTATION COMPANY, P.O. Box 126, Kanosh, UT 84637. Representative: Stuart L. Poelman, 700 Continental Bank Building, Salt Lake City, UT 84101. *Contract carrier,* irregular routes, transporting: *gypsum board and gypsum board products and accessories* from Sigurd, UT, to points in WY within the counties of Teton, Lincoln, Uinta, Freemont, Sweetwater and Carbon, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: L and W Supply Corporation, 1350 South Cherokee, Denver, CO, 80223.

MC 136897 (Sub-6–6TA), filed May 5, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. *Contract carrier,* irregular routes: (1) *such commodities as are dealt in by home improvement retail stores,* (2) *commodities used in the manufacture and distribution of the commodities in (1),* except commodities in bulk, (a) between Torrance, CA to points in TX, and (b) from Torrance, CA to Phoenix and Tucson, AZ; Salt Lake City and Provo, UT; Albuquerque, NM and Las Vegas, NV, for 180 days. An underlying ETA seeks 90 days authority. Request to serve the commercial zones in (b). Supporting Shipper: Standard Brands Paint Co. Inc., 4300 West 190th Street, Torrance, CA 90509.

Note.—Applicant requests authority to serve the Commercial Zones of the cities in (b).

MC 150728 (Sub-6–1TA), filed May 5, 1980. Applicant: TOM BILIC, d.b.a. Vancouver Air Porter, 1203 NE 75th, Vancouver, WA 98665. Representative: Philip G. Skofstad, 1525 NE Weidler, Portland, OR 97232. *Common carrier,* regular routes: *Passengers and baggage* vehicles with passengers, between Longview, WA, and Portland International Airport, OR: From Longview over Interstate Hwy 5 and connecting roadways to Portland International Airport and return over the same route serving all intermediate points for 180 days. An underlying ETA seeks 90 days authority. There are six shippers. Their statements may be examined at the Regional office listed.

MC 135803 (Sub-6–8TA), filed May 5, 1980. Applicant: WALLACE TRANSPORT, 9290 E. Hwy. 140 (P.O. Box 67), Planada, CA 95365. Representative: Donald M. Fennel (same as applicant). *Thread, Needles, Yarns, Yarn goods, Notions, and Products distributed by Coats & Clark's Sales Corp.,* between the facilities of Coats & Clark's Sales Corp., at or near Sparks, NV, and points in CA, OR, and WA for 180 days. Supporting Shipper: Coats & Clark's Sales Corp., 2915 N.E. Parkway, Doraville, GA 30360.

MC 141804 (Sub-6–34TA), filed May 5, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., 4015 Guasti Road, P.O. Box 3488, Ontario, CA 91761. Representive: Frederick J. Coffman (same address as applicant). *(1) Paper and paper articles, plastic and plastic articles and (2) material, equipment and supplies used in the manufacture and distribution of the commodities named in part (1) above,* from Chicago and Shelbyville, IL to points in AL, AR, FL, GA, KY, LA, MS, NC, SC and TN. Restricted to traffic originating at the facilities of Continental Diversified Industries, Bondware Division, for 180 days. Supporting shipper: Daniel J. Dorney, Manager Distribution—Sales, Services, Continental Diversified Industries, Bondware Division, 800 E. Northwest Highway, Palatine, IL 60067.

MC 147212 (Sub-6–1TA), filed May 5, 1980. Applicant: YASTE TRANSPORTATION CO., INC., 1950 Riverside Avenue, Hoquiam, WA 98550. Representive: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. *Contract Carrier,* Irregular routes: *wood pulp, liner board and empty ocean containers,* from the facilities of Weyerhaeuser Co., at Longview, WA and Cosmopolis, WA to points in the

commercial zones of Portland, OR, Seattle, WA and Tacoma, WA, for 180 days. An uderlying ETA seeks 90 days authority. Supporting shipper: Weyerhaeuser Co., CH2–4, Tacoma, WA 98477.

MC 143775 (Sub-6–8TA), filed May 5, 1980. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, Arizona 85301. Representive: Michael R. Burke (same address as applicant). *Rubber in vehicles equipped with mechanical temperaure control* from Kent, OH to Los Angeles, CA, for 180 days. Supporting shipper: G. E. Moore, General Manager, Hamilton-Kent of Nevada, 1650 Linda Way, Sparks, NV 89431.

MC 143775 (Sub-6–9TA), filed May 5, 1980. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, Arizona 85301. Representive: Michael R. Burke (same address as applicant). (1) *Paint and paint related prodicts (except in bulk), and (2) plastic and plastic articles (except in bulk),* from Brea, CA, and its commercial zone to points in the United States (except AK, HI and CA), restricted to traffic originating at the facilities of Ameron Corporation, for 180 days. Supporting Shipper: Gregory V. Adler, Supervisor, Shipping Warehouse and Traffic, Ameron Corporation, 201 N. Berry Street, P.O. Box 1020, Brea, CA 92621.

MC 143775 (Sub-6–10TA), filed May 5, 1980. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, Arizona 85301, Representative: Michael R. Burke (same address as applicant). (1) *Containers, container ends and closures,*(2) *commodities manufactured or distributed by a manufacturer or distributor of containers, when moving in mixed loads with containers,* and (3) *materials, equipment and supplies used in the manufacture, sale and distribution of containers, container ends and closures,* restricted in (1), (2) and (3) above, to the transportation of freight originating at or destined to the facilities of Brockway Glass Company and against commodities in bulk in tank vehicles, between points in the United States except AK and HI, for 180 days. Supporting shipper: J. W. Pennington, Corporate Transportation Manager, Brockway Glass Company, Inc., Brockway, PA 15824.

MC 143775 (Sub-6–11TA), filed May 5, 1980. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, Arizona 85301. Representative: Michael R. Burke (same address as applicant). *Flour and cornmeal, flour or meal-prepared edible and flaked potatoes (except in bulk),* from the facilities of Con Agra, Inc. at or near Sherman, TX, to points in AZ and CA, for 180 days. Supporting shipper: Donald C. Daup, Corporate Rate Manager, ConAgra, Inc. 200 Kiewit Plaza, Omaha, NE 68131.

MC 149195 (Sub-6–4TA), filed May 5, 1980. Applicant: ARCADIAN MOTOR CARRIERS, 1831 Simpson, Kingsburg, California 93631. Representative: James F. Hauenstein (same address as applicant). (1) *Welders, welder parts, welder systems, welder compounds and welding supplies. And (2) Material and supplies used in the manufacture, distribution and operation of the commodities in (1) above.* (Restricted to traffic originating at or consigned to the facilities of the Stoody International Company.) Between: City of Industry and Santa Fe Springs, CA and points in CA, OR, WA, UT, WY, CO, NM, TX, OK, KS, NE, IA, IL, MO, AR, LA, TN, KY, IN, OH, VA, WV, NY, PA, MD and NJ, for 180 days. Supporting shipper: The Stoody Company, 16425 Gale Avenue, Industry, CA.

MC 11722 (Sub-6–2TA), filed May 2, 1980. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 NE Weidler, Portland, OR 97232. *Aluminum cans and can ends,* from facilities of Reynolds Metals Company at or near Kent, WA, to Salt Lake City, UT, and Great Falls, MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Reynolds Metals Company, P.O. Box 27003, Richmond, VA.

MC 139906 (Sub-6–17TA), filed May 2, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, Utah 84127. Representative: Mr. Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Such commodities as are dealt in by retail department stores and materials and supplies used in the operation of such stores* from points in the United States (except AK, HI, and MI) to the facilities of Meijer, Inc., in MI, for 180 days. Applicant seeks underlying ETA authority for 90 days. Supporting shipper: Meijer, Inc., 2727 Walker, N.W., Grand Rapids, MI 49504.

MC 150566 (Sub-6–1TA), filed May 2, 1980. Applicant: INTERWORLD TRANSPORTATION, INC., 1109 E. Janis Street, Carson, CA 90746. Representative: Lewis P. Ames, Shimmel, Hill, Bishop & Gruender, P.C., 111 W. Monroe, 10th Floor, Phoenix, Arizona 85003. *Contract carrier* Irregular routes, *such commodities as are dealt in by retail grocery and department stores* (*Except in bulk*), from points in CA to the facilities of or utilized by Smitty's Super Valu, Inc. located at points in AZ, restricted to the transportation of traffic under a continuing contract or contracts with Smitty's Super Valu, Inc. of Phoenix, AZ for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Smitty's Super Valu, Inc., 2626 South 7th Street, Phoenix, AZ 85034.

MC 150566 (Sub-6–2TA), filed May 2, 1980. Applicant: INTERWORLD TRANSPORTATION, INC., 1109 E. Janie Street, Carson, CA 90746. Representative: Lewis P. Ames, Shimmel, Hill, Bishop & Gruender, P.C., 111 W. Monroe, 10th Floor, Phoenix, Arizona 85003. *Contract carrier,* Irregular routes: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities which because of size or weight require special equipment). Between the facilities of International Traffic Services, Inc., and its wholly owned subsidiary Marco Cartage located at Carson, CA, Phoenix and Tucson, AZ, restricted to the transportation of traffic under a continuing contract or contracts with International Traffic Services, Inc. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: International Traffic Services, Inc., 2875 Sky Harbor Blvd., Phoenix, AZ 85034.

MC 144391 (Sub-6–4TA), filed April 30, 1980. Applicant: NORWOOD TRANSPORTATION, INC., 2232 South 7200 W., Magna, UT 84044. Representative: Macoy A. McMurray, 800 Beneficial Life Towers, 36 South State St., Salt Lake City, UT 84111. *Contract carrier; irregular routes: Prestressed concrete girders, columns, beams and panels* from Salt Lake City, UT to Reno, NV under a continuing contract with Monroc, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Monroc, 1730 Beck St., Salt Lake City, UT 84116.

MC 135241 (Sub-6–3TA), filed May 1, 1980. Applicant: PAPER TRANSPORTATION SPECIALISTS, INC., 13635 S.W. Edy Road, Sherwood, OR 97140. Representative: John A. Anderson, Suite 1440, 200 S.W. Market Street, Portland, OR 97201. *Contract carrier,* irregular routes: *Diatomaceous earth,* in bags, from the facilities of Southern Clay of California, Inc., a subsidiary of Lowes, Inc., at or near Maricopa, CA, to points in OR, WA, ID, UT, NV, AZ, NM, CO, WY and MT, for the account of Southern Clay of California, Inc., a subsidiary of Lowes, Inc., South Bend, IN, for 180 days. Supporting shipper: Southern Clay of California, Inc., a subsidiary of Lowes, Inc., 348 S. Columbia St., South Bend, IN 46601.

MC 135082 (Sub-6–7TA), filed May 2, 1980. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, Albuquerque, NM 87125. Representative: Charles D. Midkiff (same as applicant). *Wallboard paper,* from Denver, CO to Albuquerque, NM for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: American Gypsum Co., P.O. Box 6345, Albuquerque, NM 87197.

MC 138875 (Sub-6–10TA), filed May 1, 1980. Applicant: SHOEMAKER TRUCKING CO., an Idaho corporation, 11900 Franklin Road, Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). *Building materials (except commodities in bulk),* from Hamilton, OH to Anaheim, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Rod Blake, Assistant General Manager, The Masonry Center, Inc., P.O. Box 7825, Boise, ID 83707.

MC 150605 (Sub-6–1TA), filed May 2, 1980. Applicant: SIERRA EXPRESS, INC., P.O. Box 1354, West Sacramento, Calif. 95691. Representative: William D. Taylor, Handler, Baker, Green & Taylor, P.C., 100 Pine Street, Suite 2550, San Francisco, Calif. 94111. *Contract carrier,* irregular routes: *General commodities (except those of unusual value, Classes A & B explosives, household goods as defined by this Commission, commodities in bulk and those requiring special equipment):* Between points in San Joaquin, Yolo and/or Sacramento Counties, CA, on the one hand, and, on the other, points in El Dorado, Placer and Sierra Counties, CA, and Storey, Douglas, Carson City Counties, NV, and that portion of Washoe County, NV, included in the Toiyabee National Forest, restricted to traffic having a prior or subsequent movement by rail, motor or water carrier, for 180 days. Request for ETA filed. Supporting shippers: There are 7 shippers. Their statements may be examined at the Regional Office listed.

MC 57697 (Sub-6–1TA), filed May 2, 1980. Applicant: LESTER SMITH TRUCKING, INC., 2645 East 51st, Denver, CO 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217. (1) *Building materials when also construction materials,* (a) Between points in UT, on the one hand, and, on the other, points in WY and MO. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 44 with Lester Smith Trucking, Inc., MC–57697, Base Certificate, Paragraph 2, at points in Sedgewick, Phillips, Logan and Morgan Counties, CO, that part of Weld County, CO east of a line drawn north and south through Briggsdale, CO and that part of Washington County, CO north of a line drawn east and west through Rago, CO. (b) Between points in WY, NE, IA, MO and KS, on the one hand, and, on the other, points in ID, MT, AZ, NV, other than Mineral County, WA and OR north of the 44th parallel. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 69(6)(b) and with Lester Smith Trucking, Inc., MC–57697, Base Certificate, Paragraph 2, as described in (a) above. (2) *Building materials when also iron and steel articles as described in ExParte No. MC–45, Descriptions in Motor Carrier Certificates, Appendix V, 61 M.C.C. 276,* between points in OR on and south of the 44th parallel, on the one hand, and, on the other, points in WY, KS, NE, MO and IA. Gateway to be eliminated. Arises from joinder of F–B Truck Line Company, MC–125433, Sub 69(8)(h) with Lester Smith Trucking, Inc., MC–57697, Base Certificate, Paragraph 2, as described in (1)(a) above. (3)(a) *Construction, telephone and power line materials when also iron and steel articles as described in ExParte No. MC–45, Descriptions in Motor Carrier Certificates, Appendix V, 61 M.C.C. 276, and (b) Construction, telephone and power line materials when also structural steel, pipe or commodities, the transportation of which by reason of size and weight requires the use of special equipment,* between points in WA, OR, north of the 44th parallel, MT, ID, NV, UT and AZ, on the one hand, and, on the other, points in IA, KS, NE, except North Platte, Ogallala and Chappell, SD and WY. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 69(9) (d) and (e) to Lester Smith Trucking, Inc., MC–57697, Sub No. 16(A)(1) at points in Colorado and Sub No. 16(A)(5) at Julesburg, CO, and points within 75 miles of Julesburg. (4) *Building, construction, telephone and powerline materials,* between points in WY, on the one hand, and, on the other, points in IA, KS, SD and NE (except North Platte, Ogallala, and Chappell, NE). Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 163F, and Lester Smith Trucking, Inc., MC–57697, Sub 16(A)(5) at Julesburg, CO and points within 75 miles of Julesburg. (5) *Construction materials,* between points in CA, on the one hand, and, on the other, points in IA, KS, SD and NE (except North Platte, Ogallala, and Chappell, NE). Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub E–19 to Lester Smith Trucking, Inc., MC–57697, Sub 16(A)(5) at Julesburg, CO and points within 75 miles of Julesburg. (6) *Building materials,* between CA, on the one hand, and on the other, points in WY and MO. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 69(6)(b) to Lester Smith Trucking, Inc., MC–57697, Base Certificate at points in Sedgewick, Phillips, Logan, and Morgan Counties, CO, that part of Weld County, CO, east of a line drawn north and south through Briggsdale, CO, and that part of Washington County, CO, north of a line drawn east and west through Rago, CO. (7) *Construction materials* between UT, on the one hand, and, on the other, points in SD. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 44 to Lester Smith Trucking, Inc., MC–57697, Sub 16(A)(5) at Julesburg, CO and points within 75 miles of Julesburg. (8) *Machines, other than farm, maximum 5,000 pounds each, when also commodities which by reason of size or weight require special handling or the use of special equipment and commodities which do not require special handling or the use of special equipment when moving in the same shipment on the same bill of lading as commodities which by reason of size or weight require special handling or the use of special equipment,* between UT, on the one hand, and, on the other, points in WY, IA, KS, NE and MO. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub 44 to Lester Smith Trucking, Inc., MC–57697, Base Certificate, Paragraph 5, at points in Sedgewick, Phillips and Logan Counties, Co, and that part of Washington County, CO, on and north of CO Highway 38. (9) *Machines, other than farm, maximum 5,000 pounds each, when commodities which by reason of size or weight, requires special handling or the use of special equipment, and commodities (except commodities in bulk, motor vehicles, motor vehicle cabs and bodies, class A and B explosives and boats), which do not require special handling or the use of special equipment when moving in the same shipment on the same bill of lading as commodities which by reason of size or weight require special handling of the use of special equipment,* between points in OR, WA, AZ, NV, ID and MT, on the one hand, and, on the other, points in MO, IA, NE, KS and WY. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Sub E–25, E–28, E–31, E–38, E–45, E–55, E–60 and E–64 with Lester Smith Trucking, Inc., MC–57607, Base Certificate,

Paragraph 5, at points in Sedgewick, Phillips, and Logan Counties, CO, and that part of Washington County, CO, on and north of CO Highway 38. (10) *Machines, other than farm, maximum 5,000 pounds each,* between CA, on the one hand, and, on the other, WY, NE, IA, MO and KS. Gateway to be eliminated: Arises from joinder of F–B Truck Line Company, MC–125433, Base Certificate and Sub 44 with Lester Smith Trucking, Inc., MC–57697, Base Certificate, Paragraph 5, at Sedgewick, Phillips and Logan Counties, CO, and that part of Washington County, CO, on and north of CO Highway 38. The sole purpose of this application is to substitute single line for joint-line operations, for 180 days.

MC 15401 (Sub-6–1TA), filed April 29, 1980. Applicant: STORER TRANSPORTATION SERVICE, 3519 MacDonald Avenue, Modesto, CA 95351. Representative: Raymond A. Greene, Jr., Handler, Baker, Greene & Taylor, P.C., 100 Pine Street, Suite 2550, San Francisco, CA 94111, Telephone: 415/986–1414. *Passengers and their baggage,* in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in Merced County, CA and extending to points in the U.S. (excluding AK and HI) for 180 days. An underlying ETA seeks 90 days' authority. Supporting shippers: Bradler Group, 3271 Thorn Avenue, Merced, CA 95340; Gustine-Newman Sr. Citizens, 28942 West Netherton Rd., Newman, CA 95360; Merced Irrigation District, 2423 Canal Street, Merced, CA 95340.

MC 149067 (Sub-6–1TA), filed May 2, 1980. Applicant: WILLIAM BARRY and FRANK VASSALLO, a partnership, d.b.a. SUN VALLEY TRUCKING, 231 Franklin Street, Oakland, CA 94607. Representative: James H. Gulseth, Loughran & Hegarty, 100 Bush St., 21st Floor, San Francisco, CA 94104. *Contract Carrier,* Irregular routes: (1) *boxed and packaged Veal,* from Pleasanton, CA to Beaverton, Eugene, Portland and Salem, OR and Kent, Seattle, Tacoma, Vancouver, Yakima and Spokane, WA; and, (2) *Hanging Veal,* from Baker and Sheridan, OR; and Burlington, Duvall, and Grandview, WA to Pleasanton, CA under contract with Delft Blue-Provimi, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Delft Blue-Provimi, 4055 B Commerce Circle, Pleasanton, CA 94566.

MC 135803 (Sub-6–7TA), filed May 1, 1980. Applicant: WALLACE TRANSPORT, 9290 E. Hwy, 140 (P.O. Box 67), Planada, CA 95365. Representative: Donald M. Fennel (same address as applicant). *Waste paper, paperboard, fibreboard, and various paper products, for repulping or recycling purposes only,* from points within the states of AZ and NV on the one hand, and on the other, points in CA for 180 days. Supporting shipper: Consolidated Fibres, Inc., 425 S. 15th St., Phoenix, AZ 85007.

MC 141804 (Sub-6–33TA), filed May 2, 1980. Applicant: WESTERN EXPRESS, division of Interstate Rental, Inc., 4015 Guasti Road, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). *Motorcycle parts and accessories,* from the facilities of Connecticut Cycle Accessories, Inc. at or near Willimantic, CT to Atlanta, GA; Birmingham, AL and Dallas, TX and their respective commercial zones, for 180 days. Supporting shipper: Frank Carberry, Traffic Manager, Connecticut Cycle Accessories, South Park Street, Willimantic, CT 06226.

MC 150744 (Sub-6–1TA), filed May 7, 1980. Applicant: DONALD P. AVERILL, doing business as DON AVERILL TRUCKING, P.O. Box 191, Tillamook, OR 97141. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. *Wood residuals,* from Tillamook County, OR to Longview and Camas, WA, for 180 days. Supporting shipper: Louisiana-Pacific, 6045 Moffett Rd., Tillamook, OR 97141.

MC 138322 (Sub-6–1), filed May 6, 1980. Applicant: BHY TRUCKING, INC., 9231 Whitmore Street, El Monte, CA 91733. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Panels, insulated, wood and styrofoam combined,* from the facilities of Pacific Panel Systems in South El Monte, CA, to points in AZ, CO, IL, KS, KY, LA, MO, NM, NV, OK, OR, TX and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Pacific Panel Systems, Inc., 1530 Santa Anita Avenue, South El Monte, CA 91733.

MC 146041 (Sub-6–1TA), filed May 5, 1980. Applicant: CAL-TEX, INC., P.O. Box 1678, Costa Mesa, CA 92626. Representative: E. Meierhoefer, 1511 K St., NW., Suite 423, Washington, D.C. 20005. (1) *Plastic containers,* and (2) *materials, equipment and supplies used in the manufacture, distribution and sale of (1) above;* Between Langhorne, PA and points in its commercial zone on the one hand, and, on the other, points in DC, DE, MA, CT, RI, NY, NJ, VA and MD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Amoco Container Co., 2111 Powers Ferry Rd., NW., Atlanta, GA 30339.

MC 150755 (Sub-6–1TA), filed May 7, 1980. Applicant: RANDALL B. CARNER, 82705 Simonsen Road, Eugene, Oregon. Representative: Randall B. Carner (same address as applicant). *Contract carrier,* Irregular routes: *Repossessed motor vehicles,* under 6,000 lbs. GVW, in driveaway service, between points in OR, on the one hand, and, on the other, points in the continental United States, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Ford Motor Credit Co., 2350 Oakmont Way, Eugene, OR.

MC 42487 (Sub-6–16TA), filed May 7, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular route: *General commodities, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment,* serving the facilities of Kason Hardware, Inc., Humboldt-Wedag, Lorain Telephone, Nylco Corp—Division of Worthen, Industries, and Colads of Atlanta, Inc., at or near Shenandoah, GA and Peachtree Aircraft Products Co., Price Exhibits, Franklin Products—Chef Division, National Cash Register and Hibrand Foods, at or near Peachtree City, GA as off-route points in connection with carrier's authorized regular route operations, for 180 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with authority held in Docket No. MC 42487 Sub 744 and Docket No. MC 42487 Sub 872. These authorities, in turn, will be tacked with other present authorities of Applicant at such points as Atlanta, GA, New Orleans, LA, Birmingham, AL and Cincinnati, OH, to permit service to and from points throughout the United States. Applicant proposes to inerline traffic with its present connecting carriers at authorized interline points throughout the United States, as provided in tariffs on file with the Interstate Commerce Commission. Supporting shippers: There are 10 statements in support attached to this application which may be examined at the I.C.C. Region 6 Office, San Francisco, CA.

MC 126594 (Sub-6–1TA), filed May 6, 1980. Applicant: CUSTOMER TRUCK SERVICE, 1945 Hilfiker Lane, Eureka, CA 95501. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Cement in bulk in*

pneumatic equipment from Eureka, CA to points in Coos and Douglas Counties, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Kaiser Cement Corp., P.O. Box 3716, Seattle, WA.

MC 56640 (Sub-6–4TA), filed May 6, 1980. Applicant: DELTA LINES, INC., 333 Hegenberger Road, Oakland, CA 94621. Representative: Kirk Wm. Horton, 333 Hegenberger Road, Wells Fargo Bank Bldg., Suite 400, Oakland, CA 94621. *Foodstuffs and canned goods* from the facilities of Ragu Foods, Inc. at or near Merced, CA, to points in WA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Ragu Foods, Inc., 33 Benedict Place, Greenwich, CT 06830.

MC 148401 (Sub-6–1TA), filed May 5, 1980. Applicant: HENRY F. JOHNSON, d.b.a. Greenleaf Transportation, 1150 Sunny Hills Ave., Brea, CA 92621. Representative: Henry F. Johnson (same address as above). *Beer, beer ingredients and articles used in the manufacture and distribution of beer and beer ingredients;* between the facilities of G. Heileman Brewing Company in AZ and points in CA, for 180 days. Supporting shipper: G. Heileman Brewing Co., 150 S. 12th St., Phoenix, AZ 85034.

MC 1515 (Sub-6–1TA), filed May 8, 1980. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: R. L. Wilson (same address as applicant). *Common carrier,* regular routes, transporting: *passengers and their baggage and express and newspapers, in the same vehicle with passengers,* (1) between Youngstown, OH and Akron, OH, serving all intermediate points: From Youngstown, OH over Interstate Hwy 680 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Akron, OH and return over the same route; (2) between Kent, OH and junction Interstate Hwy 76 and Ohio Hwy 43, serving all intermediate points: From Kent, OH over Ohio Hwy 43 to junction Interstate Hwy 76 and return over the same route, for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to tack this authority with authority it presently holds in MC 1515. Supporting shippers: There are five shippers. Their statements may be examined at the Regional Office listed.

MC 150756 (Sub-6–1TA), filed May 7, 1980. Applicant: GUTHMILLER TRUCKING, INC., P.O. Box 206 (30700 Dyer Street), Union City, CA 94587. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108. *Empty metal cans and can ends, and return movement of pallets, skid sheets, frames and related articles* from Carson and Vernon, CA to the international border near Calexico, CA for beyond movement into Mexicali, Mexico, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Gencan, Inc., 2141 E. 21st St., Los Angeles, CA 90058.

MC 150738 (Sub-6–1TA), filed May 6, 1980. Applicant: HORNOI TRANSPORT, INC., P.O. Box 934, Miles City, MT 59301. Representative: Alan Foss, 502 First National Bank Bldg., Fargo, ND 58126. *Petroleum* and *petroleum products,* in bulk, in tank vehicles, from points in Natrona County, WY, to points in Carbon, Big Horn, Sweetgrass and Yellowstone Counties, MT, for 180 days. An underlying ETA seets 90 days authority. Supporting shipper: Hilde Construction, P.O. Box 2287, Great Falls, Mt 59401.

MC 148077 (Sub-6–1TA), filed May 7, 1980. Applicant: JAMES L. KAMPSTRA, d.b.a. KAMPSTRA TRUCKING, Route 2, Box 552, Aurora, OR 97002. Representative: (same as applicant). *General commodities,* except household goods as defined by the commission, Class A&B explosives, commodities in bulk, and those requiring special equipment, between Portland, OR and Salem, OR and their commercial zones. Via Interstate 5 and return for 180 days. Supporting shipper: There are five shippers. Their statements may be examined at the Regional office listed.

MC 149202 (Sub-6–1TA), filed May 7, 1980. Applicant: MOUNTAIN TRUCKING, INC., 1114 E. 5th Street, Oxnard, CA 93030. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Varnish, woodstains, paint, preservatives, display racks and printed matter* from the facilities of Behr Process Corp., at Santa Ana, CA, to Phoenix and Tucson, AZ, Denver, Fort Collins and Westminster, CO, Atlanta, GA, Chicago, Dixon, Springfield and Rockford, IL, Evansville, Ft. Wayne, Highland and South Bend, IN, Kansas City, KS, Detroit and Sterling Heights, MI, Great Falls, MT, Omaha, NB, Albuquerque, NM, Canton, Cleveland, Columbus and Dayton, OH, Bend Portland, OR, Dallas, Houston and San Antonio, TX, Salt Lake City, UT, Seattle, Spokane and Yakima, WA, Milwaukee, WI, and to the port of entry on the international boundry line between the United States and Canada, located at Sweetgrass, MT, for 180 days. Supporting shipper: Kevin Jaffe, Vice President, Sales and Marketing, Behr Process Corp., 1603 W. Alton St., Santa Ana, CA 92702.

MC 124692 (Sub-6–6TA), filed May 7, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Avenue, Minneapolis, MN 55402. *Soda ash (except in bulk),* from Sweetwater County, WY to Aberdeen and Sioux Falls, SD, for 180 days. Supporting shipper: Dakota Chemical Company, Box 918, 123 Railroad Avenue, S.E., Aberdeen, SD 57401.

MC 77061 (Sub-6–8TA), filed May 7, 1980. Applicant: SHERMAN BROS., INC., P.O. Box 706, Eugene, OR 97440. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. *Particle board, flake board* from Jackson County, OR to Portland, OR and Pierce and King Counties, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Weldwood of Canada, P.O. Box 2179, Vancouver, B.C.; Medford Corporation, P.O. 550, Medford, OR.

MC 128732 (Sub-6–1TA), filed May 7, 1980. Applicant: TRANSPORTATION UNLIMITED OF CALIFORNIA, INC., 2639 South Soto, Los Angeles, CA 90023. Representative: Scott T. Robertson, Peterson, Bowman, & Johanns, P.O. Box 81849, Lincoln, NE 68501. *Contract carrier,* irregular routes: *Meats, meat products, meat by-products, articles distributed by meat packinghouses and such commodities as are used by packinghouses,* as described in Sections A, C, and D of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766, from York, NE; Downs, KS; Brush and LaJunta, CO; and points in IA; to Los Angeles, CA, and points within their respective commercial zones, under continuing contract or contract with Hoffman Brothers Packing Company, Inc. of Los Angeles, CA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Hoffman Brothers Packing Co., 2731 S. Soto, Los Angeles, CA 90023.

MC 144846 (Sub-6–1TA), filed May 7, 1980. Applicant: TRANSTATES, INC., 3216 East Westminster, Santa Ana, California 92703. Representative: David P. Christianson of Knapp, Grossman & Marsh, 707 Wilshire Boulevard, Suite 1800, Los Angeles, California 90017. *Fiberglass reinforcements,* from Wichita County, TX, to California, Oregon and Washington, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Certainteed Corporation, P.O. Box CT, (4515 Allendale Way), Wichita Falls, Texas 76307.

MC 145435 (Sub-6–1TA),filed May 7, 1980. Applicant: WESTERN AG INDUSTRIES, INC., 2750 N. Parkway

Dr., Fresno, CA 93711. Representative: Roland J. Mefford (same as applicant). *Contract Carrier,* Irregular routes: Recap tire products and material incident to their manufacture, between points in the U.S. (except AK, and HI), for the account of Oliver Tire and Rubber Co., for 180 days. Supporting shipper: Oliver Tire and Rubber Co., 1200 65th St., Oakland, CA 94662.

MC 141804 (Sub-6–35TA), filed May 7, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., 4015 Guasti Road, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Plastic articles,* from St. Paul, MN to Lancaster, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Phillip E. Baker, Traffic Manager, Plastics, Inc., 224 Ryan Street, St. Paul, MN 55102.

MC 141804 (Sub-6–36TA), filed May 7, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., 4015 Guasti Road, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Batteries, parts and accessories, and equipment, materials and supplies used in the manufacture of batteries,* between Henderson, NV, Palmerton, PA, Rockford, IL, Baltimore, MD, and points in CA, CT, FL, GA, IN, SC, and TN. Restricted to traffic originating at or destined to the facilities of Duracell International, Inc., for 180 days. Supporting Shipper: Robert F. Schafer, Manager of Transportation, Duracell Worldwide Battery Group, Berkshire Industrial Park, Bethel, CT 06801.

MC 150745 (Sub-6–1TA), filed May 7, 1980. Applicant: ART WHIPPLE TRUCKING, INC., 2595 North Walker Way, Fresno, CA 93727. Representative: Daniel W. Baker, Handler, Baker, Greene & Taylor, P.C., 100 Pine Street, Suite 2550, San Francisco, CA 94111. *Contract Carrier,* Irregular routes: (1) *Cooling towers, condensers, coolers, and accessories, materials and supplies used in conjunction with cooling towers, condensers and coolers,* originating at the facilities of Baltimore Air Coil Company at Madera, CA, to points in CA, AZ, OR, WA and NV, under continuing contracts with Baltimore Air Coil Company and (2) *Wire products* from Phoenix, AZ, and *reinforcing steel* from McMinnville, OR, to the facilities of Bowen Rebar Fabricators, Inc., at Fresno, CA, under continuing contracts with Bowen Rebar Fabricators, Inc., for 180 days. Supporting shippers: Baltimore Air Coil Company, 15341 Road 28½, Madera, CA 93637. Bowen Rebar Fabricators, Inc., 2595 North Walker Way, Fresno, CA 93727.

MC 141804 (Sub-6–17TA), filed March 19, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., 4015 Guasti Road, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *General Commodities* (except foodstuffs requiring refrigeration, *meats, meat products and meat by-products, dairy products and articles distributed by meat packing houses,* as described in Sections A, B, and C of Appendix I to the report in Motor Carrier, 61 M.C.C. 209 and 766, articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) from King County, WA to points in CO, NE, KS, MI, IA, MO, AR, LA, MS, GA, TN, KY, IL, WI, MN, IN, OH, PA, NY, NJ and MA. Restricted to traffic having a prior movement by water, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: Puget Sound Traffic Association, Suite 220/221, Sea-Tac International Airport, P.O. Box 68927, Seattle, WA 98188; Norvanco, Inc., Pier 56, Seattle, WA 98101; Arthur J. Fritz & Company, P.O. Box 21786, Seattle, WA 98111; J. T. Stee & Co., Inc., 318 Norton Bldg., Seattle, WA 98104.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-15268 Filed 5-16-80; 8:45 am]

BILLING CODE 7035-01-M

Water Carrier Temporary Authority Applications

The following was filed with the Region 6. Petition for Reconsideration is to be filed, on or before June 9, 1980 with the Regional Office noted. Replies to petition may be filed within 20 days of the date petition is filed.

Agatha L. Mergenovich,

Secretary.

W 587 (Sub-6–2TA), filed May 2, 1980. Applicant: FOSS L & T CO., 660 West Ewing Street, Seattle, WA 98119. Representative: Timothy G. Brewer (same as applicant). *Common carrier by water* of *freight cars,* loaded or empty, in the performance of a freight car ferry service between Port Townsend and Port Angeles, WA, on the one hand, and Seattle, WA on the other, for 180 days. Supporting shippers: Merrill & Ring, Inc., P.O. Box 1059, Port Angeles, WA 98362; ITT Rayonier, Inc., Northwest Regional Operations C–68967, Seattle, WA 98188; Allen Loggin Co., St. Route 1, Box 736, Forks, WA 98331. Address: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

[FR Doc. 80-15267 Filed 5-16-80; 8:45 am]

BILLING CODE 7035-01-M

Long- and Short-Haul Application for Relief (Formerly Fourth Section Application)

May 14, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

No. 43819, Southwestern Freight Bureau, Agent No. B–64, on carloads of roofing and building materials from stations in Southern Territory to stations in Southwestern Territory, in Item 17250–K in Supplement 283 to its Tariff ICC SWFB 2007–H, effective June 10, 1980. Grounds for relief: Additional Revenue needed to offset increased costs.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-15237 Filed 5-16-80; 8:45 am]

BILLING CODE 7035-01-M

Transportation of Government Traffic; Special Certificate Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of general commodities. (except classes A and B explosives, radioactive materials, etiologic agents, shipments of secret materials, and weapons and ammunition which are designated sensitive by the United States Government), between points in the United States (including Alaska and Hawaii), restricted to the transportation of traffic handled for the United States Government or on behalf of the United States Government where the government contractor (consignee or consignor), is directly reimbursed by the government for the transportation costs, under the Commission's regulations (49 CFR 1062.4), pursuant to general finding made in Ex Parte No. MC–107, *Government Traffic,* 131 M.C.C. 845 (1979).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission on or before June 9, 1980, from the date of this publication. A copy must also be served upon applicant or its representative.

If applicant is not othewise informed by the Commission, operations may commence June 18, 1980, subject to its

traiff publication's effective date, or the filing of an effective tender pursuant to 49 U.S.C. 10721.

GT–304–80 (special certificate—government traffic), filed April 16, 1980. Applicant: HOUSTON FREIGHTWAYS, INC., P.O. Box 473, 8500 Clinton Drive, Galena Park, TX 77457. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Government agency involved: Atomic Energy Commission, Commodity Credit Corporation, Department of Agriculture, Federal Aviation Authority, General Services Administration, Department of Defense, National Aeronautics and Space Administration, U.S. Weather Bureau.

GT–305–80 (special certificate—government traffic), filed April 8, 1980. Applicant: ED'S MOVING & STORAGE, INC., 10526 South Steele, P.O. Box 44666, Tacoma, WA 98444. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Ave. NW., Suite 1200, Washington, D.C. 20036. Government agency involved: Departments of Defense and Transportation, General Services Administration.

GT–306–80 (special certificate—government traffic), filed April 8, 1980. Applicant: STARCK VAN LINES, INC., R.D. No. 1, Burgettstown, PA 15021. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Ave. NW., Suite 1200, Washington, D.C. 20036. Government agency involved: Departments of Defense and Transportation, General Services Administration.

GT–307–80 (special certificate—government traffic), filed April 8, 1980. Applicant: STARCK VAN LINES OF COLUMBUS, INC., 3747 Groveport Road, Columbus, OH 43207. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Ave. NW., Suite 1200, Washington, D.C. 20036. Government agency involved: Departments of Defense and Transportation, General Services Administration.

GT–308–80 (special certificate—government traffic), filed April 21, 1980. Applicant: FLASH TRANSPORTATION & LEASING COMPANY, INC. 82 Landon Street, Buffalo, NY 14208. Representative: Charles C. Flagg (address same as applicant). Government agency involved: Department of Defense.

GT–309–80 (special certificate—government traffic), filed April 21, 1980. Applicant: B & R DRAYAGE, INC. (a MS corporation), P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, Wynn, Bogen & Mitchell, P.O. Box 1295, Greenville, MS 38701. Government agency involved: Agencies listed in the U.S. Government manual (1979–80 edition).

GT–310–80 (special certificate—government traffic), filed April 11, 1980. Applicant: D. L. WILLIAMS TRUCKING, INC., P.O. Drawer 818, Hillsboro, TX 76645. Representative: James W. Hightower, Hightower, Alexander and Cook, P.C., 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. Government agency involved: Departments of Defense, Agriculture, Commodity Credit Corporation, Federal Aviation Authority, General Services Administration, National Aeronautics and Space Administration, Tennessee Valley Authority, U.S. Weather Bureau, and Atomic Energy Commission.

GT–311–80 (special certificate—government traffic), filed April 21, 1980. Applicant: SEMCA MOTOR LINES, INC., 77–15 19th Road, Jackson Heights, NY 11370. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Government agency involved: Department of Defense, General Services Administration.

GT–312–80 (special certificate—government traffic), filed April 21, 1980. Applicant: FORBES TRANSFER COMPANY, INC., 1819 S. Goldsboro Street, Wilson, NC 27893. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210.

GT–313–80 (special certificate—government traffic), filed April 21, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas, Attorney (same address as applicant). Government agency involved: Agencies listed in the U.S. Government Manual (1979–80 edition).

GT–314–80 (special certificate—government traffic), filed April 22, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Road, Kings Park, NY 11754. Representative: Morton E. Kiel, Suite 1832. Government agency involved: General Services Administration, Department of Defense.

GT–315–80 (special certificate—government traffic), filed April 22, 1980. Applicant: TRANSPORT, INC., OF SOUTH DAKOTA, 100 S. Marion Road, Sioux Falls, SD 57107. Representative: Ernest M. Sifrar (address same as applicant). Government agency involved: Agencies listed in the U.S. Government Manual (1979–80 edition).

GT–316–80 (Special certificate—government traffic), filed April 23, 1980. Applicant: T. F. BOYLE TRANSPORTATION, INC., 21 Everett Street, Natick MA 01760. Representative: Thomas F. Boyle, President, T. F. Boyle Trans. Inc. (address same as applicant). Government agency involved: Department of Defense, General Services Administration.

GT–317–80 (Special certificate—government traffic), filed April 21, 1980. Applicant: PAXTON VAN LINES, INC., 5300 Port Royal Road, Springfield, VA 22151. Representative: Mr. Fred Paxton (address same as applicant). Government agency involved: General Services Administration, The State Department.

GT–318–80 (Special certificate—government traffic), filed April 22, 1980. Applicant: WHEATON CARTAGE CO., 3rd and G Sts., Millville, NJ 08332. Representative: Rocco J. Tedesco, Esq., 1101 Wheaton Ave., Millville, NJ 08332. Government agency involved: General Services Administration, Department of Defense.

GT–319–80 (special certificate—government traffic), filed April 23, 1980. Applicant: BRUCE & SON VAN & STORAGE, P.O. Drawer 7280, 6035 Canyon Expressway, Amarillo, TX 79109. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Ave. N.W., Washington, D.C. 20036. Government agency involved: Departments of Defense and Transportation, General Services Administration.

GT–320–80 (special certificate—government traffic), filed April 23, 1980. Applicant: BELGER CARTAGE SERVICE, 2100 Walnut Street, Kansas City, MO 64108. Representative: Dick L. Shaw, Traffic Manager (address same as applicant). Government agency involved: Agencies listed in the U.S. Government Manual (1979–80 edition).

GT–321–80 (special certificate—government traffic), filed April 23, 1980. Applicant: SMITH'S TRANSFER CORPORATION, US Route 11 North, Staunton, VA 24401. Representative: John T. Downing, Esq., Macdonald & McInerny, P.C., Suite 502, Solar Building, 1000 16th St., Washington, D.C. 20036. Government agency involved: Department of Defense, General Services Administration, National Aeronautics and Space Administration.

GT–322–80 (special certificate—government traffic), filed April 23, 1980. Applicant: M R & R TRUCKING COMPANY, P.O. Box 1000, Staunton, VA 24401. Representative: John T. Downing, Esq., MacDonald & McInerny, P.C., Suite 502, Solar Bldg., 1000–16th St. N.W., Washington, D.C. 20036. Government agency involved:

Department of Defense, General Services Administration, National Aeronautics and Space Administration.

GT-323-80 (special certificate—government traffic), filed April 23, 1980. Applicant: TOM INMAN TRUCKING, INC., P.O. Box 3728, Tulsa, OK 74121. Representative: Michael S. Rubin, Esq., Silver, Rosen, Fischer & Stecher, 256 Montgomery St., Fifth Floor, San Francisco, CA 94104. Government agency involved: Departments of Defense, Agriculture, Transportation, General Services Administration, Food and Drug Administration, and United States Postal Service.

GT-324-80 (special certificate—government traffic), filed April 23, 1980. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314 29th Avenue, Kenosha, WI 53140. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, D.C. 20005. Goverment agency involved: Departments of Defense, Energy, Commerce, Agriculture, and Transportation, U.S. Postal Service, National Aeronautics and Space Administration, and General Services Administration.

GT-325-80 (special certificate—government traffic), filed April 24, 1980. Appliant: MILLER TRANSFER AND RIGGING CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko, P.O. Box 322, Cuyahoga Falls, OH 44222. Government agency involved: Department of Defense and General Services Administration.

GT-326-80 (special certificate—government traffic), filed April 24, 1980. Applicant: AFFILIATED VAN LINES, INC., 2121 Washington, Lawton, OK 73502. Representative: Terry K. Bell (address same as applicant). Government agency involved: Department of Defense, General Services Administration.

GT-327-80 (special certificate—government traffic), filed April 25, 1980. Applicant: JIM C. FLEMING, JR., P.O. Box 244, Ashland, VA 23005. Representative: Jim C. Fleming, Jr., (address same as applicant). Government agency involved: Department of Defense.

GT-328-80 (special certificate—government traffic), filed April 25, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: John P. Haddad (address same as applicant). Government agency involved: Department of Defense, General Services Administration.

GT-329-80 (special certificate—government traffic), filed April 25, 1980. Applicant: WELLS CARGO, INC., 1775 East Fourth Street, Reno, NV 89512. Representative: David N. Inwood, P.O. Box 1511, Reno, NV 89505. Government agency involved: Agencies listed in the U.S. Government Manual (1979-80 edition).

GT-330-80 (special certificate—government traffic), filed April 25, 1980. Applicant: B D TRUCKING CO., P.O. Box 817, Ripon, CA 95366. Representative: R. A. Doty, Director of Commerce and Traffic, B D Trucking Co. (address same as applicant). Government agency involved: Departments of Agriculture, Commerce, Defense, Energy, Interior, Transportation, and Treasury; National Aeronautics and Space Administration and Nuclear Regulatory Commission.

GT-331-80 (special certificate—government traffic), filed April 25, 1980. Applicant: LAUGHLIN LINES, INC., 2527 N. Carson St., Suite 205, Carson City, NV 89701. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Government agency involved: Department of Defense.

GT-332-80 (special certificate—government traffic), filed April 25, 1980. Applicant: C & D TRANSPORTATION CO., INC., P.O. Box 10506, New Orleans, LA 70121. Representative: Robert E. Keene (address same as applicant). Government agency involved: Department of Defense.

GT-303-80 (special certificate—government traffic), filed April 18, 1980, republished this issue to reflect Government Agency to be served. Applicant: McLEAN TRUCKING COMPANY, 1920 West First St., Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Government agency involved: Department of Defense, U.S. Government Printing Office, and General Services Administration.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-15238 Filed 5-16-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Designation of Special Coordinator for International Disaster Assistance

Correction

In FR Doc. 80-12038 appearing on page 26853, in the issue for Monday, April 21, 1980, the signature to the document was inadvertently left off. The signature should have read:

"Thomas Ehrlich,

Director."

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Attorney General

[Attorney General Order No. 891-80]

Times Printing Co. and Chattanooga News-Free Press Co.; Joint Newspaper Operating Arrangement

May 13, 1980.

Decision of the Attorney General on the Application of the *Times Printing Company* and the *Chattanooga News-Free Press Company* for Temporary Approval of a Joint Newspaper Operating Arrangement.

Decision of the Attorney General

On April 29, 1980, the publishers of the *Chattanooga Times* and the *Chattanooga News-Free Press* filed an application seeking temporary approval, under 28 CFR § 48.15, of a joint operating arrangement between the companies. This application for temporary approval follows their request for permanent approval of such a joint operating arrangement pursuant to the Newspaper Preservation Act, 15 U.S.C. § 1801 *et seq.* The request for permanent approval is pending and, pursuant to 28 CFR § 48.7, the recommendation of the Antitrust Division with respect to that application is due May 18, 1980.

Having read applicants' request for temporary approval including the papers in support thereof, as well as the memoranda and telegram in opposition to said request, I have determined that the request for temporary approval must be denied at this time because I cannot conclude, as required by 28 CFR § 48.15, that the *Chattanooga Times* would otherwise fail before the procedures under the regulations can be completed.

The denial of this application is without prejudice to its renewal at a later date, should that be appropriate and, of course, without prejudice to the final disposition of the application under the Newspaper Preservation Act.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-15300 Filed 5-16-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON AIR QUALITY

Amended Notice of Meeting Scheduled for May 19

The May 19 meeting of the National Commission on Air Quality originally scheduled to begin at 9:00 a.m., as previously indicated in the April 18 **Federal Register**, will now convene at 9:30 a.m. The meeting will be in Room 4200 of the Dirksen Senate Office Building located at First Street, NE, and Constitution Avenue, NE, in Washington, DC.

Questions about the meeting should be directed to Mr. Morris A. Ward, Assistant Director for Public Affairs and Administration, at (202) 245–6355.

National Commission on Air Quality.

William H. Lewis, Jr.,

Director.

May 13, 1980.

[FR Doc. 80–15217 Filed 5–16–80; 8:45 am]

BILLING CODE 6820–98–M

NEW ENGLAND RIVER BASINS COMMISSION

Intent To Prepare a Draft Environmental Impact Statement for the New England Ports and Harbors Program

AGENCY: New England River Basins Commission (NERBC).

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY OF THE PROPOSED ACTION: The New England Ports and Harbors Program will assess the New England ports and harbors system and offer strategies for: (1) Increasing the effectiveness of the region's cargo port system; and (2) promoting coordinated management of the region's harbors. Strategies will be developed through consensus-building of the affected federal, state and local governmental and nongovernmental interests in the five coastal New England states. Recommendations will be framed within the context of coastal zone management and environmental goals and standards.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190), and U.S. Water Resources Council (WRC) regulations entitled, "Compliance with the National Environmental Policy Act" (18 CFR Part 707), an Environmental Impact Statement will be prepared. To meet the spirit of the WRC regulations, the scope of significant issues to be addressed through the Draft Environmental Impact Statement (DEIS) will be determined at the same time as the scope of the significant environmental aspects of the program; namely, the identifications of potential new and redevelopment sites for port facility expansion. Among other considerations, the potential sites will be selected and evaluated on the basis of environmental sensitivity, including: requirements for filling of tidelands and/or open water; value and sensitivity of marine and inland habitat (short- and long-term habitat displacement and disruption); requirements for dredging and dredged materials disposal (quality of materials and adequacy of disposal sites); and harbor water pollution potential.

The DEIS will be based primarily on the environmental assessment of potential port expansion sites. The environmental impact assessment of other elements of the program will be "tiered" appropriately; in other words, the level of detail of the environmental analyses will be determined by the level of detail of the proposed actions.

Possible Alternatives

A reasonable range of alternatives will be assessed through the environmental sensitivity analysis and DEIS process. The "no-action" alternative, mitigation measures, plus three types of impacts—direct, indirect and cumulative—will also provide the bases for assessing proposed actions.

Scoping Process

To determine the significant issues to be analyzed in depth in the DEIS, and the scope of the environmental assessment of sites, NERBC will invite the participation of affected federal, state and local agencies, and other interested persons from a variety of backgrounds, in a scoping meeting to be held 10:00 A.M., on June 5, 1980, at the New England Regional Commission Library, 53 State Street, fourth floor, Boston, Massachusetts.

The environmental assessment of potential port expansion sites will be drafted by September 1, 1980, and finalized by December 1, 1980. The DEIS will be prepared by June 1981, as an integral part of the Draft Ports and Harbors Program Report, with the final EIS (and final report) projected for completion by December 1981.

John R. Ehrenfeld, Chairman of the New England River Basins Commission, is the responsible official. For further information, contact: Stanley R. Euston, Manager, New England Ports and Harbors Program, New England River Basins Commission, 53 State Street, Boston, Massachusetts 02109.

Respectfully submitted,

Stanley R. Euston,

Program Manager.

[FR Doc. 80–15246 Filed 5–16–80; 8:45 am]

BILLING CODE 8410–01–M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

May 14, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C. Chapter 35). Department and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing this form; the title of the form; the agency from number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of forms that will be filled out; an estimate of the total number of hours needed to fill out the form; and the name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working

days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447–6201

Revisions

Agricultural Marketing Service
Application for License Under AMA of 1946
CP–357
On Occasion
Emp. of coop. St agen/self-emp. per. under contr. with FGIS, 400 responses, 100 hour
Charles A. Ellett, 395–7340.

Economics, Statistics, and Cooperatives Service
Minnesota Pesticide Survey
Annually
Description not furnished by agency, 4,000 responses, 1,000 hours
Off. of Federal Statistical Policy and Standard, 673–7974

Reinstatements

Food and Nutrition Service
National School Lunch Program
On ocassion
State agencies and school food authorities, 817 responses, 2,823 hours
Charles A. Ellett, 395–7340

Food and Nutrition Service
Regulations—determinng eligibility for free and reduced price meals and free milk in schools
On occassion
State agencies and school food authorities, 351,120 responses, 611,822 hours
Charles A. Ellett, 395–7340

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Joseph J. Strnad—245–7488

New Forms

Office of Human Development
Application for Title VI—Grants Under the Older Americans
Act, as amended
Annually
Federal Recognized Indian Tribes, 90 responses, 1,800 hours
Barbara F. Young, 395–6880

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

Revisions

Housing Production and Mortgage Credit
Supplementary survey of Home/Buyers and sellers [1]
Single time
Recent home buyers and seller in 10 local markets, 1 response, 333 hours
Richard Sheppard, 395–6880

DEPARTMENT OF THE INTERIOR

Agency Clearance Officer—William L. Carpenter—343–6716

New Forms

Bureau of Land Management
Simultaneous oil and gas lease application [2]
3112–1
Other (see SF–83)
Participants in O & G drawings must submit a lease appl., 4,000,000 responses, 333,333 hours
Charles A. Ellett, 395–7340

[1] This report will be acted on before the normal 10-day period. The clearance of this report on an expedited basis is necessary in order for HUD to collect and analyze information for a study mandated by Congress. The proposed revision is limited to an increase in the sample size of households interviewed with a more limited subset of questions previously approved by OMB.

[2] This report all be acted on before the normal 10-day public comment period. This is needed to permit Interior more forward with a system to eliminate fraud and abuse in drawing procedure for non-competitive oil and gas leases.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523–6341

Revisions

Employment and Training Administration
Program monitoring report
ETA 5–148
Monthly
State job service agencies, 208 responses, 624 hours
Arnold Strasser, 395–6880

Employment and Trading Administratioin
Job service complaint form
ETA 8429
On occasion
State job service agencies, 5,000 responses, 2,500 hours
Arnold Strasser, 395–6880

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426–1887

Reinstatements

Coast Guard
Characteristic of liquid chemicals proposed for bulk
Water movement
CG–4355
On occasion
Chemical industry, 100 responses, 300 hours
Susan B. Geiger, 395–7340

Coast Guard
Bill of sale of registered vessel
1340, 1342, 1344, 1346
On occassion
Vessel owners or agents, 20,000 responses, 10,000 hours
Susan B. Geiger, 395–7340

Coast Guard
Mortgage of Vessel
1348
On occasion
Vessel owners or agents lending institutions, 40,000 responses, 30,000 hours
Susan B. Geiger, 395–7340

DEPARTMENT OF THE TREASURY

Agency Clearance Officer—Floyd I. Sandlin—376–0436

New Forms

Treasurer of the United States
Savings bonds redemption survey
Single time
Persons redeeming savings bonds, 500 responses, 83 hours
Warren Topelius, 395–7340

Revisions

Bureau of Customs
Transportation entry and manifest of goods and in-bond

Control report
Customs, 7512–C and 7512–D
On occasion
Importers, customhouse and carriers, 2,500,000 responses, 10,425 hours
Warren Topelius, 395–7340

Bureau of Customs
Application for allowance in duties
Customs, 4315
On occasion
Importers, 12,000 responses, 1,600 hours
Warren Topelius, 395–7340

Treasurer of the United States
U.S. savings bonds payroll savings report
SB–60; SB–60A
Semi-annually
Employers operation the payroll savings plan, 46,400 responses, 32,000 hours
Warren Topelius, 395–7340

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Clearance Officer—Linda Shiley—254–9515

New forms

Limited Home Repair Survey
OT–11
Single time
Disaster victims, 615 responses, 257 hours
Edward C. Springer, 395–4814

NATIONAL SCIENCE FOUNDATION

Agency Clearance Officer—Herman Fleming—357–7811

Reinstatements

Fellowship Application and Grant Forms
289, 281, 306, 320, 296, 299, 316, 179, 349, 453, 524, 222, 310, 961, 929, 1080, and 220
Annually
Individual applicant; reference, 7,000 responses, 78,125 hours
Marsha D. Traynham, 395–7340

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389–2146

Revisions

Blind Rehabilitation Evaluation
Single time
Blind vets in receipt of VA pension or compensation, 2,800 responses, 733 hours
Laverne V. Collins, 395–6880

Extensions

50 Percent Employment Requirement Survey
VAF 22–8722, 22–8723, 22–8724
Other (see SF–83)
School and State approving agencies, 375,000 responses, 650,000 hours
Laverne V. Collins, 395–6880

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–15301 Filed 5–16–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

May 7, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given for a meeting of Panel II (the American Economy) of the President's Commission for a National Agenda for the Eighties, scheduled May 21, 1980, at 9:30 a.m. at the New Executive Office Building, Room 5104 in Washington, D.C.

The purpose of the meeting is to discuss panel's work on issues of productivity and regulations relating to long-range economic strategies.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, DC 20006, (202) 275–0616.

David R. Leuthold,

Budget and Management Officer.

[FR Doc. 80–15227 Filed 5–16–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

May 7, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given for a meeting of Panel VI (Government and the Regulations of Decisions) of the President's Commission for a National Agenda for the Eighties, scheduled May 21, 1980, from 2:30 p.m. at the New Executive Office Building, Room 5104, in Washington, DC.

The purpose of the meeting is for a review of the panel's study plan.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, DC 20006, (202) 275–0616.

David R. Leuthold,

Budget and Management Officer.

[FR Doc. 80–15228 Filed 5–16–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

May 7, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given for a meeting of the Executive Steering Committee, of the President's Commission for a National Agenda for the Eighties, scheduled May 21, 1980, at 1:00 p.m. at the New Executive Office Building, Room 7008, in Washington, DC.

The purpose of the meeting is to discuss status of Commission's panel studies.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, DC 20006, (202) 275–0616.

David R. Leuthold,

Budget and Management Officer.

[FR Doc. 80–15229 Filed 5–16–80; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Addition to the List of Countries and Instrumentalities Determined To Be Parties to the Agreement on Trade in Civil Aircraft

May 14, 1980.

On February 25, 1980, the Office of the U.S. Trade Representative published a list of countries and instrumentalities which were determined to be parties under the Agreement on Trade in Civil Aircraft (45 FR 12349). The discriminatory purchasing requirements of the Buy America Act (41 U.S.C. 10a et seq.) were waived with respect to those countries and instrumentalities.

On April 2, Switzerland deposited instruments of unconditional acceptance of the Agreement with the Secretariat of the General Agreement on Tariffs and Trade. Therefore, the list of countries

and instrumentalities is hereby amended, effective April 2, 1980, to include Switzerland.

Robert D. Hormats,

Acting U.S. Trade Representative.

[FR Doc. 80-15274 Filed 5-16-80; 8:45 am]

BILLING CODE 3190-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0398]

Columbia Pictures Capital Corp.; 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 § 107.702 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Columbia Pictures Capital Corporation (Applicant), 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, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of Delaware and it will commence operations with a capitalization of $500,000, which amount is to be contributed by the parent company, Columbia Pictures Industries, Inc. (CPII), for 100% of the issued and outstanding stock of the Applicant.

The Applicant will have its place of business at 711 Fifth Avenue, New York, New York 10022, and it intends to conduct its operations primarily in the New York metropolitan area but, will consider investments to small business concerns outside of the New York metropolitan area.

The officers, directors and stockholders of the Applicant are:

(1) Columbia Pictures Industries, Inc., 711 Fifth Ave., New York, NY 10022, 100% Shareholder and Parent.

Francis T. Vincent, Jr., 45 Bush Ave., Greenwich, CT 06830, Director and President.

Robert L. Stone, 130 E. End Ave., New York, NY 10028, Director and Executive Vice President.

Joseph A. Fischer, 89 Downey Dr., Tenafly, NJ 07670, Director and Executive Vice President.

Lawrence B. Hilford, 860 U.N. Plaza, New York, NY 10017, Director and Senior Vice President.

Victor A. Kaufman, 24 Angler Lane, Port Washington, NY 11050, Director, Senior Vice President and Secretary.

Leo Jaffe, 425 E. 58th St., New York, NY 10022, Director.

Dan W. Lufkin, Wells Hill Road, Lakeville, CT 06039, Director.

Charles R. Lee, 9609 Persimmon Tree Rd., Potomac, MD 20854, Senior Vice President and Chief Financial Officer.

C. Charles Jowaiszas, 150 E. 69th St., Apt. 16T, New York, NY 10021, Vice President and Treasurer.

Margaret A. Reigle, 2 Beekman Place, New York, NY 10022, Controller.

Morton H. Fry II, 158 Waverly Place, New York, NY 10014, Assistant Secretary.

Ellis A. Regenbogen, 235 W. 71st St., New York, NY 10023, Assistant Secretary.

Jared Jussim, 3 Rosehill Rd., Briarcliff, NY 10510, Assistant Secretary.

(1) The Applicant's parent company, CPII, is a publicly held company. It is an international company engaged in various aspects of the entertainment and amusement games business. One of its major activities is the production and world wide distribution of theatrical motion pictures and television series.

Tracinda Investment Corporation (Tracinda) is located at 4045 South Spencer Street, Suite 202, Las Vegas, Nevada. Kirk Kerkorian as an individual owns 7.1% of CPII's stock (688,000 shares) and Tracinda which is wholly owned by Mr. Kerkorian owns 1,750,700 shares of CPII or 18.1%. Collectively, he owns and controls 25.2% of CPII's issued and outstanding stock as of September 29, 1979.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulation.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 12, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-15304 Filed 5-16-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

[Summary Notice No. PE-80-14]

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 activies. 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 must be received on or before: June 4, 1980.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), 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-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence 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 May 9, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
13141	Trans World Airlines	14 CFR 121.433(c)(1)(iii), 121.441(a)(1), and 121.443(a).	Extension of expiration date of exemption to permit the Pilot in Command to be absent from the flight deck to rest during enroute flight that exceeds 8 hours and to permit a properly rated international relief officer to occupy a pilot seat during that period.
20314	Flight Training Devices	14 CFR 61.157(d)(1) and 61.63(d)(2).	To allow petitioner's trainees to complete a practical test, for the issuance of a type rating to be added to any grade of pilot certificate, in an airplane simulator as set forth in Appendix A of Part 61.
20334	Evergreen Helicopters, Inc	14 CFR 135.261(b)	To allow petitioner's pilots to have only 8 instead of 10 hours of rest during any 24 hours of duty or two periods of five consecutive hours.
20336	Executive Air Fleet Corp	14 CFR 135.89(b)(3) and 121.333(c)(2).	To allow petitioner to operate its Sabreliner aircraft up to 41,000 feet MSL without requiring at least one pilot to wear an oxygen mask.

Dispositions of Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
17682	Air Lift Associates, Inc	14 CFR 135.261(b)	To allow petitioner's flight crewmembers to rest for only 8 hours instead of the required 10 hours. *Denied 5/2/80.*
19756	Britt Airways, Inc	14 CFR 135.261(b)	To allow a minimum rest period of no less than 8 consecutive hours in the 24-hour period preceding the planned completion of the assignment. *Denied 5/5/80.*
20043	Mr. Roger A. Wood	14 CFR 61.118	To permit petitioner, a private pilot, to operate a single-place gyroplane in airshows and for public demonstrations for compensation. *Denied 5/6/80.*
20050	Jimsair Aviation	14 CFR 135.10(b)(3) and 135.173	To permit operation of petitioner's Beech 99 aircraft with a 10 or more passenger seat configuration without Airborne Thunderstorm Detection Equipment installed. *Granted 5/5/80.*
20335	Northwest Airlines, Inc	14 CFR 121.291(a)	To allow petitioner to increase the passenger seating capacity of its B-727-100 aircraft from 93 to 111 (more than 5 percent) without first conducting a full seating capacity emergency evacuation demonstration. *Granted 5/7/80.*

[FR Doc. 80-15103 Filed 5-16-80; 8:45 am]
BILLING CODE 4910-13-M

Coast Guard

[CGD 79-097]

National Environmental Policy Act (NEPA) Implementing Procedures

AGENCY: Coast Guard, DOT.

ACTION: Notice of revised agency procedures.

SUMMARY: The U.S. Coast Guard has revised its procedures for considering environmental impacts. This is in accordance with the Regulations for Implementing the National Environmental Policy Act issued by the Council on Environmental Quality on November 29, 1978 (40 CFR Parts 1500-1508).

EFFECTIVE DATE: These procedures become effective on publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert L. Evans, Acting Chief, Environmental Impact Branch, U.S. Coast Guard (G-WS-1), 2100 Second St. SW., Washington, D.C. 20593, (202) 426-3300.

SUPPLEMENTARY INFORMATION:

Background

In 1970 the Council on Environmental Quality (CEQ) issued Guidelines for preparation of environmental impact statements (EIS) under Executive Order 11514. The Guidelines were issued to implement Section 102(2)(C) of the National Environmental Policy Act (NEPA). In 1973 CEQ provided guidance to agencies for preparation of environmental impact statements. As a result the Coast Guard developed Commandant Instruction 16475.1 entitled Procedures for Considering Environmental Impacts. On November 29, 1978 CEQ published final regulations in response to Executive Order 11991 to uniformly implement all procedural provisions of NEPA (43 FR 55978). Federal agencies were directed to adopt implementing procedures to supplement the regulations published by CEQ (40 CFR 1507.3). Using as a basis the Department of Transportation (DOT) Order 5610.1C, which implements the CEQ regulations for DOT, the revised Coast Guard Instruction sets forth specific policies, responsibilities, and procedures for Coast Guard implementation of the CEQ regulations. The revised procedures are in the form of an internal directive, Commandant Instruction M16475.1A series, National Environmental Policy Act Implementing Procedures, and replace Commandant Instruction 16475.1.

Comments

On October 15, 1979, the Coast Guard published in the **Federal Register** (44 FR 59306) a notice of proposed revision of agency procedures for implementing the National Environmental Policy Act (NEPA). That notice served to inform the public and all interested parties of the proposed revision and to solicit comments. Interested parties were given until November 5, 1979 to comment. Four (4) pertinent comments were received from outside the Coast Guard.

The Department of Transportation (DOT), Office of Environmental Safety, (P-20) expressed the opinion that "maintenance dredging" should not be listed as a categorical exclusion in Section 2.B.3.(a) due to the fact that it may involve significant impact on the environment. The Coast Guard accordingly deleted "maintenance dredging" from the list of categorical exclusions.

The Environmental Protection Agency (EPA) questioned the wording in Section 2.B.4. Which suggested that the Environmental Assessment (EA) might be an appropriate alternative to the Environmental Impact Statement (EIS). This section was revised to more accurately express the relationship of the EA to the EIS and Finding of No Significant Impact (FONSI).

The Mississippi State Highway Department (MSHD) suggested that any projects that have satisfied the NEPA implementing requirements of any other agency should be treated as a categorical exclusion under Coast Guard procedures. The Coast Guard has not adopted this suggestion because it cannot assure that its requirements will be met by compliance with another agency's implementing procedures.

Several comments were made by the New York State Department of Transportation (NYDOT) citing specific requirements found in CEQ regulations. The NYDOT suggested incorporating, in Section 2.D.2. on FONSI, a statement that these documents are available to the public. This section has been revised accordingly. NYDOT questioned why there was no mention of the Record of Decision (ROD) in the Coast Guard procedures. This has not been included because a treatment of the subject in the DOT Order 5610.1C is considered adequate for Coast Guard purposes. Two comments concerned conflicts that may arise when Federal Highway Administration (FWHA) and Coast Guard officials disagree on whether a proposed action qualifies as a categorical exclusion or requires environmental documentation. A means for resolving such conflicts is contained in the Memorandum of Understanding on Coordinating the Preparation of Environmental Impact Statements between FHWA and Coast Guard (Feb. 2, 1977). Reference to this memorandum was not included in this Instruction because it is a matter of concern for only one specific office in the Coast Guard rather than the entire agency.

The Coast Guard made a number of minor editorial changes to the instruction resulting from its own review. One major addition which the Coast Guard made is the inclusion of a new Section 2.C. on Environmental Assessments (EA). This section prescribes the specific contents and format of a Coast Guard EA to establish uniform guidance for its preparation and a means of attesting to compliance with the CEQ regulations.

After full and careful consideration of all submitted comments, the proposal was revised and is set forth below as final NEPA implementing procedures.

Table of Contents

Chapter 1. Introduction.
A. Background.
B. Responsibility.
C. Use and Organization of this Instruction.
Chapter 2. Coast Guard Supplementary Implementing Instructions to DOT Order 5610.1C (Enclosure (1)).
A. Planning and Early Coordination.
B. Environmental Processing Choice.
C. Environmental Assessment (EA).
D. Finding of No Significant Impact (FONSI).
E. Lead Agencies and Cooperating Agencies.
F. Preparation and Processing of Draft Environmental Impact Statements (DEIS).
G. Review of Environmental Statements Prepared by Other Agencies.
H. Predecision Referrals to the Council on Environmental Quality.
I. Final Environmental Impact Statement (FEIS).
J. Determinations Under Section 4(f) of the DOT Act.
K. Citizen Involvement Procedures.
L. Proposals for Legislation.
M. Timing of Agency Actions.
N. Mitigating Measures and Monitoring.
Enclosure: (1) DOT Order 5610.1C, Procedures for Considering Environmental Impacts (Published Oct. 1, 1979, 44 FR 56420)
(2) Environmental Assessment Cover Sheet
(3) Finding of No Significant Impact Format (Coast Guard Prepared (EA))
(4) Finding of No Significant Impact Format (Applicant-Prepared (EA))

Commandant Instruction M16475.1A

Subj: National Environmental Policy Act (NEPA) Implementing Procedures

Ref: (a) Pub. L. 91–190 National Environmental Policy Act (NEPA)

(b) 40 CFR Parts 1500–1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

(c) Coast Guard Planning and Programming Manual COMDTINST M16010.1

(d) Procedures Guide for the Coast Guard Regulatory System (NOTAL)

1. *Purpose.* This Manual Instruction establishes policy and prescribes responsibilities and procedures for Coast Guard implementation of references (a) and (b) and other related laws and regulations.

2. *Action.* District commanders, unit commanding officers, and chiefs of responsible program offices shall ensure that the provisions of this Instruction are followed in the consideration of environmental effects of Coast Guard actions. All program guidance in implementing this Instruction shall be submitted by program managers to Commandant via (G–WS–1) for review and concurrence with this Instruction prior to issuance.

3. *CHANGES.* Recommendations and amendments for improvement of these Coast Guard NEPA implementing procedures shall be submitted to the Commandant (G–WS–1).

Chapter 1—Introduction

A. *Background.*

1. *National Environmental Policy Act (NEPA).* NEPA, reference (a), sets the national policy for the protection of the environment. NEPA procedures ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore and/or enhance the environment.

2. *Council on Environmental Quality (CEQ) Regulations.* The CEQ regulations, reference (b), establish and mandate policy requirements binding on all Federal Agencies for implementing NEPA and related statutory requirements.

3. *Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts.* DOT Order 5610.1C, enclosure (1), sets forth policy and procedures that supplement the CEQ regulations and applies them to DOT programs. The Coast Guard shall comply with the CEQ regulations and the provisions of the DOT Order.

4. *Purpose.* This Instruction prescribes policies, responsibilities, and procedures for Coast Guard implementation of references (a) and (b), and other related laws and legislation and supplements the DOT Order.

5. *Applicability.* All Coast Guard actions, as defined in this Instruction, shall be subject to and consistent with the procedures and intent of references (a) and (b), the DOT Order (Enclosure (1)), and the requirements of this Instruction.

B. *Responsibility.*

1. *Chief, Office of Marine Environment and Systems (G–W).* The Chief, Office of Marine Environment and Systems (G–W), has the primary responsibility to establish and maintain a coordinated Coast Guard environmental program.

2. *Chief, Ports and Waterways Planning Staff (G–WS).* The Chief, Ports and Waterways Planning Staff (G–WS), has the responsibility to insure compliance with reference (a) and other related environmental legislation.

3. *Chief, Environmental Impact Branch (G–WS–1).* The Chief, Environmental Impact Branch (G–WS–1), has the responsibility to develop and promulgate procedures to implement and direct compliance with references

(a), (b), and related legislation. G–WS–1 shall serve as the point of contact for coordination and review of Coast Guard and non-Coast Guard environmental documents.

4. *Chief, Bridge Division (G–NBR).* Shall be responsible for environmental documentation and review for the Bridge Administration Program, except as provided in paragraph 2–I–2 and 2–J–3, and obtaining concurrence from the DOT Office of Environment and Safety (P) as required to process bridge permit applications.

5. *Chiefs of Responsible Headquarters Program Offices.* Have the responsibility to implement the procedures in this instruction for Headquarters originated actions and those district actions so designated by the responsible Headquarters program office. This responsibility shall include: coordinating, directing, and assisting in the preparation of environmental documentation and guidance for their respective programs.

6. *District Commanders.* Have the responsibility to implement the procedures in this Instruction for all district originated actions, except those specifically designated to a responsible Headquarters program office.

C. *Use and Organization of this Instruction.*

1. *Use.* This Instruction should be used in conjunction with references (b), (c), and (d), and as a supplement to DOT Order 5610.1C (Enclosure (1)) for consideration of environmental impacts of Coast Guard actions.

2. *Organization.* The material in Chapter 2 of this Instruction supplements specific paragraphs in DOT Order 5610.1C (enclosure (1)) and is cross-referenced by including paragraph numbers of the DOT Order (in parenthesis) to which it applies. Additional chapters providing guidance in meeting new or changed requirements will be added to this Instruction as necessary.

Chapter 2. Coast Guard Supplementary Implementing Instructions to DOT Order 5610.1C (Enclosure (1))

A. *Planning and Early Coordination.*

1. (*3.c.*) *Scoping.* All interested or affected parties (Federal state, local, private) shall be notified and invited to participate in the early consultation process for all Coast Guard actions not categorically excluded in paragraph 2–B–3. below. Written notification shall be given to all state and areawide clearinghouses and all parties having statutory or regulatory involvement or directly affected. All other interested parties may be informally contacted; however, in all cases the responsible official shall maintain a written record of contacts made and responses received. For actions requiring preparation of an EIS, the scoping process shall be followed as described in Section 1501.7. of reference (b).

B. *Environmental Processing Choice.*

1. (*4.a.*) *Actions Covered.* In addition to those types of actions listed in the DOT Order, this Instruction applies to these Coast Guard actions: The decision to relocate, sell, dismantle, decommission, or close Coast Guard facilities; and research activities that have techniques or programs with potentially significant environmental effects during testing or implementation.

2. (*4.b.*) *Environmental Impact Statement (EIS).* Coast Guard actions which normally require an EIS include:

a. Actions assessed and found to have potentially significant environmental effects;

b. Actions having significant environmental effects on the global commons as described in section 2.3 of Executive Order 12114 dated 5 January 1979;

c. Actions which generate significant controversy because of effects on the human environment;

d. Actions having a significant effect on:

(1) Property protected under section 4(f) of the DOT Act;

(2) Wetlands or floodplains;

(3) Endangered species; and

(4) Significant scientific, cultural or historical resources.

e. Deepwater Port permit applications.

3. (*4.c.5*) *Categorical Exclusions.* In addition to those actions listed in paragraph 4.c of Enclosure (1) and subject to paragraph 2–B–4 of this Instruction, the following actions are not normally major Federal actions significantly affecting the environment and do not require an Environmental Assessment (EA), Finding of No Significant Impact (FONSI), or Environmental Impact Statement (EIS):

a. Actions involving repair and maintenance of existing Coast Guard facilities and which do not result in substantial change in functional use (e.g. replacement of existing materials or equipment, exterior maintenance and repair, interior maintenance, repair and alteration, maintenance of floating and fixed aids to navigation, etc.);

b. Actions to lease, acquire or construct facilities for Coast Guard personnel in areas currently zoned for that purpose and where such facilities are consistent with or approved by the local land use authority (e.g. lease or purchase of existing buildings without changing functional use, purchase or construction of housing in an approved residential subdivision, etc.);

c. Actions performed as part of the Coast Guard's statutory authority to conduct investigations, inspections, or to issue permits, licenses and certificates which do not directly affect the environment (e.g. commercial vessel documentation and inspection, facility inspections, merchant seaman documentation, Marine Boards of Inquiry, Boating Safety Detachment Team inspection of recreational boats, etc.);

d. Review of studies, reports, analyses etc. of legislative proposals not originating in DOT and relating to matters not the primary responsibility of the Coast Guard;

e. Excessing of Coast Guard real property to the General Services Administration;

f. Bridge Administration Program actions which can accurately be described as one of the following:

(1) Reconstruction or modification of an existing bridge structure on essentially the same alignment or locations including: widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, pipelines or fender works, except bridges with historic significance and bridges providing access to barrier islands.

(2) Reconstruction or modification of an existing one land bridge structure presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same aligment or locations, except bridges with historic significance and bridges providing access to barrier islands.

(3) Construction of pipeline bridges for transporting potable water;

(4) Construction of pedestrian, bicycle and/or equestrian bridges and stream gaging cableways used to transport people;

(5) Temporary replacement of a bridge which commences immediately after the occurance of a natural disaster or castastrophic failure where such bridge project is related to public safety, health and welfare;

(6) Approval of extension of time to commence or complete construction or to remove an existing or temporary bridge;

(7) Approval of deviations from approved plans prior to completion of construction which do not significantly alter the approved locations, plans, or environmental impacts;

(8) Promulgation of operating requirements or procedures for drawbridges.

g. Actions performed as a part of Coast Guard operations to carry out

statutory authority in the areas of maritime safety, protection of the environment, or military readiness (e.g. establishment of security zones, search and rescue, law and treaty enforcement, removal of oil or hazardous substances, military operations to maintain proficiency, actions to protect public safety, establishment of floating and minor fixed aids to navigation except electronic sound signals, etc.).

h. Administrative or procedural regulations which clearly do not have any environmental impacts.

4. *Restrictions on Categorical Exclusions.* An Environmental Assessment, Environmental Impact Statement, or both as appropriate shall be prepared for actions which would otherwise be classified as categorically excluded, but which are likely to involve:

(1) Significant impacts on the environment; (2) substantial controversy because of effects on the human environment; (3) impacts which are more than minimal on properties protected under section 4(f) of the DOT Act and section 106 of the Historic Preservation Act; or (4) inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

C. *Environmental Assessment (EA).*

1. *(4.d.) Environmental Assessment.* In accordance with section 1508.9 of reference (b) an EA shall provide sufficient evidence and analysis to determine whether an EIS or FONSI is required. All environmental assessments prepared by or for the Coast Guard shall contain:

a. The environmental assessment cover sheet, in the form at outlined in Enclosure (2), evidencing the date attested to be in conformance with reference (b) and this Instruction by signature and title of the preparer, the person responsible for the environmental review and the responsible official having direct responsibility and authority for implementing the proposed action;

b. A brief description of the proposed action;

c. A statement of need for the proposed action;

d. The alternatives considered;

e. A summary of the environmental impacts of the proposed action and alternatives;

f. A comparative analysis of the proposed action and alternatives;

g. A statement of environmental significance of the proposed action;

h. A list of all agencies and persons contacted during the environmental assessment.

D. *Finding of No Significant Impact (FONSI).*

1. *(5.a.) Format.* For Coast Guard purposes a FONSI shall be a separate document to which an environmental assessment (EA) is attached and notes any other environmental documents related to it. When a FONSI is based on a Coast Guard prepared EA, the format shall be as outlined in enclosure (3). When a FONSI is based on an applicant-prepared EA, the format shall be as outlined in Enclosure (4).

2. *(5.b.) Coordination.* To ensure copies of the FONSI and its environmental assessment are available to the public upon request, the originator shall forward one copy to Commandant (G–WS–1) and the responsible Headquarters program office as well as retain a copy in the originator's file. Public notice shall be given as to the availability of these documents in accordance with the requirements of Sections 1501.4.(e).(1) and (2), and 1506.6(b). of reference (b).

3. *(5.c.) Provisions of FONSI's to DOT.* A FONSI required to be provided to the DOT Office of Environment and Safety (P) shall be forwarded via Commandant (G–WS–1) by the responsible Headquarters program office.

E. *Lead Agencies and Cooperating Agencies.*

1. *(6.a.) Responsibility.* For District-originated actions the district commander or his designee will assume responsiblity for maintaining Coast Guard lead agency status. The chief of the responsible Headquarters program office or his designee will assume this responsibility for Headquarters-originated actions. In extraordinary circumstances (e.g. an action transcends more than one district, etc.) the responsible Headquarters program office via Commandant (G–WS–1) shall designate the individual responsible for maintaining Coast Guard lead agency status.

2. *(6.c.) Request for CEQ Resolution of Lead Agency Designation.* Notification to DOT (p–20) shall be made via Commandant (G–WS–1).

3. *(6.e.) Refusal to Participate.* Copies to DOT (P–1) shall be forwarded via Commandant (G–WS–1).

4. *(6.e.) Adverse Comments and Delays.* Matters referred to DOT (P–1) for discussion with CEQ shall be forwarded via Commandant (G–WS–1).

F. *Preparation and Processing of Draft Environmental Impact Statements.*

1. *(7.b.) Timing of Preparation of Draft Statements.* For other than rulemaking actions, Appendix P of reference (c) provides correlations of the NEPA process with the Coast Guard's Planning, Programming and Budgeting System. The section on Enviornmental Assessment of Regulatory Actions contained in reference (d) provides similar guidance for Coast Guard rulemaking actions.

2. *(7.f.) Circulation of Draft Environmental Impact Statements.* The originator or the responsible Headquarters program office shall forward twelve (12) copies of all draft EIS's to Commandant (G–WS–1) for distribution within U.S. Coast Guard (USCG) Headquarters offices and DOT elements as appropriate and for filing with the Environmental Protection Agency's Office of Environmental Review.

G. *Review of Environmental Statements Prepared by Other Agencies.*

1. *(9.f.) Comments on Non-Coast Guard EIS's.* One copy of all Coast Guard comments shall be sent to Commandant (G–WS–1).

H. *Predecision Referrals to the Council on Environmental Quality.*

1. *(10.a.1) DOT Lead Agency Proposals.* District commanders and Headquarters program offices receiving a notice of intended referral from another agency shall provide DOT (P) with a copy of the notice via Commandant (G–WS–1).

I. *Final Environmental Impact Statement.*

1. *(11.c.) Legal Review.* District legal officers shall provide legal sufficiency review of FEIS's for bridge permit actions that originate within their district. The Office of Chief Counsel (G–L) shall provide final legal sufficiency review of those FEIS's requiring concurrence of DOT (P).

2. *(11.d.) Internal Processing.* The Chief, Office of Marine Environment and Systems (G–W) shall have the authority to approve all Coast Guard EIS's. G–W delegates to district commanders the authority to approve Coast Guard EIS's for actions that originate within and having effects confined to their respective district except those requiring DOT (P) concurrence. DOT (P) concurrence will be obtained by the responsible Headquarters program office via Commandant (G–WS–1).

3. *(11.h.) Availability of Statements to Environmental Protection Agency and the Public.* Transmittal of the final statements to Environmental Protection Agency shall follow the method stated for draft statements in paragraph 2–F–2 of this Instruction.

J. *Determinations Under Section 4(f) of the DOT Act.*

1. *(12.a.) Integration of 4(f) Statement with EIS's.* Originators of EIS's for Coast Guard actions requiring determinations under section 4(f) of the DOT Act shall

incorporate the required 4(f) determination in the EIS.

2. *(12.b.) Legal Review.* District legal officers shall provide legal sufficiency review of Coast Guard section 4(f) determinations for projects that originate within their district that do not require the concurrence of DOT (P). The Office of Chief Counsel (G–L) shall provide final legal sufficiency review of all other Coast Guard Section 4(f) determinations.

3. *Approval of 4(f) Statements.* Approval of 4(f) statements for actions not requiring an EIS shall be made by Commandant (G–W) when DOT (P) concurrence is required. When DOT (P) concurrence is not required district commanders are delegated the authority for approving 4(f) statements for district originated actions, and chiefs of responsible Headquarters program offices, with Commandant (G–W) concurrence, shall have this authority for Headquarters actions not requiring DOT (P) concurrence.

K. *Citizen Involvement Procedures.*

1. *(14.b.) Notice of Intent.* As soon as the decision to prepare an EIS has been made, the responsible Headquarters Program Office via Commandant (G–WS–1) shall publish the required Notice of Intent (Section 1507.7(e)) in the **Federal Register.**

2. *(14.d.) Office of Management and Budget (OMB) A–95 Clearinghouse Review.* Originators of EA's or EIS's shall solicit comments from A–95 clearinghouses of affected states on the environmental consequences of the proposed action. The EA or EIS shall evidence this solicitation and consideration of comments received.

3. *(14.f.) Coast Guard Public Contact Point.* Interested persons can obtain copies and the status of Coast Guard environmental documents and information on other elements of the NEPA process by contacting the appropriate addressee below:

COMMANDANT (G–WS–1), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593, COM: (202) 426–3300, FTS: 8–426–3300.

COMMANDER (dpl), First Coast Guard District, 150 Causeway Street, Boston, MA 02114, COM: (617) 223–7562, FTS: 8–223–7563.

COMMANDER (dpl), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103, COM: (314) 425–5012, FTS: 8–279–5012.

COMMANDER (dpl), Third Coast Guard District, Governors Island, New York, NY 10004, COM: (212) 668–7047, FTS: 8–664–7001.

COMMANDER (dpl), Fifth Coast Guard District, Federal Bldg., 431 Crawford Street, Portsmouth, VA 23705, COM: (804) 398–6276, FTS: 8–827–9276.

COMMANDER (dpl), Seventh Coast Guard District, Federal Bldg., Rm. 1012, 51 SW. First Ave., Miami, FL 33103, COM: (305) 350–5503, FTS: 8–350–5503.

COMMANDER (dpl), Eighth Coast Guard District, Hale Boggs Bldg., 500 Camp Street, Rm. 1140, New Orleans, LA 70130, COM: (504) 589–2964, FTS: 8–589–2961

COMMANDER (dpl), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199, COM: (216) 522–7523, FTS: 8–293–3919.

COMMANDER (dpl), Eleventh Coast Guard District, Union Bank Bldg., 400 Oceangate, Long Beach, CA 90822, COM: (213) 590–2287, FTS: 8–984–9287.

COMMANDER (dpl), Twelfth Coast Guard District, 630 Sansome Street, San Francisco, CA 94126, COM: (415) 556–6074, FTS: 8–556–6074.

COMMANDER (dpl), Thirteenth Coast Guard District, Federal Bldg., 915 Second Ave., Seattle, WA 98174, COM: (206) 442–7523, FTS: 8–399–7523.

COMMANDER (dpl), Fourteenth Coast Guard District, Prince Kalanianaole, Federal Bldg., 300 Ala Moana Blvd., 9th Fl., Honolulu, HI 96850, FTS: 8–556–0220 ask for 546–2861 Honolulu.

COMMANDER (dpl), Seventeenth Coast Guard District, P.O. Box 3–5000, Juneau, AK 99802, FTS: 8–399–0150 ask for 586–7348.

4. *(14.f.) Coast Guard Public Contact Point for Bridge Administration Program.* Interested persons and applicants for Coast Guard bridge permits can obtain full information on the Coast Guard Bridge Administration Program by contacting the appropriate addressee listed below. Persons who intent to apply for Coast Guard bridge permits are encouraged to contact the appropriate addressee for consultation as early as possible to facilitate coordination of the NEPA process.

COMMANDANT (G–NBR), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593, COM: (202) 426–0942, FTS: 8–426–0942.

COMMANDER (obr), First Coast Guard District, 150 Causeway Street, Boston, MA 02114, COM: (617) 223–0645, FTS: 8–223–0645.

COMMANDER (obr), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103, COM: (314) 425–4607, FTS: 8–279–4607.

COMMANDER (oan-br), Third Coast Guard District, Governors Island, New York, NY 10004, COM: (212) 668–7165, FTS: 8–664–7994.

COMMANDER (oan), Fifth Coast Guard District, Federal Bldg., 431 Crawford Street, Portsmouth, VA 23705, COM: (804) 398–6227, FTS: 8–827–9222.

COMMANDER (oan), Seventh Coast Guard District, Federal Bldg., Rm. 1012, 51 SW. First Ave., Miami, FL 33103, COM: (305) 350–4108, FTS: 8–350–4103.

COMMANDER (obr), Eighth Coast Guard District, Hale Boggs Bldg., Rm. 1140, 500 Camp Street, New Orleans, LA 70130, COM: (504) 589–2965, FTS: 8–682–2965.

COMMANDER (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199, COM: (216) 522–3993, FTS: 8–293–3993.

COMMANDER (oan), Eleventh Coast Guard District, Union Bank Bldg., 400 Oceangate, Long Beach, CA 90822, COM: (213) 590–2222, FTS: 8–984–9223.

COMMANDER (oan), Twelfth Coast Guard District, 630 Sansome Street, San Francisco, CA 94126, COM: (415) 556–8668, FTS: 8–556–8668.

COMMANDER (oan), Thirteenth Coast Guard District, Federal Bldg., 915 Second Ave., Seattle, WA 98174, COM: (206) 442–5864, FTS: 8–399–5876.

COMMANDER (oan), Fourteenth Coast Guard District, Prince Kalanianaole, Federal Bldg., 300 Ala Moana Blvd., Honolulu, HI 96850, COM: (808) 546–7130, FTS: 8–556–0220 ask for 546–7130 Honolulu.

COMMANDER (oan), Seventeenth Coast Guard District, P.O. Box 3–5000, Juneau, AK 99802, FTS: 8–399–0150 ask for 586–7368.

L. *Proposals for legislation.*

1. *(15.a.) Preparation.* The responsible Coast Guard Headquarters program office shall prepare the environmental documentation for legislative proposals or reports on proposed legislation for which the coast Guard is primarily responsible.

2. *(15.b.) Processing.* The EIS shall be processed as required in paragraph 15.b. of the DOT Order via Commandant (G–WS–1).

M. *Timing of Agency Action.*

1. *(17.b.) Reduction of Prescribed Time Periods.* Request to reduce prescribed time periods for EIS processing shall be made via Commandant (G–WS–1) to EPA.

2. *(17.c.) Emergency Circumstances.* In emergency circumstances, CEQ will be consulted through DOT (P) via Commandant (G–WS–1).

N. *Mitigating Measures and Monitoring.* The responsible program manager, district commander, or commanding officer of headquarters unit as appropriate, shall assure the execution and monitoring of all mitigating measures stated in any environmental document (EA, FONSI, EIS, NOI) and/or record of decision for any Coast Guard action.

Dated: April 22, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environmental Systems.

[FR Doc. 80–15288 Filed 5–16–80; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. IP79-12; Notice 2]

Hyosung (America), Inc.; Action on Petition for Determination of Inconsequential Noncompliance

This notice grants in part and denies in part the petition by Hyosung (America) Inc. of New York City, New York to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on November 13, 1979, and an opportunity afforded for comment (44 FR 65514).

Paragraph S6.5(b) of Standard No. 119 requires tires to be marked with the tire identification number required by 49 CFR Part 574 and S6.5(f) requires them to be labeled with "the actual number of plies * * * in the sidewall * * *." Hyosung imported and distributed 2000 "Aurora–F8 1000–20 Load Range F" truck tires that lacked marking indicating the week and year of manufacture (the 19th week of 1979), and 200 of these also lacked the number of nylon tread plies (10) and nylon plies (8). Notwithstanding the filing of its petition Hyosung corrected the date code noncompliance of all but 200 tires no longer in its hands. Of these 200 tires, on the basis of having corrected the noncompliance on 1800 tires it estimates that no more than 20 lack the correct ply designation. All other information is said to be correct and petitioner believes that its noncompliances are inconsequential as they relate to motor vehicle safety since in its opinion manufacturing dates are unimportant, and the model number of the tires is clearly understood by the dealer.

No comments were received on the petition.

Hyosung presented no argument to support the conclusory statement in its petition that "the missing brand for the week and year of production is truly an inconsequential defect." On the contrary, this information is needed to effect tire registration and to implement any notification and remedy campaign covering safety-related defects or noncompliances in the tires. Accordingly, petitioner has failed to sustain its burden of persuasion that that noncompliance is inconsequential as it relates to motor vehicle safety, and its petition is denied. On the other hand the failure to mark the number of plies appears to have an inconsequential effect upon safety in that not more than 20 tires appear to be involved, all plies are present and the type of material involved (nylon) is stated on the sidewall. Petitioner has met its burden of persuasion as to this noncompliance and its petition is granted.

(Sec. 102, Pub. L. 93–492, 99 Stat. 1480 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on May 8, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-15309 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-59-M

Final Contract Briefing; Public Meeting

The National Highway Traffic Safety Administration will hold a public meeting on May 30, 1980, to present the results of a recently completed, contracted research study enitled "Relationship Between Truck Ride Quality and Drivers' Health: Methodology Development". The objective of the study was to review and explore various research approaches and alternative ways to evaluate the relationships between truck ride quality and drivers' health. Contingent upon Government review and approval of the recommended plan, NHTSA may implement a major research program in the truck ride quality area to determine if rulemaking is warranted.

The meeting will be held in Room 2230 at the DOT Headquarters Building, 400 Seventh Street, Southwest, beginning at 9:30 a.m. and lasting until about 11:30 a.m. The briefing, to be presented by the contractor (Dunlap and Associates, Inc.), will consist of a brief overview of the study findings, a detailed discussion of the research design recommendations, and an opportunity for audience questions.

Additional information may be obtained from Dr. Charles M. Overbey, Office of Driver and Pedestrian Research, Room 6240, Nassif Building, 400 Seventh Street Southwest, Washington, D.C. 20590, telephone: 202–755–8753.

Issued in Washington, D.C., on May 9, 1980.

R. Rhoads Stephenson,

Associate Administrator for Research and Development.

[FR Doc. 80-15111 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-59-M

Final Contract Briefing; Public Meeting

The National Highway Traffic Safety Administration will hold a public meeting on May 30, 1980, to present the results of a recently completed, contracted research study enitled "Relationship Between Truck Ride Quality and Safety of Operations: Methodology Development." The objective of the study was to review and explore various research approaches and alternative ways to evaluate the relationships between truck ride quality and safety of operations. Contingent upon Government review and approval of the recommended plan, NHTSA may implement a major research program in the truck ride quality area to determine if rulemaking is warranted.

The meeting will be held in Room 2230 at the DOT Headquarters Building, 400 Seventh Street, Southwest, beginning at 1:30 p.m. and lasting until about 3:30 p.m. The briefing, to be presented by the contractor (Systems Technology, Inc)., will consist of a brief overview of the study findings, a detailed discussion of the research design recommendations, and an opportunity for audience questions.

Additional information may be obtained from Dr. Charles Overbey, Office of Driver and Pedestrian Research, Room 6240, Nassif Headquarters Building, 400 Seventh Street, Southwest, Washington, DC 20590, telephone: 202–755–8753.

Issued in Washington, D.C. on May 9, 1980.

R. Rhoads Stephenson,

Associate Administrator for Research and Development.

[FR Doc. 80-15112 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants 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 that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of

the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes June 18, 1980.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8406-N	Sana Air, Incorporated, Toms River, NJ	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of Class A, B, and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
8407-N	Hooker Chemical Company, Houston, TX	49 CFR Part 172, Subpart C, 173.245.	To transport within plant over public highway via fork-lift trucks waste residues, classed as corrosine liquids, n.o.s., without shipping papers, contained in non-DOT specification portable tanks. (Mode 1.)
8408-N	Presvac Systems (Burlington) Limited, Ontario, Canada.	49 CFR 173.119(a)(17), 173.245(a)(31), 178.342-5, 178.343-5.	To authorize non-DOT specification cargo tanks complying with DOT Specification MC-307/312 except for bottom outlet valve variation for transport of flammable or corrosive waste liquids or semi-solids. (Mode 1.)
8409-N	MCB Manufacturing Chemists, Inc., Cincinnati, OH	49 CFR 173.264(a)(4)	To authorize shipment of hydrofluoric acid solution no greater than 70% in non-DOT specification polyethylene bottles not exceeding 6 liters capacity packed in DOT Specification 12A fiberboard boxes. (Modes 1, 3.)
8410-N	MCB Manufacturing Chemists, Inc., Cincinnati, OH	49 CFR 173.269(a)	To authorize shipment of perchloric acid not to exceed 72% in glass bottles of not more than 2.5 liters overpacked 6 to a non-DOT Specification IMCO 4C2 wooden box. (Modes 1,3.)
8411-N	The Goodyear Tire & Rubber Co., Akron, OH	49 CFR 173.28(m)(1)	To authorize shipment of various hazardous waste materials in DOT Specification 17C, 17E, and 17H drums complying with the reconditining requirements except for the cleaning process. (Mode 1.)
8412-N	Mobay Chemical Corporation, Kansas City, MO	49 CFR 173.377(b)(6)	To authorize shipment of organic phosphate compound mixtures in DOT Specification 12B boxes containing no more than two inside DOT Specification 2D foil lined paper bags not to exceed 15 pounds each (Modes 1, 2, 3.)
8413-N	Williams Research Corporation, Walled Lake, MI	49 CFR 173.87, 173.114, 173.102	To authorize shipment of turbofan engines having residual or small amounts of JP 9 fuel, an oxygen bottle assembly with squib in valve and a starter cartridge, Class C explosive, as integral parts. (Modes 1, 2, 4.)
8414-N	Fauvet-Girel, Paris, France	49 CFR 173.315(a)	To authorized shipment of various non-inflammable, refrigerant, compressed gases in non-DOT specification IMCO V portable tanks. (Modes 1, 2, 3.)
8415-N	Bayonne Barrel & Drum Co., Newark, NJ	49 CFR 173.28(0), 178.116-10	To authorize conversion of non-DOT specification tight head 18 gauge steel 55 gallon drums to DOT Specification 17E except for location of markings for shipment of commodities authorized in DOT 17E. (Modes 1, 2, 3, 4.)
8416-N	The Pentectoseal Co., Bensenville, IL	49 CFR 173.119	To manufacture, mark and sell non-DOT specification stainless steel drums for shipment of various flammable liquids. (Mode 1.)
8417	Hugonnet, S.A., Paris, France	49 CFR 173.119, 173.125, 173.245, 173.346, 173.510.	To authorize shipment of various hazardous materials in non-DOT specification IMCO Type I portable tanks. (Modes 1, 2, 3.)
8418-N	Aerojet Tactical Systems Company, Sacramento, CA.	49 CFR 172.101, 175.30	To authorize a one time shipment of a rocket motor, Class B explosive, exceeding the weight limitations presently authorized by cargo-only aircraft. (Mode 4.)
8419-N	Department of Defense, Washington, DC	49 CFR 173.276	To authorize shipment of hydrazine anhydrous in DOT Specification 3A or 3E steel cylinder overpacked in a cardboard container cushioned by vermiculite. (Mode 4.)
8420-N	Soaper Chemical Co., Inc., Henderson, KY	49 CFR 172.500, Subpart F	To authorize shipment of various flammable, corrosive and irritant materials contained in properly labeled drums in open bed trucks without placarding. (Mode 1.)
8422-N	CIG Gas Cylinders, Marayong, Australia	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(d)(3), 173.336(a)(2), 173.337(a)(1), 175.3.	To ship compressed gases and other hazardous materials in non-DOT specification high pressure seamless aluminum cylinders. (Modes 1, 2, 3, 4, 5.)
8423-N	U.S. Environmental Protection Agency, Washington, DC.	49 CFR Parts 100-199	To ship minute quantities of a solution of 25% nitric acid and Group I through VI radionuclides in non-DOT specification composite packaging, described as "Analytical Standards" (modes 1, 2, 3, 4, 5.)
8424-N	Sporting Specialties, Ltd., Louisville, KY	49 CFR 172.101, 173.153(a)(1)	To ship calcium carbide in 1 kilogram size inside metal cans packed in a DOT Specification 12B fiberboard box not exceeding 50 pounds net weight, as a limited quantity. (Mode 1.)
8425-N	P B & S Chemical Co., Henderson, KY	49 CFR 173.245	To authorize shipment of aqua ammonia, 29% in DOT Specification 6D or 34 containers with vented closures. (Modes 1, 2.)
8426-N	Martin Tank Manufacturing, Cerritos, CA	49 CFR 173.119(a)(17), 173.245(a)(31), 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying generally with DOT specification MC-307/312 except for bottom outlet valve variations for transport of flammable or corrosive waste liquids or semi-solids. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on May 7, 1980.

J. R. Grothe,

Chief, Exemptions Branch Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-15109 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

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 that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes June 18, 1980.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No.	Applicant	Renewal of exemption
2732-X	U.S. Department of Energy, Washington, DC.	2732
2787-X	Raytheon Co., Andover, MA	2787
2981-X	Austin Powder Company, Cleveland, OH.	2981
3128-X	Walter Kidde & Co., Inc., Belleville, NJ.	3128
3563-X	U.S. Department of Energy, Washington, DC.	3563
4390-X	Mallinckrodt, Inc., St. Louis, MO	4390
4453-X	Strawn Explosives, Inc., Dallas, TX	4453
4453-X	Austin Powder Co., Cleveland, OH	4453
4734-X	General Electric Co., Waterford, NY.	4734
5196-X	Air Products & Chemicals, Inc., Allentown, PA.	5196
5322-X	San Diego Gas & Electric Company, San Diego, CA.	5322
5372-X	Airco Industrial Gases, Murray Hill, NJ.	5372
5456-X	Fisher Scientific Co., Fair Lawn, NJ	5456
5701-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	5701
5852-X	Philadelphia Gas Works, Philadelphia, PA.	5852
5891-X	U.S. Department of Energy, Washington, DC.	5891
6113-X	Providence Gas Co., Providence, RI	6113
6113-X	Fitchburg Gas and Electric Light Co., Canton, MA.	6113
6113-X	Bay State Gas Co., Canton, MA	6113
6197-X	Providence Gas Co., Providence, RI	6197
6305-X	Ensign Bickford Co., Simsbury, CT	6305
6530-X	Union Carbide Corporation, Tarrytown, NY.	6530
6530-X	Liquid Carbonic Corporation, Chicago, IL.	6530
6530-X	Air Products & Chemicals Co., Inc., Allentown, PA (see footnote 1).	6530
6530-X	Red Ball Oxygen Co., Inc., Shreveport, LA.	6530
6536-X	Air Products & Chemicals, Inc., Allentown, PA.	6536
6536-X	L. P. Transportation, Inc., Chester, NY.	6536
6536-X	Utility Propane Company, Elizabeth, NJ.	6536
6536-X	New Jersey Natural Gas Co., Asbury Park, NJ.	6536
6536-X	SunOlin Chemical Company, Claymont, DE.	6536
6536-X	Public Service Electric & Gas Co., Newark, NJ.	6536
6589-X	Robertshaw Controls Co., Anaheim, CA (see footnote 2).	6589
6758-X	Roper Plastic, Inc., Los Angeles, CA.	6758
6762-X	Taylor Chemicals, Inc., Baltimore, MD (see footnote 3).	6762
6763-X	Purex Corporation, City of Industry, CA.	6763
6805-X	Union Carbide Corporation, Tarrytown, NY.	6805
6858-X	Eurotainer S.A.R.L., Paris, France	6858
6858-X	Bacardi International, Limited, Hamilton, Bermuda.	6858
6902-X	Halocarbon Products Corporation, Hackensack, NJ.	6902
6922-X	Halocarbon Products Corp., Hackensack, NJ.	6922
7005-X	Bignier Schmid-Laurent, Paris, France (see footnote 4).	7005
7014-X	Eurotainer S.A.R.L., Paris, France	7014
7023-X	Western Electric Company, Inc., Greesboro, NC.	7023
7023-X	HiPure Chemicals, Inc., Nazareth, PA.	7023
7023-X	Allied Chemical Co., Morristown, NJ	7023
7023-X	Texas Instruments, Incorporated, Dallas, TX.	7023
7026-X	Hydraulic Research Textron, Pacoima, CA (see footnote 5).	7026
7042-X	Walter Kidde & Co., Inc., Mebane, NC.	7042
7052-X	GTE Sylvania, Incorporated, Needham Heights, MA.	7052
7052-X	Texas Instruments, Incorporated, Dallas, TX.	7052
7052-X	Eagle-Picher Industries, Inc., Joplin, MO.	7052
7413-X	Chilton Metal Products Div. Western Industries, Inc., Chilton, WI (see footnote 6).	7413
7454-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	7454
7503-X	Lowaco, S.A., Geneva, Switzerland	7503
7516-X	Eurotainer S.A.R.L., Paris, France	7516
7598-X	Pratt & Whitney Aircraft Group, East Hartford, CT.	7598
7607-X	Department of Health, Education, and Welfare, Cincinnati, OH.	7607
7611-X	Richfood, Inc., Richmond, VA	7611
7620-X	Eastern Mediterranean (Containers) Co., Ltd., London, England.	7620
7632-X	Enerporse Service Co., Houston, TX	7632
7651-X	Austin Powder Co., Cleveland, OH	7651
7690-X	Prestex Products Co., St. Paul, MN	7690
7741-X	Bell Aerospace, Buffalo, NY	7741
7743-X	Union Carbide Corporation, Tarrytown, NY.	7743
7752-X	Eurotainer S.A.R.L., Paris, France	7752
7753-X	Stauffer Chemical Co., Westport, CT.	7753
7753-X	Monsanto Company, St. Louis, MO	7753
7754-X	Hercules, Incorporated, Wilmington, DE.	7754
7777-X	Saunders Chemical Co., Inc., Evans, CO.	7777
7796-X	Dow Chemical Co., Midland, MI	7796
7819-X	Eurotainer S.A.R.L., Paris, France	7819
7888-X	Rheem Manufacturing Co., Linden NJ.	7888
7963-X	Stauffer Chemical Co., Westport, CT (see footnote 7).	7963
7997-X	Dow Chemical Co., Midland, MI	7997
8008-X	Wheaton Aerosols Co., Mays Landing, NJ.	8008
8234-X	SMG, Gray, France (see footnote 8)	8234
8249-X	Lawrence Packaging Supply Corp., Newark, NJ (see footnote 9).	8249
2587-P	Midwest Gases, Inc., Kansas City, KS.	2587
5206-P	Independent Explosives Co., Cleveland, OH.	5206
6253-P	IBEX Industrienwerke Braunschweig, Braunschweig, Germany.	6253
6602-P	Jones Chemicals, Inc., Caledonia, NY.	6602
6614-P	Jones Chemicals, Inc., Caledonia, NY.	6614
6768-P	Van De Mark Chemical Co., Inc., Lockport, NY.	6768
6816-P	McDonnell Douglas Astronautics Co., St. Louis, MO.	6816
7052-P	Gould, Inc., Andover, MA	7052
7607-P	Foxboro Company, Burlington, MA	7607
7620-P	Pennwalt Corporation, Philadelphia, PA.	7620
7741-P	Propellant Explosive & Rocket Motors Establishment, Aylesbury, England.	7741
7819-P	Cheminova A/S, Lemvig, Denmark	7819
7835-P	Liquid Carbonic Corporation, Chicago, IL (see footnote 10).	7835
8146-P	PPG Industries, Inc., Pittsburgh, PA	8146
8153-P	Continental Vanguard, Inc., Bellmawr, NJ.	8153
8156-P	Air Products & Chemicals, Inc., Allentown, PA.	8156
8229-P	Independent Explosives Co., Cleveland, OH.	8229
8375-P	Hoyer SAGL, Chiasso, Switzerland	8375
8392-P	Hercules, Incorporated, Wilmington, DE.	8392
8414-P	SLEMI, Paris, France	8414

[1] To authorize water as an additional mode of transportation.

[2] To authorize passenger-carrying aircraft as an additional mode of transportation.

[3] To authorize water as additional mode of transportation.

[4] To authorize an additional design tank identical to those presently authorized except for capacity and thickness.

[5] To renew and to change retest requirement from three years to five years.

[6] To authorize an additional type cylinder model similar to those presently authorized and to add nitrogen as an additional commodity.

[7] Request renewal and to add water and rail as additional modes of transportation.

[8] To authorize an additional tank design similar to the one presently authorized except for thickness, additional valves, discs and filling openings.

[9] Request modification of cushioning material requirements.

[10] Request party status and to authorize an additional trailer design to paragraph 8(c).

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 7, 1980.

J.R. Grothe,

Chief Exemptions Branch, Office of Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 80-15108 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-60-M

Office of the Secretary

[Notice 80-5]

Texas Deepwater Port Authority; Deepwater Port License Extension

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Request for public comment.

SUMMARY: The intent of this notice is to solicit public comment on the request of the State of Texas to extend for one year the date by which the deepwater port license offered the Texas Deepwater Port Authority (TDPA) must be accepted in order to become effective.

DATE: Comments must be received not later than June 19, 1980.

ADDRESS: Comments should be addressed to: Mr. Ernest T. Bauer, U.S. Department of Transportation, Office of Marine Transportation, Ports Division, P-73, 400 7th Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ernest T. Bauer, (202) 426-4144.

SUPPLEMENTARY INFORMATION: On August 15, 1979, pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), the Secretary of Transportation offered to the TDPA a license to own, construct, and operate a deepwater port off the coast of Freeport, Texas. The license decision provided that it would not be effective unless it was accepted by May 15, 1980. The license itself included a condition that the licensee demonstrate that the facility was financially feasible by obtaining throughput commitments from private oil company shippers for sufficient volume to finance the sale of revenue bonds. On April 17, 1980, the Governor of Texas requested that TDPA be granted a one year extension of the time within which to accept the license. In considering this request the Secretary has determined that, due to the possibility that other parties may desire to submit an application for the same location as the TDPA facility, and because the Deepwater Port Act of 1974 prevents the Secretary from accepting other applications for the same location for which a license offer is outstanding, the full year extension is not presently considered appropriate. However, a six-month extension of the original license is being considered.

An interim 45 day extension has been granted for the purpose of soliciting public comment. Our present intention is to grant a limited six-month extension to the TDPA License offer. The license would thus have to be accepted by November 15, 1980. If no decision is reached by TDPA on this offer by November 15, 1980, the Secretary intends to entertain further extension requests only if TDPA provides to him prior to November 15, 1980:

(1) Signed and binding commitments from potential shippers indicating their intent to ship collectively at least 1.4 million barrels per day through the proposed port for which TDPA holds a license offer, or

(2) An acceptable amended application from TDPA for a smaller capacity port in the application area, together with letters of intent from potential shippers which will enable TDPA to finance such a port.

Public comment is invited upon the State's request for a one-year extension, upon the proposal to issue the limited six-month extension upon the conditions discussed alone, and upon any other relevant issues. All comments received prior to the deadline will be considered.

(Deepwater Ports Act of 1974, 33 U.S.C. 1501) et seq.)

Issued in Washington, D.C. on May 15, 1980.

Neil Goldschmidt,

Secretary of Transportation.

[FR Doc. 80-15421 Filed 5-16-80; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 80-7; Ref: ATF O 1100.77C]

Authority to Affix the Seal of the Department of the Treasury; Delegation Order

1. *Purpose.* This order sets forth delegation of authority to affix the seal of the Department of the Treasury.

2. *Cancellation.* ATF O 1100.77B, Delegation Order—Authority to Affix the Seal of the Department of the Treasury, dated October 17, 1979, is canceled.

3. *Delegation.*

a. Pursuant to the authority delegated to the Director, Bureau of Alcohol, Tobacco and Firearms by Treasury Department Order 101-12, dated October 12, 1979, those officials listed below are hereby redelegated authority to affix the seal of the Department of the Treasury in the authentication of originals and copies of books, records, papers, writings, and documents of the Bureau, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b):

(1) Regional regulatory administrators.
(2) Regional administrative officers.
(3) Assistant Director (Technical and Scientific Services).
(4) Assistant Director (Administration).
(5) Chief, Technical Services Division.
(6) Manager, ATF Distribution Center.
(7) Chief, Investigations Division.
(8) Chief, National Firearms Act Branch.
(9) Chief, Administrative Programs Division.
(10) Chief, Protective Programs and Services Branch.

b. This authority may not be redelegated.

4. *For information contact.* Procedures Branch, 1200 Pennsylvania Avenue, NW, Washington, DC, 20226, (202) 566-7602.

5. *Effective date.* This order becomes effective on May 19, 1980.

6. *Approval.* February 2, 1980.

G.R. Dickerson,

Director.

[FR Doc. 80-15291 Filed 5-16-80; 8:45 am]

BILLING CODE 4810-31-M

Granting of Relief; Disabilities Incurred by Conviction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of Granting of Relief from Disabilities incurred by Conviction.

SUMMARY: The persons named in this notice have been granted relief by the Director, Bureau of Alcohol, Tobacco and Firearms, from their disabilities imposed by Federal laws. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Michael L. Hall, Firearms Enforcement Branch, Investigations Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026, (202–566–7457).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

Anderson, Bobby J., Route 2, Box 413A, Wilkesboro, North Carolina, convicted on July 6, 1954, in the United States District Court, middle district of North Carolina.

Anderson, Raymond D., 1004 South Main Street, Redfield, South Dakota, convicted on September 30, 1975, and on March 12, 1976, in the Circuit Court, Ninth Judicial Circuit, South Dakota.

Anderson, Willie H., Route 2, Roaring River, North Carolina, convicted on May 20, 1943; on May 2, 1948; on May 21, 1954; on June 18, 1958; on August 10, 1967; and on October 22, 1969, in the United States District Court for the Middle District of North Carolina.

Bartlett, Bobby G., P.O. Box 106, Gracement, Oklahoma, convicted on November 1, 1954, in the District Court of Roosevelt County, Portales, New Mexico.

Bennett, Fred M., 719 NW. 42nd Avenue, Puyallup, Washington, convicted in 1935, 1936, and in 1937, in the Fsyth County Court, Winston Salem, North Carolina; and in 1939 in the Asbore County Court, Raleigh, North Carolina.

Berlinski, Walter D., 123–08 11th Avenue, College Point, New York, convicted on November 12, 1965, in the County Court, Nassau County, New York; and on June 14, 1967, and on November 30, 1967, in the Superior Court for the State of California for the County of Los Angeles.

Bingaman, Ronald R., 2494 Grove Way, Castro Valley, California, convicted on April 23, 1971, in the District Court, El Paso County, Colorado.

Bowen, Donald J., 1535 24th Street, Des Moines, Iowa, convicted on March 10, 1970, and on March 24, 1970, in the Polk County District Court, Des Moines, Iowa.

Bowers, Dean F., 230 Blue Ridge Avenue, Elkin, North Carolina, convicted on November 25, 1949, and on November 19, 1957, in the United States District Court, Wilkesboro, North Carolina.

Bradford, Ed, Route 3, Box 102 Steele, Missouri, convicted on April 25, 1975, in the United States District Court, Western District of Tennessee.

Breitenback, John P., RR 4, Box 1049, Wautoma, Wisconsin, convicted on April 9, 1968, in the County Court, Milwaukee, Wisconsin.

Bryant, John L., 12290 Flanders Street, Detroit, Michigan, convicted on April 15, 1965, in the United States District Court for the Western District of Arkansas.

Campbell, Irvin B., 102 Oak Street, Box 94, Rockland, Wisconsin, convicted on April 11, 1973, in the LaCrosse County Court, Winsconsin.

Carroll, Warren D., 9224–7th South East, Everett, Washington, convicted on January 23, 1962, in the superior Court, Spokane County, Washington.

Carter, Charles S., 3647 Highway 378, Westlake, Louisiana, convicted on November 16, 1976, in the Fourteenth Judicial District Court, Parish of Calcasieu, Lake Charles, Louisiana.

Cattaneo, Michael, A., 671 Stringtown Avenue, Weed, California, convicted on March 21 1976, in the Siskiyou County Superior Court, Yreka, California.

Chandler, Robert A., 709 Deland Court, El Cajon, California, convicted on November 30, 1970, in the Municipal Court of the San Diego Judicial District, County of San Diego, State of California.

Childress, James D., 263 Pioneer Road, Rye, New Hampshire, convicted on May 30, 1973, in the Superior Court, Robeson County, North Carolina.

Chiro, Joseph L., Jr., 2734 Kingston Street, Kenner, Louisiana, convicted on February 14, 1975, in the Twenty-Fourth Judicial District Court for the Parish of Jefferson, State of Louisiana.

Churchill, Leslie G., Rural Route, Maxwell, Nebraska, convicted on September 21, 1973, in the District Court of Keith County, Nebraska.

Cloward, Cameron E., 2960 Robar Street, Las Vegas, Nevada, convicted on May 1, 1973, in the United States District Court for the District of Arizona.

Colt, Michael A., 3409 S. Rural Road, Tempe, Arizona, convicted on March 12, 1975, in the Superior Court, Maricopa County, Arizona.

Dupuy, Pivon L., P.O. Box 1568, Slidell, Louisiana, convicted on September 24, 1975, in the United States District Court, Eastern District of Louisiana.

Encinias, Adan A., 302 Socorro Street, Las Vegas, Nevada, convicted on May 23, 1977, in the District Court, County of Miguel, New Mexico.

Ennis, Johnny C., 1317 South Jackson, Tucumcari, New Mexico, convicted on March 13, 1975, in the District Court, Quay County, New Mexico.

Evans, Alton R., 3306 Surrey Drive, East, Owensboro, Kentucky, convicted on February 3, 1956, in the United States District Court, Western District of Missouri, Western Division.

Faughn, Donald W., 311 Pardue Lane, Hopkinsville, Kentucky, convicted on June 5, 1974, in the Circuit Court, Christian County, Hopkinsville, Kentucky.

Frackowiak, Leonard E., 4326 Louise Street, Saginaw, Michigan, convicted on or about June 4, 1954, in the Circuit Court of Bay County, Michigan; and on March 25, 1957, in the Circuit Court of Gratiot County, Michigan.

Fultz, Paul R., P.O. Box 173, Medicine Bow, Wyoming, convicted on November 21, 1942, in the District Court, Albany County, Wyoming.

Gellatly, James B., 704 S. Western Avenue, Wenatchee, Washington, convicted on May 24, 1976, in the Superior Court of the State of Washington in and for the County of Chelan.

Gentry, Norman B., 4800 Miner Way, Sacramento, California, convicted on April 2, 1954, and on November 7, 1952, in the Sacramento County Superior Court, Louisiana.

Greeley, Gerald R., Box 93; Overton, Nebraska, convicted on February 15, 1965, in the District Court of Deuel County, Chappell, Nebraska.

Grier, Thomas W., 3475 East Street, Montgomery, Alabama, convicted on July 22, 1975, in the Circuit Court of Montgomery County, Alabama.

Griswold, Richard A., 7505 Sharp Road, Swartz Creek, Michigan, convicted on April 1, 1966, in the United States District Court, Eastern District of Tennessee; and on September 5, 1968, in the Circuit Court, Genesee County, Michigan.

Hampton, Nathaniel B., 1080 Central Street, Memphis, Tennessee, convicted on February 15, 1965, in the Criminal Court of Shelby County, Tennessee.

Harriott, Joseph C., 2245 Fifth Avenue, Fort Worth, Texas, convicted on August 30, 1971, in the Criminal District Court No. 4, Terrant County, Texas.

Harris, Phillip K., 129 Railroad Street, Bernice, Louisiana, convicted on February 18, 1956, in the Circuit Court of Cass County, Missouri.

Hartsworm, John K., Park View Manor, No. 3, Valder, Wisconsin, convicted on March 11, 1974, in the United States District Court, Western District of Texas, San Antonio, Texas.

Helwig, Lavern A., 787 Excelsior Drive, Placerville, California, convicted on November 1, 1977, in the Superior Court of the State of California, County of Sacramento.

Henry, David C., 11358 5th Place, Blaine, Minnesota, convicted on December 16, 1966, in the United States District Court for the Eastern District of Michigan.

Hess, Donald C., 47 Tomaka Drive, Hamburg, New York, convicted on July 7, 1938, in the Onondaga County Court, Syracuse, New York.

Hobson, Donald E., 2726 Marine Drive, Bremerton, Washington, convicted on December 17, 1974, in the Superior Court of the State of Washington, Kitsap County.

Huntley, Steven J., 1484 Main Street Burney, California, convicted on May 26, 1972, in the Superior Court, Orange County, California.

Johnson, Otha L., Route 7, North Wilkesboro, North Carolina, convicted on May 28, 1959, on July 27, 1961, on August 23, 1966, and on February 1, 1967, in the United States District Court, Wilkesboro, North Carolina.

Kennedy, Ralph E., Route 1, Versailles, Indiana, convicted on April 4, 1958, in the Court of Common Pleas, Hamilton County, Cincinnati, Ohio; and on January 28, 1964, in the Dearborn County Circuit Court, Lawrenceburg, Indiana.

Kleiman, Ronald A., Route 1, Box 29, Wilson, Michigan, convicted on May 20, 1976, in the United States District Court, Eastern District of Wisconsin.

Klein, George, 2980 Barron, Memphis, Tennessee, convicted on January 6, 1978, in the United States District Court, Western District of Tennessee.

LaBorde, Keith J., Route 3, Box 301, Marksville, Louisiana, convicted on August 10, 1978, in the Twelfth Judicial District Court, Parish of Avoyelles, State of Louisiana.

Lawhorne, Lawrence W., 1616 Floyd Street, Lynchburg, Virginia, convicted on January 13, 1958, in the United States District Court, Lynchburg, Virginia.

Learned, Ralph, D., Box 1, Highway 202, Birkenfeld, Oregon, convicted on December 27, 1951, in the Circuit Court of Lane County, Eugene, Oregon.

Leder, Irvin, 5400 Braesvalley, Houston, Texas, convicted on February 5, 1973, in the 174th District Court of Harris County, Texas.

Lefevers, Frank W., P.O. Box 301, Woodbury, Tennessee, convicted on June 24, 1968, in the United States District Court, Middle District of Tennessee, Nashville, Tennessee.

LeVert, Jerry C., 9–E Shadowood Circle, Birmingham, Alabama, convicted on June 4, 1976, in the Circuit Court, Bessemer Division, Bessemer, Alabama.

Linder, Dennis M., 6339 Mockingbird Lane, Cordova Apartment, Dallas, Texas, convicted on May 10, 1968, in the Criminal District Court, Dallas County, Texas.

Little, John N., Sr., 817 S. Park Avenue, Norristown, Pennsylvania, convicted on March 9, 1967, in the Common Pleas Court (Criminal), Montgomery County, Pennslyvania.

McKenzie, Fred, Jr., 116 Sunset Drive, Montoursville, Pennsylvania, convicted on March 27, 1969, in the Clinton County Court of Common Pleas, Lock Haven, Pennsylvania.

McMillan, Williams S., Jr., 819 Pennsylvania Avenue, Bremerton, Washington, convicted on June 23, 1975, in the United States District Court, Western District of Washington, Seattle, Washington.

McNeal, Willie J., 829 Schenck Avenue, Brooklyn, New York, convicted on July 9, 1968, in the Atlantic County Superior Court, New Jersey.

Mannila, Harry D., Box 843, Ollson Court #7, Keewatin, Minnesota, convicted on September 1, 1966, and on March 5, 1968, in this District Court, St. Louis County, Minnesota.

Marlow, Theodore A., 208 Miriam Avenue, Rockford, Illinois, convicted on April 20, 1943, in the Circuit Court for Winnebago County, Illinois.

Marzani, Leone J., 610 River Street, Peckville, Pennsylvania, convicted on April 26, 1977, in the United States District Court for the Middle District of Pennsylvania.

Meeks, Junior C., Route 2, Holliday Hills, Gordon, Georgia, convicted on June 25, 1957, in the Bibb County Superior Court, Georgia.

Missildine, Hulen F., Route 1, Simms, Texas, convicted on October 13, 1972, in the United States District Court, Eastern Judicial District, Texarkana, Texas.

Morrow, Mark W., Route 4, Box 148, Abilene, Texas, convicted on June 24, 1976, in the 104th Judicial District of Texas, Jones County, Texas.

Nash, Ira P., Route 1, Box 276, Honaker, Virginia, convicted on November 18, 1975, in the United States District Court, District of West Virginia.

Nickelson, James M., 1040 Tee Pee Lane, Perris, California, convicted on December 14, 1973, in the Superior Court, Mendocino County, California.

Oprisko, Myron, 719 Morse Avenue, Simpson, Pennsylvania convicted on July 20, 1977, in the United States District Court, Middle District of Pennsylvania.

Pankey, William L., 2060 Romford Road, Memphis, Tennessee, convicted on April 17, 1972, in the United States District Court, Western District of Tennessee.

Parker, Richard O., 2311 S. Macedonia Avenue, Muncie, Indiana, convicted on October 3, 1961, in the District Court of the 25th Judicial District, Atoka County, Oklahoma.

Perrella, Robert A., 18 Awixa Place, Selden, New York, convicted on May 27, 1929, in the Supreme Court of the State of New York, County of New York.

Perry, Michael G., Route 1, Box 80, Oakfield, Wisconsin convicted on September 11, 1974, in the County Branch #3 Court, Fond du Lac County, State of Wisconsin.

Pirtle, Joe M., Route 1, Box 336, Roanoke, Texas, convicted on August 14, 1974, in the Criminal District Court #1, County of Tarrant, Texas.

Polus, Timothy P., Route 3, Box 98, Fall Creek, Wisconsin, convicted on December 4, 1968, in the Wisconsin County Court, Chippewa County, Wisconsin.

Powell, Ludolph, 929 18th Street, Dallas, Texas, convicted on January 5, 1978 in the 203rd Judicial District Court, Dallas County, Texas.

Prescott, Steven, N–P109, Lake Cherokee, Longview, Texas, convicted on February 3, 1975, in the 51st Judicial District Court of Coke County, Robert Lee, Texas.

Protor, Eugene F., Route 3, Box 40A, Atlanta, Texas, convicted on December 27, 1977, in the United States District Court, Eastern Judicial of Arkansas.

Quackenbush, Paul D., Route 1, Box C320, Wagoner, Oklahoma, convicted on December 20, 1976, in the Muskegee County District Court, Oklahoma.

Rankin, Harold E., 2455 Gulf Street, Beaumont, Texas, convicted on May 16, 1973, in the Jefferson County District Court, Beaumont, Texas.

Reinhart, Dennis A., 5111 Quan Drive, Jacksonville, Florida, convicted on June 12, 1972, in the Jackson County Circuit Court, Browston, Indiana.

Reyes, Elmer F., Jr., 717 Congress, Emporia, Kansas, convicted on April 21, 1969, in the District Court of Garfield County, Oklahoma; and on June 26, 1974, in the District Court of Lyon County, Kansas.

Ricciottie, Armando, 38 Maplewood Avenue, Billerica, Massachusetts, convicted on January 7, 1936, and May 18, 1936, in the Suffolk Superior Court, Boston, Massachusetts.

Ringstaff, Leslie J., 1024 S. 11th Street, Paducah, Kentucky, convicted on May 12, 1955, in the United States District Court, Eastern District of Missouri, Eastern Division, Saint Louis, Missouri.

Rogers, William C., 8109 Idaho Street, Jacksonville, Florida, convicted on July 15, 1952, in the Circuit Court of Florida, Eighth Judicial Circuit, Balser County.

Rush, Charles E., Jr., Route 1, Box 155–E, Woodstock, Virginia, convicted on October 7, 1974, and on February 3, 1975, in the Circuit Court of Shenandoah County, Woodstock, Virginia.

Salazar, Gustave D., 575 Nanticoke Street, Wilkes-Barre, Pennsylvania, convicted on January 16, 1974, and on March 21, 1974, in the Court of Common Pleas, Wyoming County, Tunkhannock, Pennsylvania.

Santana, Rudolph, 25 Aero Avenue, Page, Arizona, convicted on January 26, 1971, in the Superior Court, Mohave County, Arizona.

Sauer, Joseph John, Route 1, Box 126–A, Lachine, Michigan, convicted on June 10, 1971, in the Circuit Court of Alpena County, Michigan.

Sherwood, Roger L., RR #2, Box 222, LaGrange, Missouri, convicted on August 7, 1970, in the Circuit Court in and for Lewis County, Canton, Missouri.

Simon, Hubert C., 5121 SE. 36th, Portland, Oregon, convicted on October 17, 1974, in the United States District Court, Seattle, Washington.

Smith, Jerry L., General Delivery, Heidrick, Kentucky, convicted on January 18, 1974, in the Kentucky Circuit Court, Knox County, Kentucky.

Swanson, Ronny L., 807 Granite, Pawnee, Oklahoma, convicted on April 5, 1976, in the District Court of the Fourteenth Judicial District of the State of Oklahoma.

Spicer, Johnny L., Route 1, Cedar Grove, Tennessee, convicted on January 17, 1968, and on June 21, 1971, in the Circuit Court of Carroll County, Tennessee.

Stemig, Calvin F., Route 1, Box 82, Dresser, Wisconsin, convicted on November 5, 1969, in the District Court, Second Judicial District, County of Ramsey, Minnesota.

Talarico, Robert J., 9650 Maple Hill Road, Duluth, Minnesota, convicted on March 18, 1971, in the Branch No. 3 Court, Douglas County, Wisconsin.

Tarochinone, Alex, 1422 Foxcroft Drive, Muskogee, Oklahoma, convicted on April 19, 1974, in the United States District Court, Eastern District of Oklahoma, Muskogee, Oklahoma.

Taylor, Charles L., Route 2, Box 63, Chewelah, Washington, convicted on October 23, 1975, in the Superior Court, Spokane County, Washington.

Teasley, James E., Route 3, Box 161, Hazlehurst, Mississippi, convicted on August 31, 1972, in the United States District Court for the Northern District of Mississippi.

Terrell, Edward H., Jr., 1540 North LaSalle Terrace, Chicago, Illinois, convicted on December 3, 1973, in the Circuit Court for the Northern District of Illinois.

Theisen, David E., 622 North Fisk Street, Green Bay, Wisconsin, convicted on March 11, 1974, in the Langlade County Court, Wisconsin.

Thibodeaux, Philip J., 204 West Roosevelt Street, Broussard, Louisiana, convicterd on November 28, 1977, in the United States District Court for the Western District of Louisiana.

Thompson, John W., 2826 Reynolds Street, Brunswick, Georgia, convicted on July 26, 1973, in the Superior Court of Glynn County, Brunswick, Georgia.

Thorpe, Thomas B., Jr., 202 East Rio Grande, Garland, Texas, convicted on August 9, 1974, in the Criminal District Court No. 2, Dallas County, Texas.

Tompkins, Wyna, Route 6, Brown Road, Stockbridge, Georgia, convicted on March 3, 1973, in the United States District Court for the Northern District of Alabama, Middle Division.

Tuter, Ronald L., 1310 North Fulbright, Springfield Missouri, convicted on September 30, 1959, in the Superior Court, Napa County, California; on April 12, 1963, in the Circuit Court, Green County, Missouri; and on March 5, 1965, in the District Court, Pottawatomie County, Oklahoma.

Van Dam, John, Jr., 7539 Astronaut Street, Jenison, Michigan, convicted on February 16, 1942, in the Circuit Court, Ottawa County, Michigan.

Vitiello, Gerald A., 23 Club Road, Fairfield, New Jersey, convicted on November 24, 1964, in the United States District Court, Judicial District of Rhode Island.

Wacek, Steve J., 718 Fairmont Avenue, Madison, Wisconsin, convicted on October 5, 1970, in the State of Wisconsin County Court, Columbia County.

Wagonseller, Monnie, 309 East 11th Street, Gibson City, Illinois, convicted on November 15, 1955, in the United States District Court, Eastern District of Illinois, Danville, Illinois.

Walton, James C., Route 2, Box 347, Bertram, Texas, convicted on November 1, 1962, in the 147th Judicial District Court, Travis County, Texas.

Weaver, William J., 1710 South Twyckenham Drive, South Bend, Indiana, convicted on February 14, 1974, in the United States District Court, Northern District of Indiana, South Bend, Indiana.

Wheeler, John G., 821½ Front Street, Leavenworth, Washington, convicted on August 21, 1974, in the Superior Court, Chelan County, Washington.

White, Stanley H., III, 6 Lunn Street, Riverside, Rhode Island, convicted on July 3, 1975, in the Providence County Superior Court, Providence, Rhode Island.

Wilkerson, Lester H., 2211 Ohio Street, Columbus, Indiana, convicted on February 4, 1936, in the Criminal Court, Bartholomew County, Indiana.

Wilkinson, Steven A., 2903 Martin Road, Pascagoula, Mississippi, convicted on June 2, 1975, in the 23rd Judicial District Court in and for the Parish of Ascension, Louisiana.

Williamson, Thomas R., Route 4, Box 160, Sequim, Washington, convicted on September 4, 1973, and on June 9, 1975, in the Superior Court of the State of Washington for the County of Clallam.

Willoughby, George G., 5220 Crown Street, Indianapolis, Indiana, convicted on June 7, 1929, and on July 26, 1929, in the Criminal Court, Marion County, Indiana.

Wysocki, Howard E., 5310 171st Avenue, SE., Snohomish, Washington, convicted on April 11, 1955, in the United States Air Force Military Court, Lowry Air Force Base, Denver, Colorado.

Compliance with Executive Order 12044

This notice of granting of relief does not meet the Department's criteria for significant regulations as set forth in the **Federal Register** of November 8, 1978.

Signed: May 13, 1980.

G. R. Dickerson,

Director.

[FR Doc. 80-15289 Filed 5-16-80; 8:45 am]

BILLING CODE 4810-31-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on June 18, 1980, at 9:00 A.M., the Portland Oregon, Regional Office Station Committee on Educational Allowances, Room 1427, Federal Building, 1220 SW. Third Avenue, Portland, Oregon, will conduct a hearing to determine whether Veterans Administration benefits to all eligible veterans indentured to Metro Electrical JATC, Portland, Oregon, should be discontinued, as provided in 38 CFR 21.4134, as a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: May 8, 1980.

R. J. Vogel,

Director, VA Regional Office.

[FR Doc. 80-15305 Filed 5-16-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 98
Monday, May 19, 1980

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

CONTENTS

	Items
Federal Energy Regulatory Commission	1
Federal Home Loan Bank Board	2
Federal Maritime Commission	3
International Trade Commission	4
National Credit Union Administration	5
National Labor Relations Board	6
National Transportation Safety Board	7
Nuclear Regulatory Commission	8
Occupational Safety and Health Review Commission	9, 10
Securities and Exchange Commission	11

1

FEDERAL ENERGY REGULATORY COMMISSION

May 14, 1980.

TIME AND DATE: 10 a.m., May 21, 1980.

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

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

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

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

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda: however, all public documents may be examined in the Office of Public Information.

Power Agenda—450th Meeting, May 21, 1980, Regular Meeting (10 a.m.)

CAP-1. Project No. 2336, Goergia Power Co.
CAP-2. Docket No. ER80-323, Public Service Co. of Oklahoma.
CAP-3. Docket Nos. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.
CAP-4. Docket Nos. ER77-354 and ER78-14, Missouri Utilities Co.
CAP-5. Docket No. E-9578 (phase II), Texas Power & Light Co.
CAP-6. Docket No. EL80-11, Gulf States Utilities Co.

Miscellaneous Agenda—450th Meeting, May 21, 1980, Regular Meeting

CAM-1. Docket No. RM80- , Discontinuance of PPC form Nos. 12B, 12C, 12E-2, and 12F.
CAM-2. Docket No. RM80- , Revisions of Form No. 1-P, annual report for public utilities and licensees (class C&D) and form No. 2-A, annual report for natural gas companies (class C&D).
CAM-3. Docket No. SA80-8, Wallace Energy Corp.
CAM-4. Docket No. GP80- , State of Oklahoma, section 108 NGPA determination, Amoco Production Co., Purdum unit No. 1, JD80-25602.

Gas Agenda—450th Meeting, May 21, 1980, Regular Meeting

CAG-1. Docket No. RP80-88, Northern Natural Gas Co.
CAG-2. Docket No. TA80-1-15 (PGA 80-2) (IPR80-2) (TT80-1) and (LFUT80-1), Mid-Louisiana Gas Co.
CAG-3. Docket Nos. AR61-2, AR69-1 et al., RP67-23, RP71-6 et al., G-11980, et al., and RP73-114, Tennessee Gas Pipeline Co.
CAG-4. Docket No. RP80-75, Southern Natural Gas Co.
CAG-5. Docket No. RP79-5, Texas Eastern Transmission Corp.
CAG-6. Docket No. RP78-87, Texas Eastern Transmission Corp.
CAG-7. Docket No. RP79-59, Colorado Interstate Gas Co.
CAG-8. Docket No. RP78-36, Southern Natural Gas Co.
CAG-9. Docket No. RP72-6 (gas turbines et al.), El Paso Natural Gas Co.; Docket No. RP77-113, El Paso Natural Gas Co.; Docket No. RP77-135-1, El Paso Natural Gas Co. (City of Denver, Tex.); Docket No. RP77-135-2, El Paso Natural Gas Co. (Community Public Service Co.).
CAG-10. FERC gas rate schedule No. 41, Placid Oil Co.
CAG-11. Docket Nos. CS71-322 et al., Cotton Petroleum Corp. (Cotton Petroleum Co.); Docket No. CI77-752, Supron Energy Corp.; Docket No. CS73-268, Home Petroleum Corp.; Docket No. CI79-37, Phillips Petroleum Co.; Docket Nos. G-4880 et al., Diamond Shamrock Corp. et al.; Docket No. CI77-420, Canadian Superior Oil (U.S.) Ltd.; Docket No. CI72-255, Getty Oil Co.; Docket No. CI77-263, Gulf Oil Corp.; Docket No. CI77-165, Highland Resources, Inc.; Docket No. CI77-315, Hunt Oil Co.; Docket No. CI77-354, Hunt Petroleum Corp.; Docket No. CI77-137, Placid Oil Co.; Docket No. CI77-326, The Superior Oil Co.; Docket No. CI72-398, Transocean Oil, Inc.; Docket No. CI80-253, Diamond Shamrock Corp.; Docket No. CI78-281, Highland Resources, Inc.; Docket No. CI80-183, Getty Oil Co.
CAG-12. Docket No. CI77-263, Gulf Oil Corp.; FERC gas rate schedule No. 624, Gulf Oil Corp.; FERC gas rate schedule No. 599, Gulf Oil Corp.; FERC gas rate schedule No. 272, Gulf Oil Corp.; Docket No. CI79-552, Exxon Corp.; Docket No. CI79-553, Exxon Corp.
CAG-13. Docket No. CI61-524, Shell Oil Co. (operator).
CAG-14. Docket Nos. CP77-1, CP76-297, CP76-274, CP76-121, CP75-271, and CP74-92, McCulloch Interstate Gas Corp.; Docket Nos. CP76-494 and CP74-62, Colorado Interstate Gas Co.; Docket Nos. CP76-259 and CP74-64, Mountain Fuel Supply Corp.; Docket Nos. CI77-163 and CI77-164, McCulloch Gas Processing Co.
CAG-15. Department of Transportation Docket No. OPSO-46, proposed Department of Transportation safety standards governing the operation, maintenance, fire protection, and corrosion control of LNG facilities.
CAG-16. Docket No. CP77-71, Natural Gas Pipeline Co. of America; Docket No. CP77-118, Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Docket No. CP77-125, Texas Gas Transmission Corp.
CAG-17. Texas Eastern Transmission Corp.
CAG-18. Docket No. CP80-14, Columbia Gas Transmission Corp.
CAG-19. Docket No. CP80-261, Panhandle Eastern Pipe Line Co.
CAG-20. Docket No. CP80-206, Northern Natural Gas Co.
CAG-21. Docket No. CP80-244, Northern Natural Gas Co.
CAG-22. Docket No. CP80-196, Texas Gas Transmission Corp.
CAG-23. Docket No. CP80-40, Colorado Interstate Gas Co.; Docket No. CP80-87, Mountain Fuel Supply Co.
CAG-24. Docket No. CP80-63, Northern Natural Gas Co.
CAG-25. Docket No. CP79-393, Transcontinental Gas Pipe Line Corp., Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.
CAG-26. Docket No. CP69-180, Cities Service Gas Co.
CAG-27. Docket No. CP75-217, Northern Natural Gas Co.; Docket No. CP75-222, Kansas-Nebraska Natural Gas Co., Inc.
CAG-28. Docket No. CP79-393, Transcontinental Gas Pipe Line Corp., Columbia Gas Transmission Corp., and Columbia Gulf Transmission Co.

Power Agenda—450th Meeting, May 21, 1980, Regular Meeting

I. Electric Rate Matters

ER-1. Docket No. ER80-225, Delmarva Power & Light Co.
ER-2. Docket No. ER80-315, Kanasas City Power & Light Co.
ER-3. Docket No. ER80-259, Kansas Gas & Electric Co.
ER-4. Docket Nos. ER80-327 and ER80-328, Georgia Power Co.
ER-5. Docket No. ER80-313, Public Service Co. of New Mexico.

ER–6. Docket Nos. ER78–337 and ER78–338 (phase II), Public Service Co. of New Mexico.
ER–7. Docket No. ER79–339, Arkansas Power & Light Co.
ER–8. Docket No. ER76–530, Arizona Public Service Co.
ER–9. Docket No. E7777(II), Pacific Gas & Electric Co.; Docket No. E–7796, Pacific Power & Light Co.
ER–10. Docket No. E–9563, U.S. Department of the Interior, Bonneville Power Administration.
ER–11. Docket No. EL80–12, Boston Edison Co.

Miscellaneous Agenda—450th Meeting, May 21, 1980, Regular Meeting

M–1. Docket No. OF80–1, Lawrence Hydroelectric Associates.
M–2. Reserved.
M–3. Reserved.
M–4 Docket No. RM80–6, pricing of pipeline and affiliate production under the Natural Gas Act.
M–5 Docket No. RM80–7, final rule governing the maximum lawful price for pipeline, distributor or affiliate production.
M–6 Docket No. RM80–11, distributor access to outer Continental Shelf gas.
M–7 Docket No. RM79–40, alternative boiler fuel.

Gas Agenda—450th Meeting, May 21, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP75–106 (Appalachian Production), Columbia Gas Transmission Co.

II. Producer Matters

CI–1. Docket No. RI73–60, Mitchell Energy Corp.

III. Pipeline certificate matters

CP–1. Docket No. CP–76–448, National Fuel Gas Distribution Corp.
CP–2. Docket No. CP–80–170, Texas Eastern Transmisison Corp.; Docket No. CP80–223, Consolidatred Gas Supply Corp.; Docket No. CP80–255, Algonquin Gas Transmission Co.
CP–3. Docket No. CP–80–145, Eastern Shore Natural Gas Co.
CP–4. Docket Nos. CP–75–140, et al., Pacific Alaska LNG Co., et al.; Docket Nos. CP74–160, et al., Pacific Indonesia LNG Co. et al.; Docket No. CI78–453, Pacific Lighting Gas Development Co.; Docket No. CI78–452, Pacific Simpco Partnership.

Kenneth F. Plumb,

Secretary.

[S–987–80 Filed 5–14–80; 4:41pm]

BILLING CODE 6450–85–M

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., May 22, 1980.

PLACE: 1700 G Street NW., Amphitheater, second floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Marshall (202–377–6677).

MATTERS TO BE CONSIDERED:

Application for Branch Office—Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma.
Application for Branch Office—North West Federal Savings and Loan Association of Chicago, Chicago, Illinois.
Merger—Ephrata Building and Loan Association, Ephrata, Pennsylvania INTO Conestoga Savings and Loan Association, Lancaster, Pennsylvania.
Merger—The Standard Savings and Loan Company, Bexley, Ohio INTO Licking County Savings and Loan Association, Newark, Ohio.
Merger—Potomac Savings and Loan Association, Reston, Virginia INTO Family Savings and Loan Association of Virginia, Springfield, Virginia.
Merger—Boyertown Savings and Loan Association, Boyertown, Pennsylvania INTO Great Valley Savings Association, Reading, Pennsylvania.
Merger—First Federal Savings and Loan Association of Oglesby, Oglesby, Illinois INTO Bloomington Federal Savings and Loan Association, Bloomington, Illinois.
Merger—Fidelity Federal Savings and Loan Association, Huntsville, Alabama INTO First Southern Federal Savings and Loan Association, Mobile, Alabama.
Application for Bank Membership—Norwalk Savings Society, Norwalk, Connecticut.
Application for Bank Membership—Suffolk Franklin Savings Bank, Boston, Massachusetts.
Application for Bank Membership—Quincy Savings Bank, Quincy, Massachusetts.
Application for Bank Membership—Washington Savings Bank, Hoboken, New Jersey.
Amendment to FHLBB Resolution, Applications for Bank Membership and Insurance of Accounts—Escondido Savings and Loan Association, Escondido, California.
Permission to Organize a New Federal Association—Roy V. Evans, et al., New Orleans, Louisiana.
Permission to Organize a New Federal Association—Kevin C. Schoenberger, et al., New Orleans, Louisiana.
Permission to Organize Application—Manuel A. Fernandez, et al., Chalmette, Louisiana.
Request for Modification of Condition—Beneficial Corporation, Wilmington, Delaware.

No. 346, May 15, 1980.

[S–989–80 Filed 5–15–80; 2:28 pm]

BILLING CODE 6720–01–M

3

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 31856, May 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 19, 1980.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session: 10. Docket No. 80–15: Rules of Practice and Procedure Proceedings Under the Intercoastal Shipping Act—Consideration of comments received in response to notice of proposed rulemaking.

[S–995–80 Filed 5–15–80; 3:29 pm]

BILLING CODE 6730–01–M

4

[USITC SE–80–30]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10:00 a.m., Thursday, May 29, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Tantalum electrolytic capacitors (Inv. AA1921–159)—reconsideration of determination.
6. Tomatoes (Inv. 701–TA–42 through –50)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–992–80 Filed 5–15–80; 3:21 pm]

BILLING CODE 7020–02–M

5

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 1 p.m., Thursday, May 22, 1980.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review Central Liquidity Facility Lending Rates.
2. Long Range Plan.
3. Report on actions taken under delegations of authority.
4. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

[S–991–80 Filed 5–15–80; 2:28 pm]

BILLING CODE 7535–01–M

6

NATIONAL LABOR RELATIONS BOARD.

TIME AND DATE: 10 a.m., Monday, May 19, 1980.

PLACE: Board Conference Room, sixth floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: SES bonuses.

CONTACT PERSON FOR MORE INFORMATION: Robert Volger, Acting Executive Secretary, Washington, D.C. 20570, telephone: (202) 254–9430.

Dated: Washington, D.C., May 15, 1980.

By direction of the Board.

George A. Leet,

Associate Executive Secretary, National Labor Relations Board.

[S–990–80 Filed 5–15–80; 2:28 pm]

BILLING CODE 7545–01–M

7

[NM–80–22]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 10 a.m., Wednesday, May 28, 1980.

PLACE: NTSB board room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—COMAIR, Inc., Piper PA–31, N6642L, Covington, Kentucky, October 8, 1979.
2. *Aircraft Accident Report*—Eastern Airlines, Inc., Boeing 727–25, N1839, Atlanta Hartsfield International Airport, Georgia, August 22, 1979.
3. *Aircraft Accident Report*—Nevada Airlines, Inc., Martin 404, N40438, Tusayan, Arizona, November 16, 1979.
4. *Marine Accident Report*—Collision of S/T MOBIL VIGILANT and the S/T MARINE DUVAL on the Neches River near Beaumont, Texas, February 25, 1979, and *Recommendations* to the United States Coast Guard and Sabine Pilots.
5. *Recommendation* to the Federal Aviation Administration re inadequate dissemination of weather advisories to aircraft operating in the vicinity of airports.

CONTACT PERSON FOR MORE INFORMATION: SHARON FLEMMING 202–472–6022.

May 15, 1980.

[S–994–80 Filed 5–15–80; 3:29 pm]

BILLING CODE 4910–58–M

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, May 21, 1980.

PLACE: Chairman's conference room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

2 p.m.

Discussion of Management-Organization & Internal Personnel Matters (approximately 2 hours, closed—exemptions 2 and 6).

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

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

Note.—Recorded message contains schedule for next several days. Those planning to attend a meeting should reverify the status on the day of the meeting.

May 14, 1980.

Roger M. Tweed,

Office of the Secretary.

[S–993–80 Filed 5–15–80; 3:21 pm]

BILLING CODE 7590–01–M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 28853, April 30, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 15, 1980.

CHANGES IN THE MEETING: This meeting will *commence at 9 a.m. on May 15, 1980.*

Dated: May 14, 1980.

[S–986–80 Filed 5–14–80; 4:40 pm]

BILLING CODE 7600–01–M

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 28853, April 30, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 21, 1980.

CHANGES IN THE MEETING: This meeting has been *rescheduled for May 22, 1980,* at 10 a.m.

Dated: May 14, 1980.

[S–985–80 Filed 5–14–80; 4:40 pm]

BILLING CODE 7600–01–M

11

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 May 19, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meeting will be held on Tuesday, May 20, 1980, at 10 a.m. An open meeting will be held on Thursday, May 22, 1980, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. 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 meeting 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)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis and Evans determined to hold the aforesaid meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 20, 1980, at 10 a.m., will be:

Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Litigation matter.
Freedom of Information Act appeals.
Freedom of Information Act and Privacy Act appeal.
Institution of injunctive action.
Opinion.
Administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, May 22, 1980, at 10:00 a.m., will be:

1. Consideration of whether to issue a release adopting an amendment to subsection (i) of Rule 15c3–3 under the Securities Exchange Act of 1934 eliminating the requirement that the Securities Investor Protection Corporation be informed of a broker or dealer's failure to make a necessary deposit to his reserve bank account or special account. For further information, please contact JoAnn Zuercher at (202) 272–2368.
2. Consideration of whether to adopt proposed amendments to Securities Exchange Act Rules 12f–1 and 12f–3 [17 CFR 240.12f–1, 12f–3] to require persons filing applications for an extension, suspension, or termination of unlisted trading privileges to certify that notice of such applications has been given to certain persons specified by Section 12(f)(5) of the Act. For further information, please contact Susan M. Wilk at (202) 272–2824.
3. Consideration of whether to grant the application of Paul R. Dupee, Jr., pursuant to Section 9(c) of the Investment Company Act of 1940, for an exemption from the provisions of Section 9(a) of the Act arising from a Final Judgment against Dupee by the United States District Court for the Southern District of New York in an enforcement action instituted

by the Commission. For further information, please contact Gary Sundick at (202) 272–2344.

4. Consideration of whether to amend Rule 17g–1 under the Investment Company Act of 1940, to define the terms "officer" and "employee" for the purposes of fidelity bonding. For further information, please contact Marsha Gilman at (202) 272–3036.

5. Consideration of whether to issue an interpretative release regarding the appropriate disclosure in solicitation materials incident to proxy contests of shareholders realizable value when disposition of the issuer's assets or outstanding stock is proposed. For further information, please contact Mary A. Binno, at (202) 272–2604.

6. Consideration of whether to grant the application of Gerald J. Kathol for relief pursuant to Rule 252(f) of Regulation A. For further information, please contact Thomas J. Baudhuin at (202) 272–2644.

7. Consideration of whether to publish a final statement concerning the Commission's consumer affairs activities. For further information, please contact Ann C. Stansbury at (202) 523–3952.

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: Paul Lowenstein at (202) 272–2091.

May 14, 1980.

[S–988–80 Filed 5–15–80; 10:57 am]

BILLING CODE 8010–01–M

Reader Aids

Federal Register

Vol. 45, No. 98

Monday, May 19, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO) "Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266 -5282	Public Law Numbers and Dates, Slip Laws, U.S. Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, MAY

29001-29262.....1
29263-29554.....2
29555-29780.....5
29781-30058.....6
30059-30414.....7
30415-30610.....8
30611-31044.....9
31045-31290.....12
31291-31694.....13
31695-31926.....14
31927-32286.....15
32287-32654.....16
32655-33588.....19

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 80-16 of Apr. 14, 1980 (Amended by Presidential Determination No. 80-18 of May 2, 1980).....20787
No. 80-17 of May 2, 1980.....20785
No. 80-18 of May 1, 1980.....20787

Executive Orders:

12169 (Amended by EO 12213).....29781
12212.....29557
12213.....29781
12214.....29783

Proclamations:

4754.....29555
4755.....30059
4756.....30415
4757.....31695
4758.....31927
4759.....32655

4 CFR

418.....31929

5 CFR

300.....29530
351.....29263
891.....30611

Proposed Rules:

351.....31379
412.....29300
532.....31382
550.....31379

6 CFR

706.....31935
707.....31935

Proposed Rules:

Ch. VII.....30445

7 CFR

2.....30417, 31697
25.....30417
210.....32502
319.....31572
418.....29001
419.....29001
421.....29001
600.....30061
799.....32312
907.....29002, 30418, 31698, 31953
908.....29002, 30418, 31953
910.....29265, 30612, 32308
916.....32308
917.....32309
918.....29003
928.....29559
953.....31045
1124.....29559
1280.....32572
1421.....31699
1425.....31699
1430.....30419
1464.....32311
1701.....32312
1945.....29265
1980.....29265
2880.....31692

Proposed Rules:

Subtitle A.....32192
Ch. I.....32192
Ch. II.....32192
Ch. III.....32192
Ch. IV.....29056, 32192
Ch. V.....32192
Ch VI.....32192
Ch. VII.....32192
Ch. IX.....32192
Ch. X.....32192
Ch. XI.....32192
Ch. XII.....32192
Ch. XIV.....29302, 32192
Ch. XV.....32192
Ch. XVI.....32192
Ch. XVII.....32192
Ch. XVIII.....32192
Ch. XXI.....32192
Ch. XXIV.....32192
Ch. XXV.....32192
Ch. XXVI.....32192
Ch. XXVII.....32192
Ch. XXVIII.....32192
Ch. XXIX.....32192
29.....30080
401.....29056
427.....30445
437.....29056
760.....31393
800.....32284
810.....30446
908.....29063
911.....31726
913.....30638
915.....29843
944.....29843, 31726
953.....29846
971.....32319
991.....30447
1002.....32321
1036.....30638
1071.....30447
1073.....30447
1097.....30447
1102.....30447
1104.....30447
1106.....30447

1108.....30447
1120.....30447
1126.....30447
1132.....30447
1138.....30447
1207.....31118
1701.....29847
1804.....30364
1930.....30364
1944.....30364
2859.....30980

8 CFR

101.....32657
103.....32657
204.....32657
211.....32657
223.....32657
223a.....32657
231.....32657
239.....29243
245.....32657
246.....32657
247.....32657
249.....32657
261.....32657
264.....32657
299.....32657

Proposed Rules:

211.....29848, 30062
214.....29848
242.....30063

9 CFR

50.....32287
78.....29267
82.....30612
92.....29268
94.....29270

Proposed Rules:

Ch. I.....32192
Ch. II.....32192
Ch. III.....32192
Ch. IV.....32192
92.....29302
308.....30980
381.....30980

10 CFR

35.....31701
50.....30614
212.....29546
798.....31604
1024.....29764

Proposed Rules:

Ch. II.....30448
Ch. III.....30448
Ch. X.....30448
20.....31118
60.....31393
205.....32322
211.....29770, 31682, 32003
212.....29553, 32003
461.....31408
486.....32560

11 CFR

4.....31291
5.....31292

Proposed Rules:

140.....32003
141.....32003
142.....32003
143.....32003
144.....32003
145.....32003
146.....32003
9001.....32003
9002.....32003
9003.....32003
9004.....32003
9005.....32003
9006.....32003
9007.....32003
9009.....32003

12 CFR

VII.....32290
205.....31705
303.....30616
309.....31294
524.....31045
528.....31954
545.....31046, 32288
561.....31050
701.....29270
1201.....31706
1202.....32288
1203.....31707
1204.....31710

Proposed Rules:

Ch. V.....31119
211.....30081-30082
225.....30082
226.....29702
523.....31727
545.....31727
556.....31121
563.....31408
590.....13122
1204.....32323

13 CFR

Proposed Rules:

Ch. I.....30338
108.....31410
304.....30320
305.....30320
306.....30320
307.....30320
308.....30320
315.....30320

14 CFR

39.....29004, 29005, 29007, 29008, 29560-29562, 30421, 31052, 32659
71.....29009, 29563, 29564, 30422, 31053, 31971, 32661
73.....30424, 31974
97.....29565, 31974
121.....30424, 31057
183.....32668
231.....31059
249.....31059
250.....30063
380.....32669
385.....30065

Proposed Rules:

Ch. I.....31125, 32700
39.....30448, 32011
71.....29063, 30449, 31128, 32702
75.....30452
121.....29064
127.....29064
135.....29064
152.....30398
199.....30398
221.....31411
250.....30086, 31413
385.....31411

15 CFR

30.....29567
369.....29010
385.....29568, 30617
399.....29568, 30617
502.....29271
503.....29272

16 CFR

13.....29010, 31712, 31979
1025.....29206

Proposed Rules:

13.....30650, 31416
1512.....32705

17 CFR

15.....30426, 31713
230.....29275

Proposed Rules:

21.....31731
229.....31733
230.....29847
240.....29853, 30454, 31418, 31733
270.....29067

18 CFR

1.....31059
35.....31294
141.....30066
154.....29011
260.....30066
270.....29569
271.....29569
273.....30068
282.....29573, 31300, 31622, 31980

Proposed Rules:

Ch.I.....31743
2.....31744
271.....31744
273.....31418

19 CFR

6.....29247
200.....31988
353.....30618
355.....30619

20 CFR

Proposed Rules:

655.....29854

21 CFR

101.....29275
201.....32550
202.....32550
207.....32393
250.....31303
520.....31304, 32294
522.....29275, 29789
540.....29276, 32294
561.....32295
610.....32296
660.....32296

Proposed Rules:

70.....32324
109.....30984
110.....30984
182.....29304, 32324
184.....29304, 32324
225.....30984
226.....30984
330.....31422
349.....30002
500.....30984
509.....30984
680.....29305
1030.....29307

22 CFR

143.....31713
51.....30619

23 CFR

663.....29015

Proposed Rules:

420.....30398
450.....30398
630.....30398
1204.....30398

24 CFR

411.....1880
203.....29277, 29573, 30602, 31716
204.....30602, 31716
213.....29277, 30602
220.....30602
221.....29277, 30602, 31894
227.....29277
234.....29277, 30602
235.....29277, 30602
275.....29279
841.....29279
865.....30346
868.....30349
885.....31990
3280.....29539

Proposed Rules:

203.....29855
215.....31132
234.....29855
241.....30352
570.....30328, 31262
571.....30455
600.....30330

25 CFR

11.....29790

Proposed Rules:

55b.....30302
172.....29070

26 CFR

Proposed Rules:

1.....29308
48.....29309

28 CFR

0.....31061
16.....32670
45.....29574, 31717
50.....29530

Proposed Rules:

42.....32710

29 CFR

56.....29280
1607.....29530

Proposed Rules:

Ch. XII.....29590

30 CFR

57.....32300

250 29280

Proposed Rules:

Ch. VII 29072, 29309-29311, 29855, 32328
19 32557
70 31426
71 31426
90 31426
211 32715
250 29309
715 32331
716 ..... 30651, 32331
816 32331
817 32331
826 32331
886 30382

31 CFR

13 30619
342 32301
51 29530
515 32671
535 29287

32 CFR

Ch. I 30623
555 32302
706 ..... 31116, 32671
811a 32301
880 31113

Proposed Rules:

286b 29590
1900 29855

33 CFR

Ch. II 32302
100 ..... 30430, 31991
110 ..... 30431, 32672
117 29020
165 ..... 29020, 30436
207 31061

Proposed Rules:

110 29593
117 ..... 29593, 29594, 31132
140 29072
141 29072
142 29072
143 29072
144 29072
145 29072
146 29072
147 29072
157 29087

34 CFR

Subtitle A 30802
Ch. I 30802
Ch. II 30802
Ch. III 30802
Ch. IV 30802
Ch. V 30802
Ch. VI 30802
Ch. VII 30802
Ch. VIII 30802

36 CFR

7 ..... 32228, 32234
61 30623
1201 30623
216 29289

Proposed Rules:

Ch. I 30414
Ch. II 32192
7 31752
50 29856
223 30652
1207 30378

38 CFR

3 31717
21 31062
36 ..... 29292, 31063

Proposed Rules:

17 30392
36 30370

39 CFR

111 32305
267 30069

40 CFR

51 31304
52 ..... 29293, 29790, 30069 30626, 31304, 32674
81 30070
86 31719
122 ..... 29589, 33290, 33516
123 ..... 33290, 33516
124 ..... 33290, 33516
125 ..... 29589, 33290, 33516
180 ..... 29802-29803, 31312, 32305
205 30630
260 33066
261 33084
262 33140
263 33150
264 33154
265 33154
408 32675
415 31992
775 32676

Proposed Rules:

35 30374
51 30088
52 ..... 29312, 29313, 29595, 29596, 29864, 30089, 30456, 30654, 32333, 32743
81 30091
167 29597
169 29597
180 ..... 29597, 32338, 32743
258 30095
261 33136
264 33260
265 ..... 33260, 33280
761 30989

41 CFR

Ch. 101 ..... 29294, 31313
1 30633
3-1 ..... 31721, 32306
3-7 32306
5-1 ..... 29574, 29575
5A 30633
5A-1 29574
5B-1 29576
5B-2 29576
5B-7 29576
5B-16 29576
14R-9 31066
18 30633
60-3 29530
101-26 ..... 31315, 31992
105-61 29577

Proposed Rules:

Ch. 4 32192
101-11 32012

42 CFR

54a 31094
57 29803
110 31721

Proposed Rules:

405 29535
420 30634
440 20535
447 30634
456 29535
462 30634
482 29535

Proposed Rules:

405 30655

43 CFR

34 31095
35 30140
2650 31110
3100 30056
9260 31276

Public Land Orders:

5309 (Amended by PLO 5724) 31993
5716 (corrected by PLO 5725) 31722
5719 29021
5720 31315
5721 29295
5722 31316
5723 31722
5724 31993
5725 31722

Proposed Rules:

9 31284
2650 30606
2920 31284
3809 31284

44 CFR

64 31316
65 ..... 29021, 31318, 32000
67 ..... 29577, 31993
70 ..... 29807-29830, 30071, 30076
76 32687

Proposed Rules:

67 ..... 29090, 29313-29323, 29598, 31133, 31427, 31754 32339

45 CFR

104 30635
163c 29588
185 32586
205 29831
235 29831
1061 32690

Proposed Rules:

Ch. X 30457
100a 30386
100b 30386
1069 ..... 31133, 32744
1385 31006
1386 31006
1387 31006

46 CFR

33 29588
35 29588
71 29588
75 29588
78 29588
91 29588
94 29588
97 29588
148 31110
160 29588
189 29588
192 29588
196 29588
252 30439
530 31722

Proposed Rules:

261 30410
276 29610
536 ..... 29323, 31139
538 ..... 29323, 31139

47 CFR

0 ..... 29835, 31722
64 ..... 31319, 32001
76 31723
90 30637
22 29023
73 29835-29840
90 29297

Proposed Rules:

Ch. I 30052
2 ..... 29323, 32013
21 ..... 29323, 29335, 29350
22 32013
61 29865
73 ..... 29865-29872, 30094, 30656, 31139, 32028, 32744
74 ..... 29323, 29350
87 31764
94 ..... 29323, 29350

48 CFR

Proposed Rules:

4 29612

49 CFR

107 32690
171 32692
173 32692
174 32692
175 32690
177 32692
220 30443
510 ..... 29032, 32001
571 29045
635 ..... 30444, 32699
1021 31374
1022 31374
1033 ..... 29048-29054, 29840-29841, 31111, 31375, 31724
1131 31374
1131a 31374
1201A 31110

Proposed Rules:

173 32030
177 32030
258 30398
260 30398
266 30398
571 29102
1033 32745
1045 31139
1056 31766
1102 29102
1254 31767
1262 30659
1270 29104
1271 29104
1272 29104
1273 29104
1274 29104

1275.....29104
1276.....29104
1277.....29104
1278.....29104
1279.....29104
1320.....31766
1321.....31766
1322.....31766
1323.....31766
1324.....31766

50 CFR

12.....31725
26.....30077
33.....29841
227.....29054
611.....31377, 32001
651.....32699
655.....32001
656.....32002
661.....29250
671.....31112
674.....30444

Proposed Rules:

17.....29370, 29371, 29373, 31446, 32348
23.....32353
216.....29375

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/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

26044 4–17–80 / Control of air pollution from new motor vehicles and new motor vehicle engines; voluntary abbreviated certification review program

FEDERAL EMERGENCY MANAGEMENT AGENCY

26052 4–17–80 / Disaster assistance: Reimbursement of other Federal agencies

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

28085 4–28–80 / Exemptions of small conduit hydroelectric facilities from Part 1 of the Federal Power Act

FEDERAL TRADE COMMISSION

66466 11–19–79 / Rule for using energy costs and consumption information used in labeling and advertising for consumer appliances under the Energy Policy and Conservation Act

[Corrected at 44 FR 75133, 12–19–79]

GENERAL SERVICES ADMINISTRATION

27762 4–24–80 / Procurement; revised data requirement

NUCLEAR REGULATORY COMMISSION

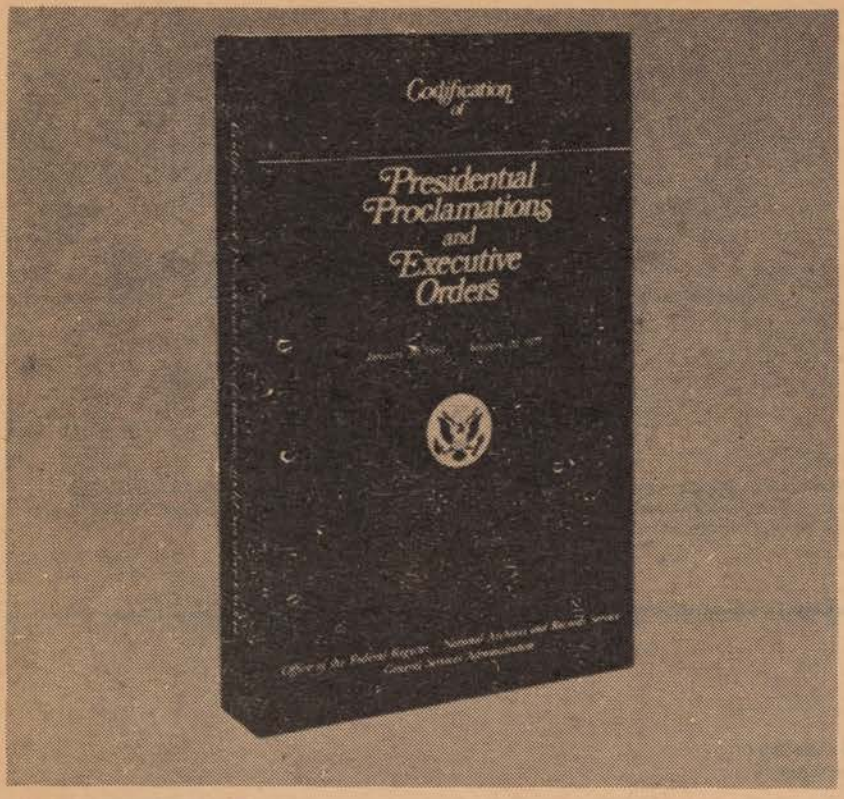
14476 3–5–80 / Access to and protection of National Security Information and restricted data

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 May 8, 1980

NEW PUBLICATION NOW AVAILABLE



For those of you who must keep informed about Presidential proclamations and Executive orders, there is now a convenient reference source that will make researching certain of these documents much easier.

Arranged by subject matter, this first edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period January 20, 1961, through January 20, 1977, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1961–1977 period, along with any amendments, an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

MAIL ORDER FORM To:

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ _____ ☐ *check,* ☐ *money order, or charge to my*

Deposit Account No. ☐☐☐☐☐☐☐–☐ *Order No.* _____

master charge

VISA

Credit Card Orders Only

Total charges $ _____. Fill in the boxes below:

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Master Charge Interbank No. ☐☐☐☐

FOR OFFICE USE ONLY	
Quantity	Charges
Enclosed	
To be mailed	
Subscriptions	
Postage	
Foreign handling	
MMOB	
OPNR	
UPNS	
Discount	
Refund	

Please send me _____ *copies of the* ***Codification of Presidential Proclamations and Executive Orders*** *at $6.50 per copy. Stock No. 022-002-00060-1*

NAME—FIRST, LAST

COMPANY NAME OR ADDITIONAL ADDRESS LINE

STREET ADDRESS

CITY STATE ZIP CODE

(or) COUNTRY

PLEASE PRINT OR TYPE

5-19-80
Vol. 45—No. 98
BOOK 2:
PAGES
33063-33285

federal register

Book 2 of 3 Books
Monday, May 19, 1980

ENVIRONMENTAL PROTECTION AGENCY
Hazardous Waste Management System

33066 Part II
Hazardous Waste Management System; General

33084 Part III
Identification and Listing of Hazardous Waste

33136 Part IV
Proposal To Modify 40 CFR Part 261—Hazardous Waste Lists

33140 Part V
Standards Applicable to Generators of Hazardous Waste

33150 Part VI
Standards Applicable to Transporters of Hazardous Waste

33154 Part VII
Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

33260 Part VIII
Proposal To Modify 40 CFR Part 265—Subpart H—Financial Requirements

33280 Part IX
Proposal To Modify 40 CFR Part 265—Subpart R—Underground Injection

Digitized by Google

federal register

Monday
May 19, 1980

Part II

Environmental Protection Agency

Hazardous Waste Management System: General

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL 1395-7]

Hazardous Waste Management System: General

AGENCY: Environmental Protection Agency.

ACTION: Revisions to final rule and interim final rule and request for comments.

SUMMARY: Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), directs the Environmental Protection Agency (EPA) to promulgate regulations to protect human health and the environment from the improper management of hazardous waste. The first phase of EPA's regulations implementing this directive are contained in Parts 262 and 263 of this chapter (which were promulgated on February 26, 1980) and Parts 261, 264, 265, 122, 123, and 124 of this chapter (which are being promulgated today).

This regulation (Part 260) sets forth definitions of words and phrases which appear in Parts 261 through 265 and contains provisions which are generally applicable to all those regulations. It was originally published on February 26, 1980, concurrent with the promulgation of EPA's Part 262 and 263 regulations. It is now being amended to add new provisions required by today's publication of Parts 261, 264 and 265 and to revise one of the definitions published in February.

DATES: Effective date: November 19, 1980. Comment date: For the interim final portions of this regulation, public comments will be accepted until July 18, 1980.

ADDRESSES: Comments on interim final portions should be sent to Docket Clerk [Docket No. 3000], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The public docket for this regulation is located in Room 2711 of the above address, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Single copies of these regulations will be available approximately 30 days after publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

For information on the implementation of these regulations, contact the EPA Regional Offices below:

Region I—Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203 (617) 223-5777;

Region II—Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007 (212) 264-0504/5;

Region III—Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106 (215) 597-0980;

Region IV—James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street N.E., Atlanta, Georgia 30365 (404) 881-3016;

Region V—Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6148.

Region VI—R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270 (214) 767-2645

Region VII—Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106 (816) 374-3307

Region VIII—Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203 (303) 837-2221

Region IX—Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105 (415) 556-4606

Region X—Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101 (206) 442-1260

FOR FURTHER INFORMATION CONTACT: John P. Lehman, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460 (202) 755-9185.

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is issued under the authority of Sections 1006, 2002(a), 3001 through 3007, 3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, and 6974.

II Background

Subtitle C of RCRA establishes a Federal program to provide comprehensive regulation of hazardous waste. When fully implemented, this program will provide "cradle-to-grave" regulation of hazardous waste. Section 3001 of Subtitle C directs EPA to identify the characteristics of and to list those hazardous wastes which are subject to regulation under Subtitle C. Sections 3002 and 3003 require EPA to establish standards for generators and transporters of hazardous waste which will ensure proper recordkeeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to properly permitted treatment, storage, and disposal facilities. To ensure that these facilities are designed, constructed, and operated in a manner which protects human health and the environment, Section 3004 of RCRA directs EPA to promulgate technical, administrative, monitoring, and financial standards for them. These independently enforceable standards will be used by EPA to issue permits to owners and operators of facilities under Section 3005. For those States interested in administering the RCRA program instead of EPA, Section 3006 requires the Agency to issue guidelines under which States may seek authorization to carry out the program. Finally, under Section 3010, all persons engaging in activities subject to control under Sections 3002 through 3004 above must notify EPA or States having authorized RCRA hazardous waste programs.

Early this year, EPA began issuing the regulations which comprise the Subtitle C hazardous waste management system. On February 26, 1980, it promulgated standards for generators and transporters of hazardous waste under Sections 3002 and 3003 of RCRA, respectively (Parts 262 and 263), and issued a public notice establishing procedures for filing a notice of hazardous waste activity under Section 3010. Today EPA is publishing permit procedures and guidelines for the approval of State hazardous waste programs under Sections 3005 and 3006, respectively (Parts 122, 123, and 124), and the first phase of its Section 3001 hazardous waste list and characteristics and Section 3004 facility standards (Parts 261, 264, and 265). As discussed in the preambles to those two latter regulations, EPA expects to be amending its Sections 3001 and 3004 regulations later this year to bring additional wastes into the hazardous waste management system and to add additional facility standards.

Table 1 below, shows where each of these regulations appears in the **Federal Register.**

Table 1[1]

40 CFR	Corresponding RCRA section and descriptive title	Federal Register date
Part:		
260	Definitions used in other Parts corresponding to the Sections 3001 through 3004 rules, and general provisions applicable to these Parts.	5/19/80 Part II.
261	Section 3001: Identification and Listing of Hazardous Waste.	5/19/80 Part III.
262	Section 3002: Standards Applicable to Generators of Hazardous Waste.	5/19/80. Part V.
263	Section 3003: Standards Applicable to Transporters of Hazardous Waste.	5/19/80. Part VI.
264	Section 3004: Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	5/19/80. Part VII.
265	Section 3004: Interim Status Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	5/19/80 Part VII.
122 and 124.	Section 3005: Permits for Treatment, Storage, and Disposal of Hazardous Waste.	5/19/80 Part X.
123	Section 3006: Guidelines for Authorized State Hazardous Waste Programs.	5/19/80. Part X.
.....	Section 3010: Preliminary Notification of Hazardous Waste Activity.	2/26/80. (45 FR 12746)

[1] This table is self-explanatory except for that portion of it dealing with section 3004 of RCRA. There are three groups of owners and operators of hazardous waste facilities subject to control under this Section: owners and operators with interim status, those who own or operate RCRA permitted facilities, and those with neither interim status nor a permit. Owners and operators in the first group are subject to the Part 265 rules; those in the second group must comply with RCRA permits based on the Part 264 rules; those in the third group must stop operations on the effective date of these regulations. (See the preamble to the Parts 264 and 265 rules issued elsewhere in today's FEDERAL REGISTER for an explanation of how owners and operators qualify for interim status.)

The purpose of this regulation (Part 260) is to consolidate in one place a number of provisions which are applicable to all the Part 261 through 265 regulations. Subpart A contains rules concerning the designation and handling of confidential information and rules of grammatical construction which are generally applicable to Parts 261 through 265. Subpart B contains definitions of key words and phrases which are used in those Parts. Subpart C outlines the general procedures which EPA will follow in acting on petitions to amend Parts 260 through 265 and special procedures applicable to petitions for the approval of equivalent testing and analytical methods and petitions to amend Part 261. Finally, Appendix I contains a "road map" to the Subtitle C regulations which is designed to acquaint persons unfamiliar with EPA's Subtitle C regulations with the most important regulatory provisions in Parts 260 through 265 and Parts 122 through 124. (Note that Appendix I contains guidance, not regulations. If any part of the appendix is inconsistent with the regulations, the regulations should be considered controlling.)

III. Subpart A

1. *Section 260.1 (Purpose, scope, and applicability).* This section explains the purpose of Part 260 and outlines the contents of the remaining sections. It is largely self-explanatory.

2. *Section 260.2 (Availability of information; confidentiality of information).* The Agency expressed its basic stance on confidentiality in § 250.27 of the proposed Section 3002 regulations, which stated that all information provided in connection with the requirements of RCRA must be made available to any person, as authorized by Section 3007(b) of RCRA, the Freedom of Information Act (FOIA, 5 U.S.C. 552), and the EPA regulations adopted to implement the FOIA and Section 3007(b) (40 CFR Part 2). Proposed § 250.27 applied also to the recordkeeping and reporting systems under Section 3004 of the proposed regulations, because they were designed to use information supplied on the manifest as the data base.

A number of commenters argued that all RCRA reports and information should be made known to the public because public knowledge of this information is essential to the effective enforcement of RCRA. In particular, they argued that in order for the public oversight and citizen suit provisions of RCRA to be effective, the public must have information on the types and amounts of waste being handled by facilities, data from the monitoring of ground water and surface water, information on the type of process generating the waste and the hazardous properties of the waste, and any information reported to the Agency regarding fires, explosions, and discharges of hazardous waste, including data on the degradation of ground water.

The Agency has sought to balance the public need for information against legitimate claims of confidentiality. Neither Section 3007(b) of RCRA nor the Freedom of Information Act, however, authorize or require full public disclosure of information collected pursuant to RCRA. Section 3007(b) directs the Administator to consider as confidential any information which would be entitled to protection under Section 1905 of Title 18 of the United States Code, upon a satisfactory showing by the claimant that his information does indeed warrant confidential treatment. The provisions of the Freedom of Information Act concerning the availability of information do not apply to confidential trade secrets and commercial or financial information (Section 552(b)(4)).

Because of this provision in RCRA, the Agency cannot impose a blanket requirement in the regulations that specific information must be released to the public in all cases. However, the public may obtain information on the type of process producing the wastes listed in the Section 3001 rules from the background documents supporting the Section 3001 regulations. In addition, the Subpart D rules require owners or operators to notify local authorities of fires, explosions, or discharges of hazardous waste which have the potential for adversely affecting human health and the environment outside the facility. Thus, information of this type may also be available to the public.

Several commenters suggested that EPA should clearly state that the confidentiality provisions of proposed § 250.27 apply to the information required in the Section 3004 rules. The Agency agrees, and has therefore placed the provisions concerning confidentiality in Part 260 of the final rules. Section 260.1 of this Part makes it clear that the § 260.2 confidentiality provisions apply to all information required to be submitted under the final Sections 3001 through 3004 standards.

3. *Section 260.3 (Use of number and gender).* This section establishes simple rules of grammatical construction concerning number and gender. It has been added to allow EPA to simplify the drafting of its final Part 261 through 265 regulations by eliminating the need for such awkward phrases as "he/she/it" or "the owner (or in event there is more than one owner, the owners)". It is self-explanatory.

Although there is no direct counterpart to this section in the proposed Subtitle C rules, the Agency is issuing it as a final, rather than interim final standard. This is simply a rule of usage and, therefore, it is unnecessary to solicit comments on it.

IV. Supart B

In EPA's proposed regulations, each regulation had its own set of definitions (*see* §§ 250.11, 250.21, 250.31, and 250.41). To eliminate the unnecessary repetition this produced, all the definitions which are applicable to more than one of EPA's final regulations have been consolidated into this subpart. Definitions of terms which are used only once, or only in conjunction with a single section or subpart, will generally be defined in the section or subpart in which they are used. We hope this reorganization will make the regulations less cumbersome and easier to follow.

When Part 260 was published in February, it contained definitions of twelve terms used in EPA's Parts 262 and 263 regulations and a preamble discussion of each (45 FR 12722). Except for the definition of "on-site", which has been revised since February, these terms will not be discussed again here.

Of the new definitions which are being added to Part 260 today, most are self-explanatory and non-controversial and therefore need not be addressed in this preamble. Those which do require explanation are either dealt with in the preambles accompanying the regulation in which the term is used or in the discussion which follows.

1. *Definition of Active Portion.* The proposed difinition of "active portion" stated that portions of facilities closed in accordance with the facility closure plan, and all applicable closure requirements, were not active portions. Several commenters were concerned that portions of facilities which were closed before the effective date of the regulations, but not in accordance with the Section 3004 closure requirements, would be considered to be active portions. If this were the case, they argued that it was unreasonable to require owners and operators to re-close these portions in accordance with the RCRA standards.

The Agency believed that the following statement in the preamble to the proposed Section 3004 regulations stated that Agency's intent generally *not* to regulate portions of facilities closed before the effective date of the regulations:

> RCRA is written in the present tense and its regulatory scheme is organized in a way which seems to contemplate coverage only of those facilities which continue to operate after the effective date of the regulations. The Subpart D standards and Subpart E permitting procedures are not directed at inactive facilities. (43 FR 58984)

However, the Agency realizes that its original intent would have been more clearly stated if the words "or inactive portions of active facilities" had been added to the above sentence. The Agency's intent is not to regulate under Subtitle C portions of facilities closed before the effective date of the regulations. The only exception to this is that owners and operators of facilities which continue to operate after the effective date of the regulations must ensure that portions of facilities closed before the effective date of these rules do not interfere with the monitoring or control of active portions. This requirement regulates the facility which operates under the RCRA regulations, although it may require the owner or operator, before he receives a permit, or as a permit condition, to take certain measures on portions of his facility closed before the effective date of these regulations.

2. *Definitions of Disposal and Disposal Facility.* Several commenters suggested that the statutory definition of "disposal"given in Section 1004(3) of RCRA should be reworded to make it clear that an unplanned release or discharge of hazardous waste does not constitute disposal. They argued that this change is necessary because, otherwise, accidental discharges will have to be permitted before they are allowed to occur.

Regardless of whether a discharge of hazardous waste is intentional or not, the human health and environmental effects are the same. Thus, intentional and unintentional discharges are included in the definition of "disposal".

However, the Agency agrees that permits logically can only be required for intentional disposal of hazardous waste. Therefore, the definition of "disposal facility" has been modified to indicate the Agency's intent that the term does not apply to activities involving truly accidental discharge of hazardous waste.

In addition, the definition has been further modified to make it clear that only facilities at which hazardous waste is to remain after closure are, for the purposes of these regulations, disposal facilities. Thus, for example, a surface impoundment used for waste treatment from which the emplaced waste and waste residue is to be removed before closure of the impoundment, for purposes of these regulations, is not both a treatment and a disposal facility, but rather, only a treatment facility. That does not mean it might not be "disposing" of wastes within the meaning of that term in Section 1004(3) of RCRA. It merely means that EPA, for purposes of reference in these regulations, will call it a "treatment facility."

3. *Definition of Existing Facility.* Several commenters pointed out what they perceived as a serious fault in Section 3005(e) of RCRA, which is that the Section limits interim status to owners and operators of facilities "in existence" on or before October 21, 1976. The statute requires that, in order to operate legally, facilities which have come into existence after October 21, 1976, must obtain a permit by the effective date of the Section 3005 regulations (i.e., within 180 days after the promulgation date of the regulations). Because it is unlikely that permits can be issued within 180 days for all facilities not "in existence" by October 21, 1976, the commenters felt that the language of the statute was unfair to the owners and operators of these facilities.

EPA agrees that the language of the statute as it now stands would make the RCRA program unworkable. However, the language of RCRA is clear and EPA has had no alternative but to follow it in the regulations. As the preamble to the Part 122 regulations discusses, EPA expects that amendments to RCRA now in conference will be passed shortly and will cure this problem.[2]

In the proposed rules, existing facilities were limited to those which were in operation or under "physical construction" by a certain date. Physical construction was defined as:

> 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.

The Agency has expanded this aspect of the definition of "existing facility" in the final rules. The Agency believes that facilities for which substantial financial commitments have been incurred through contractual obligations to purchase specially designed structures or equipment, should also be considered to be existing facilities. Accordingly, the final Part 260 definition provides that a facility which has "commenced construction" by a certain date is an "existing facility".

In determining whether construction has commenced, as the term is defined in Part 260, it is first necessary to determine whether the owner or operator has obtained and continues to hold all necessary preconstruction approvals or permits required by Federal, State, and local laws and regulations. If all such permits have not been obtained or maintained, construction has not commenced.

Assuming that the permit requirement is satisfied, in order to have "commenced construction," it is still necessary for facilities to meet one of two additional requirements. The first requirement is that a continuous physical on-site construction program has begun by the date in question. The words "continuous" and "on-site" are key to this test. It will not suffice merely to have begun erection of auxiliary buildings or construction sheds unless there is clear evidence (through contracts or otherwise) that construction of the entire facility will go forward in a

[2] Accordingly, EPA encourages every facility built or under construction on the promulgation date of the RCRA program regulations to notify EPA and file Part A of the permit application so that it can be quickly processed for Interim Status when the change in the law takes effect.

continuous manner (no breaks greater than 18 months). Nor will it suffice that erection of certain components began off-site.

The alternative requirement is that by the date in question, binding agreements—which cannot be canceled or modified without substantial loss—were established for construction of the facility to be completed within a reasonable time. The words "substantial" and "for construction" are key to this test. In order to minimize administrative burdens and to provide some certainty, the Agency will consider a loss as being substantial if the cost to cancel a construction agreement is more than 10 percent of the total project cost. Whether a loss equal to or less than 10 percent is substantial will be considered on a case-by-case basis. The loss must also be related to contractual obligations for construction. Options to purchase or contracts for feasibility, engineering, or design studies will not be considered to be contractual obligations for construction.

These conditions for "commenced construction" are adopted from EPA's Prevention of Significant Deterioration (PSD) regulations issued under the Clean Air Act (see 43 FR 26395).

4. *Definition of Generator.* Several comments on the proposed definition of "generator" concerned corporations controlling plants in several locations which each produce hazardous waste. They questioned whether each plant, or only the corporate headquarters, is the generator. Some commenters thought that the latter should be designated as the generator because this would allegedly reduce the number of manifests and records that the corporation would collectively be required to develop.

RCRA directs the Agency to monitor and control the movement of hazardous waste. The only way that the Agency can do so is to know the source of the waste. If the reports which EPA received on hazardous waste identified the corporate headquarters as the generator, EPA would not know which of the corporation's plants produced the waste and, thus, would be unable to monitor the waste's movement. For this reason, the final definition has been modified to make it clear that the plant, and not the parent company, is the generator. However, corporate headquarters may prepare and submit separate reports for each of the corporation's facilities.

Certain producers (e.g., farmers and small generators) were excluded from the proposed definition of "generator." Because these exclusions are specifically dealt with in the final Part 261 and Part 262 regulations, it is unnecessary to attempt to include the substance of these regulations in the final definition of "generator".

5. *Definition of On-Site.* The Agency is amending the definition of "on-site", which was promulgated in the Part 260 regulations issued on February 26, 1980 (45 FR 12724). In the preamble which accompanied that definition, the Agency pointed out that the manifest is necessary "to safeguard human health and the environment in the transportation of hazardous waste, regardless of the distance that the waste is being transported." However, the preamble went on to say that:

> Merely *crossing* the public right-of-way to gain access to property under the control of the generator does not create the same dangers to the public that transportation upon public highways entails. [emphasis added]

For this reason, the proposed definition of "on-site" (43 FR 58976) was revised to include as "on-site," non-contiguous property owned by the generator which is connected by "a right-of-way which he controls and to which the public does not have access." This revision allowed generators to transport their waste within these confined limits without preparing a manifest for it.

The Agency now realizes, however, that the revised definition of "on-site" (45 FR 12724) cold be interpreted to allow unmanifested waste to be transported *along* a public right-of-way. This was not what the Agency had intended when revising the proposed definition. Therefore, that definition has been amended to make it clear that the entrance and exit of the geographically contiguous property—which may be divided by a public or private right-of-way—must be directly across from each other in order to be considered to be the same site.

6. *Definition of Representative Sample.* The Agency mistakenly provided two definitions of the term "representative sample" in the proposed rules, one in § 250.11(b)(5), and the other in § 250.41(b)(73). The latter was concerned solely with samples characteristic of ground water beneath a facility. Several commenters pointed out that the definition was too restrictive because the proposed regulations required samples to be taken of things other than ground water. The Agency agrees, and has restructured the final ground-water monitoring standards so that a definition of "representative sample" specific to ground water is no longer needed. It has therefore been deleted from the final rules.

The definition provided in § 250.11(b)(5) was broader than that contained in § 250.41(b)(73). § 250.11(b)(5) defined representative sample as:

> Any sample of the waste which is *statistically equivalent* to the total waste in composition, and in physical and chemical properties. Representative samples may be generated using the methods set out in Appendix I of this Subpart. [emphasis added]

Many commenters objected to the aspect of this definition which required that the sample be statistically equivalent to the total waste. They argued that statistical equivalence has an exact meaning, and that interpreted literally, the proposed definition would have required the entire waste stream to be sampled, or a statistical data base established for it, in order to ensure that every constituent of the waste stream was known to some level of accuracy and precision. These commenters felt that this aspect of the definition was unreasonable.

The Agency agrees that requiring a representative sample to be statistically equivalent to the waste is currently infeasible for most waste streams. This is particularly true for "composite" or heterogeneous wastes. The Agency will, in the future, develop and publish in SW–846, "Test Methods for the Evaluation of Solid Waste", practical procedures for obtaining statistically equivalent representative samples of hazardous waste. However, until they are developed, the Agency agrees that the definition of "representative sample" should not require that the samples be statistically equivalent to the total waste. Therefore, the definition has been changed to require that representative samples exhibit the average properties of the universe or whole (e.g., waste or ground water).

V. Subpart C

1. *Section 260.20 (General).* Section 7004 of RCRA states that any person may petition EPA for the promulgation, amendment, or repeal of any regulation under RCRA. That section further directs the Administrator to develop and publish minimum guidelines for the public to participate in this process.

EPA's proposed Subtitle C regulations contained no guidelines to assist the public in framing rulemaking petitions or to advise them of the procedures EPA would follow in acting on their petitions. EPA received a number of comments, often in the context of a specific regulatory provision (e.g., the list of hazardous wastes issued under Section 3001), suggesting that EPA establish rulemaking procedures for Subtitle C.

EPA agrees this would be desirable, and accordingly is adding a subpart to its final rules which (1) establishes the procedures for petitioning EPA to amend, modify, or revoke any provision in Parts 260 through 265 and (2) establishes procedures governing EPA's action on these petitions.

These procedures reflect normal informal rulemaking practice under the Administrative Procedures Act and are largely self-explanatory. Except for two types of petitions—petitions to approve equivalent methods and petitions to amend Part 261 to exclude a waste produced by a particular facility—EPA is not establishing information requirements for petitions. These requirements will of necessity vary with the nature of the regulatory provision which the petitioner is seeking to add or amend, and are not readily susceptible to precise articulation in a regulation. However, petitioners should be able to glean a great deal of information which would be useful in drafting rulemaking petitions from preamble discussions of provisions and associated background documents. In the case of EPA's hazardous waste characteristics and list, the regulations themselves identify the criteria against which all rulemaking (including that initiated by EPA) will be evaluated.

This entire subpart is being published in interim final form to give the public an opportunity to comment on EPA's procedures.

2. *Section 260.21 (Petitions for equivalent testing or analytical methods).* In its proposed Section 3001 regulations, EPA required persons to determine whether their waste exhibited one of the Agency's proposed hazardous waste characteristics using specified testing and analytical methods or "an equivalent method". (See proposed §§ 250.13(a) (i) and (ii), (a)(2)(i), (b)(i), and (d)(2)(ii)). Section 250.11(b)(2) of the proposed rules defined "equivalent method" as any method:

> which the Administrator determines to be functionally equivalent or superior to the method specified.

The proposed rules did not, however, provide any procedures for requesting EPA to approve testing or analytical methods as equivalent to those specified in proposed Section 3001. Several commenters suggested that such procedures should be included in the regulations.

EPA agrees and believes the procedures set forth in § 260.20 will work well for petitions for equivalent methods. However, because specific types of data are required to determine whether a testing or analytical protocol is "equivalent" or "superior" to an existing method, EPA has also established specific information requirements for petitions for equivalent methods. These requirements necessarily require a petitioner to fully evaluate the alternative method and to undertake a thorough comparative analysis of this method and EPA's. Requiring less data would place too large a burden on EPA, considering its limited resources for developing alternative testing methods. The Agency believes that those who desire to use a method other than that prescribed in the final rules will typically have the data required in § 260.21 because they will have found the prescribed method to be inappropriate for their purposes, and will have already committed resources to develop an equivalent method.

3. *Section 260.22 (Petitions to amend Part 261 to exclude a waste produced at a particular facility).* This provision is discussed in Section VII of the preamble to Part 261.

Regulatory Analysis

The Agency has prepared for the regulations promulgated under Sections 3001 through 3004 and 3010 of RCRA, an Economic Impact Analysis, an Environmental Impact Statement, a Reports Impact Analysis, an Operations Resources Impact Analysis, and an Evaluation Plan. EPA has prepared a summary regulatory analysis of its final regulations based on the above reports. This Regulatory Analysis describes the various alternative approaches that the Agency might have used to implement the hazardous waste program, and explains why certain choices were made.

Except for the Evaluation Plan (which was prepared under Executive Order 12044), or as otherwise specified below, copies of these documents may be reviewed in the EPA Regional Office libraries, and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The Evaluation Plan will be available for review only at the EPA headquarters library.

I. Economic Analysis

The Agency prepared an Economic Impact Analysis under Executive Order 11821, as amended by Executive Order 11949. It indicates that there are both costs and benefits associated with this regulatory program.

1. *Benefits.* The Subtitle C regulatory program will reduce the damage to human health and the environment from improper management of hazardous waste. The following is a brief list of some of the many expected improvements:

(1) Ground-water pollution from leaching of toxic pollutants from improperly designed and managed landfills and surface impoundments will be reduced.

(2) Poisoning and injury due to direct contact with randomly dumped wastes will be reduced.

(3) Pollution of surface waters from hazardous waste stored or disposed of in fields and on riverbanks will be reduced.

(4) Illicit dumping of waste in farm fields, wooded areas, along roadsides, and in ditches and streams will be reduced.

(5) Emission of toxic gases from improperly run incinerators will be reduced.

(6) Accidents, mistakes, and malfunctions at hazardous waste management facilities, which could affect people near the site, will be reduced in number and in severity, due to improved training of personnel, monitoring and inspections, and required emergency equipment.

(7) Contingency plans will spell out procedures to ensure rapid and effective responses to emergencies to minimize any danger to off-site residents and the environment.

(8) Facilities will be decontaminated or otherwise secured at closure, and disposal sites will be monitored and maintained after closure, to reduce the possibility of future adverse impacts on human health or the environment.

The Agency believes these improvements will be substantial and noticeable. The expected improvements are not quantifiable, however, since records of past practices and problems are extremely limited. Also, it is difficult or impossible to quantify benefits deriving from reduced adverse impacts on health or the environment. The dollar value of preventing a case of cancer, for example, is not truly ascertainable. In addition to the major non-quantifiable economic benefits expected from decreases in human health problems and in pollution of our air, land, and water, EPA expects an improvement in economic efficiency and equity, and substantial direct savings from avoiding clean up costs in the future.

An economy functions efficiently and equitably when the price of goods produced in the society reflects the actual social and private costs of production (i.e., when the costs are internalized). Until now, in most states, firms could dispose of wastes in environmentally unsafe ways at a cost substantially less than that for adequate disposal. Thus, the price of goods often

did not reflect the full social cost of production.

Pre-RCRA practices for managing hazardous waste created economic inequities. The costs of disposal often fell randomly on individuals affected by improper management or on the public at large since tax revenues were used to clean up inadequate facilities. It would be more equitable for the costs of adequate hazardous waste management to fall on the consumers and producers of the products which generate the hazardous waste.

Pre-RCRA management practices also caused economic inefficiencies. Because the price of goods did not reflect the cost of properly managing the waste produced as part of the manufacturing process, these goods were priced too low relative to other goods. Because prices were lower than the true social cost of producing the product, consumers were able to buy more of these goods than they could if proper waste management costs were included in the product price. Thus, companies manufactured and sold more of these products and generated more hazardous waste than was economically efficient. These products, thus, had an unfair competitive edge over other products which didn't generate hazardous waste. Furthermore, because companies did not have to either pay the cost of proper waste management or pass it along to customers, the incentives to develop technology and process changes to lessen the quantity of hazardous waste generated or to recover the waste as a useful material were weak compared to what they might have been if proper waste management was required. Additionally, companies which wanted to properly manage their wastes were put at a competitive disadvantage by doing so because they bore costs which their competitors did not.

The RCRA Subtitle C Regulations will ensure that those generating hazardous waste will pay appropriately for their safe management. Most of this cost will be passed on to consumers, while some may be borne by the generator, particularly where price increases are held down in some way (e.g., by foreign competition or competition with other products). In either case, the economy will be more efficient and equitable because those receiving the benefits will also pay the costs, and prices will serve as a more efficient allocator of resources.

In recent years, with increasing frequency, society has been forced to properly dispose of waste that was previously disposed of haphazardly. The best known example of this is Love Canal in New York, where 20,000 tons of waste were buried over a period of years. The diagnosis of a severe health hazard in the area due to wastes seeping into house basements and surfacing in backyards caused society to take remedial action. The price tag to the State and Federal governments is expected to be about $36 million for clean up, relocating residents, health and environmental testing services, and other expenses associated with the disaster. Thus, society is spending about $1,800 per ton in its effort to clean up waste improperly disposed of, and more will be spent before the area is returned to normal. Further, the $1,800 per ton excludes human health costs and suffering, which might easily outweigh actual dollar costs. Given that average disposal costs after the RCRA regulatory program is in place are estimated to be around $80 per ton, it clearly pays to do the job right in the first place.

Given that damages from improper hazardous waste management often take decades to surface, we may be paying dearly for past waste mismanagement for many years to come. Further, without a regulatory program, new problem sites would continue to be developed. Ultimately, clean up of all of these sites could cost billions of dollars.

2. *Costs and Impacts.* Phase I of the RCRA Subtitle C program will broadly affect American industry. The Agency focused its Economic Impact Analysis (EIA) on major hazardous waste-generating segments within 22[3] industries. The study covered approximately 29,000 generators who produced an estimated 13.7 million metric tons of hazardous waste in 1978. The RCRA hazardous waste standards are expected to cover about 67,000 hazardous waste generators that are expected to produce about 41 million metric tons of hazardous waste in 1980. The Agency's analysis shows that 62% of this hazardous waste is from the chemical and allied industries.

As a result of the Phase I regulations, the annual hazardous waste disposal costs for the 29,000 generators covered by the EIA are predicted to increase by $510 million.[4] Of this annual cost, about 50% is for compliance with surface impoundment requirements. Recurring operational and administrative expenses account for $430 million (1980 dollars) of the total annual cost; the rest is for capital and other initial expenditures (as annualized). Total capital and other initial expenditures are estimated at $310 million.

The distribution of the annual compliance cost by major RCRA hazardous waste management activity is provided in Table I. The major part of the cost is for treatment and disposal facility closure and post-closure activities which will occur in the future, but which EPA assumes owners will prepare for in advance of their occurrence. The $510 million annual cost amounts to less than 0.2 percent of the value of sales of the affected industries.

Table I.—*Distribution of RCRA Costs by Type of Requirement*

Compliance activity	Annual incremental cost in millions of dollars	Percent of total cost
Closure/post-closure	$303.3	59
Treatment and disposal	56.8	11
Monitoring/testing	67.5	13
Administration	28.7	6
Contingency planning	23.2	5
Recordkeeping/reporting	15.2	3
Training	15.8	3
Total	*$510.0	100

*Detail does not add to total due to independent rounding.

The Phase I standards establish the RCRA Subtitle C program, and will be followed by Phase II, which will establish the standards for permit issuance. These are scheduled to be promulgated in the fall of 1980. While the regulations have not yet been written, it is conceivable that the added costs of the Phase II regulations could double the total costs for the affected industries.

As part of the EIA, the Agency performed detailed analyses of parts of six major industries which EPA believed could be substantially affected economically by the regulations. They were segments of the textiles, leather tanning, electroplating, inorganic chemicals, organic chemicals, and nonferrous metal smelting and refining industries. The analyses showed that 86 plants may close out of the 4200 studied, costing as many as 5300 jobs. Negative impacts are concentrated in the following industry sectors: Primary zinc and secondary lead smelting and refining, sodium dichromate and titanium dioxide production; cattlehide non-chrome and sheephide (no beamhouse) tanning, electroplating job shops, and woven fabric finishing and

[3] The study included one additional segment, metals mining, which is not included in this summary. The calculations have not been completed and there are major questions as to whether significant quantities of waste from this industry will prove hazardous.

[4] This is an annualized cost developed by multiplying a capital recovery factor by the initial capital cost and adding the product to the recurring program costs. This provides an even projection of expenditures although generators will typically incur disproportionately more expenses in the beginning of the program and at the end of the useful life of the facility.

felted fabric processing in the textile industry. Overall, price increases resulting from the regulation for products from these industries were not found to be substantial except for projected price increases for electroplating job shops (6.6%) and cattlehide non-chrome tanneries (1–3%). Table II summarizes these impacts.

Table II.—*Summary of Costs and Impacts*

Industry	Plants generating hazardous waste (#)	Potential closure (#)	Potential employment loss	Possible price increase (percent)	Annual costs (in millions)
Electroplating[1]	2,336	60	1,680	6.6	$80.7
Inorganic chemicals[2]	95	3	607	<1	49.8
Leather tanning[3]	271	11	795	<1	11.8
Nonferrous smelting[4]	252	2	1,500	<1	64.2
Organic chemicals[5]	45	0	0	0	13.3
Textiles[6]	1,166	10	740	0	23.3
Other manufacturing	.....	.....	.....	.....	258.9
Service industries	.....	.....	.....	.....	8.0
Total	29,000	.....	.....	.....	510.0

[1] Job shops only.
[2] Cost study covered seven product lines, detailed impact study covered four. Significant impacts possible in sodium dichromate (1 closure of 3 plants—45 jobs) and titanium dioxide (2 closures of 13 plants—562 jobs).
[3] Significant impacts possible in cattlehide (6 closures of 16 plants—695 jobs) and sheephides (5 closures of 29 plants—100 jobs).
[4] Significant impact possible in primary zinc industry (1 closure of 6 plants—500 to 1,500 jobs).
[5] Cost study covered ten product lines, detailed impact study covered five.
[6] Cost study includes costs for five industry segments whose wastes are no longer listed as hazardous waste. Significant impact possible in the felted fabric processing segment (2 closures of 19 plants—326 jobs).

EPA performed less detailed analyses for the other industry segments in the EIA. This qualitative analysis shows the possibility of plant closures in some sectors of the explosives, petroleum rerefining, pharmaceuticals, organic chemicals, and plastics industries.

The effects of the Phase I requirements will interact with those of some other EPA regulations. It is too early to estimate these effects in general. But, as an example, the water pretreatment standards for electroplaters were expected to close 587 job shops until the Agency, working with the Small Business Administration, developed a Federal assistance program. As a result of the RCRA Subtitle C program alone, 60 job shops may close, and the Agency may find it more difficult to mitigate the effect of the pretreatment regulations on other plants.

3. *Limits of Analysis.* In order to make the economic analysis practical, the Agency had to make some fundamental assumptions and limit the scope of the analysis to what it believed were the major waste generating industries. The EIA could not cover all industry segments which generate hazardous waste. Simple extrapolation of the compliance cost for the 29,000 generators studied to the 67,000 generators that are expected to be regulated during Phase I, would more than double the EIA estimate. The costs for surface impoundments alone, for those industries not included in the analysis, have been roughly estimated to be somewhere between $60–900 million.[5]

The EIA was based on hazardous waste volumes believed to exist in the covered industry segments because their waste appeared on EPA's hazardous waste list or was believed to exhibit one of the four hazardous waste characteristics. The uncertainty over this latter aspect of the analysis is somewhat reflected in the 1980 waste volume estimate which EPA believes could range between 28 million and 56 million metric tons. The 41 million metric tons previously quoted is EPA's best estimate. To the extent these generators delist or discover that their specific wastes do not meet the hazardous waste characteristics, the costs and impacts will be less.

The EIA made two major assumptions: (1) Although disposal prices may increase significantly under RCRA, the study assumed that generators would be unable to reduce the volume of waste disposed and will not be able to find a cheaper way to manage it, and (2) acceptable off-site waste disposal capacity will be readily available.

Finally, the analysis is based on final Sections 3002 and 3003 regulations and a January 1980 draft of the Sections 3001 and 3004 requirements. The draft regulations have substantially changed since that time. In most instances, the alterations have led to cost reductions. For instance, a number of changes which would greatly reduce the amount of waste covered by the regulations have not been factored into the analysis. Also, the financial requirements have been deferred in the Part 265 regulations but are still covered in the economic impact study. On the other hand, control of underground injection has been added to the regulations, but it is not covered in the EIA.

The Agency is now analyzing the final Phase I regulations and will make the results publicly available this summer in an economic analysis summary. EPA will publish a notice in the **Federal Register** concerning its availability. In the interim, anyone wishing to review the current version of the economic analysis may do so at EPA Headquarters and Regional Office libraries. A more extensive summary of the economic analysis can be found in the Regulatory Analysis which is also available in the Regional Office and EPA Headquarters libraries.

II. Environmental Analysis

EPA voluntarily prepared an Environmental Impact Statement (EIS) under the National Environmental Policy Act 42 U.S.C. § 4321 *et seq.* (NEPA). (See the NEPA discussion in the preamble accompanying the Parts 264 and 265 rules issued elsewhere in today's **Federal Register.**) EPA will publish a **Federal Register** notice within 90 days of the promulgation of these regulations announcing the availability of the EIS for those interested in obtaining a copy of it.

Industry Assistance

The Agency recognizes that these regulations may have a substantial impact on certain industrial sectors, particularly on firms in a poor competitive position. The Agency will provide a limited degree of assistance to such firms. For example, the Agency is preparing guidance manuals which interpret the regulations and offer advice on efficient compliance with substantive requirements. Seminars and public hearings will be held to explain the regulations, respond to questions, and describe available financial

[5] Based on varied assumptions on site life and actual number of hazardous waste sites. Also, this estimation was based on a fixed $25 million cost assumption for closure of impoundments over 150 acres. The costs would have been nearly double that without this assumption and with strict use of a model cost equation used for impoundments of less area. However, uncertainty in the data base over site life, impoundment size and hazardousness of wastes, and the Agency belief that operators could develop less costly closure plans that EPA would accept, support this assumption.

assistance. Limited technological assistance may be available.

The Agency has also established an industry assistance program in the Office of Solid Waste. The staff of this program have been charged with (1) identifying industry and community RCRA compliance problems and seeking solutions to them, (2) coordinating assistance activities with the States, other parts of EPA, and other Federal agencies (e.g., the Small Business Administration and the Economic Development Administration), (3) planning and conducting seminars, and (4) coordinating production of written material designed to assist those least able to cope with the regulatory burden.

The Agency would ideally like to provide this assistance to anyone who wants it. However, because the industry assistance program may receive more requests for help than it can initially respond to, it may be necessary to establish priorities to determine which requests should be answered first. If this is the case, the program will concentrate first on the following industry sectors, which the Agency believes most need this help: chrome pigments, chlorine, electroplating (job shops), woven fabric finishing, felt fabric finishing, sheepskin tanneries, vegetable tanners, primary and secondary aluminum, primary and secondary copper, primary and secondary lead, primary tungsten, primary zinc, petroleum rerefining, pesticides, plastics, and pharmaceuticals. EPA plans to meet with the trade associations of these industries in order to define specific assistance responses.

Anyone having suggestions on how the Agency can help industry comply with these regulations should contact: Michael Barclay, RCRA Industry Assistance Coordinator, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 755-9190.

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR Part 260 is revised to read as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart A—General

Sec.

260.1 Purpose, scope and applicability.
260.2 Availability of information, confidentiality of information.
260.3 Use of number and gender.

Subpart B—Definitions

260.10 Definitions.

Subpart C—Rulemaking Petitions

260.20 General.
260.21 Petitions for equivalent testing or analytical methods.
260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.
Appendix I—Overview of Subtitle C Regulations

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, and 7004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, and 6974).

Subpart A—General

§ 260.1 Purpose, scope, and applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts 260 through 265 of this Chapter.

(b) In this part: (1) Section 260.2 sets forth the rules that EPA will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to EPA under Parts 260 through 265 of this Chapter.

(2) Section 260.3 establishes rules of grammatical construction for Parts 260 through 265 of this Chapter.

(3) Section 260.10 defines terms which are used in Parts 260 through 265 of this Chapter.

(4) Section 260.20 establishes procedures for petitioning EPA to amend, modify, or revoke any provision of Parts 260 through 265 of this Chapter and establishes procedures governing EPA's action on such petitions.

(5) Section 260.21 establishes procedures for petitioning EPA to approve testing methods as equivalent to those prescribed in Parts 261, 264, or 265 of this Chapter.

(6) Section 260.22 establishes procedures for petitioning EPA to amend Subpart D of Part 261 to exclude a waste from a particular facility.

§ 260.2 Availability of information; confidentiality of information.

(a) Any information provided to EPA under Parts 260 through 265 of this Chapter will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b), Part 2 of this Chapter, as applicable.

(b) Any person who submits information to EPA in accordance with Parts 260 through 265 of this Chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this Chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B of this Chapter. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

§ 260.3 Use of number and gender.

As used in Parts 260 through 265 of this Chapter:

(a) Words in the masculine gender also include the feminine and neuter genders; and

(b) Words in the singular include the plural; and

(c) Words in the plural include the singular.

Subpart B—Definitions

§ 260.10 Definitions.

(a) When used in Parts 260 through 265 of this Chapter, the following terms have the meanings given below: (1) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(2) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of Part 261 of this Chapter and which is not a closed portion. (See also "closed portion" and "inactive portion".)

(3) "Administrator" means the Administrator of the Environmental Protection Agency, or his designee.

(4) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(5) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(6) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

(7) "Confined aquifer" means an aquifer bounded above and below by

impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

(8) "Constituent" or "hazardous waste constituent" means a constituent which caused the Administrator to list the hazardous waste in Part 261, Subpart D, of this Chapter, or a constituent listed in Table 1 of § 261.24 of this Chapter.

(9) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(10) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(11) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 122 and 124 of this Chapter, or a permit from a State authorized in accordance with Part 123 of this Chapter, that has been designated on the manifest by the generator pursuant to § 262.20.

(12) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(13) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(14) "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 ground waters.

(15) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(16) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Part 261, Subpart D, of this Chapter and to each characteristic identified in Part 261, Subpart C, of this Chapter.

(17) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

(18) "EPA region" means the states and territories found in any one of the following ten regions:

Region I—Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.
Region II—New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.
Region III—Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.
Region IV—Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.
Region V—Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.
Region VI—New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.
Region VII—Nebraska, Kansas, Missouri, and Iowa.
Region VIII—Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.
Region IX—California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.
Region X—Washington, Oregon, Idaho, and Alaska.

(19) "Equivalent method" means any testing or analytical method approved by the Administrator under §§ 260.20 and 260.21.

(20) "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before October 21, 1976. Construction had commenced if:

(i) The owner or operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and either

(ii)(*a*) A continuous physical, on-site construction program has begun, or

(*b*) The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for construction of the facility to be completed within a reasonable time.

(21) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(22) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(23) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(24) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(25) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(26) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this Chapter.

(27) "Ground water" means water below the land surface in a zone of saturation.

(28) "Hazardous waste" means a hazardous waste as defined in § 261.3 of this Chapter.

(29) "Inactive portion" means that portion of a facility which is not operated after the effective date of Part 261 of this Chapter. (See also "active portion" and "closed portion".)

(30) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

(31) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See Part 265, Appendix V, of this Chapter for examples.)

(32) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(33) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(34) "Injection well" means a well into which fluids are injected. (See also "underground injection".)

(35) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the

construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(36) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(37) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

(38) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(39) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(40) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(41) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(42) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(43) "Manifest" means the shipping document originated and signed by the generator which contains the information required by Part 262, Subpart B, of this Chapter.

(44) "Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

(45) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(46) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(47) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after October 21, 1976. (See also "Existing hazardous waste management facility".)

(48) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(49) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products.

(See also "incineration" and "thermal treatment".)

(50) "Operator" means the person responsible for the overall operation of a facility.

(51) "Owner" means the person who owns a facility or part of a facility.

(52) "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of Parts 264 or 265 of this Chapter. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell, or a pit, while other parts of the same facility continue in operation or will be placed in operation in the future.

(53) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(54) "Personnel" or "facility personnel" means all persons who work, at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Parts 264 or 265 of this Chapter.

(55) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

(56) "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, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(57) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality" (as defined by Section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(58) "Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

(59) "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

(60) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(61) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(62) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(63) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(64) "Solid waste" means a solid waste as defined in § 261.2 of this Chapter.

(65) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(66) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(67) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage,

settling, and aeration pits, ponds, and lagoons.

(68) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(69) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

(70) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(71) "Transportation" means the movement of hazardous waste by air, rail, highway, or water.

(72) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(73) "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 recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(74) "Underground 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. (See also "injection well".)

(75) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(76) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(77) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(78) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(79) "Well injection": (See "underground injection".)

Subpart C—Rulemaking Petitions

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in Parts 260 through 265 of this Chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to Parts 261, 264 or 265. Section 260.22 sets forth additional requirements for petitions to exclude a waste at a particular facility from § 261.3 of this Chapter or the lists of hazardous wastes in Subpart D of Part 261.

(b) Each petition must be submitted to the Administrator by certified mail and must include:

(1) The petitioner's name and address;
(2) A statement of the petitioner's interest in the proposed action;
(3) A description of the proposed action, including (where appropriate) suggested regulatory language; and
(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The Administrator will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the **Federal Register** for written public comment.

(d) Upon the written request of any interested person, the Administrator may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Administrator may in any case decide on his own motion to hold an informal public hearing.

(e) After evaluating all public comments the Administrator will make a final decision by publishing in the **Federal Register** a regulatory amendment or a denial of the petition.

§ 260.21 Petitions for equivalent testing or analytical methods.

(a) Any person seeking to add a testing or analytical method to Parts 261, 264, or 265 of this Chapter may petition for a regulatory amendment under this section and § 260.20. To be successful, the person must demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method prescribed in Parts 261, 264, or 265 of this Chapter, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

(b) Each petition must include, in addition to the information required by § 260.20(b):

(1) A full description of the proposed method, including all procedural steps and equipment used in the method;
(2) A description of the types of wastes or waste matrices for which the proposed method may be used;
(3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Parts 261, 264, or 265 of this Chapter;
(4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Administrator may request any additional information on the proposed method which he may reasonably require to evaluate the method.

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated in "Test Methods for the Evaluation of Solid Waste: Physical/Chemical Methods," SW–846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460.

[Comment: This manual will be provided to any person on request, and will be available for inspection or copying at EPA headquarters or any EPA Regional Office.]

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may petition for a regulatory amendment under this section and § 260.20. To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that the waste

produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous waste and, in the case of an acutely hazardous waste listed under § 261.11(a)(2), that it also does not meet the criterion of § 261.11(a)(3). A waste which is so excluded may still, however, be a hazardous waste by operation of Subpart C of Part 261.

(b) The procedures in this section and § 260.20 may also be used to petition the Administrator for a regulatory amendment to exclude from § 261.3(a)(2)(ii) or (c), a waste which is described in those sections and is either a waste listed in Subpart D, contains a waste listed in Subpart D, or is derived from a waste listed in Subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section, except that where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration may be made with respect to each constituent listed waste or the waste mixture as a whole. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

(c) If the waste is listed with codes "I", "C", "R", or "E" in Subpart D, the petitioner must show that demonstration samples of the waste do not exhibit the relevant characteristic defined in §§ 261.21, 261.22, 261.23, or 261.24 using any applicable test methods prescribed therein.

(d) If the waste is listed with code "T" in Subpart D, the petitioner must demonstrate that:

(1) Demonstration samples of the waste do not contain the constituent (as defined in Appendix VII) that caused the Administrator to list the waste, using the appropriate test methods prescribed in Appendix III; or

(2) The waste does not meet the criterion of § 261.11(a)(3) when considering the factors in § 261.11(a)(3) (i) through (xi).

(e) If the waste is listed with the code "H" in Subpart D, the petitioner must demonstrate that the waste does not meet both of the following criteria:

(1) The criterion of § 261.11(a)(2).

(2) The criterion of § 261.11(a)(3) when considering the factors listed in § 261.11(a)(3) (i) through (xi).

(f) [Reserved for listing radioactive wastes.]

(g) [Reserved for listed infectious wastes.]

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition must include, in addition to the information required by § 260.20(b):

(1) The name and address of the laboratory facility performing the sampling or tests of the waste;

(2) The names and qualifications of the persons sampling and testing the waste;

(3) The dates of sampling and testing;

(4) The location of the generating facility;

(5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in § 261.11(a)(3);

(8) A description of the methodologies and equipment used to obtain the representative samples;

(9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(10) A description of the tests performed (including results);

(11) The names and model numbers of the instruments used in performing the tests; and

(12) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration 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.

(j) After receiving a petition for an exclusion, the Administrator may request any additional information which he may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Administrator may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion.

(m) The Administrator may (but shall not be required to) grant a temporary exclusion before making a final decision under § 260.20(d) whenever he finds that there is a substantial likelihood that an exclusion will be finally granted. The Administrator will publish notice of any such temporary exclusion in the **Federal Register.**

Appendix I.—Overview of Subtitle C Regulations

The Agency believes that there are many people who suspect, but are not sure, that their activities are subject to control under the RCRA Subtitle C rules. This appendix is written for these people. It is designed to help those who are unfamiliar with the hazardous waste control program to determine with which, if any, of the regulations they should comply.

Definition of Solid Waste

The first question which such a person should ask himself is: "Is the material I handle a solid waste?" If the answer to this question is "No", then the material is not subject to control under RCRA and, therefore, the person need not worry about whether he should comply with the Subtitle C rules.

Section 261.2 of this Chapter provides a definition of "solid waste" which expands the statutory definition of that term given in section 1004(27) of RCRA. This definition is diagrammed in Figure 1 below.

Figure 1 explains that all materials are either: (1) Garbage refuse, or sludge; (2) solid, liquid, semi-solid or contained gaseous material; or (3) something else. No materials in the third category are solid waste. All materials in the first category are solid waste. Materials in the second category are solid waste unless they are one of the five exclusions specified in § 261.4(a).

Definition of Hazardous Waste

If a person has determined that his material is a "solid waste", the next question he should ask is: "Is the solid waste I handle a hazardous waste?"

Hazardous waste is defined in § 261.3 of this chapter. Section 261.3 provides that, in general, a solid waste is a hazardous waste if: (1) It is, or contains, a hazardous waste listed in Subpart D of

Part 261 of this Chapter, or (2) the waste exhibits any of the characteristics defined in Subpart C of Part 261. However, Parts 260 and 261 also contain provisions which exclude (§§ 261.4(b), 260.20, and 260.22) certain solid wastes from the definition of "hazardous waste", even though they are listed in Subpart D or exhibit one or more of the characteristics defined in Subpart C. Figure 2 depicts the interplay of these special provisions with the definition of "hazardous waste". It presents a series of questions which a person should ask himself concerning his waste. After doing so, the person should be able to determine if the solid waste he handles is a hazardous waste.

Hazardous Waste Regulations

If this is the case, the person should look at Figure 3. Figure 3 depicts the special provisions specified in the final Part 261 rules for hazardous waste which:

1. Is generated by a small quantity generator
2. Is or is intended to be legitimately and beneficially used, re-used, recycled, or reclaimed
3. Is a sludge; is listed in Part 261, Subpart D; or is a mixture containing a waste listed in Part 261, Subpart D.

For each of these Groups, Figure 3 indicates with which Subtitle C regulations (if any) the person handling these wastes must comply. Figure 3 also explains that, if a person handles hazardous waste which is not included in any one of the above three categories, his waste is subject to the Subtitle C regulations diagrammed in Figure 4.

Figure 4 is a flowchart which identifies the three categories of activities regulated under the Subtitle C rules, and the corresponding set of rules with which people in each of these categories must comply. It points out that all people who handle hazardous waste are either: (1) Generators of hazardous waste, (2) transporters of hazardous waste, (3) owners or operators of hazardous waste treatment, storage, or disposal facilities, or (4) a combination of the above. Figure 4 indicates that all of these people must notify EPA of their hazardous waste activities in accordance with the Section 3010 Notification Procedures (see 45 FR 12746 *et seq.*), and obtain an EPA identification number.

It should be noted that people handling wastes listed in Subpart D of Part 261 who have filed, or who intend to file an application to exempt their waste from regulation under the Subtitle C rules, must also comply with the notification requirements of section 3010.

If a person generates hazardous waste, Figure 4 indicates that he must comply with the Part 262 rules. If he transports it, he must comply with the Part 263 rules. The standards in both these Parts are designed to ensure, among other things, proper recordkeeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to a permitted treatment, storage, or disposal facility.

If a person owns or operates a facility which treats, stores, or disposes of hazardous waste, the standards with which he must comply depend on a number of factors. First of all, if the owner or operator of a *storage* facility is also the person who generates the waste, and the waste is stored at the facility for less than 90 days for subsequent shipment off-site, then the person must comply with § 262.34 of the Part 262 rules.

All other owners or operators of treatment, storage, or disposal facilities must comply with either the Part 264 or the Part 265 rules. To determine with which of these sets of rules an owner or operator must comply, he must find out whether his facility qualifies for interim status. To qualify, the owner or operator must: (1) Have been treating, storing, or disposing of the hazardous waste, or commenced facility construction on or before October 21, 1976, (2) comply with the Section 3010 notification requirements, and (3) apply for a permit under Part 122 of this Chapter.

If the owner or operator has done all of the above, he qualifies for interim status, and he must comply with the Part 265 rules. These rules contain administrative requirements, monitoring and closure standards, and an abbreviated set of technical and closure and post-closure cost estimate requirements. The owner or operator must comply with these standards until final administrative disposition of his permit application is made. If a permit is issued to the owner or operator, he must then comply with the permit which will be based on the Part 264 rules.

If the owner or operator has not carried out the above three requirements, he does not qualify for interim status. Until he is issued a permit for his facility, the owner or operator must stop waste management operations (if any) at the facility, and send his hazardous waste (if any) to a facility whose owner or operator has interim status or to a storage facility following the Part 262 rules.

In order to apply for a permit, the owner or operator must comply with the procedures specified in Part 122 of this Chapter.

It should be noted that the Agency will be periodically revising the rules depicted in Figures 3 and 4. All persons are encouraged to write to EPA to verify that the regulations which they are reading are up-to-date. To obtain this verification, contact: Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684–5362.

[FR Doc. 80-14306 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

FIGURE 1

DEFINITION OF A SOLID WASTE

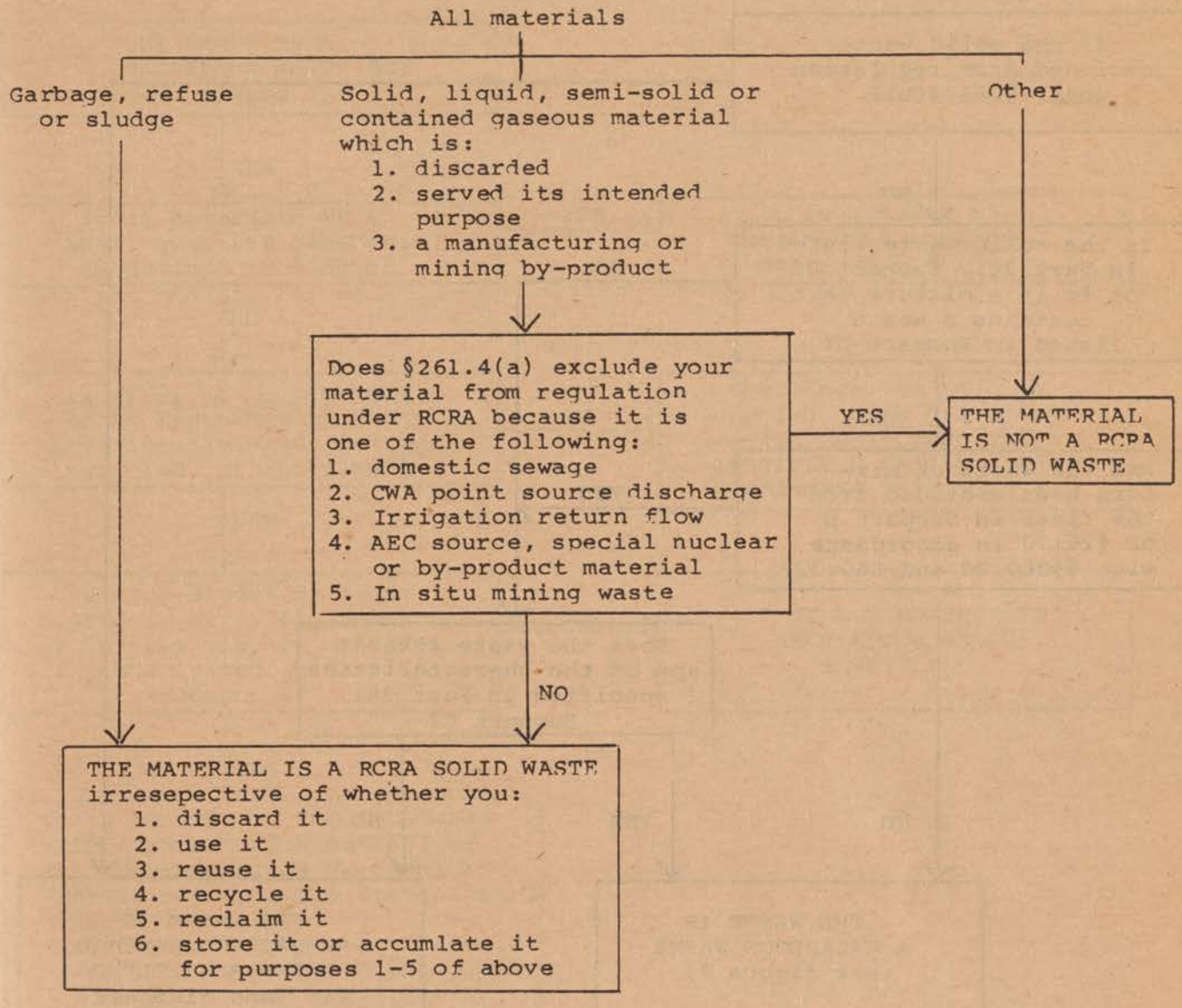


FIGURE 2

DEFINITION OF A HAZARDOUS WASTE

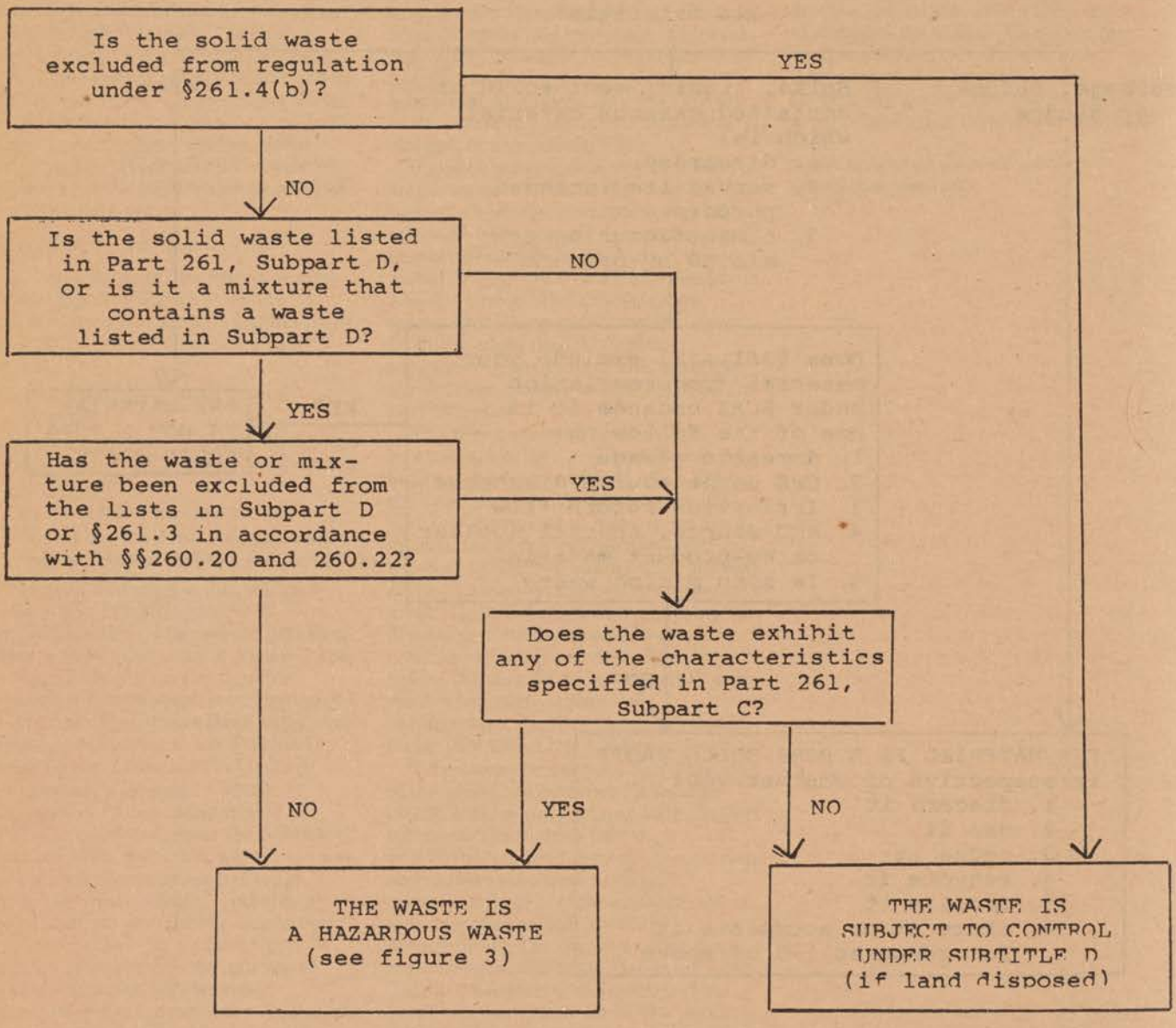


FIGURE 3

SPECIAL PROVISIONS FOR CERTAIN HAZARDOUS WASTE

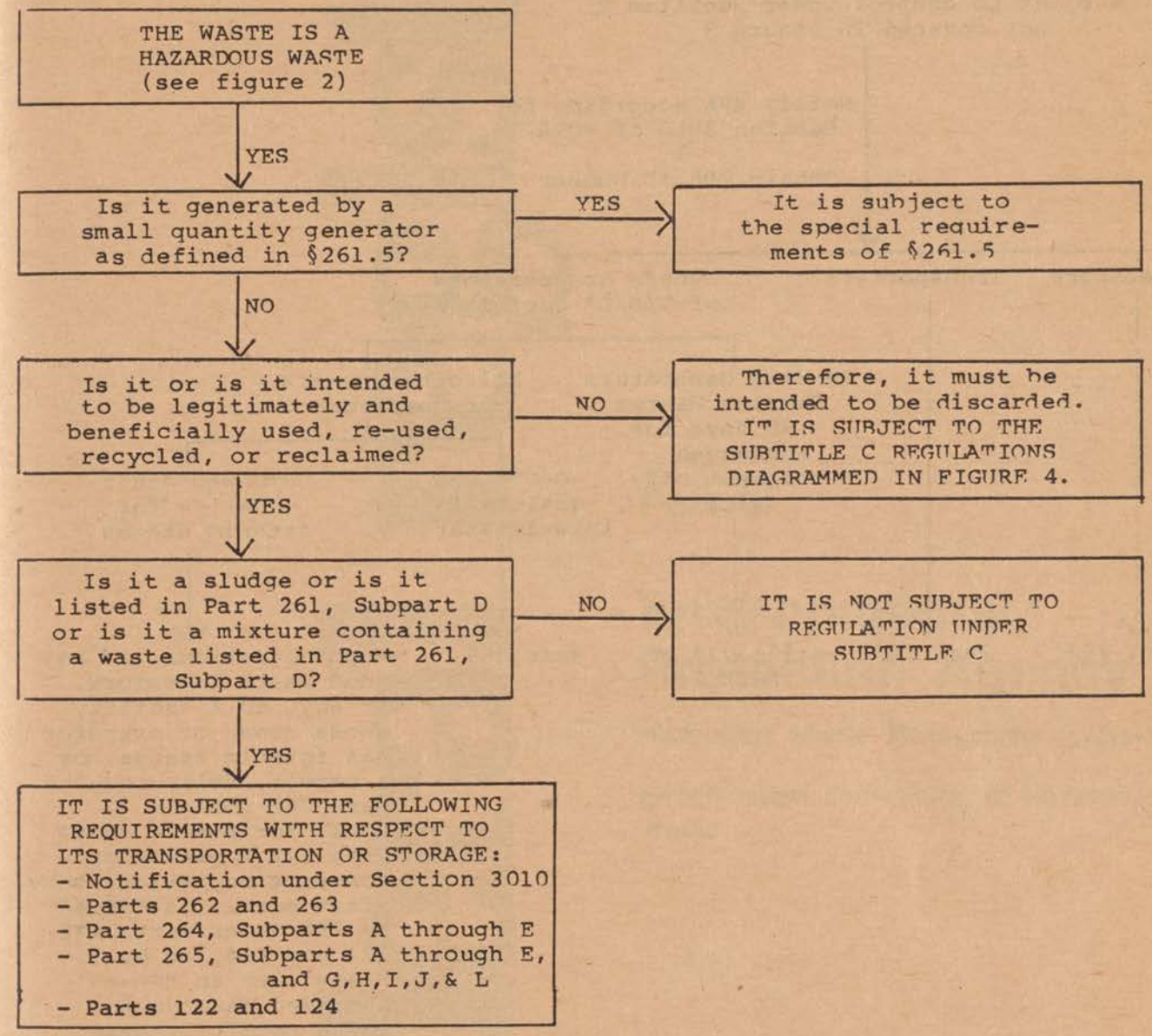
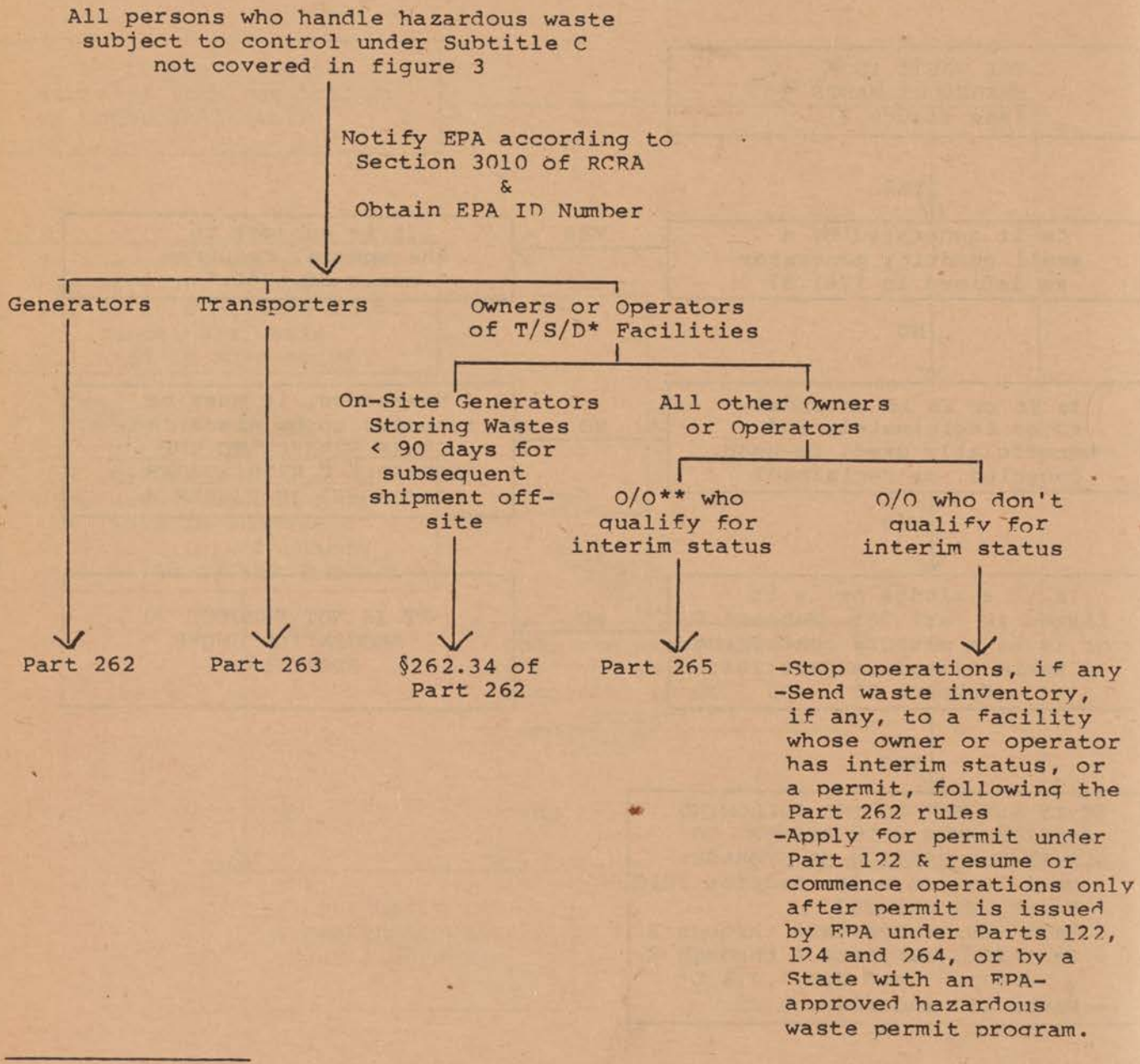


FIGURE 4

REGULATIONS FOR HAZARDOUS WASTE
NOT COVERED IN DIAGRAM 3



* T/S/D stands for Treatment, Storage, or Disposal
** O/O stands for Owners or Operators

BILLING CODE 6560-01-C

federal register

Monday
May 19, 1980

Part III

Environmental Protection Agency

Hazardous Waste Management System

Identification and Listing of Hazardous Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL 1471-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Enviromental Protection Agency.

ACTION: Final rule, interim final rule, and request for comments.

SUMMARY: Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), requires the Environmental Protection Agency ("EPA") to promulgate regulations establishing a Federal hazardous waste management system. The keystone of Subtitle C is Section 3001, which requires EPA to identify the characteristics of and to list those solid wastes which must be managed as hazardous wastes under that system.

This regulation is the first phase of EPA's implementation of Section 3001. It identifies four characteristics of hazardous waste to be used by persons handling solid waste to determine if that waste is a hazardous waste. In addition, it lists 85 process wastes as hazardous wastes and approximately 400 chemicals as hazardous wastes if they are discarded. Persons who generate, transport, treat, store or dispose of hazardous wastes identified or listed in this regulation must comply with all applicable requirements of Parts 122, 124, and 262 through 265 of this Chapter and the notification requirements of Section 3010 of RCRA.

In addition to identifying and listing hazardous wastes, this regulation also sets forth the criteria used by EPA to identify characteristics of hazardous wastes and to list hazardous wastes.

DATES:

Effective Date: These regulations, in the form published today, complete EPA's initial rulemaking on the subjects covered and are final agency action. They become effective on November 19, 1980, which is six months from the date of promulgation as Section 3010 requires. Today's promulgation begins the various schedules provided by RCRA for filing notifications and permit applications, and for States to apply for interim authorization.

Comment Dates: EPA will accept public comments on these regulations as follows:

Regulation and Deadline for Submission of Comments

Final regulations—technical errors only (*e.g.*, typographical errors, inaccurate cross references); July 18, 1980.

Use, re-use, recycling and reclamation of wastes (see section IV.B. of the preamble and § 261.4(c) of the regulations); August 18, 1980.

Interim final regulations (§§ 261.2, 261.4(a)(1) and 261.11, Subpart D and Appendix VIII); July 18, 1980.

Public Meetings: EPA will hold three all-day public meetings each beginning at 9 a.m. on the following dates:

May 30, 1980—San Francisco, California.

June 2, 1980—Washington, D.C.

June 6, 1980—Chicago, Illinois.

ADDRESSES: Comments on interim final portions should be sent to Docket Clerk [Docket No. 3001], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Docket: The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for many of the provisions in this regulation.

Copies of Regulations: Single copies of this regulation will be available approximately 30 days after date of publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 W. Saint Clair Street, Cincinnati, Ohio 45268, (513) 684-5362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

Public Meetings: EPA will hold three all-day public meetings, each beginning at 9 a.m., to answer questions about all of its final and interim final Subtitle C regulations. The dates and locations of these meetings are:

May 30, 1980—Sheraton Palace Hotel, 639 Market Place, San Francisco, California.

June 2, 1980—HEW Auditorium, HEW North Building, 330 Independence Avenue, S.W., Washington, D.C.

June 6, 1980—Palmer House Hotel, 17 East Monroe Street, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: For general information, contact Alan S. Corson, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187. For information on implementation, contact:

Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203 (617) 223-5777.

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5.

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980.

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-3016.

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148.

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-2645.

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307.

Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221.

Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606.

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260.

For further information about these meetings, contact Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-9157.

SUPPLEMENTARY INFORMATION:

I. Introduction

The improper management of hazardous waste is probably the most serious environmental problem in the United States today. EPA estimates that in 1979 the United States generated almost 60 million metric tons of hazardous waste, but that only 10 percent of this waste was managed in an environmentally sound manner. The remainder—over 50 million tons—was transported, treated, stored or disposed of in a manner which potentially threatens human health and the environment.

This mismanagement has tragic consequences. EPA has on file hundreds of cases of damage to human health or the environment resulting from the

indiscriminate dumping or other improper management of hazardous waste. The vast majority of these cases involve the pollution of groundwater—the source of drinking water for about half the nations's population—from the open dumping of wastes or from improperly operated landfills and surface impoundments. In many of these cases, groundwater supplies were so badly contaminated with toxic or cancer-causing chemicals and heavy metals that residents in the area had to obtain drinking water from other sources. In other more tragic cases, residents were not aware of the contamination, continued to drink the water, and suffered serious health effects.

Groundwater pollution is not the only problem posed by improper hazardous waste management. EPA's damage case file also includes incidents where the improper disposal of hazardous waste has polluted streams, rivers, lakes and other surface waters, killing aquatic life, destroying wildlife, and denuding areas of vegetation. In other cases, the vaporization of volatile organic materials from wastes which were improperly disposed of has been linked to respiratory illnesses, skin diseases (including skin cancer) and elevated levels of toxic materials in the blood and tissues of humans and domestic livestock. In still other cases, the mismanagement of hazardous waste has resulted in fires, explosions or the generation of toxic gases which have killed or seriously injured workers and firemen.

It is against the backdrop of such incidents that Congress enacted the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.* ("RCRA" or "Act"). Although the Act has several objectives (including the promotion of resource recovery and the proper management of non-hazardous solid waste), Congress' "overriding concern" (H.R. Rep. No. 96–1461, 96th Cong., 1st Sess. 3 (1976) ("H.R. Rep.")) in enacting RCRA was to establish the statutory framework for a national system which would insure the proper management of hazardous waste.

That framework is contained in Subtitle C of the statute. It requires EPA to establish a Federal "cradle to grave" management system for hazardous waste, including standards for generators of hazardous waste (Section 3002), standards for transporters of hazardous waste (Section 3003), standards and permit requirements for owners and operators of facilities that treat, store or dispose of hazardous waste (Sections 3004 and 3005) and a manifest system which will track the movement of the waste from the point of generation to the point of disposal (Sections 3002, 3003 and 3004). Under Section 3006 of Subtitle C, EPA may authorize States to operate a State hazardous waste program in lieu of the Federal program if they meet certain requirements.

The centerpiece of this system is Section 3001 of Subtitle C, which requires EPA to identify and list those solid wastes which must be managed as hazardous wastes according to the standards established by EPA under Sections 3002 through 3005. This identification is a two-part process. First, EPA is required to develop criteria for identifying the characteristics of hazardous waste and for listing hazardous wastes (Section 3001(a)). Then, based on these criteria, EPA must actually identify specific characteristics of hazardous waste and list particular hazardous wastes (Section 3001(b)).

EPA began developing regulations to implement these requirements shortly after RCRA was enacted. During 1977 and 1978, the Agency met extensively with experts in hazardous waste management, States, Federal agencies, industry, environmental groups and other individuals and organizations to discuss possible criteria, and to obtain suggestions for characteristics and listed wastes. Drafts of proposed regulations were developed and widely disseminated to the public for comment. Based on these meetings, several public hearings, written comments on its draft regulations and information collected by EPA, a final proposed regulation was developed and published in the **Federal Register** on December 18, 1978 (43 FR 58949–58968).

EPA held five public hearings on its December 18, 1978, proposal (43 FR 58946). Several hundred persons testified at these hearings. In addition, EPA received an estimated 1,000 sets of written comments on its proposed Section 3001 regulations.

Based in part on these comments, EPA proposed a supplemental list of hazardous wastes on August 22, 1979 (44 FR 49402–49404). The Agency also held a hearing on this proposal and received a number of written comments.

The Agency has carefully considered the comments received on its December 18, 1978, and August 22, 1979, proposals, as well as comments received on a number of reports, studies and other documents associated with its Section 3001 rulemaking which were noticed for public comment after the close of the comment period on the proposed regulations,[1] in developing the final and interim final regulations published today.

II. Organization of Regulations and Preamble

In response to comment that its proposed Subtitle C regulations were difficult to read, EPA has totally reorganized them. Regulations implementing Section 3001, which were originally proposed as Subpart A of Part 250 of Title 40 of the Code of Federal Regulations have been recodified as Part 261 of Title 40. Similar changes have been made in the remainder of the Subtitle C regulations. The following table shows the correlation between the statutory provisions of Subtitle C and the sections of EPA's proposed and final regulations which implement those provisions:

Statutory section	Proposed rule	Final rule
General provisions and definitions.	§§ 250.12(c), 250.11, 250.21, 250.31, 250.41	Part 260.
3001	§§ 250.10 (a) and (b), 250.12 through 250.15, 250.29(a)	Part 261.
3002	§§ 250.22 through 250.28, 250.29(b)	Part 262.
3003	§§ 250.32 through 250.38	Part 263.
3004 (permitting standards).	§§ 250.4 (a), (b), (d), and (e), 250.42 through 250.46–6	Part 264.
3004 (interim status standards).	§§ 250.40(c), 250.46	Part 265.
3005	Parts 122 and 124	Parts 122 and 124.
3006	Part 123, §§ 250.10(c), 250.20(b), 250.30(d)	Part 123.
3010	Part 250, Subpart E	45 FR 12746 (Feb. 26, 1980).

The recodification of EPA's Section 3001 regulations from a Subpart of Part 250 to Part 261 has necessitated some major reorganization of those regulations. Proposed § 250.10 is now largely incorporated in Subpart A. The purpose of this subpart is to tell the reader what materials are subject to the Federal hazardous waste management system established by Parts 262 through 265, 122 and 124. It contains a definition of solid waste, a definition of hazardous waste, and a list of materials which are excluded from all or a portion of the requirements in those parts. It also designates the points in the waste generation and handling process when a hazardous waste must begin to be managed in accordance with EPA's Parts 262 through 265 standards and explains when a hazardous waste ceases to be a hazardous waste. Finally, it establishes special requirements for small quantity generators of hazardous waste (originally contained in § 250.29(a) of EPA's proposed generator standards).

[1] See 44 FR 49277, 49278 (August 22, 1979); 44 FR 56724 (October 2, 1979); 44 FR 76827 (December 28, 1979); 45 FR 2059 (January 10, 1980); 45 FR 14232 (March 5, 1980).

Subpart B (§§ 250.12 and 250.14 of the proposed rule) establishes the criteria used by EPA in identifying the characteristics of hazardous waste and listing particular hazardous wastes. Subpart C (proposed § 250.13) contains the hazardous waste characteristics which EPA has identified and Subpart D (proposed § 250.14) the particular hazardous wastes which EPA has listed to date based on those criteria. As noted in the definition of hazardous waste in Subpart A, these two subparts are the cornerstone for the Federal hazardous waste management system because they identify which solid wastes will be regulated as hazardous wastes under that system.

The following table provides a rough correlation between the various provisions of EPA's proposed and final Section 3001 regulations:

Subject	Proposed rule	Final rule
Purpose of regulations	§ 250.10(a)	§ 261.1.
General definitions	§ 250.11	§§ 260.10, 261.2, 261.3.
Definition of solid waste	§ 250.10(b)	§ 261.2.
Definition of hazardous waste	§ 250.10(d)(1)	§ 261.3.
Exclusions	§§ 250.10(d)(2), 250.11(a)(7), 250.20(c)(4)	§ 261.4.
Small quantity generators	§ 250.29(a)	§ 261.5.
Criteria	§§ 250.12 (a) and (b), 250.14	Subpart B.
For identifying characteristics	§ 250.12(a)	§ 261.10.
For listing	§§ 250.12(b), 250.14	§ 261.11.
Characteristics	§ 250.13	Subpart C.
Ignitability	§ 250.13(a)	§ 261.21.
Corrosivity	§ 250.13(b)	§ 261.22.
Reactivity	§ 250.13(c)	§ 261.23.
Toxicity	§ 250.13(d)	§ 261.24.
Lists	§ 250.14	Subpart D.
Nonspecific sources	§ 250.14(a)	§ 261.31.
Specific sources	§ 250.14(b)(2)	§ 261.32.
Discarded chemicals	§ 250.14(a)	§ 261.33.
Procedures for exempting listed wastes from particular generating facilities.	§ 250.15	§§ 260.20, 260.22.
Petitions:		
Revision of list and characteristics.	§ 250.12(c)	§ 260.20.
Equivalent methods	§§ 250.13(a)(1)(i), (a)(2), (b)(1)(i), (b)(1)(ii), (d)(2)(ii)	§§ 260.20, 260.21.

Except for some broad issues which cut across all the Section 3001 regulations (and in some cases EPA's Section 3002 through 3004 standards), the preamble to this regulation will generally follow the structure of the final regulations. It will discuss some of the more significant issues raised during the public comment period on EPA's proposed regulations and the revisions made in response to those comments. Background documents which address these comments and revisions and explain the basis for these regulations in more detail are available as noted above.

III. General Issues

A. Phasing of Regulations

Several months prior to the proposal of EPA's Section 3001 regulations, the State of Illinois, several environmental groups, and a solid waste trade association sued the Agency under Section 7004 of RCRA to obtain a court order requiring EPA to promulgate final regulations under Section 3001 (and other sections of the Act) by a date certain. On January 3, 1979, the court issued an order directing EPA to issue final regulations under Section 3001 by December 31, 1979. *State of Illinois* v. *Costle*, 12 ERC 1597 (D.D.C. 1979). This order was subsequently modified to require EPA to use its best efforts to meet an April 1980, promulgation date (Order of December 18, 1979).

Given our limited resources, it has not been possible both to meet this deadline and to make final decisions on every segment of the very ambitious regulatory program which the Agency proposed on December 18, 1978, and August 22, 1979. We have tried to prioritize our efforts, insofar as possible, to deal with the most serious environmental problems first (*e.g.*, ones that are national in scope, are not dealt with by other State or Federal regulations) and to finalize those portions of the proposed regulations which must be issued if a core hazardous waste management program is to go into effect.

For these reasons, the final regulation published today defers final action on a number of aspects of the proposed regulation, including integrating the regulation of polychlorinated biphenyls ("PCBs") under RCRA and the Toxic Substances Control Act ("TSCA"); fully regulating wastes that are used, re-used, reclaimed or recovered; and a number of proposed listed wastes. To assist States in developing hazardous waste programs under Section 3006 of RCRA and the regulated community in preparing to comply with future regulatory requirements, EPA is providing the following information on its current schedule for acting on these deferred portions:

1. *PCB Integration.* On February 17, 1978 (43 FR 7150) EPA issued final regulations under Section 6(e) of TSCA establishing storage, landfilling, incineration, packaging, marking, placarding and recordkeeping requirements for waste PCBs. Revisions to these regulations were published on May 31, 1979 (44 FR 31514).

Because of the potential overlap between the RCRA hazardous waste management standards and the TSCA PCB marking and disposal regulations, in its proposed Section 3004 regulations, EPA requested comment on five alternative ways of integrating the two sets of regulations (43 FR 58993–58994). *See also* 43 FR 31539 (May 31, 1979). Based on the comments received, and EPA's own review of the two sets of regulations, the Agency has made a tentative decision that the best way to regulate PCBs is to merge the TSCA PCB rules into the final RCRA regulations.

Unfortunately, it has not been possible to complete this task to date. Both rules are lengthy and complicated, and must be carefully coordinated to avoid regulatory loopholes and disruption of the ongoing TSCA PCB program. Completing this coordination by April of this year would have required diverting personnel from the task of finalizing the RCRA hazardous waste program. EPA decided that it made little sense to focus its limited resources on revising an existing regulatory program when so much work needed to be done to develop a new one.

EPA expects to complete the task of integrating the RCRA regulations and TSCA PCB rules by the fall of 1980, and to amend Parts 261 through 265 to bring waste PCBs into the Subtitle C system at the same time that it promulgates its final Phase II Section 3004 standards. In the interim, the handling and disposal of waste PCBs will continue to be regulated under TSCA and other EPA statutes.

2. *Regulation of Wastes Which Are Used, Re-Used, Recovered or Reclaimed.* As discussed in some detail in section IV.B. of this preamble, EPA will be deferring the promulgation of standards to regulate hazardous waste recycling and reclamation operations and the actual use and re-use of hazardous waste until beginning in the fall of 1980.

3. *Radioactive Wastes.* In its December 18, 1978, regulation, EPA proposed to list the following radioactive materials as hazardous wastes: waste rock and overburden from uranium mining; overburden and slimes from phosphate surface mining; waste gypsum from phosphoric acid production; and slag and fluid bed prills from elemental phosphorous production (§ 250.14(b)(2)). At the same time, it proposed to establish special management standards for these wastes

which would regulate their disposal (§§ 250.46–2 and 250.46–4) and prevent their being used as fill in land used for residential development or in building products unless radon emissions and gamma radiation could be reduced to specified levels (§§ 250.46–3(c) and 250.46–4(b)). The purpose of these latter use restrictions was to reduce the amount of radiation to which persons living or working in buildings constructed either on land where these wastes were deposited or with materials containing these wastes would be exposed.

In February, 1980, the House of Representatives passed a bill which would amend RCRA to temporarily suspend EPA's authority to regulate these wastes under Subtitle C except as necessary:

> to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of solid waste from the extraction, beneficiation or processing of phosphate rock or the extraction of uranium ore (Section 3(d) of H.R. 3994).

Because Congressional action on this provision is imminent (see section III.E. of this preamble), we are deferring the development of final or interim final regulations establishing a criterion for listing radioactive wastes, listing radioactive phosphate and uranium wastes, and establishing management standards for those wastes until Congress has spoken. Assuming Congress acts by the end of the summer, we would hope to promulgate regulations for radioactive wastes by the fall of 1980. This would give EPA some time to better refine its final standards and conform them to any legislative amendments, to fully respond to comments on its proposal and to coordinate its final standards with its other regulations on used, re-used, recovered and reclaimed wastes (see section IV.B.4. of this preamble).

Although the use of radioactive mining wastes in residential landfill and construction materials may pose a serious health hazard, this hazard is limited to approximately half a dozen states where these wastes are generated. Thus, in contrast with many of the wastes covered by today's regulation, which are more ubiquitous and are frequently transported across state lines, these wastes can probably be regulated effectively at the state level pending EPA action.

4. *Infectious Wastes.* In its proposed regulation, EPA listed as hazardous wastes infectious wastes generated by certain departments in health care facilities and veterinary hospitals, by laboratories handling etiologic agents, and by sewage treatment facilities, unless the wastes were sterilized or incinerated in accordance with the methods prescribed in Appendix VI or § 250.14(b)(1)(iii).

EPA received a number of comments on this proposal, particularly the absence of an infectious waste listing criterion, the breadth of sources covered and the Agency's proposed treatment methods. Although EPA has completed its evaluation of these comments and has developed a criterion for listing infectious wastes and refined its proposed list, it has not been able to complete the work necessary to identify the treatment methods it would allow to be used to exempt these wastes from regulation. Because logic dictates that these three parts of the regulation should be promulgated simultaneously, EPA is deferring action on infectious wastes until it can finish this last segment. It expects to complete this task by the fall of 1980.

In the meantime, none of these wastes will go entirely unregulated. Many will be subject to State disposal regulations or State laws governing hospitals and other health care facilities. Because of public health considerations, the operations of these facilities are generally closely scrutinized by State and local officials. In addition, during this interim period, these wastes will be subject to the "open dumping" prohibition under Section 4005(c) of RCRA. EPA's regulations defining those practices which constitute "open dumping" expressly prohibit the land disposal of infectious wastes unless measures have been taken to minimize disease vectors (40 CFR 257.3–6).

5. *Other Listed Wastes.* The other waste streams on which EPA has deferred final action fall into four basic categories: Wastes which EPA intends to list as hazardous but for which revised background documents could not be completed in time for promulgation as part of this regulation; wastes for which EPA currently has insufficient data to make a final determination that the wastes are hazardous; wastes which available data suggests are not hazardous; and wastes which are no longer produced.

It is EPA's intent to amend this regulation to add most of the wastes included in the first category of deferred wastes by June 15, 1980 (see Appendix A) and the remainder by fall, 1980 (see Appendix B). Persons handling wastes identified or listed in both this regulation and Appendix A may, if they desire, save themselves the expense and inconvenience of a second notification under Section 3010 of RCRA by including Appendix A wastes in the notification required to be filed on August 18, 1980. Owners and operators of facilities which treat, store or dispose of the wastes in both categories may similarly avoid having to amend their Part A permit application (*see* 40 CFR 122.22) by including Appendix A wastes in their initial application.

EPA will take action on the second category of deferred wastes—wastes for which EPA currently has insufficient data to make a final listing determination—as soon as it is able to obtain the information necessary to make those decisions. To enable the Agency to gather such information without the *ex parte* contact restraints normally imposed on post-proposal rulemaking activities, EPA will in the future be reopening the comment period on its December 18, 1978, proposal to list these wastes. EPA does not plan on taking any further action on the final two categories of wastes.

EPA does not believe that phasing the promulgation of Section 3001 in this fashion will frustrate the objectives of the statute or unduly complicate implementation of the hazardous waste program. Sections 2002(b), 3001(c) and 7002 of the Act clearly contemplate that regulations under Section 3001 will be periodically expanded or otherwise revised. *See also* H.R. Rep. at 25. The preview of the content and timing of future regulations provided above should help to minimize the disruption that phased promulgation of major portions of the Section 3001 regulations might cause for the regulated community and for States which are attempting to formulate their hazardous waste programs. In light of these considerations and the pressing need to begin implementation of a national hazardous waste program as soon as possible, EPA sees no reason to postpone publication of those portions of its Section 3001 regulations which it is ready to finalize today pending a final decision on the remaining portions. Such an approach would cause an unwarranted delay in the commencement of the program.

B. Interim Final Provisions

The following portions of this regulation are being published as "interim final" regulations: the lists of hazardous wastes (Subpart D), the criteria for listing hazardous wastes (§ 261.11), and the definitions of "solid waste" (§ 261.2) and "domestic sewage" (§ 261.4(a)). This means that, although these regulations are promulgated for purposes of the 90-day notification requirement under Section 3010(a), the six-month effective date under Section 3010(b) and the 90-day petition deadline under Section 7006, the public will have an additional opportunity to comment on them before they are published as "final final" regulations.

The lists of hazardous wastes under Subpart D are being published in interim final form to allow the public an opportunity to comment on the

additional data EPA has collected since the close of the public comment period to support the listing of these wastes. Because EPA received comments on only approximately twenty-five percent of the wastes listed in its December 18, 1978, and August 22, 1979, proposals, the Agency does not anticipate receiving very many comments on its revised support documents or having to make major changes in the list of wastes published today before issuing a "final final" regulation.

The criteria for listing (§ 261.11) have been substantially revised in response to public comment. While EPA believes that these changes are a logical outgrowth of the public comment period, it also recognizes that they would probably benefit from the fine tuning that an additional round of public comment would provide. For this reason, the Agency is also publishing § 261.11 in interim final form.

EPA's proposed definition of "solid waste" has been clarified and a new definition of "domestic sewage" has been added in response to public comment. Because of the difficulties inherent in devising workable, broadly applicable definitions of these terms, and their potential regulatory impact, we would like to obtain some additional comment on them before publishing them in final form.

It is EPA's intent to act on all interim final portions of these regulations prior to the compliance date of Parts 262 and 263 and the effective date of Parts 264 and 265.

C. Data Base for Regulations

EPA received a number of comments on its December 18, 1978, and August 22, 1979, proposals urging it to postpone the promulgation of final regulations under Section 3001 (and the rest of Subtitle C) until it could develop an extensive data base on hazardous waste characteristics and individual hazardous wastes, including extensive industry-specific waste studies, risk assessments, and in-depth waste analyses.

In the final regulation published today, the Agency has made every attempt to base its rules on the data available on waste generation, composition and management, on the potential health and environmental hazards posed by waste constituents, and on exposure pathways. It has also exercised its best efforts to use good scientific analysis and judgment to supplement available data and to respond to comments received on its proposed regulation. In some instances, within time and budget constraints, EPA has undertaken additional waste analyses and testing.

While the acquisition of more information is often a scientific objective, Section 3001 requires the Agency to establish regulations where it has limited, but meaningful data. The broad discretion provided to EPA under the statute, the tight statutory promulgation deadlines coupled with Congress' acknowledged recognition of the lack of available data on hazardous waste management (*see* H.R. Rep. at 26), and the critical nature of the hazardous waste problem (*see* H.R. Rep. at 3, 4, 11, 17–23; S. Rep. No. 94–988, 94th Cong. 2d Sess. at 3, 4 ("S. Rep.")) all support EPA's going forward with a regulatory program even though its data base and regulations are less than perfect. The courts have repeatedly sanctioned this approach under other EPA statutes where, as here, the Agency is implementing a complex program in an area "fraught with scientific uncertainty" where Congress has directed EPA "to act quickly and decisively despite the lack of exact data". *Weyerhaeuser Company v. Costle*, 590 F.2d 1011, 1025–1026 (D.C. Cir. 1978). *See also Ethyl Corp. v. EPA*, 541 F.2d 1, 24 (D.C. Cir. 1976); *Society of Plastics Industries, Inc. v. OSHA*, 509 F.2d 1301, 1308 (2d Cir.), *cert. denied*, 421 U.S. 992 (1975).

We are committed to improving our data base for these regulations and refining them in the future. The Agency has recently instituted a multi-year, multi-million dollar program to survey specific industries, and collect waste samples and other information which will expand its data base on the hazardous waste generated by these industries. EPA also anticipates that implementation of the Subtitle C regulations—particularly the waste testing requirements—will, over the next several years, substantially increase the national pool of information on hazardous wastes. The petitioning procedures set forth in §§ 260.20 through 260.22 should provide yet another revenue of information which can be used to improve this regulation in the future.

D. Developing a National Hazardous Waste Management System

EPA received a number of comments on its proposed regulations identifying particular wastes or management situations where a strict application of EPA's proposed regulations would result in overregulation of the wastes at issue. For exampe. commenters identified several wastes which exhibited EPA's proposed characteristics but which would not normally be thought of as hazardous, and described situations where the application of EPA's proposed Section 3004 standards was arguably unnecessary.

In the regulations promulgated today, particularly the Part 264 and 265 regulations, we have tried to address some of these criticisms, to the extent feasible, and to achieve a better balance between the often competing goals of regulatory specificity and broad applicability. Where we think specific standards are appropriate, we have promulgated specific standards; where more flexibility is required, we have either used broader standards or used specific standards and articulated exceptions or provided for individual variances. We have done our best to lay the groundwork for a hazardous waste management system which is workable and understandable, and which provides appropriate regulation of most hazardous wastes identified or listed in this Part.

This system may not work perfectly for every waste, however. It may overregulate in some instances and underregulate in others. This is an unavoidable consequence of attempting to develop a national hazardous waste managment program which has to regulate thousands of wastes in literally hundreds of thousands of individual transportation, treatment, storage and disposal situtations. To develop a program which would provide precisely the right degree of environmental and health protection in each management situation would require regulations that would be either so vague that they would offer little guidance to the regulated community and would be largely unenforceable or so extensive and so encumbered with provisions for case-by-case variances that they would be an administrative nightmare for both EPA and the hundreds of thousands of persons and facilities which are potentially subject to them.

We think that the system we have promulgated today, although not perfect in all aspects, is within the scope of what Congress intended when, in 1976, it directed EPA to establish hazardous waste management standards which were "necessary to protect health and the environment" in eighteen months. We do not think that Congress expected EPA to develop a program which it could not implement or enforce or to indefinitely postpone the issuance of regulations until it could develop standards which would provide the degree of precision desired by some commenters. Neither of these approaches would provide any health or environmental protection at all.

In these regulations we have tried to strike a balance between these two extremes. Where we have failed to achieve the right balance, we suspect that this will become apparent in the early stages of implementing the

program. If there are situations where a strict application of the standards contained in these rules would bring about a result which was obviously not intended, we would appreciate being advised of it so that we can take appropriate action. We are prepared to react to these problems with regulatory amendments, interpretive guidance and reasonable implementation and enforcment, as appropriate.

E. Pending Legislative Amendments

The United States Senate and House of Representatives have each recently passed a bill to reauthorize and amend RCRA (S. 1156 and H.R. 3994). Both bills contain amendments to Section 3001 which, if enacted, would repeal or temporarily suspend EPA's authority to regulate certain utility and energy development wastes as hazardous wastes under Subtitle C. These bills are now awaiting action by a conference committee. Because it appears likely that Congress will act before November 19, 1980 to exempt these wastes, EPA has temporarily excluded them from this regulation (*see* § 261.4(b)). This exclusion will be revised, if necessary, to conform to the legislation which is ultimately enacted.

F. Consideration of Economic Impact of the Development of the Regulations

In its proposed regulations, EPA expressed uncertainty on the appropriate role that cost considerations and economic impact should play in the development of the hazardous waste regulations:

> It is also not clear to what extent RCRA allows economic impact to be taken into account, since the Act is silent on this point. Thus, the Agency is faced with the problem of how to deal with these potential impacts with little economic data and without clear Congressional guidance. (43 FR 58971)

A variety of comments were received on this issue, expressing three predominant themes: (a) The Act and its legislative history require the Agency to analyze its regulations in terms of costs and benefits; (b) the legislative materials preclude any consideration of costs in the development of regulations; and, (c) EPA must prepare an economic impact analysis.

EPA has re-examined the legislative history of RCRA. Although the legislative history is sparse, it does contain sufficient indications of Congressional intent to lead the Agency to the conclusion that EPA may not consider cost burden upon industry in choosing the level of its standards. The Agency may, however, take cost considerations in account in order to select the most effective regulation among various alternatives that meet the statutory requirement of being "necessary to protect human health and the environment." In addition, the Agency may prepare economic analyses to supplement its regulations as an aid to congressional, intergovernmental, or public understanding of the regulatory program.

EPA disagrees with the position of several commenters that cost, or economic considerations more generally, must be a factor in EPA's decisions under Subtitle C. There is no explicit requirement in the Act directing EPA to consider costs in the development of its intitial regulations. The singular focus of protecting human health and the environment distinguishes RCRA from the other major pollution control statutes. For example, in developing effluent guideline limitations under the Clean Water Act, the Administrator is to consider, among other things, "the total cost of the application of technology in relation to the the effluent reductions to be achieved . . ." Section 304(b)(1)(B), 33 U.S.C. 1314(b)(1)(B). *See also* Section 304(b)(2)(B). The Clean Air Act also directs that in establishing new source performance standards for stationary sources of air pollution the Administrator should "consider the cost of achieving such emission reduction and any nonair quality health and environmental impact and energy requirements." Section 111(a)(1)(C), 42 U.S.C. 7211(a)(1)(C).

The silence of the statute itself appears especially significant because earlier drafts of the legislation had contained language which either explicitly called for considerations of cost or implicitly sanctioned such consideration. A draft bill for use by the relevant House Subcommittee would have required that hazardous waste regulations "shall be such as will minimize the risk of adverse effects on human health while taking to the greatest extent possible, into account the economic cost and benefits of achieving such standards." Section 351(e), Subcommittee on Transportation and Commerce, Draft of the Solid Waste Utilization Act (December 8, 1975). When this bill was redrafted for introduction to the House of Representatives as H.R. 14496, this provision calling for consideration of costs and benefits had been deleted. The House bill, however, required that hazardous waste regulations "reasonably protect" human health and the environment. H.R. 14496, 94th Cong., 2d Sess., § 306 (1976). The legislative materials accompanying H.R. 14496 provided no guidance on what effect, if any, the draftsmen intended the potentially moderating phrase "reasonably protect" should have on the development of regulations. In the compromise bill reconciling the differences between the Senate and House bills, the adverb "reasonably" was deleted. In the debate in the House prior to the Act's passage there was no discussion of the effect of this deletion on the intended operation of the Act.

Congress was aware that the hazardous waste regulation would impose substantial costs on the regulated community. *See, e.g.*, H.R. Rep. at 4, S. Rep. at 4. Despite this recognition, Congress deliberately rejected provisions that would require consideration of cost burden on industry or to moderate the Act's environmental objectives. For these reasons, the Agency concludes that the Act prohibits it from considering such costs in the development of Subtitle C regulations as a basis for lessening the standards it considers necessary to ensure protection of human health or the environment.

The Agency has, however, considered cost-effectiveness in choosing among alternatives that meet the requirements of the statute. In addition, the Administrator may refer to other considerations such as energy or environmental impacts, and implementation and enforcement burdens. For instance, the information received or developed in the course of rulemaking on the cost implications of its proposed regulations may be used by EPA to determine the relative cost-effectiveness of various methods to implement a particular requirement. Information on economic impacts may also be useful in informing Congress about the implementation of the hazardous waste program, developing new legislative or Agency intitatives which might affect the regulatory program, and advising the public about the projected impacts of the program. *See Hercules, Inc. v. Environmental Protection Agency*, 598 F. 2d 91, 113 (D.C.Cir. 1978). EPA has prepared an economic impact analysis on the entire Subtitle C regulatory program. This analysis provides detailed information on the projected economic impacts of these regulations. The report should facilitate public understanding of the task that the Agency is undertaking.

G. Rulemaking Petitions

EPA's December 18, 1978, proposed Section 3001 regulations contained no special procedures for petitioning the Agency to identify a new characteristic or list a new hazardous waste, or to modify or revoke an existing

characteristic or listing. They simply provided that a petition to identify a characteristic or list a solid waste as a hazardous waste would be granted if EPA found that the proposed characteristic or waste met EPA's criteria for characteristics or listing (proposed § 250.12(c)).

EPA received a number of comments urging it to establish standardized procedures for the submission and processing of petitions to modify its characteristics or list of wastes. Some of these commenters simply wanted to know how to file a petition and how EPA would act on it. Others insisted that EPA establish rulemaking procedures which complied with the Administrative Procedures Act, mistakenly thinking that because proposed § 250.12(c) did not articulate the procedures EPA would follow in acting on petitions, the Agency would grant petitions, thereby modifying its regulations, without going through normal rulemaking procedures.

To provide the guidance desired by the first set of commenters and to assuage the concerns of the second, we have included in Subpart C of Part 260 procedures for the submission and processing of petitions to add to, revoke or otherwise modify any of the Subtitle C hazardous waste regulations, including the hazardous waste characteristics and lists. This provision expressly requires that a tentative decision to grant a petition be made in the form of an advance notice of proposed rulemaking or a proposed regulation, thus starting the rulemaking process.

EPA received a number of comments suggesting that unless EPA specified the information to be contained in petitions to amend its characteristics or lists of hazardous wastes, petitioners would not know what type of data to submit to the Agency and that the Agency would have to expend a substantial amount of time reviewing incomplete petitions.

EPA agrees that this may have been a problem with its proposed regulation. The Agency's proposed criteria for listing were not particularly well-articulated. In addition, the background documents for characteristics and for individual wastes also failed, in some cases, to provide meaningful guidance as to the kinds of information which should be submitted in a rulemaking petition.

We think we have remedied most of these deficiencies in this regulation. In response to comment, we have substantially expanded the criteria for listing, so that the factors which EPA will be using in making a listing decision are much better stated. The background documents for both the characteristics and lists have been materially upgraded, so that they now provide a good model for rulemaking petitions. In short, we think the regulations published today, with their supporting materials, will enable petitioners to intelligently frame rulemaking petitions.

For this reason, EPA thinks it is probably unnecessary to establish detailed informational requirements for petitions. Moreover, developing a list of such requirements would be very difficult, because the types of data and degree of detail required will vary substantially from waste to waste and from characteristic to characteristic. If, in the future, EPA finds that most petitioners are submitting insufficient information, we will reconsider establishing more specific data requirements for these petitions.

EPA recognizes that some organizations—primarily environmental groups—may not have the skills, resources, or data collection authority to fashion rulemaking petitions which contain all of the information which EPA will need to make a decision to establish a new characteristic or list a new waste. If such petitions, although incomplete, appear to have merit, EPA will attempt to obtain the supplemental data necessary to make a tentative rulemaking determination. These organizations should recognize, however, that this will necessarily delay any final action on their petitions.

IV. Subpart A.

A. Section 261.1 (Purpose, Scope and Applicability)

Although this section is largely self-explanatory, two points regarding the function of EPA's Section 3001 regulation, which were apparently a source of misunderstanding during the comment period, are deserving of special attention.

First, the purpose of this regulation is to identify those wastes which, because of the hazards they may pose in transportation, treatment, storage or disposal, should be subject to appropriate management requirements under Subtitle C. It does not dictate how wastes should be managed (although it may identify properties of the waste which will affect management practices). Management standards and permitting requirements are imposed under Sections 3002 through 3005 and Section 3010.

Second, although this regulation limits what may be regulated as a "hazardous waste" under Sections 3002 through 3005 and 3010 of RCRA, it does not limit those materials which may be considered "hazardous wastes" under other sections of the statute, particularly Section 3007 (which authorizes EPA to obtain information on "hazardous waste" in order to develop regulations or enforce RCRA) and Section 7003 (which authorizes the Agency to institute civil actions to abate imminent and substantial hazards caused by "hazardous wastes"). Unlike Sections 3002 through 3004 and Section 3010, Congress did not confine the operations of Sections 3007 and 7003 to "hazardous wastes *identified or listed under this subtitle*" (emphasis added). To avoid future confusion on this point, EPA has stated it explicitly in § 261.1(b).

B. Section 261.2 (Definition of Solid Waste)

Because no material can be a "hazardous waste" without first being a "solid waste" (Section 1004(5)), what constitutes a "solid waste" is really the definitional starting point for the hazardous waste management system. Section 1004(27) of RCRA defines a solid waste as:

> any garbage, refuse, sludge from a wastewater 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 industrial, commercial or mining and agricultural operations, and from community activities, but does not include solid or dissolved materials 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 Federal Water Pollution Control Act . . . or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 . . . (Section 1004(27)).

In its proposed regulations, EPA adopted this definition, with its exclusions, in its entirety (§ 250.11(a)(7)). In addition, it proposed to construe the term "other discarded material" in Section 1004(27) to include:

(1) Any material which is not re-used—i.e., is abandoned or committed to final disposal;
(2) Any material which is re-used by being placed in or on the land or water so that the material or any constituent thereof is released into the environment; and
(3) Waste oil burned as fuel.

EPA noted that it would add other uses to the third category of discarded materials if it found that it was necessary to control such uses (43 FR 58954).

This definition of "other discarded material" was based on four major considerations. First, after reviewing both the language and framework of

RCRA and its legislative history, EPA concluded that Subtitle C was intended to regulate hazardous wastes irrespective of their end use—*i.e.*, regardless of whether they are committed to final disposal or intended to be used, re-used, recycled or reclaimed.

Second, the Agency concluded that all hazardous wastes, regardless of their end use, may pose significant health and environmental hazards. Wastes that present a hazard in storage or transport arguably pose the same danger in storage or transport irrespective of whether they are destined for disposal or for use, re-use, recycle or reclamation. Wastes which are used or re-used by being placed on the land—*e.g.*, chemical-bearing sludges used as fertilizers, contaminated waste oil used as a dust suppressant on roads and radioactive mining wastes used as residential land fill—may pose almost the same hazards as if they were simply dumped there. Wastes which are used, re-used, recycled or reclaimed in some other fashion, and the facilities which recycle or reclaim them, may also create serious health or environmental problems. For example, waste drums containing hazardous residues which were used as municipal trash cans have injured children; waste solvent reclamation facilities have caused serious air pollution problems.

Third, EPA decided that excluding wastes that are used, re-used, recycled or reclaimed from the Subtitle C system would make the regulatory program largely unworkable and create a major regulatory loophole not intended by the Act. Without a manifest system (or its functional equivalent) there would be no way of assuring that wastes which were intended to be used, re-used, recycled or reclaimed were in fact delivered to their intended destination. Whether a waste was subject to Subtitle C requirements would be based primarily on the intent of the person handling it. This would make the requirements difficult to enforce and theoretically allow wastes to move in and out of the hazardous waste management system depending on what the person then handling the waste planned to do with it.

Finally, the Agency decided that, insofar as feasible, its regulations should try to achieve a workable balance between the requirement in Subtitle C that hazardous waste be properly managed and RCRA's overall objective of promoting the use, re-use, recycling and reclamation of wastes. The use, re-use, recycling and reclamation of wastes not only helps preserve valuable natural resources and reduces the environmental problems which stem from the exploitation of those resources, but, if properly conducted, may eliminate or reduce some of the hazards associated with other types of waste management and alleviate the strain on national disposal capacity. For this reason, EPA proposed to regulate only those uses and re-uses which could readily be expected to pose significant health and environmental hazards.

EPA received a substantial number of comments on its proposed construction of the statutory definition of "solid waste" and "other discarded materials." Virtually all commenters agreed that the terms encompassed materials which were destined for disposal. There was substantially less consensus on EPA's proposed regulation of used, re-used, recycled or reclaimed wastes. Some commenters argued that EPA had no authority under RCRA to regulate wastes which were used, re-used, recycled or reclaimed. Others contended that the Agency did have such authority and that comprehensive regulation of the use and recycling of hazardous waste was essential to protect public health and the environment and to make the hazardous waste management system workable. Still other commenters claimed that imposing stringent Subtitle C requirements on waste use, re-use, recycling and recovery would discourage such activities, thwarting one of the primary objectives of RCRA and further aggravating hazardous waste management problems.

1. *Legal Authority to Regulate Wastes That Are Used, Re-used, Recycled or Recovered.* Most commenters who challenged EPA's authority to regulate the use, re-use, recycling or reclamation of wastes based their contention on the term "other discarded material" in the statutory definition of "solid waste". The common meaning of this term, they argued, would preclude regulating as "solid waste" wastes which were not intended to be "thrown away" or "abandoned" or which were of "no further use".

The United States Court of Appeals for the D.C. Circuit has already rejected this argument in *United States Brewers' Association, Inc. v. EPA*, 600 F.2d 974 (D.C. Cir. 1979), a lawsuit challenging a beverage container recycling guideline issued by EPA under Section 1008(a)(1) of RCRA. The petitioners in that proceeding contended, *inter alia*, that beverage containers were not "solid waste" until "discarded" and therefore that EPA had no authority under Section 1008(a)(1) to issue solid waste management guidelines requiring that beverages be sold in returnable containers, or that a minimum deposit be charged on containers (to encourage their return). The Court of Appeals gave short shrift to this contention, noting that it:

> flies squarely in the face of the explicit definition in the statute. Section 1008(a) directs EPA to publish "suggested guidelines for solid waste management", which, as defined in section 1004(30) expressly includes "planning or management respecting resource recovery and resource conservation" . . . and "utilization of recovered resources" [600 F. 2d at 982–983].

We think the Court's conclusion is applicable to the rest of RCRA as well. It seems highly improbable that Congress would have intended the term "solid waste" to include recycled wastes under Section 1008(a)(1) but not under Subtitle C. Indeed, RCRA and its legislative history evidence a clear Congressional intent that the terms "solid waste" and "hazardous waste" encompass wastes that are used, re-used, recycled or recovered wherever such terms are used in the statute.

For example, Section 1004 of RCRA contains numerous definitions—including the definition of "Hazardous Waste Management", the title of Subtitle C—which would be self contradictory if the terms "solid waste" and "hazardous waste" did not include wastes which were used, re-used, recycled or recovered. *See, e.g.*, Sections 1004(7), (18)–(24), (29) and (34). The repeated references to resource recovery and conservation in the statute would be similarly meaningless if solid wastes were never recycled, recovered or reclaimed. *See, e.g.*, Sections 1002(c)(2) and (3), 1003(1) and (5)–(8), 2003, 4002(c)(10), 4003(5) and (6), 4008(a)(2)(A) and (d), 5001, 5002 and 6002(c)–(g).

The legislative history of RCRA further supports this construction of the terms "solid waste" and "discarded material". The report of the House Committee on Interstate and Foreign Commerce on RCRA, for example, makes it clear that the term "discarded material" is meant to *expand*, not limit, the common meaning of the term "solid waste" (H.R. Rep. at 2). Other references in the legislative history confirm that the term "discarded material" covers wastes which are being recycled (*see, e.g., H.R. Rep.* at 3, 10). Several of the damage incidents cited by Congress as justification for establishing a national hazardous waste management system resulted from recycling or re-use activities (H.R. Rep. at 17, 19 and 22). Discussions of resource conservation and recovery activities presume the existence of a solid waste from which valuable resources can be reclaimed.

See, e.g., H.R. Rep. at 3, 4, 10, 11; S. Rep. at 2, 4, 6 (1976).

In short, under RCRA solid wastes do not cease to be solid wastes simply because they are being used, re-used, recycled or reclaimed. Rather, use, re-use, recycling, resource recovery and reclamation are ways of managing solid wastes which, if properly conducted, can avoid environmental hazards, protect scarce land supply, and reduce the nation's reliance on foreign energy and materials (H.R. Rep. at 4).

A number of commenters suggested that Congress could not have intended the term "solid waste" to include hazardous wastes which are used, re-used, recycled or reclaimed because the regulation of such wastes under Subtitle C would thwart RCRA's broad resource conservation and recovery objectives.

EPA does not agree. Although promoting waste re-use and recovery is certainly one of the goals of RCRA, Subtitle C does not require EPA to consider resource recovery implications in establishing hazardous waste management standards; nor does it suggest that promoting resource recovery should take precedence over assuring proper management of hazardous wastes. Furthermore, EPA does not agree that frustrating resource recovery is an inevitable result of requiring hazardous waste to be properly managed. As discussed below, EPA believes it may be possible to achieve a workable balance between Subtitle C's mandate that hazardous wastes be handled in an environmentally sound manner and RCRA's overall objective of encouraging th re-use and reclamation of wastes. However, in the event such a balance cannot be achieved, Congress' "overriding concern"—the safe handling of hazardous wastes (H.R. Rep. at 3) and the elimination of "the last remaining loophole" in environmental regulation (H.R. Rep. at 4)—must prevail.

2. *Assuring Proper Management of Hazardous Waste and Encouraging Resource Recovery.* The comments which EPA received on its proposal to regulate the use, re-use, recycling and recovery of hazardous waste in many ways mirrored the competing objectives which the Agency was trying to achieve in its proposal. Many commenters argued that EPA's approach would discourage the beneficial use and recycling of hazardous wastes by so escalating the cost of using or recycling wastes that they could no longer compete with virgin products, by increasing administrative burdens for the waste user or reclaimer, and by labeling recycling activities as another form of "hazardous waste" management. These commenters also suggested that the regulation of waste uses and reclamation would pose serious practical problems—*e.g.,* distinguishing between wastes and commercial by-products and intermediates, issuing permits for certain types of re-uses—and that EPA's proposed Section 3004 standards were not appropiate for many waste use and reclamation activities. Other commenters, citing the types of considerations outlined above, applauded EPA's regulation of the use and reclamation of hazardous wastes and urged that its proposed list of regulated waste re-uses and recycling operations be expanded to include the reclamation of waste solvents, the burning of spent catalysts and other organic wastes for energy, the use of metal-bearing sludges as fertilizers, the use of waste acids, and the re-use of contaminated drums. Still other commenters suggested that, at a minimum, wastes destined for re-use, or reclamation be properly stored and manifested.

EPA does not agree with the largely unsubstantiated claims of commenters that controlling the use and recycling of hazardous waste will necessarily discourage *bona fide,* environmentally sound re-use and reclamation activities. The impact of EPA's regulations on waste use and recovery will, in the Agency's opinion, hinge almost exclusively on the relative costs of re-use versus disposal. As disposal costs increase, it seems reasonable to expect that it will become profitable or more profitable to recycle or re-use wastes (even if regulated) than to dispose of them. EPA received no data during the comment period to suggest the contrary.

Commenters' claims about the chilling effect of regulating recycle and re-use activities also seem somewhat exaggerated. In many cases, Federal or State regulation of these activities should legitimatize, not stigmatize, them in the eyes of the public and increase the flow of wastes to well-operated facilities. Indeed, EPA received comments from several waste recyclers urging the Agency to extend Subtitle C control to their operations for these very reasons.

EPA does agree, however, that its proposed Section 3004 treatment and disposal standards (as well as the standards promulgated today) may not be well-suited for regulating all hazardous waste recovery and reclamation facilities or for regulating all uses and re-uses of hazardous waste. These standards are designed primarily to minimize the health and environmental hazards posed by traditional hazardous waste treatment and disposal facilities—such as incinerators and landfills. In many cases, the health and environmental dangers associated with the use or re-use of hazardous waste or with the recycle and reclamation operations are different in nature or degree, and therefore may justify the imposition of different management standards. For example, air emissions generated by the burning of waste oil for energy recovery can probably be effectively controlled without requiring boilers to meet hazardous waste incinerator requirements. Similarly, the leaching of metals from slag used in roadbeds can probably be successfully minimized without requiring compliance with Section 3004 landfill criteria.

At the same time, EPA also concedes that its proposed Section 3001 regulations probably did not go far enough in controlling the re-use and reclamation of hazardous waste. For example, there are a number of waste recycling operations which were not covered by EPA's proposed regulation—*e.g.,* solvent reclamation—which have been known to cause serious health and environmental hazards and should be subject to Subtitle C regulation. The long-term storage of hazardous wastes prior to recycling is another area where there have been damage incidents (*e.g.,* the incident at the Silresim Chemical Company) and where Subtitle C controls would appear to be essential for environmental protection.

In short, EPA acknowledges that it could have done a better job in its proposed regulations of attempting to balance Subtitle C's mandate that hazardous wastes be properly managed with RCRA's overall objective of promoting resource recovery. As we discovered during the comment period, however, this is not an easy task, and given other priorities in developing the regulations promulgated today, we have only been able to complete the first phase of it to date. That first phase, as well as EPA's long term plans for regulating the use, re-use, recycling and reclamation of hazardous wastes are discussed in sections IV.B.3. and IV.B.4., respectively, of this preamble. As indicated in those sections, we believe this program, when completed, will be responsive to the two major deficiencies in EPA's proposed regulation identified above.

3. *Regulating the Storage and Transportation of Hazardous Wastes Prior to Use, Re-use, Recycling or Reclamation; Defining "Waste".* As discussed above, EPA generally agrees

that many of its proposed (and final) treatment and disposal standards were not particularly well-suited for hazardous waste recycling and reclamation operations or for uses and re-uses of hazardous wastes. Because of the need to resolve other, more pressing issues in the rule published today, we have not been able to formulate more appropriate standards to date. We are therefore deferring Subtitle C regulation of the actual use and re-use of hazardous wastes and hazardous waste recycling and reclamation activities until such standards can be developed (§ 261.6(a)). As noted in section IV.B.4., we hope to begin issuing those standards later this year.

This temporary deferral, it should be noted, is confined to *bona fide* "legitimate" and "beneficial" uses and recycling of hazardous wastes. Sham uses and recovery or reclamation activities—*e.g.*, "landfilling" or "land reclamation" which is actually disposal and burning organic wastes that have little or no heat value in industrial boilers under the guise of energy recovery—are not within its scope and, if conducted in violation of Subtitle C requirements, will be subject to enforcement under Section 3008 of RCRA. In enforcing this provision, EPA will be particularly suspicious of use, and reclamation operations which were not conducted prior to the publication of these regulations.

We do not think that the types of criticisms which have been made of EPA's proposal to apply its treatment and disposal standards to the use, re-use, recycling and reclamation of hazardous waste are applicable to those regulations which govern waste management prior to actual use, re-use, recycling or reclamation—*i.e.*, the standards for generators, transporters and owners and operators of storage facilities. During these stages of the waste handling process, wastes present essentially the same hazards, and should therefore require essentially the same management, irrespective of whether they are destined for disposal or for re-use and recycling.

EPA has concluded, therefore, that although we are not now prepared to issue standards regulating the actual use, re-use, recycling and reclamation of hazardous wastes, we can and should begin to control the transportation and storage of wastes prior to use, re-use, recycling and reclamation, and that the general management standards set forth in Parts 262, 263 and selected sections of Parts 264 and 265 are entirely appropriate for that purpose.

The decision to regulate hazardous waste use and recycling necessitates the development of a working definition of "waste" which can appropriately distinguish between "wastes" and other materials (such as products and chemical intermediates) for purposes of determining whether their use is subject to RCRA's jurisdiction. Indeed, many commenters criticized EPA for failing to clearly distinguish between wastes and other materials in its proposed regulations and suggested language or conceptual approaches which they contended would draw that distinction.

We have carefully reviewed these suggestions; most, however, were not very useful. For example, a number of commenters suggested that the line of demarcation between a "waste" and other materials was whether a substance had value. This definition makes no sense in the context of recycle and re-use activities, since a waste which is being re-used or recycled by definition "has value". *See* H.R. Rep. at 3. Definitions keyed to whether a waste has a commercial use raise similar problems.

Other commenters contended that the proper inquiry was whether a material was "historically reused" or was "sometimes discarded". We think this is a much more productive line of analysis and is more consistent with the language and legislative history of RCRA and the purposes of Subtitle C.

A review of both RCRA and its legislative history indicate that Congress intended to regulate four broad categories of materials as solid wastes under RCRA, and particularly Subtitle C, irrespective of their ultimate disposition. The common thread linking all these materials is that they are "sometimes discarded." Because they are "sometimes discarded," they not only fall within the general rubric "waste", but also may become part of the "discarded materials disposal problem" (H.R. Rep. at 2) which Congress sought to remedy under RCRA. Proper tracking and management of these materials under Subtitle C would assure that they did not become part of this problem because they would be either properly disposed of or properly used or reclaimed.

The first category of materials which are regulated as "wastes" under RCRA are "garbage, refuse (and) sludge" (Section 1004(27)). These materials are almost always thrown away, and it is clear from both Section 1004(27) of the statute and its legislative history (H.R. Rep. at 2–4; S. Rep. at 5) that Congress regarded them as "wastes" regardless of their intended end use.

Of those materials which are not garbage, refuse or sludge, it also seems clear that any material which is intended to be or is in fact thrown away, abandoned or destroyed is a "waste." As noted above, there appears to be no disagreement among commenters on this point and of course it is fully supported by the legislative history of RCRA.

Of those materials which do not fall into either of these two categories—*i.e.*, materials other than garbage, refuse or sludge which are (or are intended to be) used, re-used, recycled or reclaimed—it appears that there are two types of substances which Congress intended to be regulated as "wastes" under RCRA.

The first are materials like waste solvents, paint wastes, waste acids, used drums and waste oil. These are what Congress referred to in the legislative history as "post-consumer wastes" or wastes which have "served their intended purpose" (H.R. Rep. at 2 and 9). While acknowledging that some of these post-consumer wastes might be recycled (*see* H.R. Rep. at 3, 10), Congress also recognized that they were sometimes discarded, and therefore were "wastes" (*see* H.R. Rep. at 9–10).

The second are tars, residues, slags and other materials which are incidentally generated as part of a manufacturing or mining process. A major concern of Congress in enacting RCRA was to assure regulation of "the waste by-products of the nation's manufacturing processes" (H.R. Rep. at 2) and "the by-products of the productive process" (H.R. Rep. at 9). There is nothing in the legislative history which suggests that these terms refer only to the by-products of pollution control. Indeed, even the definition of sludge in Section 1004(26A) indicates Congress was not simply concerned about wastewater treatment slurries and sludges and emission control dusts, but also materials having "similar characteristics and effects". The term "similar characteristics" would suggest that such materials not only contain similar types of substances but, like pollution control sludges and dusts, are also incidentally produced as a result of industrial processes; the term "similar . . . effects" implies that such materials, like wastewater and emission control sludges, are also sometimes discarded in ways that pose environmental problems.

EPA has incorporated these concepts into a definition of "solid waste" in § 261.2. This term is defined to include "garbage", "refuse", "sludge" and "other waste material" (§ 261.2(a)). "Other waste material" is in turn defined as (i) materials which are discarded (or stored or accumulated for that purpose), (ii) materials which have served their original intended purpose and are sometimes discarded and (iii) materials which are incidentally generated during

manufacturing or mining operations and are sometimes discarded (§ 261.2(b)). This latter category of materials expressly excludes primary products and product intermediates (§ 261.2(d)).

We are fairly confident that this definition will properly differentiate between "wastes" and other material with respect to those particular solid wastes that have been listed as hazardous wastes in Subpart D. In developing Subpart D, EPA has been careful to list only those materials that are either sludges, used materials which are typically discarded (*e.g.*, spent solvents) or manufacturing by-products which are typically discarded (*e.g.*, distillation residues). We have tried to avoid listing materials that are always used for manufacturing other products, because we believe that those are actually product intermediates, not wastes. Given the complexity of many manufacturing operations, however, it is possible that we might have erred in a few cases and we urge the public to bring these to our attention.

We are somewhat less confident that our definition of solid waste, particularly its inclusion of used materials and by-products, will work for all the materials which might exhibit the Subtitle C characteristics. For this reason, we are at the present time confining our regulation of the storage and transportation of wastes prior to use, re-use, recycling and reclamation to sludges, wastes listed in Subpart D and waste mixtures containing wastes listed in Subpart D (§ 261.6(b)). As discussed above, we are fairly sure that all these materials are "wastes" whose use, re-use, recycling and reclamation is subject to jurisdiction under RCRA.

As noted in Section III.B., the definition of "solid waste" is being issued as an interim final regulation. We are expressly soliciting comment on whether its application to unlisted materials (as well as listed wastes) leads to absurd results, and, if so, what these situations are and how they might be remedied by specific revisions to § 261.2.

4. *Regulating the Actual Use, Re-Use, Recycling and Reclamation of Hazardous Wastes.* One approach to regulating the use, re-use, recycling and reclamation of hazardous wastes which a number of commenters suggested and which EPA is considering very seriously is waste-specific, use-specific management standards. This approach would help avoid the problems, discussed above, of attempting to apply standards which are designed to deal with traditional waste disposal and treatment operations, such as landfills, to re-use and recycle activities.

EPA intends to begin issuing such standards in the fall of 1980. In some cases, these standards may require full or partial compliance with existing Subtitle C requirements; in others, they may include a special set of requirements (to be established in Part 266) which have been developed for a particular hazardous waste use or recovery operation. Using this regulatory approach, we believe we can not only better tailor Subtitle C management standards to the health and environmental hazards posed by use and recycling activities but also achieve a better balance between RCRA's dual goals of protecting human health and the environment and promoting resource conservation and recovery.

In the fall of 1980, we expect to start dealing with the following hazardous waste use and recovery operations:

Waste	Use or Recovery
Spent solvents listed in Subpart D.	Reclamation Burning as a fuel
Radioactive uranium mining and phosphate mining and processing wastes.	Land reclamation Use in building products
Waste oil	Road oiling and use in other land applications Burning as a fuel Reclaiming and re-refining
Residues from the production of chlorinated hydrocarbons.	Burning as a fuel

These operations were identified by commenters as being among those which posed the most serious potential health or environmental hazards and/or were the most ubiquitous. EPA agrees, and therefore will begin establishing standards for these activities first.

At a later date, possibly by the fall of 1981, we intend to address the re-use and recycling of other hazardous wastes, including but not limited to the following:

Waste	Use or Recovery
Residues from the production of organic chemicals listed in Subpart D (other than chlorinated hydrocarbons).	Burning as a fuel
Activated carbon used to treat hazardous wastes.	Regeneration
Wastewater and air emission treatment sludges listed in Subpart D.	Fertilizers and soil conditioners Other uses on the land

Eventually, EPA hopes to regulate the use, re-use, recycling and reclamation of all hazardous wastes listed in Subpart D which are known to be used, re-used or recycled. Our plans for extending regulatory coverage to unlisted hazardous wastes are less certain at this time because we do not have a good inventory of these wastes. As data are collected through the Section 3010 notification and annual reporting under Parts 262, 264 and 265, we hope to develop a more specific plan for regulating the use and recycling of these wastes.

EPA is anxious to obtain public comment on this approach. We specifically invite comments on the following questions:

1. Are there other hazardous wastes, particularly wastes listed in Subpart D, that should be placed on the above lists and given priority?

2. Are the above-listed wastes used or recycled in other ways that require regulation? If so, what types of regulatory controls would be appropriate?

3. Is there any reason not to prohibit the land disposal of spent solvents listed in Subpart D and require that they be reclaimed or destroyed? Is it necessary to manifest these wastes to assure that they are delivered to reclamation or treatment facilities? Can such facilities be effectively regulated by rule—*i.e.*, without individual permits?

4. Can the radiation hazards posed by radioactive mining wastes and phosphate mining and processing wastes be adequately controlled by (a) prohibiting the use of these wastes in residential construction and (b) imposing a few simple requirements on the use of these wastes as fill for land where habitable structures might be built?

5. Can facilities which burn waste oil as a fuel or reclaim or refine waste oil be adequately regulated by rule—*i.e.*, without individual permits? Is there any reason not to prohibit the use of waste oil for road oiling, dust suppression and other land (and water) applications?

6. Should full Subtitle C standards be applied to the use, re-use, recycling and reclamation of residues from the production of chlorinated hydrocarbons? From the production of other organic chemicals? If not, for what residues and uses should special standards be applied and what should those standards be?

7. Should full Subtitle C standards be applied to the regeneration of activated carbon? If not, what standards should be applied?

8. Can sites where waste treatment sludges are used as fertilizers, as soil conditioners or in other land applications be effectively regulated by rule—*i.e.*, without individual permits?

In each of the foregoing areas of inquiry, EPA would appreciate the submission of any relevant facts and data. Unsubstantiated opinions are generally not very helpful to us in coming to grips with these types of issues. On the other hand, information on the quantity of waste which is used

or recycled, management practices, environmental emissions that attend use or recycling, health and environmental effects resulting from use and recycling and other specific data are very useful.

We also invite commenters to submit specific proposed standards or suggestions for how standards might be developed. For example, where wastes might be burned as a supplemental fuel in industrial boilers, proposals on fuel ratios, burning temperatures, emission control requirements and residue disposal requirements would be useful. Obviously, the more specific and constructive the suggestions, the more helpful they will be in our rulemaking.

C. Section 261.3 (Definition of Hazardous Waste)

This section is a new provision which does not have a direct counterpart in the proposed regulations. It has been added for purposes of clarification and in response to questions raised during the comment period concerning waste mixtures and when hazardous wastes become subject to and cease to be subject to the Subtitle C hazardous waste management system.

If a material is a hazardous waste within the meaning of this section it must be managed in accordance with EPA's Part 262 through 265 standards and its Part 122 through 124 permitting requirements unless covered by one of the exclusions in those regulations or one of the Part 261 special management provisions (§§ 261.5 and 261.6).

1. *What is a Hazardous Waste?* Paragraph (a) of this section defines what a hazardous waste is. It provides that a solid waste is a hazardous waste if it is not excluded under § 261.4(b) and it either (1) is listed as a hazardous waste in Subpart D, (2) is a waste mixture containing one or more hazardous wastes listed in Subpart D or (3) exhibits one or more characteristics of hazardous waste identified in Subpart C. A listed waste or a solid waste mixture containing a listed waste which is generated by a particular facility may be excluded under the rulemaking procedures prescribed in §§ 260.20 and 260.22 (see section VIII.C., below). In that event, it will be considered a hazardous waste only if it exhibits one or more of the characteristics.

Except for waste mixtures, all these provisions were contained in EPA's December 18, 1978 proposal (*see* §§ 250.10 (b) and (d)(2), 250.13 and 250.14). The waste mixtures provision is a clarification which has been added in response to inquiries about whether mixtures of hazardous and nonhazardous wastes would be subject to Subtitle C requirements. This is a very real issue in real-world waste management, since many hazardous wastes are mixed with non-hazardous wastes or other hazardous wastes during storage, treatment, or disposal.

Although it was not expressly stated in the proposed regulation, EPA intended waste mixtures containing listed hazardous wastes to be considered a hazardous waste and managed accordingly. Without such a rule, generators could evade Subtitle C requirements simply by commingling listed wastes with nonhazardous solid waste. Most of these waste mixtures would not be caught by the Subpart C characteristics because they would contain wastes which were listed for reasons other than that they exhibit the characteristics (*e.g.*, they contain carcinogens, mutagens or toxic organic materials). Obviously, this would leave a major loophole in the Subtitle C management system and create inconsistencies in how wastes must be managed under that system.

EPA recognizes that designating all waste mixtures containing listed wastes as hazardous wastes under Subtitle C may create some inequities. For example, this approach may result in some waste mixtures which contain only very small amounts of listed hazardous wastes or which commingle waste in a way which renders them nonhazardous (*e.g.*, neutralization) having to be managed under Subtitle C. We have tried to address this problem by establishing provisions for amending this paragraph to exclude waste mixtures produced by individual facilities, if they can show that the mixture (or each constituent listed hazardous waste) is not hazardous, based on the criteria for which the consistuent hazardous wastes were listed. Because this is a rulemaking procedure, it will, as a practical matter, only be useful for facilities which routinely mix wastes in relatively constant proportions. With a regulated community potentially numbering in the hundreds of thousands, we simply do not have the resources to process petitions for exempting "one-shot" waste mixtures. Moreover, in most of these one-time cases, it seems likely that the burden of having to manage a waste mixture as a hazardous waste could be easily avoided by carefully segregating hazardous and non-hazardous waste.

We know of no other effective regulatory mechanism for dealing with waste mixtures containing listed hazardous wastes. Because the potential combinations of listed wastes and other wastes are infinite, we have been unable to devise any workable, broadly applicable formula which would distinguish between those waste mixtures which are and are not hazardous. If any members of the public have suggestions for other approaches, we would appreciate having them brought to our attention for future rulemaking.

Waste mixtures containing only wastes which meet the characteristics are treated just like any other solid waste *i.e.*, they will be considered hazardous only if they exhibit the characteristics. EPA recognizes that this may not be an altogether satisfactory regulatory approach. While it would no doubt encourage some desirable mixing of wastes, it would also allow some wastes (principally wastes caught by EPA's extraction procedure) to escape regulation merely by being mixed with other wastes or other materials. We know of no solution to this problem which does not create major inconsistencies in the way wastes are determined to be hazardous under Subpart C of this regulation. Again, if the public has suggestions for other ways of dealing with this issue, we would like to receive them.

2. *When Does a Waste Become a Hazardous Waste?* Paragraph (b) provides three simple rules for determining when a solid waste becomes a hazardous waste and therefore must be managed under Subtitle C. It has been provided in response to comment requesting clarification on this issue.

Paragraph (b) states that a solid waste which is a hazardous waste because it is listed in Subpart D must begin to be managed as a hazardous waste when it first meets the Subpart D listing description. Most of the hazardous wastes listed in §§ 261.31 and 261.32 of Subpart D are process residues, emission control dusts, or wastewater treatment sludges, and the point in time when they are created is generally well-defined. For those used materials which are listed as hazardous wastes in those sections or § 261.33 (*e.g.*, spent solvents), the point at which they meet the listing description is somewhat less well-defined, but generally occurs when their intended use has ceased, and they begin to be accumulated or stored for disposal, re-use or reclamation.

In the case of a waste mixture containing a listed hazardous waste, paragraph (b) requires that the waste mixture be managed as a hazardous waste as soon as the listed waste is added to it. The listed waste, of course, must be handled as a hazardous waste prior to that time.

Finally, paragraph (b) provides that a solid waste is a hazardous waste

whenever it exhibits one or more of the characteristics. As a practical matter, this means that persons handling solid wastes must determine whether they meet the characteristics whenever the management of the solid wastes would potentially be subject to EPA's Part 262 through 265 regulations.

The following examples illustrate how this provision would operate in practice:

- The ABC Company stores waste acid on-site in containers prior to transport off-site for disposal. The company must determine whether the acid meets Subpart C characteristics when it is poured into the containers.
- The DEF Company pipes waste acid into a tank, where it is neutralized by adding lime. The company must determine whether the acid meets Subpart C characteristics when it enters the neutralization tank. The neutralization operation is a treatment process.
- The GHI Company pipes waste acid into a tank truck for transport to an off-site treatment facility. The company must determine whether the acid meets Subpart C characteristics when it enters the tank truck.
- The JKL Company produces a wastewater which is piped into a surface impoundment, for the purposes of treatment prior to point-source discharge into surface waters. During treatment a sludge forms. This sludge is periodically dredged from the impoundment and disposed of. The company must determine (1) whether the wastewater meets Subpart C characteristics when it enters the impoundment and (2) whether the sludge meets Subpart C characteristics when it begins to accumulate on the bottom of the impoundment.

In drafting paragraph (b), EPA has attempted to cover the most common types of waste generation and management scenarios. The Agency recognizes, however, that some companies may generate and handle wastes in ways not contemplated by EPA and for which a strict application of paragraph (b) would make no sense. We would appreciate having those instances brought to our attention so that we can decide whether additional rulemaking or issuing guidance is appropriate for dealing with these situations.

3. When Does a Hazardous Waste Cease to be a Hazardous Waste?

Paragraphs (c) and (d) of this section explain when a hazardous waste ceases to be a hazardous waste and therefore is no longer subject to Subtitle C requirements. These are new provisions which have been added both in response to comment and as a logical outgrowth of paragraph (b).

Paragraph (c) provides that a hazardous waste remains a hazardous waste unless and until (1) it does not exhibit any of the characteristics identified in Subpart C and (2) where the waste is listed in Subpart D (or is a mixture containing a waste listed in Subpart D), the waste (or each of its constitutent listed wastes) is also excluded from paragraph (c) under the rulemaking procedures outlined in §§ 260.20 and 260.22. As a practical matter, this means that facilities which store, dispose of or treat hazardous waste must be considered hazardous waste management facilities for as long as they continue to contain hazardous waste and that any wastes removed from such facilities—including spills, discharges or leaks—must be managed as hazardous wastes.

EPA believes this is a very reasonable and rational rule. Wastes are typically stored for relatively short periods of time. Although solids in the waste may settle and the volume of the waste may be reduced by evaporation during this period, major chemical or biological changes affecting the hazardous character of the waste are unlikely to occur. Hazardous wastes which are disposed of in a landfill are more likely to undergo change (principally through leaching and anaerobic degradation), but only very slowly and over a long period of time.

Hazardous wastes placed in treatment facilities (including incinerators, surface impoundments and land treatment facilities) will, by definition, change character. However, treatment does not necessarily "render [a] waste nonhazardous" (Section 1004(34)). It may only make it "amenable for recovery, amenable for storage or reduced in volume"; or it may only eliminate one of several hazardous properties. Moreover, even in those cases where treatment does ultimately render a waste "nonhazardous", the waste will generally have been hazardous during part or all of the treatment process.

Paragraph (c) establishes a similar rule with respect to solid wastes generated by storage, disposal and treatment—including leachate and treatment residues such as sludges and incinerator ash. Here, too, it is reasonable to assume that these wastes, which are derived from hazardous wastes, are themselves hazardous.

Leachate is produced by the percolation of liquid through wastes; it typically contains solubilized heavy metals and organic materials and is virtually always highly toxic. Treatment residues, by definition, contain waste constituents which were removed during treatment or which were not completely destroyed by treatment. Sludges from wastewater treatment typically contain concentrated amounts of the toxic substances which were in the wastewater. Ash from the incineration of hazardous wastes often contains heavy metals and, if combustion is not complete, undestroyed toxic organic materials.

This is the best regulatory approach we can devise at this time for dealing with solid wastes generated by hazardous waste management facilities. We are not now in a position to prescribe waste-specific treatment standards which would identify those processes which do and do not render wastes or treatment residues nonhazardous. To list treatment residues on case-by-case basis would be an enormous job, and one which we think, given the reasons outlined above, is unnecessary.

This approach obviously is not without deficiencies. For example, one effect of treating wastes containing synthetic organic materials may be to create new hazardous constituents in the waste or treatment residue. This regulation obviously does not deal with those new constituents. It also does not cover run-off from hazardous waste facilities on the theory that the water in precipitation run-off in many cases may not have had sufficient contact with the waste to solubilize waste constituents. (Of course if collected, run-off would be a solid waste and, if it exhibited any of the characteristics, would have to be managed as a hazardous waste). For purposes of future rulemaking, we would be interested in any suggestions the public has for dealing with these issues.

D. Section 261.4 (Exclusions)

EPA's proposed Section 3001 regulations identified a number of wastes which would not be subject to Subtitle C requirements because they were either excluded from the statutory definition of solid waste (§ 250.11(a)(7)), not intended by Congress to be regulated under Subtitle C (§ 250.10(d)(2)(i) and (ii)), or subject to regulation under other EPA statutes (§ 250.10(d)(2)(iii)).

EPA received a number of comments on these proposed exclusions. Some commenters simply urged EPA to clarify which wastes were covered by each of the exclusions. Others challenged EPA's justification for some of its proposed exclusions. Still others contended that additional wastes should be exempted from regulation based on legislative history or an alleged lack of demonstrated harm to human health or the environment.

The exclusions contained in § 261.4 are based on interpretations of the statutory definition of "solid waste" and on those parts of RCRA's legislative history which indicate a Congressional intent that certain waste streams should not be regulated. Some commenters suggested that certain waste streams would never be hazardous and therefore should be excluded from these regulations. Those commenters did not, however, provide sufficient information on which EPA could base such sweeping determinations. Generators of solid wastes that are not hazardous may determine that their wastes are non-hazardous under these regulations. As these regulations are implemented more information will be developed about specific waste streams. EPA will then be in a better position to make categorical judgments about the lack of risk presented by certain wastes. At this time, however, EPA has limited the exclusions in § 261.4 to those which are based on expressed Congressional intent.

The following is a discussion of the specific exclusions contained in § 261.4:

1. *Domestic Sewage.* In defining "solid waste" Section 1004(27) specifically excludes "solid or dissolved material in domestic sewage." The proposed regulation did not specifically define "domestic sewage", but did contain provisions that were based on an interpretation of that term. Section 250.40(c)(3) of the proposed regulation exempted owners and operators of POTW's from all portions of the Section 3004 standards except those involving the manifest system, recordkeeping and reporting with respect to hazardous wastes received by truck or rail. As described in the preamble to the proposed regulation, that decision was based on the idea that the mixing of a hazardous waste with domestic sewage made the entire mixture a domestic sewage excluded under Section 1004(27).

Commenters raised several objections to this approach. First, commenters argued that the only basis for an exclusion under Section 3004 is one based on health or environmental risk rather than public ownership. Second, commenters argued that some POTW's will handle significant quantities of hazardous waste and that such facilities present the same environmental risks as private facilities that treat, store or dispose of hazardous waste. Third, some commenters merely argued that if POTW's are excluded because they handle a significant portion of domestic sewage, other private parties that handle wastes of a similar mix should be excluded also. Fourth, a commenter said that the proposed regulation did not clearly indicate whether a POTW could ever be subject to Subtitle C jurisdiction if it only treated industrial waste.

The term "domestic sewage" generally denotes sanitary wastes that pass through a sewer system. A waste stream comprised entirely of sanitary waste, that passes through a sewer system is "domestic sewage" under any reasonable interpretation of the statutory exemption. This exemption applies regardless of whether the sewer system or the treatment works to which it connects is publicly or privately owned.

A more difficult question is presented when pure sanitary wastes are mixed with other types of wastes in a sewer system. The issue of whether such mixed waste streams are within RCRA's jurisdiction has broad implications and thus it is necessary to carefully consider the Congressional purpose behind the exemption.

The legislative history of RCRA does not specifically address the exemption because it was a carry-over from the Solid Waste Disposal Act, which RCRA amended. The "domestic sewage" exemption first appeared in the definition of "solid waste" found in the Solid Waste Disposal Act of 1965. The legislative history of that act indicates that the exemption was based on a recommendation, made to the Congress by the Administration, that "organic solids in untreated domestic sewage" be excluded from coverage because such wastes were already subject to controls under the Federal Water Pollution Control Act (FWPCA). At that time, the portion of the FWPCA that addressed "untreated sewage" was the Federal construction grant program, which gave money to States and municipalities to construct treatment works and to study combined sewer systems.

This legislative history suggests a Congressional intent that the scope of the "domestic sewage" exemption must depend, in part, on the capacity of the Agency's construction grants program to address the environmental problems arising from any exempted waste streams. At the time the exemption was enacted, and under the present Clean Water Act, the Agency has grant programs that assist states and localities in the treatment of sanitary sewage by POTW's.

EPA believes that the Congressional policy reflected in the legislative history of the "domestic sewage" exemption should guide the Agency in its regulation of mixtures of sanitary waste with other waste streams. Mixed waste streams that pass through sewer systems to publicly-owned treatment works (POTW's) will be subject to controls under the Clean Water Act. The Agency's construction grants program provides financial assistance for the proper treatment of these wastes. In addition the Agency's pretreatment program provides a basis for EPA and the local communities to insure that users of sewer and treatment systems do not dump wastes into the system that will present environmental problems. Under these circumstances EPA believes that it is appropriate to include within the "domestic sewage" exemption mixtures of sanitary wastes and other wastes that pass to POTW's. Since the treatment of sewage by privately-owned treatment works is not similarly controlled through the Agency's construction grant and pretreatment program, the exemption would not be available for mixed waste streams going to such treatment works.

The "domestic sewage" exemption is only applicable to non-domestic wastes that *mix* with sanitary wastes in a sewer system leading to a POTW. An industrial waste stream that never mixes with sanitary wastes in the sewer prior to treatment or storage does not fall within the exemption, regardless of the public or private ownership of the treatment works. Defining the point at which "mixture" occurs may seem to be a relatively straightforward task. Practical problems arise, however, in defining the point at which mixture of sanitary and other wastes occurs in a complex sewer system. Moreover it is particularly difficult to define this point for regulatory purposes in such a way that all parties understand when RCRA obligations begin and end.

EPA has, therefore, decided that a waste falls within the domestic sewage exemption when it first enters a sewer system that will mix it with sanitary wastes prior to storage or treatment by a POTW. EPA recognizes that this interpretation brings various wastes within the exemption before they are actually mixed with sanitary wastes. In light of the fact that the wastes will be mixed prior to treatment and that the mixture will be properly treated by the POTW, EPA believes that the need for administrative clarity in this otherwise complicated regulatory program warrants such an approach.

In response to the comments on the exclusion of POTW's from Section 3004 standards, EPA has changed these regulations to make clear that the statutory exemption is one for "domestic sewage" rather than POTW's. Facilities receiving waste streams that are exclusively made up of sanitary wastes will not be subject to these regulations

regardless of the public or private ownership of the facility. Likewise a POTW receiving industrial wastes that do not mix with sanitary wastes prior to treatment would be handling a solid waste subject to these regulations.

The exclusion of domestic sewage and mixtures that pass through sewer systems to POTW's is based on Congressional intent, not an Agency determination about the relative health and environmental risks presented by such waste streams. The Agency acknowledges that some mixtures of domestic sewage with other wastes may present environmental risks and that some non-domestic wastes may have properties similar to these of exempted domestic wastes. In response EPA can only assume that such factors were not determinative in the Congress' creation of the exclusion.

The proposed regulation did not contain a specific definition of domestic sewage. EPA believes that the definition of domestic sewage, and the provision relating to mixtures of wastes with domestic sewage, contained in these regulations is a reasonable interpretation of RCRA's statutory language and legislative history. The Agency has decided, however, to promulgate this part of the regulation as interim final in order to gain the benefit of public comment on the concepts involved. The Agency considered several options for defining domestic sewage and classifying mixtures of such sewage with other wastes. Those options included:

(1) Defining "domestic sewage" to include all wastes mixed with sanitary wastes;

(2) Limiting the exemption to only sanitary wastes, treating any mixture of sanitary wastes and other wastes as solid wastes;

(3) Defining "domestic sewage" as any waste made up primarily (i.e. more than 50% by volume) of sanitary waste streams; and

(4) Linking the exemption for mixtures to those that flowed into a "publicly-serving" or "constructed-to-serve-the-public" treatment works, rather than POTW's.

The Agency is interested in comments on these options and the selected approach, as well as any other suggested interpretations of the provision. Commenters should recognize that the Agency's selected approach is based on an interpretation of Congressional intent. The Agency is interested generally in comments about the impact of this approach on regulated parties, but it particularly seeks comment on how such effects relate to the Congressional purpose of the exemption expressed in RCRA's legislative history.

These regulations, then, define domestic sewage as untreated sanitary wastes that pass through a sewer system. Such wastes are excluded from regulation as solid wastes under these regulations. In addition mixtures of wastes with domestic sewage that pass through a sewer system to a publicly-owned treatment works for treatment are also excluded from regulation as solid wastes.

2. *Industrial Point Source Discharges.* The statutory definition of "solid waste" in Section 1004(27) of RCRA excludes "solid or dissolved materials in . . . industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act". In its proposed regulations, EPA construed this phrase to include only actual discharges into navigable waters, not industrial wastewaters upstream from the point of discharge. The effect of this interpretation was to require surface impoundments, tanks, lagoons, holding ponds and other facilities used to treat or store hazardous industrial wastewater to meet Section 3004 standards and to obtain a Section 3005 permit. *See* 43 FR 58993 and proposed §§ 250.45–3 and 250.45–4.

The application of Subtitle C requirements to wastewater treatment impoundments was one of the most controversial aspects of EPA's proposed hazardous waste regulations. Most of commenters' objections to EPA's proposal as they pertain to Section 3004 interim status requirements are discussed in the preamble to the Section 3004 regulations published elsewhere in today's **Federal Register.** The only one addressed here is commenters' argument that the "industrial discharge" exclusion in Section 1004(27) refers to the entire wastewater stream, not simply the point source discharge, and that EPA therefore has no authority under RCRA to regulate industrial wastewater holding or treatment facilities.

This contention is not supported by either the plain language of the statute or its legislative history. The obvious purpose of the industrial point source discharge exclusion in Section 1004(27) was to avoid duplicative regulation of point source discharges under RCRA and the Clean Water Act. Without such a provision, the discharge of wastewater into navigable waters would be "disposal" of solid waste, and potentially subject to regulation under both the Clean Water Act and Subtitle C. These considerations do not apply to industrial wastewaters prior to discharge since most of the environmental hazards posed by wastewaters in treatment and holding facilities—primarily groundwater contamination—cannot be controlled under the Clean Water Act or other EPA statutes.

Had Congress intended to exempt industrial wastewaters in storage and treatment facilities from all RCRA requirements, it seems unlikely that the House Report on RCRA would have cited, as justification for the development of a national hazardous waste management program, numerous damage incidents which appear to have involved leakage or overflow from industrial wastewater impoundments. *See, e.g.,* H.R. Rep. at 21. Nor would Congress have used the term "discharge" in Section 1004(27). This is a term of art under the Clean Water Act (Section 504(12)) and refers only to the "addition of any pollutant to navigable waters", not to industrial wastewaters prior to and during treatment.

Since the comment period closed on EPA's regulations, both Houses of Congress have passed amendments to RCRA which are designed to provide EPA with more flexibility under Subtitle C in setting standards for and issuing permits to existing facilities which treat or store hazardous wastewater. *See* Section 3(a)(2) of H.R. 3994 and Section 7 of S. 1156. *See also* S. Rep. No. 96–172, 96th Cong., 1st Sess. 3 (1979); Cong. Rec. S6819, June 4, 1979 (daily ed.,); Cong. Rec. H1094–1096, February 20, 1980 (daily ed.). These proposed amendments and the accompanying legislative history should lay to rest any question of whether Congress intended industrial wastewaters in holding or treatment facilities to be regulated as "solid waste" under RCRA.

3. *Other Statutory Exclusions.* The definition of "solid waste" in Section 1004(27) excludes two other classes of wastes. "Solid or dissolved materials in irrigation return flows" and "source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954" are not "solid waste" under RCRA.

In § 250.40(e) of the proposed regulation these two categories of wastes were excluded from regulation under Section 3004. No substantial comment was received on these exclusions. In these final regulations under Section 3001, the Agency has specifically excluded these materials from regulation as solid waste in accord with the statutory definition of "solid waste."

4. *Household Wastes.* Under § 250.20(c)(4) of the proposed regulation, a person or Federal agency who

generated only household refuse or household septic tank pumpings was excluded from regulation as a generator of hazardous waste. "Household refuse" was defined as trash or rubbish ordinarily produced by a family at their home. This exclusion, which also was available to apartment houses, condominiums and hotels, was based on the legislative history of RCRA.

The few commenters that addressed this provision made two general points. First they said that the "ordinarily produced" portion of the proposed "household refuse" definition might not include certain materials such as medicinal drugs and ointments, household cleaning agents and solvents, waste oils, paints and pesticides that might be purchased at a grocery, drug or hardware store. Second, a commenter pointed out that a Federal agency could not, by definition, produce household wastes.

The Agency has retained the general concept contained in proposed § 250.20(c)(4) in these regulations. The provision is stated, however, as an exclusion of a waste stream—namely "household wastes"—rather than as an exclusion of a class of generators. This change is more in accord with legislative intent. The exclusion is based on language in the Senate Report which states:

> (The hazardous waste program) is not to be used to control the disposal of substances used in households or to extend control over general municipal wastes based on the presence of such substances.
>
> (S. Rep. No. 94-988, 94th Cong., 2nd Sess., at 16.)

This indicates Congressional intent to exclude *waste streams* generated by consumers at the household level. Since the wastes generated at hotels and motels are essentially the same as those generated by consumers in their households, EPA believes that such wastes should be within the exclusion.

The Senate language makes it clear that household waste does not lose the exclusion simply because it has been collected. Since household waste is excluded in all phases of its management, residues remaining after treatment (e.g. incineration, thermal treatment) are not subject to regulation as hazardous waste. Such wastes, however, must be transported, stored, treated and disposed in accord with applicable State and federal requirements concerning management of solid waste (including any requirements specified in regulations under Subtitle D of RCRA.)

When household waste is mixed with other hazardous wastes, however, the mixture will be deemed hazardous in accord with § 261.3(a)(2)(ii) of these regulations except when they are mixed with hazardous wastes produced by small quantity generators (see § 261.5). While household waste may not be hazardous per se, it is like any other solid waste. Thus a mixture of household and hazardous (except those just noted) wastes is also regulated as a hazardous waste under these regulations.

Because of comments on this matter, the relationship of this exclusion to refuse-derived fuel (RDF) should also be explained. RDF is a processed material (usually shredded) that is produced from solid waste and used as a fuel. RDF production usually involves the extraction of inorganic components from the waste leaving the combustible organic component for its fuel value. In the same sense that residue from the treatment of household wastes is not subject to regulation as a hazardous waste, as discussed above, neither is RDF subject to such regulation. Moreover, RDF is not a "solid waste" under § 261.2 because it is not an "other discarded material;" it is or is not intended to be discarded (§ 261.2(b)(1)), it is not a material that has served its original intended purpose (§ 261.2(b)(2)) and it is not a manufacturing or mining by-product (§ 261.2(b)(3)).

EPA agrees with those commenters who suggested that Federal agencies cannot qualify as households. Therefore wastes generated by such agencies are not within the household waste exclusion. In addition EPA believes that medicinal drugs and ointments, household cleaning agents and solvents, waste oils, paints and pesticides purchased at grocery, drug or hardware stores may be disposed of as part of a consumer's household wastes. If a household disposes of such wastes, the wastes may be subject to the household waste exclusion.

Septic tank pumpings were included in the exclusion contained in § 250.20(c)(4) of the proposed regulation. After further examination of this provision, EPA has concluded that such pumpings should be excluded from regulation as hazardous wastes to the extent that they constitute household waste. Households often use septic tanks to dispose of a portion of their wastes. As with all household wastes, these sanitary wastes in household septic tanks are excluded from regulation as a hazardous waste in all phases of their management. Thus septic tank pumpings drawn from household septic tanks are not regulated as hazardous wastes under these regulations. Any wastes drawn from non-household septic tanks are regulated like any other solid waste under these regulations.

5. *Agricultural Wastes.* Under § 250.10(d)(2)(i) of the proposed regulation, agricultural wastes (including manures and crop residues) which are returned to the soil as fertilizers or soil conditioners were excluded from regulation as hazardous waste. The exclusion was based on the legislative history of RCRA which specifically calls for such an exclusion. See H. Rep. No. 94-1491, 94th Cong. 2nd Sess. 2 (1976). Commenters generally accepted this exclusion, and EPA has decided to retain it because the need for such an exclusion is so clearly identified in RCRA's legislative history.

Some commenters asked the Agency, however, to go beyond the specific language of the legislative history and expand the exclusion to include silvicultural wastes. They argued that the foliage and branches left in the forest after trees have been cut are not hazardous and that such wastes help to enrich the soil and control erosion. EPA has decided not to provide a specific exclusion for such wastes because there is no indication in the legislative history of RCRA that the Congress meant to include silvicultural wastes in the exclusion otherwise applicable to agricultural wastes. Moreover EPA has no basis to make a general determination that all silvicultural wastes will not pose environmental problems if mismanaged.

In response to the specific comment about tree branches, it must be recognized that the obligation placed on generators of solid waste is to determine whether their waste is hazardous. Tree branches are not listed as hazardous wastes. Therefore, the only obligation placed on a timber operation is to determine whether its wastes exhibit hazardous characteristics. EPA expects that, in the case of tree branches that are not hazardous, it will be a relatively easy task for the generator to determine that his waste is not hazardous.

6. *Mining Waste.* Section 250.10(d)(2)(ii) of the proposed regulation excluded overburden intended for return to the mine site from regulation under Subtitle C unless such overburden had been specifically listed as a hazardous waste. This exemption was based on the legislative history of RCRA.

Generally commenters accepted this exemption but sought a clearer specification of what wastes fall within the exclusion. Thus commenters sought a definition of both "overburden" and "mine site." Commenters also sought a

clearer interpretation of the time within which the "*return* to the mine site" would have to occur. Finally, several commenters objected to that portion of the proposed regulation which allowed EPA to list and regulate specific overburden materials otherwise covered by the exclusion. EPA had invoked this provision when listing uranium mining overburden and waste rock and phosphate mining overburden in the proposed regulation. These same commenters had also objected to the proposed listing of such wastes.

After review of the comments and further analysis, EPA has decided to retain an exemption for "mining overburden returned to the mine site", defining it as "any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine."

In enacting RCRA, the Congress specifically included mining wastes within the Section 1004(27) definition of "solid waste." Therefore unless the statute or legislative history clearly indicate that mining wastes are to be exempt the presumption is that they are to be regulated like any other solid or hazardous waste. Portions of RCRA's legislative history in both the Senate and House of Representatives suggest, however, that certain kinds of mining overburden are not within the Act's jurisdiction. In discussing RCRA's scope the House Report states:

> [O]verburden resulting from mining operations and intended for return to the mine site is not considered to be discarded material within the meaning of this legislation. This however does not preclude any finding by the Administrator that specific mine wastes are hazardous within the scope of this legislation.

In the Senate this issue was discussed during the floor debate when Senator Domenici asked about the effect of RCRA on mining operations, particularly strip mining. As part of his response Senator Randolph stated:

> The measure would not affect surface mining activities. Reclamation is not solid waste disposal.

Reclamation of surface mines will commonly involve the return to the mine site of waste overburden that has been removed to gain access to the ore deposit. Since it is assumed that both the Senate and House had similar objectives in passing RCRA, the "returned to the mine site" language in the House Report must be read in light of the Senate's concern that mining wastes used to reclaim surface mines should not be subject to RCRA. EPA believes, therefore, that the most reasonable interpretation of the "return to the mine site" phrase is one that limits the exemption to mining waste used to reclaim surface mines.

Commenters suggested that EPA define overburden as any material removed to gain access to the "economic mineral" or the "mineral being mined for use." While both terms basically convey the same meaning, EPA has decided to use "economic mineral" because it may have a clearer meaning to mining operators. The intent of the term is to identify the material that the mining operator is in the business to extract from the ground.

In keeping with the Congressional intent that this exclusion is designed for overburden used to reclaim surface mines, the definition is limited to overburden "overlying" a mineral deposit. The Department of the Interior makes a similar distinction in the definition of overburden in its regulations under the Surface Mining Control Act. EPA does not intend this definition of overburden to be limited exclusively to the material located directly above a mineral deposit. Some material is removed from the sides of a mining pit to permit safe access to the economic mineral, and such material should be treated as overburden. EPA urges the public to provide suggestions about how the definition may be refined if there appears to be any confusion about the meaining of "overlying" in this context.

Overburden material must be "returned to the mine site" before it is excluded from regulation under RCRA. As indicated earlier, the purpose of the exemption is to assure that mining wastes used to reclaim surface mines are not subject to regulation as solid or hazardous waste. EPA recognizes that reclamation does not necessarily involve replacement of overburden into the portion of the ground from which it was taken. EPA also recognizes that surface mining reclamation may be subject to State or Federal regulation, making it difficulut to provide a national definition of what constitutes reclamation. In particular it is difficult to provide a general definition of "mine site" that will fit with the various State and federal requirements for reclamation.

EPA has decided, therefore, not to define what is meant by reclamation of a surface mine. Several commenters indicated that most reclamation activities are subject to State or Federal regulation. EPA expects that any permits or reclamation plans developed to satisfy such regulatory agencies will specify the reclaimed area, and these actions should provide an acceptable and understandable specification of the "mine site" as that term is used in this definition. EPA contemplated limiting the exemption to reclamation that was approved by State or Federal agencies. While such a requirement is not part of this regulation, EPA is considering whether such a requirement should be part of the final definition. EPA seeks public comment on such a modification and is particularly interested to discover the extent to which environmentally sound reclamation activity occurs in the absence of Federal and State regulation.

This approach addresses two specific suggestions made in comments. First it clarifies the time component of the "returned to the mine site" concept because it ties the exemption to reclamation activity. Particularly where the mining operation is subject to State or Federal regulation, it should be reasonably clear what portion of the mine's overburden will be used over what period of time to implement a reclamation plan. Second, as indicated above, it eliminates the need for a specific definition of mine site. In any case, EPA does not believe, as one commenter suggested, that the definition of "mine" used in the Agency's Effluent Limitations Guidelines for the Ore Mining and Dressing Point Source Category (under the Clean Water Act) is appropriate for this definition. The CWA definition is designed to identify a full range of mining and associated activities that should be regulated because they generate pollutants which may potentially discharge into navigable waters. The RCRA definition of "mine site" is to identify a reclaimed area that may receive a waste material which will thereby be excluded from environmental regulation under RCRA.

Finally the Agency has eliminated the part of the proposed exemption that would allow exempted overburden to be brought within RCRA jurisdiction through specific listing as a hazardous waste. (EPA believes, however, that uranium mining overburden and phosphate mining overburden will be brought back under Subtitle C jurisdiction, as discussed below.) The only overburden exempted is that which is used for reclamation purposes. EPA expects that the State and Federal agencies that regulate such reclamation will consider the overburden's potential to adversely affect public health and the environment.

EPA believes strongly that portions of the overburden from uranium and phospate mining should be regulated under Subtitle C with respect to their potential emissions of radon gas and gamma radiation. The Agency

recognizes that this is an issue currently before the Congress in amendments to RCRA. One such amendment would provide specific authority for EPA to regulate these overburdens. If this amendment is enacted, the "overburden returned to the mine site" exclusion will be modified accordingly.

Commenters also questioned the application of the Subtitle C system to in-situ mining wastes. In-situ mining of oil shale, uranium and other minerals may involve the placement of certain solvent solutions directly to a mineral deposit in the ground. This solvent passes through the earth, solubilizing the economic mineral as it goes. The mineral and solvent mixture leaches down to underground extraction wells which remove the solution.

EPA does not believe that the soil through which these solvent solutions pass is a waste to be regulated under RCRA for two reasons. First the removal of materials from their natural state does not transform all remaining elements of that environment into a waste material. For example, picking an apple from a tree does not transform the tree into a solid waste. Likewise the removal of minerals from the land does not make the earth a solid waste.

Second, the soil from which minerals are extracted by in-situ mining does not need to be managed as solid wastes. As indicated in *United States Brewers' Association, Inc.* v. *EPA, supra.*, the definition of "solid waste" under RCRA must be read in conjunction with Section 1004(28), the definition of "solid waste management," which sets forth the broad set of activities that RCRA is to regulate. None of the management activities identified in Section 1004(28), including "disposal," are relevant to in-place materials located hundreds, even thousands of feet below the ground. Only when these materials are actually removed from the ground can it be reasonable to establish regulations governing the management of those materials. Accordingly in-situ mining wastes, not removed from the ground, are not regulated as solid wastes under these regulations.

A final issue raised in the public comments concerns the relationship between these regulations and the study of mining wastes required under Section 8002(f) of RCRA. Commenters argued that all mining wastes should be excluded from coverage under RCRA regulatory programs (including Subtitle C) pending the outcome of that study.

While the study will certainly assist the Agency in refining these regulations to address the particular environmental problems presented by mining wastes, the Agency does not believe that mining wastes should be excluded from regulation, any more than any other solid or hazardous waste, until the study is completed. RCRA certainly does not require such a deferral. The fact that the Congress may have perceived a need for further information about mining wastes does not raise the implication that RCRA's regulatory programs should not address the environmental problems presented by such wastes. The definition of "solid waste" in Section 1004(27) specifically includes wastes from mining operations and no other statutory provision otherwise links EPA's jurisdiction over such wastes to completion of the study under Section 8002(f).

It is important to note that pending amendments to RCRA may provide for deferral of regulation of certain mining wastes until completion of the mining waste study. Clearly that indicates a Congressional belief that any deferral of regulation pending the outcome of the study was not contained in RCRA as originally enacted. Certainly if the legislative amendment is passed EPA will modify these regulations accordingly. The Agency has not, however, created such a deferral in anticipation of such an amendment because the amendment is contained in the bill of only one house. Thus the Agency cannot be certain that such an amendment will be part of the final legislation.

7. *Sewage Sludge.* Unlike the proposed regulation this regulation does not exclude from regulation under Subtitle C sewage sludge from publicly-owned treatment works (POTW's). Several commenters objected to the exclusion contained in the proposed regulation, arguing that it was inconsistent to exclude sewage sludge from POTW's and not exclude sewage sludge from privately-owned systems. They urged EPA to exclude sewage sludge from such private systems. Other commenters urged EPA to exclude wastewater treatment sludges from certain industries such as the meat packing and food processing industries because these sludges are very similar to domestic sewage sludge.

Finally, other commenters objected to the proposed exclusion of sewage sludge from POTW's and urged that this exclusion be dropped. They claimed that POTW sludge often is very contaminated and thereby can be a hazardous waste. They urged that it not enjoy an arbitrary exclusion. EPA has thoroughly re-examined this issue in light of the comments and has decided not to exclude POTW sludge and not to add exclusions for any other types of sludge.

The regulation of sewage sludge is necessarily a complex matter because such sludges fall within the jurisdiction of several Federal environmental programs. Under Section 1004(27) of RCRA, the definition of "solid waste" specifically includes "sludge from a waste treatment plant." In defining "sludge," Section 1004(26A) includes wastes from a "*municipal* wastewater treatment plant."

Because of these very clear statutory expressions, EPA must regulate sewage sludge under RCRA—either under Subtitle D, where it has already promulgated regulations covering sewage sludge (see 44 FR 53438 *et. seq.*), or under Subtitle C where these sludges that are deemed by EPA to be hazardous wastes should be regulated.

Under Section 102 of the Marine Protection, Research and Sanctuaries Act, EPA regulates the ocean dumping of sludge, including sewage sludge. In addition EPA establishes, under Section 405 of the Clean Water Act (CWA), guidelines for the disposal and utilization of sewage sludge. Under Section 405(e), owners and operators of publicly owned treatment works (POTW's) must comply with these guidelines. Sewage sludge often contains valuable organic matter and plant nutrients, and it may be distributed to the public as a soil conditioner or fertilizer. Such distribution of sewage sludge may be regulated under the Consumer Product Safety Act (CPSA) or the Toxic Substances Control Act (TSCA), in addition to Section 405 of the CWA.

Where such overlapping jurisdiction exists, EPA seeks to integrate and coordinate its regulatory actions to the extent feasible. Such efforts give the regulated community a clear picture of its obligations and improve the administrative efficiency of the Agency, both of which advance the environmental objectives contained in EPA's various statutory authorities. Section 1006 of RCRA specifically recognizes the need to integrate the solid and hazardous waste programs with other EPA regulatory programs.

To that end EPA has decided to develop a comprehensive set of regulations to deal with sewage sludge management. Such regulations would be co-promulgated under RCRA (Subtitles C and D), the Clean Water Act, the Marine Protection, Research and Sanctuaries Act and possibly the Toxic Substances Control Act and/or the Consumer Product Safety Act. These regulations will address sewage sludge

from both private and public sources, including septic tank pumpings.

In devising such regulations the Agency will, of course, make the distinctions and classifications necessary to make the regulation comport with the goals and requirements of each statute. Under such a comprehensive regulation, sewage sludge that would otherwise meet the test for being hazardous under Subtitle C will be subject to requirements providing a level of protection to human health and the environment equivalent to that found in the Subtitle C regulations.

The Agency has issued and is developing regulations which will eventually be part of the comprehensive sewage sludge regulation. For example the Agency promulgated Criteria for the Classification of Solid Waste Disposal Facilities and Practices (44 FR 53438) on September 13, 1979. These regulations, which apply to sewage sludge, include special provisions for the land application of solid waste to food chain crops and for the prevention of disease from pathogens contained in sewage sludge and septic tank pumpings. EPA issued the Criteria under the authority of Sections 1008(a)(3) and 4004(a) of RCRA as well as Section 405(d) of the CWA. EPA has also published two technical bulletins that provide guidance on sludge management: "Municipal Sludge Management: Environmental Factors" (42 FR 57420) and "Application of Sludges and Wastewater to Agricultural Land; A Planning and Education Guide."

In addition the Agency is in the process of developing regulations on the distribution and marketing of sewage sludge which will focus on the use of such material as a soil conditioner or fertilizer. These regulations will, at a minimum, be promulgated under Section 405(d) of the CWA. The Agency is also examining whether TSCA or CPSA authorities may be used in developing these regulations.

The Agency's strategy for the development of a comprehensive sewage sludge management regulation will eventually result in the establishment of a separate regulation. Once such a regulation is in place, sewage sludge will be exempted from coverage under other sets of regulations. In particular sewage sludge that qualifies as a hazardous waste will be exempted from this Part and Parts 262 through 265 once this separate sewage sludge regulation, which will provide an equivalent level of protection, is issued in final form.

Pending promulgation of this comprehensive sewage sludge regulation, sewage sludge will not be specifically excluded from Subtitle C. Like any other solid waste, sewage sludge that exhibits any of the characteristics of hazardous waste established in this regulation must be managed as a hazardous waste.

Some commenters urged EPA to list sewage sludge as a hazardous waste, contending that it was particularly hazardous when used in the growing of food chain crops because of the potential plant uptake of cadmium, PCB's and other contaminants. The Agency has decided not to specifically list sewage sludge as a hazardous waste at this time.

It is difficult to make general determinations about the hazardousness of sewage sludge, particularly those produced by POTW's, because of the wide variations in sludge quality. The makeup of a given community's sewage sludge, for example, reflects the range of contaminants generated by the industrial and commercial activities in the area. The sludges of two POTW's will differ as much as the communities themselves.

Determinations about the hazardousness of sewage sludge must, therefore, involve the making of some distinctions between types of sludge. EPA anticipates that it may make such distinctions as part of its comprehensive sewage sludge management regulations. Thus, it is reasonable for EPA to determine whether categorical classifications of sewage sludges are appropriate as part of the Agency's effort to develop such a regulation.

In addition it should be recognized that the particular hazard identified by the commenters, namely uptake of contaminants in food-chain crops, is being addressed by existing regulations. As mentioned above, EPA has issued the Criteria for the Classification of Solid Waste Disposal Facilities and Practices under Subtitle D of RCRA, which place limits on the application of solid waste (including sewage sludge) to food-chain crops. In addition, it is developing regulations covering the distribution and marketing of sewage sludge, which often is used by consumers in gardens for growing food crops. EPA believes that these regulations address the commenter's particular concern about cadmium and PCB contamination in sludge.

E. Section 261.5 (Special Requirements for Hazardous Waste Produced by Small Quantity Generators)

1. *Introduction.* In enacting RCRA, Congress was responding to a problem of unknown magnitude and dimension. With specific reference to the generation of hazardous waste, the House Committee stated:

> One of the major problems to be addressed in the hazardous waste area is the lack of information concerning the components, volumes and sources of hazardous waste. To date there has been no survey or other wide ranging investigation of the sources of hazardous or potentially hazardous waste generation or disposal. As a result, little is known about the actual volume of hazardous waste being generated, the geographical distribution of the generators or the extent to which hazardous wastes are transported [H.R. Rep. at 26].

In the proposed regulation, EPA recognized that the principal focus of the regulatory program should be directed towards effectively controlling the hazardous waste generated by the larger sources of hazardous waste. The Agency was uncertain, however, about the most appropriate manner of regulating generators of small quantities of hazardous waste. The proposed regulations exempted from regulation retailers and any person who generated and disposed of hazardous waste in quantities of less than 100 kilograms in any one month period, provided that these generators disposed of their waste in a waste disposal facility meeting the RCRA Section 4004 criteria or in a facility permitted to manage hazardous waste. In the preamble to the proposal, EPA explained the rationale for this exemption as follows:

> The principal element of this issue is how to balance the need to protect human health and the environment from the adverse impact of potential mismanagement of small quantities of hazardous waste with the need to hold the administrative and economic burden of management of these wastes under RCRA within reasonable and practical limits (43 FR 58970).

Since the time of proposal, the Agency has received and developed considerable information on the issue of the appropriate degree and manner of regulating small quantities of hazardous waste. The information obtained in this process indicates that the number of persons generating hazardous wastes is staggering. There are an estimated 760,000 large and small generators of hazardous wastes producing over 60 million tons of hazardous waste a year. The greatest amount of these wastes comes from very large generators, typically large manufacturing facilities. Just over 5 percent, or 40,000, of the total number of generators produce more than 5000 kg/mo of hazardous wastes; yet, these large generators produce 97.7 percent of the total quantity of hazardous waste. Roughly 91 percent, or 695,000 of the generators, produce less than 1000 kg/mo, yet contribute only one

percent, or 600,000 tons per year, of the total hazardous waste generated. At levels of generation below 100 kg/mo, 74 percent, or 563,000, of the generators produce only 0.23 percent, or 138,000 tons per year of hazardous waste.

The types of business activity generating small quantities of hazardous waste differ markedly from those generating large quantities of hazardous waste. In contrast to large quantity generators, which are almost entirely from the manufacturing sector, over 89 percent of the small generators—those producing hazardous waste at rates of less than 1000 kg/mo—are from the non-manufacturing sector. These generators are scattered among such diverse sectors as construction, special trade contractors (e.g. plumbers, electricians), secondary schools, and local transportation systems. Gasoline service stations and automobile repair garages (for wastes *other* than waste lubricating oil) comprise nearly 30 percent of these non-manufacturing small generators of hazardous waste.

The Agency has determined that the enormous number of small generators, if brought entirely within the Subtitle C regulatory system, would far outstrip the limited Agency resources necessary to achieve effective implementation.

The information developed in the rulemaking process has led EPA to adopt, in the final regulations, a system which incorporates various aspects of the different approaches suggested in the preamble to the proposed rule. The final regulation sets low (1 to 100 kg/mo) quantity exclusion limits for certain extremely hazardous wastes; sets an initial general exclusion limit for generators of less than 1000 kg/mo of all other hazardous wastes; and conditions this general exclusion to assure that excluded wastes are disposed of in either authorized hazardous waste management facilities or facilities approved by a State for municipal or industrial wastes. EPA believes the approach adopted will allow EPA and the States to initially focus implementation and enforcement of the Subtitle C regulatory program on those generators of hazardous waste who are presently producing 99 percent of all hazardous waste. In addition, the Agency will initiate rulemaking within 2 to 5 years to phase-in expanded Subtitle C coverage of small generators down to those generating more than 100 kg/mo quantities.

The final rule does not exempt retailers from coverage as did the proposed regulations. In the preamble to the proposed rule the Agency stated its belief that retailers rarely generate more than 100 kg/mo. However, commenters argued, and the Agency agrees, that some retailers may generate extremely hazardous wastes. Furthermore, some generators, such as large hardware or garden stores may generate substantial quantities of hazardous waste. To the extent that retailers do generate only very small quantities, they will be exempted by the exclusion level provided in the regulations. Thus, in the final regulation, retailers who generate hazardous waste are subject to the same requirements as any other generator.

The background document responds fully to the diverse and numerous comments received on the proposed exemption of generators of small quantities of hazardous waste. This preamble will discuss the issue raised most frequently during the comment period—the consideration of hazard in establishing quantity limitations for hazardous wastes—and the rationale for setting an initial quantity exclusion of 1000 kg/mo and for phasing down the exclusion to 100 kg/mo.

2. *Consideration of Hazard in Establishing Quantity Limitations.* A number of commenters stated that EPA should use consideration of hazard in determining the scope of regulatory coverage. Two methods were suggested: (1) Using quantity to define hazardous waste pursuant to Section 1005(5) of RCRA, i.e., determining the level for each waste below which it does not pose a substantial hazard to human health and the environment when improperly managed; or, (2) considering the degree of hazard presented by a particular waste to establish different levels or types of controls. Although both approaches are attractive, the Agency lacks at present the ability to use either approach in any extensive fashion, and therefore has had to adopt a general exclusion level.

3. *Using Quantity to Determine That a Waste is Hazardous.* The Agency considered whether the small quantity issue could be addressed through consideration of quantity in the definition of hazardous waste. Specifically, the Agency considered whether small quantity exclusion limits could be established by defining *de minimis* quantities below which a waste would not be hazardous under the statutory definition in Section 1005(5) of RCRA, i.e., below which no substantial hazard to human health and the environment exists under conditions of improper management. However, the Agency has not been able to find a way of determining *de minimis* quantities. To do so would require knowledge not only about the intrinsic properties of a waste but also about the possible *exposures* that attend various small quantities of waste under various plausible scenarios of waste mismanagement. Such exposure assessments require consideration of waste properties, numerous site-specific conditions, and alternative management scenarios. For example, the levels of exposure and hazard which could result from leaching of toxic constituents from a particular hazardous sludge in a landfill would depend on factors such as the persistence of the waste, site hydrogeology, depth to the groundwater, the attenuation of the constituent in the underground environment (including degradation of the constituent and its dilution in the groundwater), and the location of persons using the groundwater. The problem is made more complex by the fact that many wastes may be managed in several alternative ways, such as land disposal, treatment, or incineration, and each of these types of management exhibits different exposure and risk patterns.

Given current knowledge and information, these assessments cannot be made for most wastes with sufficient precision to determine the specific quantities which represent a threshold for finding a waste hazardous. Therefore, the Agency has not been able to establish *de minimis* quantities for defining hazardous wastes. The Agency must therefore consider all quantities of any waste listed or identified in Part 261 to be hazardous.

4. *Inability of the Agency to Use Degree of Hazard.* Because the Agency was unable to use quantity in determining whether a waste is hazardous, it considered using degree of hazard in determining the appropriate quantity exclusion level. Commenters heavily supported establishing exclusion limits based on degree of hazard of various wastes. These suggestions were part of a broader set of comments which recommended that the Agency establish a degree of hazard system that placed wastes into two or more levels of hazard depending on the risk that those wastes present to public health and the environment. Commenters argued that such a system could be used as a basis for phasing regulatory coverage, tailoring waste management standards, and establishing small quantity exclusion levels.

The Agency's response to the full scope of the degree of hazard proposals is included in the preamble to the Part 264 and 265 regulations being promulgated today. As explained there, the Agency has not adopted a degree of hazard system in the final regulations. Among other reasons, the Agency

concluded that none of the degree of hazard systems suggested by commenters, nor any it could itself conceive, is capable of comprehensively distinguishing different degrees of hazard among the myriad of hazardous wastes without application of very subjective judgment. This precluded establishing small quantity exemptions based on a hierarchy of hazard levels.

While the Agency has not found it possible to establish a comprehensive hazard ranking system, the Agency has attempted on a limited basis to make hazard distinctions in establishing small quantity cutoffs. The Agency has established very low exclusion limits for certain very acutely toxic or otherwise hazardous chemical products (if discarded), off-specification derivatives of those products, and the product containers and spill residues. The Agency may in the future establish specific (low) exclusion limits for other highly hazardous wastes on a case-by-case basis.

5. *Limited Administrative Resources Require Setting the Initial Exclusion Level at 1000 kg/mo.* EPA has decided to adopt for the present time, a general exclusion level of 1000 kg/mo. The Agency's basis for this decision is the current lack of sufficient administrative resources to allow the Agency and the States to effectively regulate all hazardous waste. Given that resource constraint, the Agency believes that the overall level of environmental protection which can be provided will be greater if the Agency focuses available resources on fully regulating wastes from large generators during the early years of regulation implementation rather than expanding the scope of regulatory coverage and achieving ineffectual implementation of a more ambitious program.

The primary reason for selecting 1000 kg/mo, i.e., the administrative impossibility of implementing at lower levels, deserves some elaboration. As noted earlier, regulation of all generators of hazardous waste would bring 760,000 persons into the regulatory system. Regulating only those persons who generate more than 100 kg/mo would exclude from the program 560,000 generators, 73.9 percent of the total. If the exclusion level were set at 1000 kg/mo, 695,000 generators or 91.2 percent would be excluded from regulation. At a 5000 kg/mo level, 722,000 generators or 94.7 percent would be excluded.

In 1981, the first full year of implementing the Subtitle C controls, analyses of Agency and State workload requirements and available resources to implement the Subtitle C controls indicate that, if all generators were fully regulated, workload requirements would exceed resources available by 1100 to 1200 workyears. If generators of less than 100 kg/mo quantities were exempted from full regulation, the shortfall would be much less, but still a substantial 200 to 300 workyears. However, if generators of less than 1000 kg/mo quantities are exempted, the shortfall is projected to be less than 100 workyears, about 5 percent of the total workload requirements.

The resource constraints and shortfalls have direct significance for the operation of the entire regulatory program. To expand the coverage to smaller generators would require direct sacrifices from other elements of the program, most notably regulation and enforcement of large generators, permitting of treatment, storage and disposal facilities, and enforcement and inspection of these facilities. Furthermore, with greater resource demands and projected shortfalls, greater difficulties are likely in the ability of States to obtain authorization to administer the program in lieu of the Federal government.

Given the enormity of the implementation task and the limited administrative resources, EPA has been forced to make difficult allocation decisions. Expanding the coverage of generators would entail direct sacrifices from other essential program components. The determination of the proper exclusion level in the final regulation represents a complicated balancing of a variety of factors. The decision reflects a judgment by the Agency that the overall environmental objectives will be best served by selecting a level which promises full and effective implementation of all elements of the program rather than one that promises ineffective implementation of a more ambitious program.

Accordingly, EPA has decided to establish for the present time a conditioned exclusion of hazardous wastes from generators who produce less than 1000 kilograms a month. This level will enable EPA to direct its attention to the effective regulation of 99 percent of the total wastes generated, and will entail only insignificant, if any, sacrifices in the task of issuing permits to hazardous waste management facilities.

In addition, the exclusion is not unqualified; generators of small quantities of hazardous waste must ensure that their wastes go to facilities that are approved by the State to handle municipal or industrial wastes. For most of these facilities the commingling of small quantities of hazardous waste with large quantities of non-hazardous waste is likely to minimize environmental problems attributable to the hazardous waste, particularly since dilution levels at a 1000 kg exclusion are generally at least 100 to 1. Importantly, this approach will give State agencies more flexibility in dealing with small quantity generators. If a State determines that certain types of exempted hazardous waste should not be managed in a particular non-hazardous facility, it can deal with that situation directly.

The Agency considered other types of reduced administrative or technical requirements for exempted generators, including various subsets of the full Subtitle C requirements. A limited number of commenters suggested particular reduced requirements which they felt would provide limited but necessary controls. The Agency's analysis of various reduced Subtitle C requirements indicated that they would either provide an insignificant level of additional control, or that they would not substantially reduce the administrative burden of the full Subtitle C requirements. Thus, the Agency decided to impose only the condition stated above.

6. *Phasing Down the Coverage of Small Quantity Generators.* On the basis of information presently available to the Agency, it appears that a general exclusion level of 100 kg/mo would better achieve the environmental protection objectives of Subtitle C. Therefore, EPA intends to initiate rulemaking within 2 to 5 years to expand Subtitle C coverage down to generators of 100 kg/mo. During this process, the Agency will consider the need for any special regulatory requirements to deal with any unique problems associated with these wastes.

A number of commenters argued that phasing regulatory coverage of small generators would significantly benefit the administration of the hazardous waste management program. The Agency believes that because of limited resources, the Agency *must* phase its regulation of small generators to be able to fully implement the Subtitle C controls on large generators, transporters, and waste management facilities.

7. *Environmental Considerations.* The information that the Agency was able to develop on the environmental impacts of different quantity cutoff levels was not fully conclusive. However, the data indicate that an exclusion level of 100 kg/mo, coupled with lower exclusions for certain highly hazardous wastes, and disposal of excluded waste in Subtitle C or State approved facilities will, in most

cases, minimize adverse impacts on human health and the environment.

The review of damage cases tends to support a 100 kg/mo exclusion level. First, there were very few damage cases involving quantities below that level. Second, those few cases involved indiscriminate dumping rather than disposal in managed facilities. This suggested that disposal of quantities less than 100 kilograms in a managed facility might provide sufficient environmental protection, even if the managed facility was not authorized to handle hazardous waste. Of the 11 damage incidents involving the disposal of less than 1000 kg quantities of hazardous waste in managed facilities the environmental damage or personal injury occurred in nine of the incidents because of mismanagement of single containers, i.e., 55 gallon drums of ignitable, corrosive or reactive materials. Setting the exclusion level at 100 kg/mo would in most cases ensure that single, full drums would be properly packaged and labeled, manifested and sent to Subtitle C facilities. A higher exclusion level would not provide this assurance.

Wastes generated by small quantity generators at the 100 kg/mo exclusion level comprise only 0.23 percent of all hazardous waste. The environmental analysis showed that these small generator hazardous wastes are typically mixed by the generator with non-hazardous wastes and subsequently disposed of in waste management facilities for municipal waste. If these mixed wastes were evenly distributed to such facilities, the dilution ratio of non-hazardous to hazardous waste would be roughly 900 to 1 at a 100 kg/mo exclusion limit.

Although even distribution will not occur, EPA believes that very large dilution ratios will result in most situations with a 100 kg/mo exclusion level. This is because 92 percent of the small generators (producing less than 100 kg/mo) are in the non-manufacturing sector and are distributed in reasonable proportion to population and, therefore, in reasonable proportion to quantities of diluting non-hazardous municipal wastes. The effect of even distribution and high dilution is to spread and, thereby, minimize exposure and risk. Although this effect cannot be assessed with great precision, it is not unreasonable to assume that human health exposure and risk is significantly reduced at dilution ratios of several hundred to 1.

8. *Resource Considerations.* Projecting administrative resources into the future is inherently speculative, requiring various assumptions and estimates of State and Agency budgets, and implementation workloads. The Agency studies assumed constant budgets, and predicted the administrative shortfall to become exacerbated, rather than reduced over time. Other projections, presented in the background document for small generators, also suggest some resource difficulties in phasing-in the coverage of small generators, but these projections show that the resource picture may improve over time. The Agency, however, believes it is appropriate to expand its regulatory coverage of small quantity generators, and will be seeking the budgetary increases necessary to accomplish that phasing. Additionally, once the regulatory apparatus is in place and operating, the Agency will be able to reassess the ability to achieve more comprehensive coverage by means of allocating its resources differently than presently projected.

F. Section 261.6 (Special Requirements for Hazardous Waste Which Is Used, Re-used, Recycled or Reclaimed)

This section sets forth the applicability of the Subtitle C regulations to the storage and transportation of hazardous waste sludges and hazardous wastes listed in Subpart D that are used, re-used, recycled or reclaimed. It also provides for the exclusion from regulation of all other aspects of the use, re-use, recycling or reclamation of hazardous waste until EPA promulgates regulations to the contrary. The content of and rulemaking considerations that went into this section are fully discussed in Section IV. B. of this preamble.

V. Subpart B—Criteria for Identifying Characteristics of Hazardous Waste and for Listing Hazardous Waste

A. Section 261.10 (Criteria for Identifying the Characteristics of Hazardous Wastes)

Section 3001 of the Act requires EPA to develop and promulgate criteria for identifying the characteristics of hazardous waste. The proposed regulations identified two such criteria. The first criterion was that the characteristic be capable of being defined in terms of physical, chemical or other properties which cause the waste to meet the definition of hazardous waste in the Act. This criterion embodied the simple but fundamental notion that a characteristic of hazardous waste must be one which causes the waste to be a hazardous waste within the meaining of the statutory definition. The second criterion was that the properties defining the characteristic be measurable by standardized and available testing protocols. EPA adopted this second criterion in recognition that the primary responsibility for determining whether wastes exhibit the characteristics rests with generators. It believed that unless generators were provided with widely available and uncomplicated test methods for determining whether their wastes exhibited the characteristics, the system would prove unworkable. Largely in reliance on this second criterion, EPA refrained from adding organic toxicity, carcinogenicity, mutagenicity, teratogenicity, bioaccumulation potential and phytotoxicity to the set of proposed characteristics and instead left it to listing mechanism to capture wastes exhibiting these properties. EPA considered the available test protocols for measuring these characteristics to be either insufficiently developed or too complex and too highly dependent on the use of skilled personnel and special equipment. Additionally, given the current state of the knowledge concerning such properties, EPA did not feel that it could define with any confidence the numerical threshold level at which wastes exhibiting these characteristics would present a substantial hazard. Furthermore, it questioned whether these tests sufficiently took into account the multiple factors which bore on the question of the hazardousness of such wastes.

EPA received a few comments on its proposed criteria for identifying characteristics, the most significant of which addressed the appropriate use of the identified characteristics. A number of commenters contended that EPA did not have authority to require generators to assess their wastes in accordance with the characteristics. These commenters were generally concerned about the burden placed on generators by such a requirement and argued that the characteristrics should only be used by the Agency in listing hazardous wastes. Other commenters believed that EPA was fully justified in requiring generators to assess their wastes in accordance with the identified characteristics and felt that this would assure the broadest possible coverage for hazardous wastes.

EPA disagrees with those commenters who argue that EPA has no authority to require generators to determine if their wastes exhibit any of the characteristics. Throughout the statute, Congress made reference to two alternative mechanisms for bringing a waste into the hazardous waste system—identification through characteristics, and listing. If Congress

had intended the identified characteristics to be used solely by EPA in listing wastes, then there would have been no point in making a distinction between these two mechanisms. Consequently, since the determination of whether a waste exhibits the characteristics appears to require some action by someone other than EPA, the most reasonable interpretation of the statutory language is that it requires generators to assess their wastes in accordance with the EPA-identified characteristics. This interpretation of the statutory language is substantially reinforced by the provision in Section 3002(4) that generators may be required to furnish information on the general chemical composition of their waste—a requirement which presumes testing.

The final regulation makes a few slight changes in the language of the criteria for identifying characteristics in an attempt to clarify the meaning of the regulation and better reflect EPA's regulatory intent. First, EPA has omitted reference to damage incidents and scientific and technical information as bases for identifying characteristics, out of a conviction that this reference is unnecessary and in partial agreement with those who argued that damage incidents should not be heavily relied on in identifying characteristics. Second, EPA has omitted the redundant phrase "can be defined in terms of specific, physical, chemical, toxic, infectious, or other properties of a solid waste." Third, EPA has expanded the criterion of "measurability" to make clear that any test for measuring characteristics must be within the capability of the generator community and to provide that characteristics such as reactivity need not be accompanied by a testing protocol if the characteristic can be "reasonably detected by generators . . . through their knowledge of the waste."

B. Section 261.11 (Criteria for Listing Hazardous Waste)

In the proposed regulation, EPA specified two criteria for listing hazardous waste. The first criterion was that the waste possess one or more of the identified characteristics. The second criterion was that the waste meet the definition of hazardous waste found in Section 1004(5) of the Act.

The first criterion to a large extent reflected EPA's regulatory strategy at the time of the proposal. Under that strategy, EPA planned to identify and quantitatively define all of the characteristics of hazardous waste, including organic toxicity, carcinogenicity, mutagenicity, teratogenicity, bioaccumulation potential and phytotoxicity. Generators would be required to assess their wastes in accordance with these characteristics and EPA would list hazardous wastes where it had data indicating the wastes exhibited one of the identified characteristics. Listing would thus play a largely supplementary function and would serve as a device for injecting certainty into the process of hazardous waste determination. As noted above, however, EPA has found it impossible to fully effectuate this strategy because of the lack of suitably uncomplicated test protocols, the difficulty of establishing numerical hazardous threshold levels for these additional characteristics, and the failure of the available test protocols to fully incorporate all of the multiple factors bearing on the hazards presented by such characteristics.

The second criterion was adopted against the backdrop of this inability to capture all hazardous wastes through identified characteristics, and was intended to give the Agency an independent basis for capturing such wastes. Although this proposed criterion was admittedly somewhat general in nature, it implicitly incorporated the more specific criteria embodied in the delisting requirements and the waste codes which accompanied each listing—provisions which made it clear that EPA was specifically concerned with radioactive, mutagenic, bioaccumulative, toxic organic and infectious wastes. Thus, although EPA appeared to have prescribed for itself a very broad and inexact listing standard in the proposed regulation, in actuality the Agency followed a fairly particularized set of criteria in listing wastes.

EPA received a large number of comments in response to its proposed criteria for listing. None of these commenters objected to EPA's first criterion for listing wastes that exhibit one of the characteristics. A large number of commenters, however, objected to the second criterion. Many of these commenters felt that the mere articulation of the statutory definition as the basis for listing was circular and constituted an abrogation of EPA's statutory duty to establish criteria for listing which expand upon the statutory definition. Others argued that the second criterion was inappropriate because it failed to take into consideration such things as concentration, degradation potential and bioaccumulation potential—factors which are specifically mentioned by the Act.

EPA agrees that the proposed criterion for listing wastes which do not exhibit any of the characteristics was as a general matter, too broad. Accordingly, we have promulgated a considerably expanded and more specific set of criteria to take the place of the proposed criterion. These criteria are broken down into two categories—criteria for listing acutely hazardous waste and criteria for listing toxic waste.

The criteria for listing acutely hazardous waste are intended by EPA to serve as the criteria for identifying wastes which are so hazardous that they can be said to meet part (A) of the statutory definition of hazardous waste—i.e., wastes which may "cause, or significantly contribute to an increase in serious irreversible, or incapacitating reversible, illness", regardless of how they are managed. It is EPA's conviction that most wastes are hazardous only because they "pose a substantial present or potential hazard to human health or the environment *when improperly managed*" and thus meet part (B) of the statutory definition of hazardous waste. Nevertheless, EPA recognizes that there are wastes which are so acutely hazardous that they can be considered to present a substantial hazard whether improperly managed or not. EPA has defined this category of wastes to include those which have been shown to be fatal to humans in low doses or have been shown in mammalian studies to have an oral LD 50 toxicity of less than 50 milligrams per kilogram, (as determined using rats), an inhalation LC 50 toxicity of less than 2000 milligrams per cubic meter (as determined using rats), or a dermal LD 50 toxicity of less than 200 milligrams per kilogram (as determined using rabbits). Numerous government agencies and private organizations, including the Department of Transportation, the Consumer Product Safety Commission and the National Academy of Sciences, recognize that substances exhibiting these LD 50 and LC 50 toxicities are so potentially lethal as to be considered poisonous or acutely toxic. EPA has also defined this category of wastes to include wastes, such as explosives, which otherwise meet part (A) of the statutory definition of hazardous waste. This has been done in recognition that wastes may be acutely hazardous even if they are not toxic. Inasmuch as a waste will meet the acutely hazardous criteria only when the whole waste, rather than just its constituents, presents an acute hazard, EPA has employed and intends to employ these criteria primarily to list the discarded pure chemical substances and associated materials specified in § 261.33. EPA recognizes, however, that there may be

wastes such as wastes containing substantial concentrations of potent carcinogens which meet these criteria even though they are not pure substances.

The criteria for listing toxic wastes are intended by EPA to identify all those wastes which are toxic, carcinogenic, mutagenic, teratogenic, phytotoxic, or toxic to aquatic species. These criteria provide that a waste will be listed where it contains any of a number of designated toxic constituents—unless, after consideration of certain specified factors, EPA concludes that the waste does not meet part (B) of the statutory definition of hazardous waste. As in the proposed regulation, the ultimate requirement for listing a waste as hazardous is whether it meets the definition of hazardous waste found in the Act. Unlike the proposed regulation, however, the final criteria significantly channel the route the Agency must follow in determining whether a waste meets the statutory definition. The first inquiry which must be made under the final criteria is whether the waste contains any of the toxic constituents listed in Appendix VIII. These constituents are ones which have been shown in reputable scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms and include such substances as those identified by the Agency's Carcinogen Assessment Group. Consequently, the presence of any of these constituents in the waste is presumed to be sufficient to list the waste unless after consideration of the designated multiple factors, EPA concludes the waste is not hazardous. These multiple factors include the type of toxic threat posed, the concentrations of the toxic constituents in the waste, the migration potential, persistence and degradation potential of the toxic constituents, the degree to which the toxic constituents bioaccumulate in ecosystems, the plausible types of improper management to which the waste could be subjected, the quantities of waste generated, and other factors not explicitly designated by the Act, including damage incidents involving wastes containing the toxic constituents and actions taken by other governmental agencies with respect to the waste or its toxic constituents.

EPA has adopted this flexible, multiple factor approach to listing rather than the formulaic approach embodied in the characteristics because it considers this approach to be better able to accommodate itself to complex determinations of hazard. EPA further believes that this multiple factor approach was to some extent contemplated by Congress. Most of the factors selected are specifically mentioned in Section 3001 of the Act. Additionally, the report which accompanied the Senate bill provided that at a minimum the Administrator should designate as hazardous each mixture of solid waste which contained a toxic or hazardous substance listed in section 112 of the Clean Air Act or section 307(a) and section 311(b) of the Clean Water Act unless he determined that the waste did not meet the criteria for identifying hazardous wastes. Senate Report 94–988, 94th Cong., 2d Sess. at 14. Thus the Senate bill, like EPA's final regulations, envisioned a presumption in favor of listing based on the presence of a toxic constituent in the waste which is rebuttable by a consideration of further factors. Although the Senate version of the bill was not adopted, the concept embodied therein was not specifically rejected in the final statute, providing some further basis for concluding that EPA's approach for listing toxic wastes reflects congressional intent.

As can be seen from the above discussion, the final criteria for listing reflect a change in emphasis in the Agency's regulatory strategy. EPA is not fully confident that it can suitably define and construct testing protocols for the characteristics of organic toxicity, carcinogenicity, mutagenicity, teratogenicity, bioaccumulation potential, phytotoxicity, radioactivity and infectiousness, and is consequently relying on the listing mechanism to bring wastes exhibiting these properties into the system. One negative aspect of this change in approach is that it shifts to EPA the primary burden for identifying, analyzing and evaluating these wastes with the result that it may take longer to achieve full regulatory coverage. This negative aspect is substantially offset, however, by the greater flexibility and assurance which the listing approach provides, especially when accompanied by the delisting procedure.

A notable difference between the approach embodied in the characteristics and the approach embodied in the criteria for listing is that EPA attaches less emphasis to waste constituent migration and subsequent environmental fate in the listing mechanism than in the characteristics. This is nowhere better demonstrated than in the listing of waste which contain primary drinking water standards contaminants. In listing wastes which contain primary drinking water standards contaminants EPA has elected to focus, in the first instance, on the actual presence of the toxic constituent in the waste and to treat other factors such as migration potential as essentially mitigating considerations which might render the waste non-hazardous. EPA feels justified in concentrating primarily on the composition of the waste because the listing mechanism allows for a more individualized consideration of hazard and because the delisting procedure affords generators an opportunity to demonstrate, through reliance on the specified factors, that their waste is not in fact hazardous. In the case of wastes exhibiting the characteristic of EP toxicity, on the other hand, there is no opportunity to make such a demonstration—since the test prescribed in the characteristic constitutes a final determination of hazard. Consequently, out of concern that the characteristic not be overinclusive, EPA has placed somewhat greater emphasis on migration potential and has rigorously incorporated this consideration into the EP test.

As noted in section III.A.3. of this preamble, EPA intends to supplement the listing criteria to allow listing of radioactive and infectious wastes. We are deferring promulgation of the criteria for listing radioactive wastes because we want to wait until Congress has spoken on this issue and because deferral will give EPA more time to refine its standards for listing these wastes and to coordinate these standards with the regulations governing used, re-used recovered, and reclaimed wastes. We are similarly deferring promulgation of the criteria for listing infectious wastes because we have not finished developing the treatment standards applicable to such wastes.

A few clarifying changes have been added to the final regulation. First, the regulation provides that EPA may list classes or types of wastes if it has reason to believe that all wastes within the class or type typically or frequently are hazardous. Second, the regulation provides that the criteria for listing will be used to establish the exclusion limits for acutely toxic wastes generated by small generators. These exclusion limits are referred to in § 261.5(c).

VI. Subpart C—Characteristics of Hazardous Waste

A. Section 261.20—General

This section is largely self-explanatory. It states that a solid waste is a hazardous waste if it exhibits any of the characteristics of hazardous waste, explains the assignment of EPA Hazardous Waste Numbers, and

explains the method for obtaining a representative sample in testing for characteristics. Rather than specifying particular procedures to be used in obtaining representative samples, EPA is simply requiring the regulated community to obtain samples which meet the definition of representative sample found in Part 260 of the regulations. To provide some guidance concerning compliance with this requirement, EPA will consider any sample obtained using the sampling methods indexed in Appendix I to be a representative sample within the meaning of the Part 260 definition. Since, however, these sampling methods are not being officially required by EPA anyone desiring to use a different sampling method may do so without demonstrating the equivalency of that method under the procedures set forth in § 260.21.

B. Section 261.21 (Characteristic of Ignitability)

In the proposed regulation, EPA defined ignitable waste to include the following: (1) Liquids having a flashpoint of less than 140° F (60° C) (2) non-liquids liable to cause fires through friction, absorption of moisture, spontaneous chemical change or retained heat from manufacturing or liable, when ignited, to burn so vigorously and persistently as to create a hazard (3) ignitable compressed gases and (4) oxidizers.

EPA's objective was to identify wastes capable of causing fires during routine transportation, storage and disposal and wastes capable of severely exacerbating a fire once started. Such fires, EPA recognized, pose a particular danger to transportation and disposal personnel and also threaten the general public by generating toxic fumes and creating convection currents which transport toxic particulates to the surrounding area. EPA adopted the Department of Transportation's definitions of ignitable compressed gas and oxidizer and borrowed heavily from the Department of Transportation's definition of non-liquid ignitable because it believed these definitions adequately reflected routine waste management conditions. At the same time, it chose a flashpoint limit for ignitable liquid wastes different from that specified by the Department of Transportation's "flammable" liquid category because it believed that the flashpoint limit specified by the Department of Transportation did not fully reflect conditions likely to be encountered during routine waste management.

A large number of commenters argued that EPA should adopt the Department of Transportation's 100° F flashpoint for flammable liquids. These commenters argued that EPA's adoption of a different flashpoint limit from the Department of Transportation is not justified by conditions likely to be encountered during waste management and will create undue confusion in the regulated community.

The Agency disagrees with these commenters. A number of EPA studies reveal that ambient temperatures of 140° F are regularly encountered during landfill disposal. In such environments, liquid wastes with flashpoints lower than 140° F will readily volatilize and can be easily ignited by the numerous ignition sources to which wastes are exposed during management. The need to regulate such wastes is borne out by an early Department of Transportation study which recommended that the Department of Transportation adopt a flashpoint limit of 140° F for flammable liquids because temperatures of this order can be encountered during transportation. The commenters who argue that EPA's 140° F flashpoint limit is not justified by waste management conditions forget that, through the creation of its "combustible liquid" category, the Department of Transportation regulates liquids with flashpoints of up to 200° F—a tacit acknowledgement that EPA's 140° F flashpoint is well within the sphere of potential concern.

EPA does not believe that its ignitable liquids category will create undue confusion in the regulated community. The term "ignitable" was specifically chosen to eliminate confusion between EPA's "ignitable" liquids category and the Department of Transportation's "flammable" liquids category. Furthermore, EPA's ignitable liquids category is one with which the regulated community should already be familiar since it encompasses Class I and Class II liquids in the National Fire Protection Association's classification scheme. While EPA believes that maintaining consistency between its definitions of hazard and those of the Department of Transportation is a desirable goal, it does not believe that such consistency should be achieved at the expense of human health and environmental protection.

A number of commenters argued that the 140° F flashpoint for liquids improperly included many liquid wastes such as wine and some latex paints which exhibit low flashpoints because of their alcohol content but do not sustain combustion because of the high percentage of water present.

EPA agrees that such wastes should not be designated as hazardous, but unfortunately has no data on hand which identifies the correlation between the concentration of alcohol in such wastes and the established flashpoint of 140° F. Accordingly, it has for the time being opted to follow the Department of Transportation's lead and exclude from its ignitable liquids category aqueous solutions containing less than 24 percent of alcohol by volume. This exclusion will remove from the ignitability characteristic liquid wastes which the Agency knows may flash but not sustain combustion. In the meantime, EPA hopes to undertake further study to determine whether another exclusion limit is more appropriate and to evaluate tests which might be capable of identifying wastes which exhibit this phenomenon.

Many commenters argued that the proposed definition of solid ignitable wastes was too vague and that a testing protocol was needed to provide proper guidance. A number of these commenters took particular issue with the phrase ". . . or when ignited burns so vigorously and persistently as to create a hazard during its management . . ." which they felt could be construed to include such non-hazardous materials as bark, wood chips, wastepaper, sawdust, corrugated boxes, etc.

EPA agrees that the proposed definition of solid ignitable wastes was perhaps imprecise and could stand clarification. It has no intention of designating such things as wastepaper and sawdust to be hazardous and is only interested in capturing the small class of thermally unstable solids which are liable to cause fires through friction, absorption of moisture or spontaneous chemical changes. Accordingly, to eliminate any misunderstanding, we have changed the definition of ignitable solid to read ". . . *and* when ignited burns so vigorously and persistently that it creates a hazard."

Although EPA would have preferred providing a test method for identifying ignitable solids, it has determined, after diligent inquiry, that there are no test methods capable of accurately identifying the small class of ignitable solids to which its regulation is directed. EPA is presently working with the Department of Transportation and other organizations to correct this deficiency. In the meantime, the absence of a test should not cause too much of a problem since generators of thermally unstable solids, like generators of reactive wastes, are likely to be aware that their waste exhibits this property.

A number of commenters argued that EPA improperly included in its definition of ignitable solids, wastes such as slags which are liable to cause

fires through "retained heat from manufacturing or processing."

EPA agrees that these wastes should not be designated as hazardous and has accordingly deleted the phrase "or retained heat from manufacturing or processing" from the definition of ignitable solids. EPA was originally concerned that wastes such as slags, if placed in a landfill, could present a hazard by raising the temperature of other wastes to their flashpoints. It is now convinced that the likelihood of such high volume wastes being placed in a landfill is sufficiently small as not to warrant their regulation.

C. Section 261.22 (Characteristic of Corrosivity)

In the proposed regulation, EPA defined corrosive wastes to include (1) aqueous wastes exhibiting a pH of less than or equal to 3 or greater than or equal to 12 and (2) liquid wastes capable or corroding steel at a rate greater than 0.250 inches per year. This definition attempted to address the various hazards presented by corrosive wastes. EPA chose pH as one barometer of corrosivity because wastes exhibiting low or high pH can cause harm to human tissue, promote the migration of toxic contaminants from other wastes, react dangerously with other wastes, and harm aquatic life. EPA chose metal corrosion rate as its other barometer of corrosivity because wastes capable of corroding metal can escape from the containers in which they are segregated and liberate other wastes.

A majority of commenters argued that the proposed pH limits were unduly stringent. These commenters pointed out that the proposed upper pH limit of 12.0 would include many otherwise non-hazardous lime-stabilized wastes and sludges, thereby discouraging use of this valuable treatment technique. They further pointed out that the proposed lower pH limit of 3.0 would include a number of substances generally thought to be innocuous and many industrial wastewaters prior to neutralization. They questioned EPA's assertion that the proposed lower pH limit was needed to protect against tissue damage.

EPA agrees that the proposed pH limits were unnecessarily stringent and has accordingly adjusted the upper pH limit to 12.5 and the lower pH limit to 2.0. In originally establishing the proposed limits, EPA was confronted with the difficulty that while the tendency to promote the solubilization of heavy metal contaminants and to cause harmful reactions generally increases as pH approaches the upper and lower limits of the pH scale, there are no threshold levels for these effects. Consequently, to a significant extent, EPA based the proposed pH levels on studies demonstrating a correlation between pH and eye tissue damage. Since eye tissue is considered to be more sensitive than other human tissue, the proposed pH levels were unnecessarily conservative and had the unintended effect of inhibiting the use of such beneficial processes as the lime stabilization of wastes. The expanded pH range being adopted today rectifies this problem by excluding such things as lime stabilized wastes from the system. It also addresses the problem of tissue damage more realistically while at the same time providing ample protection against the solubilization of toxic contaminants and dangerous reactions.

A number of commenters commented on the need for addressing percent acidity and alkalinity in the pH provision of the corrosivity characteristic. A few commenters favored adding percent acidity/alkalinity to the pH provision because it would provide useful information for disposal purposes. Most commenters, however, felt that percent acidity/alkalinity should not be addressed because it would not add significantly to the determination of hazard and would require the use of a more complicated measurement technique.

EPA agrees with most commenters that the addition of percent acidity/alkalinity to the pH provision is unnecessary. Percent acidity/alkalinity provides an indication of the capacity of a waste to resist a change in pH and therefore to aid in the assessment of the hazard presented by a waste over the long term. However, it adds little to the assessment of the hazard posed by the waste during transportation, storage and initial disposal. Furthermore, because the capacity of a waste to retain low or high pH is as much a function of its disposal or storage environment as of its percent acidity/alkalinity, the Agency knows of no scientifically valid basis upon which to establish hazardous threshold levels of percent acidity/alkalinity. Accordingly, EPA has elected not to address percent acidity/alkalinity in the corrosivity characteristic.

A few comments were received on the need for including corrosive solids in the corrosivity characteristic. All advocated including solids in the corrosivity characteristic but none described situations where the improper disposal of such wastes would be likely to cause damage.

EPA has concluded that, inasmuch as the great majority of wastes are presumed to be in liquid or semi-liquid form, there is no demonstrated need to address corrosive solids at this time. EPA will, however, continue to seek information on the dangers presented by these wastes and will consider specific regulatory measures if the need for more control becomes apparent.

A number of commenters suggested that the corrosivity characteristic should address tissue damage more directly and employ a skin corrosion test. Several of these commenters pointed to a Consumer Product Safety Commission survey which ostensibly casts doubt on the ability of pH to predict tissue damage.

EPA believes that there is sufficient correlation between pH and tissue damage to justify the use of pH in a regulatory context, especially in view of the fact that it is using pH as a multi-purpose measure of many elements of concern. Requiring the regulated community to conduct skin corrosion tests, which necessitate the maintenance of special facilities and skilled personnel, would prove unnecessarily burdensome and would yield little in the way of extra results. Accordingly, EPA is not including a skin corrosion test in the final regulation.

At least one commenter noted that the NACE metal corrosion test specified in the proposed regulations permits variation in a number of test conditions.

To correct this problem, EPA has standardized the conditions of the NACE test in its test methods guidance manual and has required generators to utilize this standardized version in running the test.

D. Section 261.23 (Characteristic of reactivity)

The proposed regulation defined reactive wastes to include wastes which (1) readily undergo violent chemical change (2) react violently or form potentially explosive mixtures with water (3) generate toxic fumes when mixed with water or, in the case of cyanide or sulfide bearing wastes, when exposed to mild acidic or basic conditions (4) explode when subjected to a strong initiating force (5) explode at normal temperatures and pressures or (6) fit within the Department of Transportation's forbidden explosives, Class A explosives, or Class B explosives classifications.

This definition was intended to identify wastes which, because of their extreme instability and tendency to react violently or explode, pose a problem at all stages of the waste management process. The definition was to a large extent a paraphrase of the narrative definition employed by the National Fire Protection Association, although test protocols for measuring thermal and shock instability were

prescribed as a partial aid in assessing reactivity. The Agency chose to rely on a descriptive, prose definition of reactivity because the available tests for measuring the variegated class of effects embraced by the reactivity definition suffered from a number of deficiencies.

EPA received a large number of comments which argued that the prose definition of reactivity employed by EPA is too indefinite and vague and gives generators inadequate guidance in assessing the reactivity of their waste. These comments advocated replacing the prose definition with a numerically quantified definition accompanied by appropriate testing protocols.

EPA has attempted where possible to define hazardous waste characteristics in terms of specific, numerically quantified properties measurable by standardized testing protocols. The available test methods for reactivity, however, suffer from a number of generic and individual shortcomings which make a numerically quantified definition with accompanying test protocols inappropriate. First, these tests are too restrictive in scope and confine themselves to measuring how one specific aspect of reactivity correlates with a specific initiating condition or stress. No test is sufficiently general to even begin to measure the variety of different stresses and reactions found within the reactive classification. Second, because the reactivity of a waste sample is a function not just of its intensive properties such as density and composition but also of its extensive properties such as mass and surface area, the reactivity of the sample as measured by the tests will not necessarily reflect the reactivity of the whole waste. Third, most of the available tests are not of the "pass-fail" type and require subjective interpretation of the results.

The unavailability of suitable test methods for measuring reactivity should not cause problems. Most generators of reactive wastes are aware that their wastes possess this property and require special handling. This in because such wastes are dangerous to the generators' own operations and are rarely generated from unreactive feed stocks. Consequently, the prose definition should provide generators with sufficient guidance to enable them to determine whether their wastes are reactive.

A number of commenters argued that the two proposed test methods for measuring reactivity were, among other things, unreliable and difficult to interpret. EPA agrees with these commenters that the two proposed test methods—the Explosion Temperature Test and the Bureau of Explosives shock instability test suffer from a number of inadequacies and add little to the prose definition. Although the Explosion Temperature Test was originally thought to be a suitable method for measuring one aspect of reactivity, field testing demonstrates that this test requires subjective interpretation of the results. Re-evaluation of the shock instability test suggests that it too possesses problems which make its utility as a measure of reactivity questionable—especially in view of its narrow scope. Accordingly, EPA has stricken these two tests from the regulations except to the extent the Department of Transportation's definition of Class A explosives requires use of the shock instability test.

Several commenters took issue with the inclusion in the reactivity definition of any waste which "generates toxic gases, vapors or fumes when mixed with water" and "any cyanide or sulfide bearing waste which can generate toxic gases, vapors or fumes when exposed to mild acidic or basic conditions." These commenters complained that this language lacks specificity. As an example, they noted that quite a few things contain sulfides and cyanides in trace amounts and can generate minute quantities of hydrogen sulfide or hydrogen cyanide under acidic or basic conditions.

EPA agrees that the language in question could benefit from clarification. It has accordingly amended the regulation to include only those wastes which generate toxic gases, vapors and fumes in *"a quantity sufficient to present a danger to human health or the environment"*. It has also specified that, by mild acidic or basic conditions, it means pH conditions of between 2 and 12.5. This pH range was chosen because only waste inside this pH range can be managed without regard to the prohibitions imposed by Subtitle C. Consequently, these pH conditions are likely to be the most stringent encountered by cyanide and sulfide bearing wastes.

E. Section 261.24 (Characteristic of EP Toxicity)

There is persuasive evidence that the contamination of groundwater through the leaching of waste contaminants from land disposed wastes is one of the most prevalent pathways by which toxic waste constituents migrate to the environment. EPA's damage files contain numerous incidents of groundwater pollution resulting from the indiscriminate dumping and improper landfilling of wastes. Additionally, the legislative history of RCRA is replete with indications that such groundwater contamination was one of Congress' primary areas of concern. In the proposed regulation, EPA addressed this problem by developing a test procedure called the Extraction Procedure (EP) designed to identify wastes likely to leach hazardous concentrations of particular toxic constituents into the groundwater under conditions of improper management. Under this procedure, constituents were extracted from the waste in a manner designed to simulate the leaching action that occurs in landfills. This extract was then analyzed to determine whether it possessed any of the toxic contaminants identified in the National Interim Primary Drinking Water Standards (NIPDWS). If the extract contained any of the contaminants in concentrations 10 times greater than that specified in the National Interim Primary Drinking Water Standards, the waste was considered to be hazardous.

Like other test procedures employed to identify hazardous characteristics, the EP was intended to serve as a quick test for identifying wastes which are capable of posing a substantial present or potential hazard when improperly managed. Consequently, in devising the test, EPA necessarily had to make certain assumptions about the improper management to which toxic wastes capable of contaminating groundwater are likely to be subjected. In making such assumptions, EPA believed it important to employ a reasonably conservative mismanagement scenario—in view of the statutory mandate to protect human health and the environment, the broad statutory definition of hazardous waste and also because the phenomenon of long term leaching is only incompletely understood. On the other hand, EPA considered it important not to utilize a wholly implausible mismanagement scenario, since by doing so it would end up regulating as hazardous those wastes which were quite unlikely to ever cause a problem.

The result of these deliberations was a decision to model the EP upon a mismanagement scenario for toxic wastes which constitutes a prevalent form of improper management—namely, the co-disposal of toxic wastes in an actively decomposing municipal landfill which overlies a groundwater aquifer. EPA realized in making its co-disposal assumption that actively decomposing municipal waste landfills generate more aggressive leachate media than other landfills and thus, that its assumption was a relatively conservative one. It

nevertheless believed the co-disposal assumption to be reasonable, first, because wastes are customarily landfilled, second, because most categories of waste have the potential to be disposed of in municipal waste landfills, third, because the predicted degree of contaminant concentration in leachate could occur with respect to wastes which are not likely to be disposed of in municipal landfills and fourth, because Congress expressed particular concern about the disposal of toxic wastes in municipal landfills. EPA also realized its assumption that the landfill overlies a groundwater aquifer was a relatively conservative one. It believed, however, that this assumption was consistent with its concern for the disposal of wastes in environmentally sensitive areas and with the fact that a groundwater body, once contaminated, may remain contaminated for a number of years. Furthermore, it believed this assumption to be somewhat mitigated by its further assumption that there would be some attenuation in the concentration of toxicants in the leachate between the point the leachate leaves the disposal site and the point the toxicants reach environmental receptors.

Taking these assumptions as its framework, EPA developed the EP test to simulate the physical processes which would occur in an actual landfill characterized by these assumptions. To simulate the acidic leaching medium which occurs in actively decomposing municipal landfills, EPA chose to employ an acetic acid leaching medium with a pH of 5.0 (±0.2). To simulate the leaching process, EPA specified a procedure requiring mixing of the solid component of the waste with the acidic leaching medium for a period of 24 hours. To duplicate the attenuation in concentration expected to occur between the point of leachate generation and the point of human or environmental exposure, EPA applied a dilution factor of 10 to the concentration of toxic constituents observed in the test extract.

EPA was convinced that the proposed EP represented a valid and acceptable test for identifying wastes likely to leach toxic constituents into groundwater. Because, however, this test was innovative in character and reflected a fair amount of groundbreaking inquiry, it drew the greatest response from the public of all the test protocols utilized in identifying the characteristics. The most important of these comments are discussed below.

A number of commenters expressed disagreement with EPA's proposed use of a 10-fold dilution factor to calculate the attenuation in toxicant concentration expected to occur between the point at which the leachate leaves the waste and the point of human or environmental exposure. Some commenters thought that the 10-fold dilution factor was too liberal and that no dilution factor would be more appropriate. The majority felt that the 10-fold dilution factor was too conservative and that a higher dilution factor would be more appropriate.

Choosing an attentuation factor which reasonably represents the amount of attenuation likely to occur in the real world was one of the most difficult problems EPA faced in formulating the EP—a problem which reflects in microcosm many of the difficulties of modeling complex physical processes with a short term test. As leachate migrates vertically from the landfill site towards the groundwater strata, a number of attenuating processes can occur—including adsorption, absorption, ion exchange, filtration, and dilution. When the leachate enters the groundwater zone its movement changes from vertical to horizontal and it will tend to form a slug or plume of contaminated water rather than mix generally with the groundwater flow. This plume of contaminants may experience some dilution, depending on the local geology, the groundwater flow, and the nature of the contaminants. Once the plume of contaminated water is drawn into a pumping well, some further dilution tends to take place, depending upon the amount of water withdrawn and the rate at which it is withdrawn. Unfortunately, all these attenuation mechanisms are dependent upon site specific conditions. While some sites may exhibit attenuation of 500-fold, others will exhibit very little attenuation at all. Moreover over time, a site that originally exhibits 500-fold attenuation may become so saturated that the attenuation mechanisms no longer work and the site begins to flush at the same rate at which it is charged.

In order to formulate a reasonable dilution factor, EPA assumed in the proposed regulations that leachate from the landfill passed unattenuated through the soil underlying the landfill to the groundwater zone and that drinking water wells were situated 500 feet down gradient from the landfill site. Relying on projections from a mathematical model which incorporated these assumptions and on empirical data from field analyses, EPA concluded that a dilution factor of 10 was a conservative, but reasonable, figure.

EPA has had an opportunity to carefully re-evaluate its original choice of a dilution factor and is now of the opinion that the 10-fold dilution factor was inappropriate. A number of considerations have prompted it to come to this conclusion. In the first place, EPA is concerned that, while the dilution factor plays a critically important role in determining the scope of coverage of the EP, there is relatively little empirical data upon which to base such an attenuation factor. It is consequently somewhat troubled by its assumption that the soil underlying the landfill is a delay mechanism only and that there is no attenuation in the concentration of toxic contaminants between the point of actual leachate generation and arrival at the groundwater aquifer. Second, in view of this uncertainty, EPA attaches some importance to the fact that there is no variance or "delisting" procedure for wastes which fail the EP. This absence of a variance procedure, while perfectly permissible, tends to magnify the consequences of a wastes being anomalously brought into the system by the EP. Third, EPA believes the EP to be a somewhat less precise instrument than the listing mechanism for determining hazard, inasmuch as the EP fails to take into account factors such as the concentration of toxicants in the waste itself and the quantity of waste generated which could have a bearing on the hazardousness of the waste. EPA consequently prefers to entrust determinations of marginal hazard to the listing mechanism rather than to the EP.

On the basis of these considerations, EPA has decided, pending the completion of further studies, to alter the proposed dilution factor by adopting an attenuation factor of 100. EPA is adopting a 100-fold attenuation factor because it is confident that anything which fails the EP at this factor has the potential to present a substantial hazard regardless of the attentuation mechanisms at play. If forthcoming studies demonstrate that another attenuation factor is more appropriate EPA will adjust the dilution factor accordingly.

EPA does not intend this alteration in the dilution factor to constitute what may be perceived as an untoward relaxation of the EP. It is simply electing to exercise a degree of caution in the face of the lack of empirical substantiation for its EP leaching test to ensure that the EP only captures wastes which are certain to present a substantial hazard. Since this alteration of the attenuation factor is based as much on EPA's desire to engage in

cautionary rulemaking as on an environmental re-evaluation of the attenuative processes which influence concentrations in leachate, EPA has listed and intends to continue to list wastes which have extract concentrations of less than 100-times drinking water standards. This listing will to a significant degree compensate for the alteration in the attenuation factor and will prevent the overall coverage of the Subtitle C regulations from being measurably reduced.

A number of commenters argued that EPA improperly based the EP on a mismanagement scenario which assumed co-disposal in the acidic environment of a municipal waste landfill. These commenters generally argued that the co-disposal assumption is inapplicable to numerous classes of waste which are never co-disposed with municipal wastes and which do not leach at the aggressive rates characteristic of co-disposal situations. These commenters suggested that EPA employ an alternative leachate medium, such as distilled water, for those wastes which are unlikely to be co-disposed with municipal wastes.

EPA disagrees with these commenters. EPA believes that the level of leachate concentration predicted by the EP is reasonably in keeping with the concentrations which could realistically occur in most waste management situations and that employment of an acidic leaching medium is therefore appropriate. Most wastes, even those which are unlikely to be disposed of in a municipal landfill, are likely to come into contact with some form of acidic leaching media during their management histories or could otherwise encounter environments which could cause them to leach comparable levels of toxic constitutents. Furthermore, inasmuch as the phenomenon of long term leaching is not well understood and there is no consensus within the scientific community on a short term leaching test, EPA believes it has the power to employ a leaching model which fails to take into account the physical processes affecting particular generators even if this model errs on the side of caution. See, *Ethyl Corp.* v. *EPA*, 541 F.2d 1, 24–29 (D.C. Cir. 1976 *en banc*); *Hercules, Inc.* v. *EPA*, 598 F.2d 91, 104–106 (D.C. Cir. 1978).

In any event, the change to an attenuation factor of 100 lays to rest the concerns of those who argued that the acidic leaching medium was too aggressive to apply to them. EPA is quite convinced that any waste which fails the EP at the 100-times standard presents the potential for substantial hazard if improperly managed no matter what leaching media it is actually exposed to.

A number of commenters argued that the EP is not sufficiently reproducible for use in defining hazardous waste. Some commenters, basing their argument on studies which have been conducted on the reproducibility of the EP, argued that these studies demonstrate an unacceptable variability in the results obtained by the EP. Other commenters, who did not base their arguments on these studies, argued simply that EPA has not shown the EP to be reproducible and therefore may not appropriately employ the EP in a regulatory framework.

EPA disagrees. Sensitive throughout the process of developing the EP to the issue of ensuring reproducibility, EPA commissioned a number of studies to evaluate the EP, including a study by the NUS Corporation, a study by the American Electroplaters' Society, and an ongoing study being conducted by the Oak Ridge National Laboratory. In addition, a study commissioned by the Electric Power Research Institute (EPRI) has been completed. None of these studies present enough data to draw any hard and fast conclusions. However, data from the EPRI report—the only report which was able to separate out the reproducibility of the EP from the reproducibility of the analytical procedures—suggests that the reproducibility of the EP itself is of the same order of magnitude as the analytical procedures used to analyze the toxic constituents in the extract. Since these analytical procedures have proven to be widely acceptable to private industry, EPA believes that the EP should also prove acceptable.

EPA concedes that the preliminary data indicate some variability in the results obtained by the EP. This, however, is true of all analytical procedures and test methods, especially those which are novel in character. Furthermore, variability can be easily corrected by running further replicates of the test to achieve greater certainty in the results. To accommodate any problems with variability, EPA intends to provide generators with guidance on the number of extractions which they can perform if they want to ensure confidence in the result. In addition, EPA is engaged in research studies which will enable it to further isolate and get a handle on the causes of this variability.

A number of commenters argued that extract from the EP should be tested for toxic contaminants other than those specified in the National Interim Primary Drinking Water Standards.

EPA originally intended the extraction procedure to identify toxic contaminants other than those specified in the National Interim Primary Drinking Water Standards. EPA has been unable to do this, however, because no other chronic exposure threshold levels relating to drinking water consumption have been established for other contaminants. This should not cause a problem, because EPA is regulating wastes containing non-drinking water standard contaminants through the listing process. EPA will reassess its position on this issue, when thresholds are developed for additional contaminants or when the Clean Water Act Water Quality Criteria are adopted in final form.

The proposed EP required generators to separate the liquid and solid portions of their waste as the first step of the procedure, based on the assumption that the liquid portion of the waste would flow out of the landfill independent of any leaching action. Generators were then required to mix the separated solid portion with the acidic leaching medium and, after a further separation, combine the resulting extract with the originally separated liquid portion for analysis. EPA gave generators the option of using either centrifugation or filtration to perform the initial solid-liquid separation and to perform the subsequent separation of solid from leaching solution. However, information obtained since publication of the proposed regulation indicates that use of centrifugation alone is not as efficient as filtration and can lead to carryover of particles larger than 0.45 um. Since a filter the size of 0.45 um was originally selected because particles larger than 0.45 um are expected to be filtered out by the soil prior to reaching the groundwater, EPA has revised the EP to require filtration of both the liquid portion and the extract prior to analysis.

A number of commenters said they encountered severe operational problems when performing the EP on liquids containing very small percentages of solids. To accommodate this problem, EPA is amending the proposed regulation so generators need not perform the EP on liquids containing less than 0.5% solids. Instead, the liquid itself, after filtration, should be considered the extract and directly analyzed for its toxic constituents.

VII. Subpart D

A. Sections 261.31 and 261.32 (Hazardous Wastes From Specific and Non-Specific Sources)

1. *Methodology for Listing Hazardous Waste Streams.* Detailed justification

for listing each hazardous waste in Subpart D is contained in specific background documents, and so will not be set forth in this preamble. The general methodology used to support listings will, however, briefly be described.

The listing documents are based on the listing criteria contained in § 261.11. The documents are organized in the following sequence: (1) A summary of the Administrator's basis for listing each identified waste stream; (2) a brief description of the industry (or industries) generating the listed waste stream; (3a) a description of the manufacturing process or other activity which generates the waste, (3b) identification of waste composition, constituent concentrations, and annual quantity generated,[1] and (3c) a description of waste management methods; (4) a discussion of the basis for listing each waste stream (described more fully below); and (5) a summary of the adverse health effects of each of the waste constituents of concern. The documents also contain appendices describing in more detail the adverse health effects of the waste constituents of concern, and (for certain documents) compiling available environmental fate and transport data (including data on waste constituent solubility, volatility, and environmental persistence) for each such waste constituent.

a. *Basis for Listing Toxic Wastes.* (1) Outline of Listing Discussion.

For hazardous wastes listed because they meet the criteria of toxicity, the discussion of the basis for listing identifies the waste constituents of concern, whether these constituents are present in significant concentrations, and the hazards associated with each waste constituent. The discussion then addresses whether these waste constituents, if the waste are managed improperly, could migrate from waste management sites, persist in the environment, and reach environmental receptors so as to cause substantial hazard. The analysis generally follows a physical continuum: whether waste constituents are inherently capable of migrating from the matrix of the waste in concentrations sufficient to cause substantial hazard, whether waste mismanagement could lead to environmental release of the migrating waste constituents, and whether waste constituents are mobile and persistent enough to reach environmental receptors and cause substantial hazard upon environmental release. In some cases, actual damage incidents involving the waste or waste constituents demonstrate empirically that waste constituents may migrate, persist, and cause substantial harm if mismanaged.[2]

A word as to the types of mismanagement situations considered. The Agency has limited its discussion to waste management situations which could plausibly occur with regard to the waste at issue. In the Agency's view, the hazard posed by a waste are not "substantial" (Section 1004(5)(B)) if hazards could arise only as a result of implausible types of waste mismanagement. Thus, the Agency would not examine possible hazards arising from improper waste incineration if the waste in question is not likely to be incinerated. On the other hand, the fact that a waste is properly managed by particular generators or particular classes of generators does *not* make the waste non-hazardous, as the statute requires that EPA determine whether a waste is hazardous if substantial hazard could result when wastes are "improperly treated, stored, transported, or disposed of, or otherwise managed." The potential of the waste to cause hazard is therefore the key factor. Consequently, if most or all generators of an otherwise hazardous waste dispose of the waste properly, for example in lined lagoons, the Agency may still consider hazards which could result from improper waste lagooning.[3]

(2) Relative Importance Attached to Identity of Waste Constituents and Constituents' Transport and Fate in Making Toxicity Listing Determinations.

It must be emphasized that in making listing determinations, the Agency's principal focus is on the identity of the waste's constituents, and on constituent concentrations in the waste and the nature of the toxicity presented by the constituents. Where a waste contains significant concentrations of hazardous waste constituents, the Agency is likely to list the waste as hazardous unless it is evident that the waste constituents are incapable of migrating in significant concentrations even if improperly managed, or that the waste constituents are not mobile or persistent should they migrate. This is particularly true where the waste constituents include suspect or proven carcinogens. As EPA recently stated, "(T)here is no scientific basis for estimating 'safe' levels of carcinogens. The draft criteria for carcinogens therefore state that the recommended concentration for maximum protection of human health is zero." (EPA *Water Quality Criteria,* 44 FR 15926, 15930 (March 15, 1979).) Thus, if suspect or known carcinogens are present, an additional cancer may result should the waste constituent migrate and reach a receptor in any concentration, certainly a sufficient risk to constitute a "substantial present or potential hazard" (Section 1004(5)(B)). In this situation, the Agency would require virtual assurance that waste constituents will not migrate and persist if improperly managed to justify a decision not to list the waste.

The Agency therefore does not seek to demonstrate that waste constituents will migrate and persist in sufficient concentrations to cause substantial hazard. Rather, fate and transport information is relevant to show that the potential for harm inherent in the waste (by virtue of its composition) will not eventuate. But, as stated, there must be a very strong likelihood that hazardous constituents are unable to migrate or persist to cause substantial harm before the Agency will decide not to list a waste.[4]

The Agency believes that this methodology is fully in accord with statutory requirements. Thus, this approach accords with the requirement of Section 3001(a) that environmental fate be considered in identifying wastes as hazardous. At the same time, the key focus is on the inherent potential of waste constituents to cause substantial harm, in accord with the definition of hazardous waste, which requires only that a waste "may pose a substantial present or *potential* hazard" to be hazardous. (Section 1004(5)(B), emphasis added.)

(3) Data Base for Toxicity Listing Determinations.

The Agency anticipates arguments that these toxicity listing determinations are made on the basis of inadequate data, and that listings be deferred until further information is gathered. EPA recognizes that these listing

[1] Waste composition and constituent concentrations have been determined either by actual analysis of waste samples, through literature searches, or on the basis of process engineering and process chemistry assumptions. When process assumptions are used to identify waste constituents and concentrations, the bases for the assumptions are contained in the document.

[2] Other factors identified in § 261.11(a)(3) are also considered when relevant, and when information is available. These factors include the quantities of waste managed, and actions of other governmental agencies or regulatory programs with regard to health or environmental hazards posed by the waste or by waste constituents.

[3] Indeed, in this hypothetical example, the fact that an industry takes special precautions in managing the waste suggests that the industry itself regards the waste as hazardous.

[4] § 261.11(a)(3) reflects that the waste's composition is the key factor in determining to list wastes as hazardous, since wastes containing enumerated constituents are to be listed unless consideration of particular additional factors demonstrates that the wastes do not meet the statutory hazardous waste definition.

determinations are essentially qualitative judgments, generally involving expert assumptions based on available physical data rather than precise field determinations of waste composition or of how the wastes will act under identified conditions. However, the statute requires only that a qualitative judgment be made, namely that the wastes, if mismanaged, pose sufficient potentiality of hazard to warrant careful regulation. The Agency believes that it has compiled sufficient information on which to make this judgment. Nor would the delay necessary to compile in-depth (though quite likely cumulative or redundant) information on potentially hazardous wastes be sufferable in light of the urgent need for rapid implementation of the hazardous waste management program.[5] In any case, opportunity is afforded by means of a new comment period for affected parties to present additional information on the listed waste streams, and such comments are solicited.

b. Basis for Listing Ignitable, Corrosive, Reactive or EP Toxic Wastes

The basis for listing ignitable, corrosive, or reactive wastes is much simpler. These wastes, to be listed, must possess the appropriate characteristic, and the listing discussion is directed toward making this demonstration.

2. *Legal Authority to List Wastes Generically.* A number of commenters challenged the Agency's legal authority to list wastes generically. They stated that under Section 3001(b), the Administrator is to list "particular hazardous wastes," arguing that this language requires wastes to be listed individually, rather than as a generic class. These commenters also argued that the statute's legislative history supports their view, noting that the House report to RCRA states that "the Administrator shall promulgate regulations identifying and *specifically listing* those hazardous wastes subject to this title." H.R. Rep. at 56 (empasis added). The Agency disagrees with this interpretation. Although Congress clearly intended to distinguish the promulgation of hazardous waste characteristics from the listing of hazardous wastes, there is no clear indication that Congress further intended to limit the Administrator's discretion by precluding listing of classes of wastes. In the Agency's view, a class of wastes may be listed generically so long as most of the wastes in the class are typically or frequently hazardous, and so long as the listing description is sufficiently specific and particularized for individual generators to determine whether their wastes streams are included within the listing.

Thus, Section 3001(a), far from prohibiting listing of wastes by classes, simply distinguishes the use of criteria to identify hazardousness characteristics and to identify listed hazardous wastes.

> The Administrator shall * * * develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste * * *

Section 3001(b) carries forward this distinction:

> [T]he Administrator shall promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes * * * Such regulations shall be based on the criteria promulgated under subsection (a) * * *

To argue that Section 3001(b) was intended to bar any listing of wastes by class consequently reads far too much into the language of that provision. Indeed, Section 3001(a) does *not* refer to listing of particular wastes. This wording certainly militates against attaching too much importance to the reference to "particular wastes" in Section 3001(b).[6]

The legislative history likewise indicates that Congress' concern was that the identification of wastes through characteristics or through listing be regulatorily distinct mechanisms, and that the listing criteria not be confused with hazardous wastes themselves, *not* that generic listing be prohibited. The House report to RCRA thus refers to a "bifurcation of developing the criteria for what is a hazardous waste separate from the identification and listing of the hazardous wastes * * *" and cautions that "the critera for determining what should be considered hazardous should not be confused with an actual hazardous waste * * *" H.R. Rep. at 25.

Moreover, Congress itself, in the principal report to RCRA, used generic waste descriptions to identify hazardous wastes involved in damage incidents. Examples include identification of "electroplating wastes" (H.R. Rep. at 18), waste "petrochemicals" (*id.* at 18, 19), and "munitions waste" (*id.* at 20). This means of identification again suggests strongly that Congress envisioned generic identification as a means of bringing hazardous wastes into the Subtitle C management system.

Some commenters went on the argue that the statutory requirement to take factors such as toxicity, persistence, potential for bioaccumulation, quantity, and concentration into account in making listing determinations (see Sections 3001(a) and 1004(5); *see also* H.R. Rep. at 25) demonstrates Congresssional intent to prohibit generic listings because "(t)hese factors by their very nature are specific to particular hazardous waste rather than to generic categories." (Comments of Dow Chemical Co., October 10, 1979, p. 10). The Agency again disagrees. A class of wastes may exhibit sufficient unformity of hazard to warrant listing on a class basis. (The Agency of course, must demonstrate that sufficient uniformity exists or is likely to exist). Furthermore, the commenters' argument, taken to its logical conclusion, would mean that the Agency could only list wastes on a generator by generator basis, since waste streams will vary to some degree with respect to these factors depending upon the precise composition of the individual waste (although the degree of difference ordinarily will not be of regulatory significance). Yet Congress clearly did not envision site-by-site listing.

The Agency therefore intends to list generically those wastes which demonstrate a reasonable likelihood of hazard as a class. The listing descriptions will be sufficiently specific to allow generators to determine if their wastes are covered, and, as discussed above, the listing of wastes will be distinct from their identification by means of hazardousness characteristics. This approach, we believe, is fully in accord with Congressional intent.

3. *Changes in Proposed Waste Listing Descriptions and Proposed Waste Lists.* Certain of the waste listing descriptions proposed in December, 1978 have been revised in the lists contained in §§ 261.31 and 261.32. These changes generally were made to clarify where in the process wastes are generated so as to enable generators to determine more easily if their wastes are listed. Since the coverage of these clarified listing descriptions remains identical with the

[5] *See, e.g., Report on Hazardous Waste Management and the Implementation of the Resource Conservation and Recovery Act,* Senate Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs, 96th Cong., 2d Sess. 7 (1980).

[6] In any case, the words "particular" and "specific" do not necessarily connote "individualized." For instance, the first definition of "specific" in Webster's *New Collegiate Dictionary* is "constituting or falling into a specifiable category." Similarly, the same source defines "particular" as "distinctive among others of the same general category." Thus, the statutory language, far from requiring individualized listing, requires that listing be done with sufficient particularity to distinguish listed and unlisted wastes.

proposal, the revised descriptions are not being reproposed.

Certain other listed waste streams arise out of waste generation processes listed in the December proposal, but are newly identified. These waste streams are being proposed today, rather than issued in interim final form.

Finally, some of the waste streams initially proposed are not contained in the present list of wastes. The Agency's reasons for this action are discussed in Section III A.

B. Section 261.33 (Discarded Commercial Chemical Products, Off-Specification Species, Containers, and Spill Residues Thereof)

The proposed regulation contained three appendices listing a variety of materials which the Agency proposed to treat as hazardous waste if discarded. Appendix III listed selected cancelled pesticides or pesticides undergoing RPAR (Rebuttable presumption against registration) review within the Agency that were not listed elsewhere in the proposed regulation. Appendix IV listed selected substances regulated by the Department of Transportation (DOT) and classified as Poison A, Poison B, or ORM–A that were also not listed elsewhere. Appendix V listed substances which are being regulated as toxic priority pollutants under the Clean Water Act. In addition to the substances themselves, the regulation proposed to regulate (1) off-specification materials, which if they had met specifications, would have been shipped using the names of the substances listed in these appendices (2) containers, unless triple rinsed, containing the materials listed in the appendices, and (3) spill clean-up residues and debris from spills of materials listed in these appendices. Subsequently, in a supplemental proposed rule, EPA published another appendix (Appendix XII) listing thirty-three chemicals found to be human carcinogens or potential human carcinogens by the International Agency for Research on Cancer. 44 FR 49404 (August 22, 1979). In the proposed regulation, these materials were to be subject to the general exemption level of 100 kg/mo. Quantities of these materials below this level were not subject to full Subtitle C regulation.

In listing these materials in the proposed rule, EPA intended to encompass those chemical products which possessed toxic or other hazardous properties and which, for various reasons, are sometimes thrown away in pure or undiluted form. The reasons for discarding these materials might be that the materials did not meet required specifications, that inventories were being reduced, or that the product line had changed. The regulation was intended to designate chemicals themselves as hazardous wastes, if discarded, not to list all wastes which might contain these chemical constituents. In drawing up these lists, the Agency drew heavily upon previous work by EPA and other organizations identifying substances of particular concern.

On the basis of comments received and also EPA's own re-examination of the proposed rule, we have substantially revised this regulation. In the final regulations, commercial chemicals are treated in two separate provisions. First, substances listed in § 261.33(f) of the regulations are considered hazardous wastes if they or their off-specification species are thrown away in their pure form. These substances are regulated in the same manner as other hazardous wastes and are subject to the general exclusion level in § 261.5 (a) and (b) for the generation of small quantities of hazardous waste. Second, a number of the substances, which meet the criterion for listing acutely hazardous wastes, are separately listed in § 261.33(e). This section applies to the chemical substances if they or their off-specification species are thrown away in their pure form, containers and inner liners containing these materials, and spill residue and debris created by spills of these listed materials. Section 261.5(c) establishes low quantity exclusion levels for these acutely hazardous materials.

1. *Section 261.33(f) (Commercial Chemical Products).* A number of commenters stated that, as proposed, the materials listed in the various appendices were not tied to any of the criteria for listing, and, accordingly, the reasons for their listing were unclear. The Agency agrees that the basis for its proposed listings was not adequately specified. A table accompanying the background document on commercial chemical products sets forth the specific basis for including each substance on the list published today.

Commenters also expressed some uncertainty as to whether the proposed regulations made hazardous any waste that contained the listed substance as a constituent of the waste. The intent of the regulation was to encompass only those materials which were being thrown away in their pure form or as an off-specification species of the listed material, as well as the contaminated residues and debris from those materials. The final regulation has been redrafted to limit the application of this section to the commercial chemical product itself, its off-specification species and derived spill residues and debris.

Several commenters argued that the wholesale incorporation of lists developed by EPA or other Federal agencies for other regulatory purposes was not appropriate. In the proposal, EPA had, for example, listed all materials that DOT lists as ORM–A materials pursuant to its authority under the Hazardous Materials Transportation Act. A number of commenters argued that these substances should not be listed by EPA because DOT's basis for listing used different criteria—the potential for interfering with transportation. DOT's standard is very broad and somewhat vague: ORM–A material is one that has "an anesthetic, irritating, noxious, toxic or similar property which can cause extreme annoyance of discomfort to passengers and are in the event of leakage during transportation." 49 CFR 173.500(a)(1).

EPA agrees with these comments and, rather than adopting lists of substances on a wholesale basis, has evaluated each against EPA's criteria for listing. Included in § 261.33(f) are those chemical substances which are toxic and which meet the listing criteria set forth in § 261.11(a)(3). These hazardous properties have been documented in EPA rulemaking, studies and other materials, including health effects documents prepared in support of these regulations materials supporting RPAR actions background documents supporting National Interim Primary Drinking Water Standards, materials produced by EPA's Cancer Assessment Group and, in the case of chlorofluorcarbons, documents supporting regulations under TSCA.

This approach has led to certain deletions from the lists of hazardous wastes contained in the proposed rules. A table accompanying the background document sets forth the disposition of all 295 chemicals originally listed in the proposed rules. Eight substances have been deleted from the list because they did not meet any of the criteria for listing hazardous wastes; sixteen were deleted because the listing description was not precise enough to enable generators to determine whether particular materials fell within that description. Examples of these deletions are "medicines N.O.S." and "motor fuel antiknock compound." In addition, thirty-one substances are not presently listed because EPA lacks data to assess the propriety of listing them on the basis of the listing. These substances are presently under review by the Agency to

determine whether they should be included on the § 261.33(f) list.

This process has reduced the chemical products listed, to those substances which are demonstrated to pose a substantial threat to human health or the environment. These materials, their off-specification variants, and contaminated residues and debris from the spills of these materials are subject to full regulation under Subtitle C in the same manner as other hazardous wastes.

2. *Section 261.33(e) (Commercial Chemical Products).* In considering the hazards presented by commercial chemical products, EPA recognized that some substances in their pure form possessed extremely hazardous properties. To account for these substances, EPA has established a new criterion for listing which examines the potentially lethal capacity of chemical substances in very small quantities. The basis for this criterion is explained in section V.B. above.

Applying this criterion to the proposed lists of chemicals products has led the Agency to list 122 substances in § 261.33(e). As with the substances listed in § 261.33(f), the regulatory language has been clarified to restrict the application of this section to chemical products, or their off-specification species, and not to wastes which contain these materials as a constituents. Because of their acutely hazardous nature, however, containers and inner liners which contained these materials and spill cleanup debris and residues resulting from spill of these materials are also included.

At the suggestion of commenters, EPA also reviewed chemical substances on the TSCA inventory list for inclusion on the § 261.33(e) list. A number of those substances do meet the acutely hazardous criterion and accordingly have been added to the list. However, because all interested persons have not had an opportunity to comment on the listing of these materials, the Agency is promulgating them in interim final (together with the remainder of Subpart D).

The final regulations establish stringent quantity cutoff levels for materials listed in § 261.33(e). In the proposed regulation, all hazardous wastes in quantities generated or disposed of at rates greater than 100 kg/mo were subject to full Subtitle C regulation. Although the Agency recognized that many, if not all, of the proposed chemicals listed possessed acutely hazardous characteristics, it did not propose lesser limits for these substances because the general exclusion level—less than ½ of a 55 gallon drum—appeared sufficient to regulate most of the chemical products that would be thrown away. For the reasons discussed in section IV. E., above, the general exclusion level has been raised to 1000 kg/mo. This higher level undercuts the original rationale for proposing a single exclusion level for all hazardous wastes. Many commenters urged that EPA employ a degree of hazard system for determining exclusion levels, for allocating Agency resources and determining priorities, and for establishing management standards. Although EPA is unable to adopt a degree of hazard system, we agree with the commenters that considerations of hazard are appropriate in establishing quantity exclusion levels for those substances which posses acutely hazardous properties. The criterion used in listing these substances ensures that those materials that are listed in § 261.33(e) are those which are lethal in very small quantities.

Accordingly, the Agency has adopted very low exclusion levels for these chemical products and their off-specification variants, containers and inner liners which contained these materials, and spill residues and debris. The selection of these levels reflects the judgment of the Agency that, although even lesser quantities may be hazardous, the levels selected, on the basis of probable exposure scenarios, are sufficient to minimize the threat to human health and the environment while enabling the Agency to implement and enforce these regulations. The one kilogram level for the chemicals will, in the Agency's judgment, bring under full regulation virtually all of the substances being thrown away. The quantity limit for containers which have not been triple rinsed (20 liters) represents the Agency's judgment of probable exposure and consequential injury from the use of discarded containers. The Agency has records of damage incidents resulting from improperly disposed containers that occurred when people salvaged large containers for such uses as garbage containers and barbecue pits. The levels chosen for inner liners and spill residue and debris represent the same type of judgment based on probable exposure.

A number of commenters suggested that the proposed rule regarding containers be revised. The proposal had included within its scope all containers which had not been triple-rinsed. Some commenters argued that there were other effective ways of cleaning containers and therefore the rule was unduly restrictive. One commenter pointed out, for example, that the EPA registered label for certain pesticides requires different rinsing procedures from those specified in the proposed rule. EPA agrees with these comments and has revised the regulation to allow other cleaning methods provided they are equally effective.

The listing of spill residues and debris attracted several comments. One commenter suggested that small quantities of contaminated spill clean-up be excluded. EPA has, in the final regulation, excluded aggregate amounts of less than 100 kilograms. Another commenter felt that EPA should define the term "spill debris" more precisely to avoid including wrecked rail cars or trucks. EPA has chosen not to exclude such debris by definition. If contaminated, these items pose a substantial threat to human health and the environment and should be handled carefully. EPA presumes, however, that in virtually all cases, heavy equipment can be decontaminated and therefore will not become part of the contaminated debris.

C. Delisting

EPA's proposed regulations contained procedures allowing a person to show that a listed waste generated by an individual facility was not hazardous beause of plant-specific variations in raw materials, processes or other factors (§ 250.15). These demonstrations of non-hazardousness were to be based on the results of specific tests for each of the hazardous properties for which the waste was listed (§ 250.15(a)) and submitted and processed in accordance with procedures set forth in § 250.15(c) through (h) of the proposed regulations.

Although virtually all commenters supported the concept of a "delisting" process in principle, most were dissatisfied with the specifics of EPA's proposal. Many criticized the delisting standards as being too inflexible, too vague, and based on tests which EPA itself was unwilling to propose as characteristics or use as listing criteria; some specifically urged that other factors—including how a waste was managed at an individual facility—be considered in determining whether a waste should be delisted. Other commenters objected to the procedures themselves, urging EPA to provide trial-type hearings on delisting petitions, extensive procedural safeguards and multiple administrative appeals.

After re-examining its proposed regulation and considering public comments, EPA has concluded that its delisting procedures should be revised and simplified in four major respects.

First, EPA has concluded that the delisting of a waste from a particular

facility is really a modification of its original listing determination and therefore should take the form of a regulatory amendment to the lists of wastes in Subpart D. The informational requirements for petitions to amend Subpart D to exclude wastes from a particular generating facility are set forth in §§ 260.20 and 260.22 of this Chapter. EPA will follow the Administrative Procedures Act's informal rulemaking procedures in acting on them (*see* § 260.20).

Some commenters argued that EPA's delisting regulations should provide for elaborate adjudicatory hearings with administrative law judges. EPA thinks such procedures would be unduly costly, burdensome and time-consuming and that the relevant issues can be adequately aired and decided in informal rulemaking procedures. EPA is on firm legal ground in this regard, for RCRA requires only informal rulemaking here. The Supreme Court has recently confirmed that an agency need not provide more formal procedures than are specifically required by statute (*Vermont Yankee* v. *NRDC*, 435 U.S. 519, 524 (1978)).

The second major change which EPA has made in its delisting procedures pertains to the effect of filing a petition. In its proposal, EPA stated that a requested exclusion would take effect 90 days after submission, but that the Administrator could revoke the effectiveness at any time thereafter simply by disapproving the demonstration (§ 250.15(d)). In the regulations promulgated today, no exclusion will be deemed effective until either (i) EPA has taken final action under § 260.20(e), or (ii) EPA has granted a temporary exclusion on the grounds of substantial likelihood of success under § 260.22(m).

EPA has concluded that it would be inappropriate to consider a delisting petition effective until EPA has taken some affirmative action in response. Once a listing has been established through rulemaking procedures it must be presumed valid, and those seeking to amend any portion of it should have the burden of establishing the correctness of their position. The proposed provision allowing a demonstration to become effective without EPA action improperly shifted the burden. At the same time, new § 260.22(m) will benefit generators because EPA will be able to grant temporary exclusions in appropriate cases before the rulemaking process is complete.

The third major change which EPA has made to its proposed delisting regulations is to key the standards for approving a delisting petition to the criteria which EPA used to list the waste in the first place. This approach not only is consistent with EPA's decision to treat delisting as a rulemaking, but also is responsive to commenters' criticisms that EPA's proposed delisting standards were unrelated to its listing criteria. Moreover, because the listing criteria have been substantially clarified and expanded (see section V.B.), it is also responsive to objections that those standards were vague, inflexible and failed to consider the multiple factors which might cause a waste to be hazardous.

Two points concerning the standards for granting a delisting petition are deserving of special comment. First, the fact that a waste is properly managed by an individual facility is not grounds for delisting it, any more than the fact that a waste is generally properly managed by industry is grounds for not listing it (see section VII.A.). Second, in the case of a waste which has been listed for acute toxicity, a generator will be required to show not only that the waste does not meet EPA's acute toxicity criterion but also that it does not meet its general toxicity criterion. Although an off-specification acutely toxic waste or a mixture containing an acutely toxic waste may no longer be deadly, it may still continue to pose a substantial hazard to human health and the environment.

The final major revision which EPA has made in its proposed regulations relates to the effect of successful delisting petition. Under the regulations published today, a decision to exclude a waste from the hazardous waste lists in Subpart D is not a decision that the waste is not hazardous. It simply relegates the waste to the same general category as any other unlisted waste—*i.e.*, if the waste exhibits one of the characteristics, it must be regulated as hazardous waste. This approach is necessitated by the fact that wastes from individual facilities may exhibit characteristics not exhibited by waste in general and that, in deciding to list a waste, EPA has not tested it against every one of the characteristics.

VIII. Environmental, Economic and Regulatory Impacts

In accordance with Executive Order 11821, as amended by Executive Order 11949, and Executive Order 12044, EPA has prepared an Environmental Impact Analysis and a Regulatory Analysis of all of its Section 3001 through 3004 regulations. The Agency has also voluntarily prepared an Environmental Impact Statement for these regulations under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

Copies of these documents, and EPA's Reports Impact Analysis and Operations Resources Impact Analysis for Sections 3001 through 3004, may be reviewed in all EPA Regional Office Libraries, and at the EPA headquarters library, Room 2404, 401 M Street, S.W., Washington, D.C. 20460.

Appendix A—Scheduled June Promulgation

Generics

1. Paint residues generated from industrial painting
2. Wastewater treatment sludges from industrial painting [Comment: The above two listing descriptions have been changed from those originally proposed on December 18, 1978 (43 FR 58957) as: Paint wastes (such as used rags, slops latex sludge, spent solvent); Water-based paint waste; and Waste paint and varnish remover or stripper.]

Process Wastes

1. Woven fabric dying and finishing wastewater treatment sludges
2. Mercury bearing sludges from brine treatment and mercury bearing brine purification muds from the mercury cell process in chlorine production [Comment: This listing description includes two wastes which were originally proposed on December 18, 1978 (43 FR 58958) as: Mercury bearing sludges from brine purification muds from mercury cell process in chlorine production and mercury bearing brine purification muds from mercury cell process in chlorine production.]
3. Wastewater treatment sludge from the diaphragm cell process using graphite anodes in the production of chlorine [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Wastewater treatment sludge from diaphragm cell process in production of chlorine.]
4. Chlorinated hydrocarbon bearing wastes from the diaphragm cell process using graphite anodes in chlorine production [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Chlorinated hydrocarbon wastes from diaphragm cell process in chlorine production.]
5. Wastewater treatment sludges from the production of TiO_2 pigment using chromium bearing ores by the chloride process [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Chromium bearing wastewater treatment sludges from the production of TiO_2 pigment by the chloride process.]

6. Wastewater treatment sludges from the production of TiO_2 pigment using chromium bearing ores by the sulfate process [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Chromium bearing wastewater treatment sludges from the production of TiO_2 pigment by the sulfate process.]
7. Arsenic bearing sludges from the purification process in the production of antimony oxide
8. Antimony bearing wastewater treatment sludge from the production of antimony oxide
9. Solvent cleaning wastes from paint manufacturing
10. Water cleaning wastes from paint manufacturing
11. Caustic cleaning wastes from paint manufacturing
12. Wastewater treatment sludges from paint manufacturing
13. Air pollution control sludges from paint manufacturing [Comment: The above five listing descriptions have been changed from those originally proposed on December 18, 1978 (43 FR 58958) as: Wastewater treatment sludges from paint production and Air pollution control sludges from paint production.]
14. Still bottoms from aniline production
15. Sludges, wastes from tub washers (Ink Formulation)
16. Coking: Decanter tank tar/pitch/sludge [Comment: This listing description includes two wastes which were originally proposed on December 18, 1978 (43 FR 58959) as: Coking: Decanter tank tar and Coking: Decanter tank pitch sludge.]
17. Spend potliners (cathodes) from primary aluminum production
18. Lead bearing wastewater treatment sludges from gray iron foundries
19. Arsenic or organo-arsenic containing wastewater treatment sludges from the production of veterinary pharmaceuticals
20. Distillation residue from the separation of chlorobenzenes in the production of chlorobenzenes [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Distillation residues from fractionating tower for recovery of benzene and chlorobenzenes.]
21. Emission control dust/sludge from ferrochromium-silicon production [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58959) as: Ferrochromesilicon furnace emission control dust or sludge.]
22. Emission control dust/sludge from ferrochrome production [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58959) as: Ferrochrome emissions control: furnace baghouse dust, and ESP dust.]
23. Emission control dust/sludge from ferromanganese production [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58959) as: Ferromanganese emission control: baghouse dusts and scrub water solids.]

Appendix B*—Scheduled Fall Promulgation

Generic

1. Reactor clean-up wastes from the chlorination, dehydrochlorination, or oxychlorination of aliphatic hydrocarbons
2. Fractionation bottoms from the separation of chlorination hydrocarbons
3. Distillation bottoms from the separation of chlorinated aliphatic hydrocarbons
4. Washer wastes from the production of chlorinated aliphatic hydrocarbons
5. Spent catalyst from the production of chlorinated aliphatic hydrocarbons
6. Reactor clean-up wastes from the chlorination of cyclic aliphatic hydrocarbons
7. Fractionation bottoms from the separation of chlorinated cyclic aliphatic hydrocarbons
8. Distillation bottoms from the separation of chlorinated cyclic aliphatic hydrocarbons
9. Washer wastes from the production of chlorinated cyclic aliphatic hydrocarbons
10. Spent catalyst from the production of chlorinated cyclic aliphatic hydrocarbons
11. Batch residues from the batch production of chlorinated polymers
12. Solution residues from the production of chlorinated polymers
13. Reactor clean-up wastes from the chlorination of aromatic hydrocarbons
14. Fractionation bottoms from the separation of chlorinated aromatic hydrocarbons
15. Distillation bottoms from the separation of chlorinated aromatic hydrocarbons
16. Washer wastes from the production of chlorinated aromatic hydrocarbons
17. Waste Oil [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58957) as: Waste lubricating oil and Waste hydraulic or cutting oil.]
18. Polychlorinated biphenyls (PCB) and PCB items as defined in 40 CFR Part 761 [Comment: The Agency indicated in the preamble to the Section 3004 regulations (43 FR 58993), their intention to integrate the TSCA regulations for the disposal of PCB's with the RCRA hazardous waste regulations.]

Process Wastes

1. Sub-ore from underground and surface mining of uranium, overburden from surface mining of uranium and waste rock from underground mining of uranium with a radium-226 activity in excess of 5pCi/gm [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Waste rock and overburden from uranium mining.]
2. Leach zone overburden and discarded phosphate ore from phosphate surface mining and slimes from phosphate ore beneficiation [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Overburden and slimes from phosphate surface mining.]
3. Waste gypsum from processing phosphate ore to produce phosphoric acid [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Waste gypsum from phosphoric acid production.]
4. Slag and fluid bed prills from processing phosphate ore to produce elemental phosphorous [Comment: This listing description was originally proposed on December 18, 1978 (43 FR 58958) as: Slag and fluid bed prills from elemental phosphorous production.]
5. Washwater/sludges from ink printing equipment clean-up [Comment: This listing description includes three wastes which were originally proposed on August 22, 1979 (44 FR 49403 and 49404) as: Waste from equipment cleaning from flexoprinting in the manufacture of paperboard boxes; Waste from press clean-up in newspaper printing and Wash water from printing ink equipment cleaning.]
6. Wastes from photographic processing [Comment: This listing was originally proposed on August 22, 1979 (44 FR 49404) as: Waste Ferricyanide bleach, dichromate bleach, color developer (Agfa), bleach fix (Agfa) and acid solution from photographic processing.]
7. Lead acid storage battery production wastewater treatment sludges
8. Lead acid storage battery production clean-up wastes from cathode and anode paste production

*Since these wastes will not be promulgated until the fall, the listing descriptions for some of these wastes may change as additional information is gathered.

9. Nickel cadmium battery production wastewater treatment sludges
10. Lead slag from lead alkyl production
11. Emission control dust/sludge from reverberatory furnace and converters from primary copper production [Comment: This listing description was included in the listing description originally proposed on December 18, 1978 (43 FR 58959) as: Primary copper smelting and refining electric furnace slag, converter dust, acid plant sludge and reverberatory dust.]

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended by adding the following new Part 261:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

Sec.

261.1 Purpose and scope.
261.2 Definition of solid waste.
261.3 Definition of hazardous waste.
261.4 Exclusions.
261.5 Special requirements for hazardous waste produced by small quantity generators.
261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.

Subpart B—Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Wastes

261.10 Criteria for identifying the characteristics of hazardous wastes.
261.11 Criteria for listing hazardous waste.

Subpart C—Characteristics of Hazardous Waste

261.20 General.
261.21 Characteristic of ignitability.
261.22 Characteristic of corrosivity.
261.23 Characteristic of reactivity.
261.24 Characteristic of EP toxicity.

Subpart D—Lists of Hazardous Wastes

261.30 General.
261.31 Hazardous wastes from non-specific sources.
261.32 Hazardous wastes from specific sources.
261.33 Discarded commercial chemical products and associated off-specification materials, containers and spill residues.

Appendices

Appendix I—Representative Sampling Methods
Appendix II—EP Toxicity Test Procedures
Appendix III—Chemical Analysis Test Methods
Appendix IV—[Reserved for Radioactive Waste Test Methods]
Appendix V—[Reserved for Infectious Waste Treatment Specifications]
Appendix VI—[Reserved for Etiologic Agents]
Appendix VII—Basis for Listing
Appendix VIII—Hazardous Constituents

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6921 and 6922).

Subpart A—General

§ 261.1 Purpose and scope.

(a) This Part identifies those solid wastes which are subject to regulation as hazardous wastes under Parts 262 through 265 and Parts 122 through 124 of this Chapter and which are subject to the notification requirements of Section 3010 of RCRA. In this Part:

(1) Subpart A defines the terms "solid waste" and "hazardous waste," identifies those wastes which are excluded from regulation under Parts 262 through 265 and 122 through 124 and establishes special management requirements for hazardous waste produced by small quantity generators and hazardous waste which is used, re-used, recycled or reclaimed.

(2) Subpart B sets forth the criteria used by EPA to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Subpart C identifies characteristics of hazardous waste.

(4) Subpart D lists particular hazardous wastes.

(b) This Part identifies only some of the materials which are hazardous wastes under Sections 3007 and 7003 of RCRA. A material which is not a hazardous waste identified in this part is still a hazardous waste for purposes of those sections if:

(1) In the case of Section 3007, EPA has reason to believe that the material may be a hazardous waste within the meaning of Section 1004(5) of RCRA.

(2) In the case of Section 7003, the statutory elements are established.

§ 261.2 Definition of solid waste.

(a) A solid waste is any garbage, refuse, sludge or any other waste material which is not excluded under § 261.4(a).

(b) An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:

(1) Is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or

(2) Has served its original intended use and sometimes is discarded; or

(3) Is a manufacuring or mining by-product and sometimes is discarded.

(c) A material is "discarded" if it is abandoned (and not used, re-used, reclaimed or recycled) by being:

(1) Disposed of; or

(2) Burned or incinerated, except where the material is being burned as a fuel for the purpose of recovering usable energy; or

(3) Physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed of.

(d) A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters.

(e) A "manufacturing or mining by-product" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.

§ 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in § 261.2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and

(2) It meets any of the following criteria:

(i) It is listed in Subpart D and has not been excluded from the lists in Subpart D under §§ 260.20 and 260.22 of this Chapter.

(ii) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under §§ 260.20 and 260.22 of this Chapter.

(iii) It exhibits any of the characteristics of hazardous waste identified in Subpart C.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Subpart D, when the waste first meets the listing description set forth in Subpart D.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed

in Subpart D is first added to the solid waste.

(3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Subpart C.

(c) Unless and until it meets the criteria of paragraph (d):

(1) A hazardous waste will remain a hazardous waste.

(2) Any solid waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Subpart C.

(2) In the case of a waste which is a listed waste under Subpart D, contains a waste listed under Subpart D or is derived from a waste listed in Subpart D, it also has been excluded from paragraph (c) under §§ 260.20 and 260.22 of this Chapter.

§ 261.4 Exclusions.

(a) *Materials which are not solid wastes.* The following materials are not solid wastes for the purpose of this Part:

(1) (i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended.

[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.]

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(b) *Solid wastes which are not hazardous wastes.* The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels.)

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

(a) Except as otherwise provided in this section, if a person generates, in a calendar month, a total of less than 1000 kilograms of hazardous wastes, those wastes are not subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this Chapter, and the notification requirements of Section 3010 of RCRA.

(b) If a person whose waste has been excluded from regulation under paragraph (a) of this Section accumulates hazardous wastes in quantities greater than 1000 kilograms, those accumulated wastes are subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this Chapter, and the notification requirements of Section 3010 of RCRA.

(c) If a person generates in a calendar month or accumulates at any time any of the following hazardous wastes in quantities greater than set forth below, those wastes are subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this Chapter, and the notification requirements of Section 3010 of RCRA:

(1) One kilogram of any commercial product or manufacturing chemical intermediate having the generic name listed in § 261.33(e).

(2) One kilogram of any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in § 261.33(e).

(3) Any containers identified in § 261.33(c) that are larger than 20 liters in capacity;

(4) 10 kilograms of inner liners from containers identified under § 261.33(c);

(5) 100 kilograms of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in § 261.33(e).

(d) In order for hazardous waste to be excluded from regulation under this section, the generator must comply with § 262.11 of this Chapter. He must also either treat or dispose of the waste in an on-site facility, or ensure delivery to an off-site treatment, storage or disposal facility, either of which is:

(1) Permitted by EPA under Part 122 of this Chapter, or by a State with a hazardous waste management program authorized under Part 123 of this Chapter;

(2) In interim status under Parts 122 and 265 of this Chapter; or,

(3) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(e) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C.

§ 261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.

(a) Except as otherwise provided in paragraph (b) of this section, a hazardous waste which meets either of the following criteria is not subject to regulation under Parts 262 through 265 or Parts 122 through 124 of this Chapter and is not subject to the notification requirements of Section 3010 of RCRA until such time as the Administrator promulgates regulations to the contrary:

(1) It is being beneficially used or re-used or legitimately recycled or reclaimed.

(2) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.

(b) A hazardous waste which is a sludge, or which is listed in Subpart D, or which contains one or more hazardous wastes listed in Subpart D; and which is transported or stored prior

to being used, re-used, recycled or reclaimed is subject to the following requirements with respect to such transportation or storage:

(1) Notification requirements under Section 3010 RCRA.

(2) Part 262 of this Chapter.

(3) Part 263 of this Chapter.

(4) Subparts A, B, C, D and E of Part 264 of this Chapter.

(5) Subparts A, B, C, D, E, G, H, I, J and L of Part 265 of this Chapter.

(6) Parts 122 and 124 of this Chapter, with respect to storage facilities.

Subpart B—Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste

§ 261.10 Criteria for identifying the characteristics of hazardous waste.

(a) The Administrator shall identify and define a characteristic of hazardous waste in Subpart C only upon determining that:

(1) A solid waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(2) The characteristic can be:

(i) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

§ 261.11 Criteria for listing hazardous waste.

(a) The Administrator shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in Subpart C.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)

(3) It contains any of the toxic constituents listed in Appendix VIII unless, after considering any of the following factors, the Administrator concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (a)(3)(vii) of this section.

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate.

Substances will be listed on Appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms.

(Wastes listed in accordance with these criteria will be designated Toxic wastes.)

(b) The Administrator may list classes or types of solid waste as hazardous waste if he has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 1004(5) of the Act.

(c) The Administrator will use the criteria for listing specified in this section to establish the exclusion limits referred to in § 261.5(c).

Subpart C—Characteristics of Hazardous Waste

§ 261.20 General.

(a) A solid waste, as defined in § 261.2, which is not excluded from regulation as a hazardous waste under § 261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this Subpart.

[Comment: § 262.11 of this Chapter sets forth the generator's responsibility to determine whether his waste exhibits one or more of the characteristics identified in this Subpart]

(b) A hazardous waste which is identified by a characteristic in this subpart, but is not listed as a hazardous waste in Subpart D, is assigned the EPA Hazardous Waste Number set forth in the respective characteristic in this Subpart. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under Parts 262 through 265 and Part 122 of this Chapter.

(c) For purposes of this Subpart, the Administrator will consider a sample obtained using any of the applicable sampling methods specified in Appendix I to be a representative sample within the meaning of Part 260 of this Chapter.

[Comment: Since the Appendix I sampling methods are not being formally adopted by the Administrator, a person who desires to employ an alternative sampling method is not required to demonstrate the equivalency of his method under the procedures set forth in §§ 260.20 and 260.21.]

§ 261.21 Characteristic of ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D–93–79, or a Setaflash Closed Cup Tester, using the test method specified in ASTM standard D–3278–78, or as determined by an equivalent test method approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21.[1]

[1] ASTM Standards are available from ASTM, 1916 Race Street, Philadelphia, PA 19103.

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that is creates a hazard.

(3) It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Administrator under §§ 260.20 and 260.21.

(4) It is an oxidizer as defined in 49 CFR 173.151.

(b) A solid waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number of D001.

§ 261.22 Characteristic of corrosivity.

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" [2] (also described in "Methods for Analysis of Water and Wastes" EPA 600/4–79–020, March 1979), or an equivalent test method approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM–01–69 [3] as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," or an equivalent test method approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21.

(b) A solid waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number of D002.

[2] This document is available from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[3] The NACE Standard is available from the National Association of Corrosion Engineers, P.O. Box 986, Katy, Texas 77450.

§ 261.23 Characteristic of reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has *any* of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53 or a Class B explosive as defined in 49 CFR 173.88.

(b) A solid waste that exhibits the characteristic of reactivity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number of D003.

§ 261.24 Characteristic of EP Toxicity.

(a) A solid waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section.

(b) A solid waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

Table I.—Maximum Concentration of Contaminants for Characteristic of EP Toxicity— Continued

EPA hazardous waste number	Contaminant	Maximum concentration (milligrams per liter)
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0
D007	Chromium	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo, endo-5,8-dimethano naphthalene.	0.02
D013	Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer.	0.4
D014	Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxyphenyl]ethane).	10.0
D015	Toxaphene ($C_{10}H_{10}Cl_8$, Technical chlorinated camphene, 67–69 percent chlorine).	0.5
D016	2,4-D, (2,4-Dichlorophenoxyacetic acid).	10.0
D017	2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid).	1.0

Subpart D—Lists of Hazardous Wastes

§ 261.30 General.

(a) A solid waste is a hazardous waste if it is listed in this Subpart, unless it has been excluded from this list under §§ 260.20 and 260.22.

(b) The Administrator will indicate his basis for listing the classes or types of wastes listed in this Subpart by employing one or more of the following Hazard Codes:

Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
EP Toxic Waste	(E)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

Appendix VII identifies the constituent which caused the Administrator to list the waste as an EP Toxic Waste (E) or Toxic Waste (T) in §§ 261.31 and 261.32.

(c) Each hazardous waste listed in this Subpart is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 of the Act and certain recordkeeping and reporting requirements under Parts 262 through 265 and Part 122 of this Chapter.

(d) Certain of the hazardous wastes listed in § 261.31 or § 261.32 have exclusion limits that refer to § 261.5(c)(5).

§ 261.31 Hazardous waste from nonspecific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic:		
F001	The spent halogenated solvents used in degreasing, tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and the chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations.	(T)
F002	The spent halogenated solvents, tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, o-dichlorobenzene, trichlorofluoromethane and the still bottoms from the recovery of these solvents.	(T)
F003	The spent non-halogenated solvents, xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, n-butyl alcohol, cyclohexanone, and the still bottoms from the recovery of these solvents.	(I)
F004	The spent non-halogenated solvents, cresols and cresylic acid, nitrobenzene, and the still bottoms from the recovery of these solvents	(T)
F005	The spent non-halogenated solvents, methanol, toluene, methyl ethyl ketone, methyl isobutyl ketone, carbon disulfide, isobutanol, pyridine and the still bottoms from the recovery of these solvents.	(I, T)
F006	Wastewater treatment sludges from electroplating operations	(T)
F007	Spent plating bath solutions from electroplating operations	(R, T)
F008	Plating bath sludges from the bottom of plating baths from electroplating operations	(R, T)
F009	Spent stripping and cleaning bath solutions from electroplating operations	(R; T)
F010	Quenching bath sludge from oil baths from metal heat treating operations	(R, T)
F011	Spent solutions from salt bath pot cleaning from metal heat treating operations	(R, T)
F012	Quenching wastewater treatment sludges from metal heat treating operations	(T)
F013	Flotation tailings from selective flotation from mineral metals recovery operations	(T)
F014	Cyanidation wastewater treatment tailing pond sediment from mineral metals recovery operations	(T)
F015	Spent cyanide bath solutions from mineral metals recovery operations	(R, T)
F016	Dewatered air pollution control scrubber sludges from coke ovens and blast furnaces	(T)

§ 261.32 Hazardous waste from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Wood Preservation: K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments	(T)
K008	Oven residue from the production of chrome oxide green pigments	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R, T)
K012	Still bottoms from the final purification of acrylonitrile in the production of acrylonitrile	(T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R, T)
K014	Bottoms from the acetronitrile purification column in the production of acrylonitrile	(T)
K015	Still bottoms from the distillation of benzyl chloride	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)
K018	Heavy ends from fractionation in ethyl chloride production	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene	(T)
K026	Stripping still tails from the production of methyl ethyl pyridines	(T)
K027	Centrifuge residue from toluene diisocyanate production	(R, T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)
K029	Waste from the product stream stripper in the production of 1,1,1-trichloroethane	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)
Pesticides:		
K031	By-products salts generated in the production of MSMA and cacodylic acid	(T)
K032	Wastewater treatment sludge from the production of chlordane	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane	(T)
K035	Wastewater treatment sludges generated in the production of creosote	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton	(T)
K037	Wastewater treatment sludges from the production of disulfoton	(T)
K038	Wastewater from the washing and stripping of phorate production	(T)
K039	Filter cake from the filtration of diethylphosphorodithoric acid in the production of phorate	(T)
K040	Wastewater treatment sludge from the production of phorate	(T)
K041	Wastewater treatment sludge from the production of toxaphene	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)
K045	Spent carbon from the treatment of wastewater containing explosives	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
K047	Pink/red water from TNT operations	(R)
Petroleum Refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)
K049	Slop oil emulsion solids from the petroleum refining industry	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)
K051	API separator sludge from the petroleum refining industry	(T)
K052	Tank bottoms (leaded) from the petroleum refining industry	(T)
Leather Tanning Finishing:		
K053	Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.	(T)

§ 261.32 Hazardous waste from specific sources. —Continued

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
K054	Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.	(T)
K055	Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; and through-the-blue.	(T)
K056	Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.	(T)
K057	Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue and shearling.	(T)
K058	Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.	(R, T)
K059	Wastewater treatment sludges generated by the following subcategory of the leather tanning and finishing industry: hair save/non-chrome tan/retan/wet finish.	(R)
Iron and Steel:		
K060	Ammonia still lime sludge from coking operations	(T)
K061	Emission control dust/sludge from the electric furnace production of steel	(T)
K062	Spent pickle liquor from steel finishing operations	(C, T)
K063	Sludge from lime treatment of spent pickle liquor from steel finishing operations	(T)
Primary Copper: K064	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production	(T)
Primary Lead: K065	Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities	(T)
Primary Zinc:		
K066	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production	(T)
K067	Electrolytic anode slimes/sludges from primary zinc production	(T)
K068	Cadmium plant leach residue (iron oxide) from primary zinc production	(T)
Secondary Lead: K069	Emission control dust/sludge from secondary lead smelting	(T)

§ 261.33 Discarded Commercial Chemical Products, Off-Specification Species, Containers, and Spill Residues Thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section.

(c) Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless:

(1) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(2) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(3) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this Section.

[Comment: The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraphs (e) or (f), such waste will be listed in either §§ 261.31 or 261.32 or will be identified as a hazardous waste by the characteristics set forth in Subpart C of this Part.]

(e) The commercial chemical products or manufacturing chemical intermediates, referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in § 261.5(c). These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous waste No.	Substance [1]
	1080 see P058
	1081 see P057
	(Acetato)phenylmercury see P092
	Acetone cyanohydrin see P069
P001	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts
P002	1-Acetyl-2-thiourea
P003	Acrolein
	Agarin see P007
	Agrosan GN 5 see P092
	Aldicarb see P069
	Aldifen see P048

—Continued

Hazardous waste No.	Substance [1]
P004	Aldrin
	Algimycin see P092
P005	Allyl alcohol
P006	Aluminum phosphide (R)
	ALVIT see P037
	Aminoethylene see P054
P007	5-(Aminomethyl)-3-isoxazolol
P008	4-Aminopyridine
	Ammonium metavanadate see P119
P009	Ammonium picrate (R)
	ANTIMUCIN WDR see P092
	ANTURAT see P073
	AQUATHOL see P088
	ARETIT see P020
P010	Arsenic acid
P011	Arsenic pentoxide
P012	Arsenic trioxide
	Athrombin see P001
	AVITROL see P008
	Aziridene see P054
	AZOFOS see P061
	Azophos see P061
	BANTU see P072
P013	Barium cyanide
	BASENITE see P020
	BCME see P016
P014	Benzenethiol
	Benzoepin see P050
P015	Beryllium dust
P016	Bis(chloromethyl) ether
	BLADAN-M see P071
P017	Bromoacetone
P018	Brucine
P019	2-Butanone peroxide
	BUFEN see P092
	Butaphene see P020
P020	2-sec-Butyl-4,6-dinitrophenol
P021	Calcium cyanide
	CALDON see P020
P022	Carbon disulfide
	CERESAN see P092
	CERESAN UNIVERSAL see P092
	CHEMOX GENERAL see P020
	CHEMOX P.E. see P020
	CHEM-TOL see P090
P023	Chloroacetaldehyde
P024	p-Chloroaniline
P025	1-(p-Chlorobenzoyl)-5-methoxy-2-methylindole-3-acetic acid
P026	1-(o-Chlorophenyl)thiourea
P027	3-Chloropropionitrile
P028	alpha-Chlorotoluene
P029	Copper cyanide
	CRETOX see P108
	Coumadin see P001
	Coumafen see P001
P030	Cyanides

Hazardous waste No.	Substance [1]
P031	Cyanogen
P032	Cyanogen bromide
P033	Cyanogen chloride
	Cyclodan see P050
P034	2-Cyclohexyl-4,6-dinitrophenol
	D-CON see P001
	DETHMOR see P001
	DETHNEL see P001
	DFP see P043
P035	2,4-Dichlorophenoxyacetic acid (2,4-D)
P036	Dichlorophenylarsine
	Dicyanogen see P031
P037	Dieldrin
	DIELDREX see P037
P038	Diethylarsine
P039	0,0-Diethyl-S-(2-(ethylthio)ethyl)ester of phosphorothioic acid
P040	0,0-Diethyl-0-(2-pyrazinyl)phosphorothioate
P041	0,0-Diethyl phosphoric acid, 0-p-nitrophenyl ester
P042	3,4-Dihydroxy-alpha-(methylamino)-methyl benzyl alcohol
P043	Di-isopropylfluorophosphate
	DIMETATE see P044
	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro endo, endo see P060
P044	Dimethoate
P045	3,3-Dimethyl-1-(methylthio)-2-butanone-O-[(methylamino)carbonyl] oxime
P046	alpha,alpha-Dimethylphenethylamine
	Dinitrocyclohexylphenol see P034
P047	4,6-Dinitro-o-cresol and salts
P048	2,4-Dinitrophenol
	DINOSEB see P020
	DINOSEBE see P020
	Disulfoton see P039
P049	2,4-Dithiobiuret
	DNBP see P020
	DOLCO MOUSE CEREAL see P108
	DOW GENERAL see P020
	DOW GENERAL WEED KILLER see P020
	DOW SELECTIVE WEED KILLER see P020
	DOWICIDE G see P090
	DYANACIDE see P092
	EASTERN STATES DUOCIDE see P001
	ELGETOL see P020
P050	Endosulfan
P051	Endrin
	Epinephrine see P042
P052	Ethylcyanide
P053	Ethylenediamine
P054	Ethyleneimine
	FASCO FASCRAT POWDER see P001
	FEMMA see P091
P055	Ferric cyanide
P056	Fluorine
P057	2-Fluoroacetamide
P058	Fluoroacetic acid, sodium salt
	FOLODOL-80 see P071
	FOLODOL M see P071
	FOSFERNO M 50 see P071
	FRATOL see P058
	Fulminate of mercury see P065
	FUNGITOX OR see P092
	FUSSOF see P057
	GALLOTOX see P092
	GEARPHOS see P071
	GERUTOX see P020
P059	Heptachlor
P060	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene
	1,4,5,6,7,7-Hexachloro-cyclic-5-norbornene-2,3-dimethanol sulfite see P050
P061	Hexachloropropene
P062	Hexaethyl tetraphosphate
	HOSTAQUICK see P092
	HOSTAQUIK see P092
	Hydrazomethane see P068
P063	Hydrocyanic acid
	ILLOXOL see P037
	INDOCI see P025
	Indomethacin see P025
	INSECTOPHENE see P050
	Isodrin see P060
P064	Isocyanic acid, methyl ester
	KILOSEB see P020
	KOP-THIODAN see P050
	KWIK-KIL see P108
	KWIKSAN see P092
	KUMADER see P001
	KYPFARIN see P001
	LEYTOSAN see P092
	LIQUIPHENE see P092
	MALIK see P050
	MAREVAN see P001
	MAR-FRIN see P001
	MARTIN'D MAR-FRIN see P001
	MAVERAN see P001
	MEGATOX see P005
P065	Mercury fulminate
	MERSOLITE see P092
	METACID 50 see P071
	METAFOS see P071
	METAPHOR see P071
	METAPHOS see P071
	METASOL 30 see P092
P066	Methomyl
P067	2-Methylaziridine
	METHYL-E 605 see P071
P068	Methyl hydrazine
	Methyl isocyanate see P064
P069	2-Methyllactonitrile
P070	2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime
	METHYL NIRON see P042
P071	Methyl parathion
	METRON see P071
	MOLE DEATH see P108
	MOUSE-NOTS see P108
	MOUSE-RID see P108
	MOUSE-TOX see P108
	MUSCIMOL see P007
P072	1-Naphthyl-2-thiourea
P073	Nickel carbonyl
P074	Nickel cyanide
P075	Nicotine and salts
P076	Nitric oxide
P077	p-Nitroaniline
P078	Nitrogen dioxide
P079	Nitrogen peroxide
P080	Nitrogen tetroxide
P081	Nitroglycerine (R)
P082	N-Nitrosodimethylamine
P083	N-Nitrosodiphenylamine
P084	N-Nitrosomethylvinylamine
	NYLMERATE see P092
	OCTALOX see P037
P085	Octamethylpyrophosphoramide
	OCTAN see P092
P086	Oleyl alcohol condensed with 2 moles ethylene oxide
	OMPA see P085
	OMPACIDE see P085
	OMPAX see P085
P087	Osmium tetroxide
P088	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
	PANIVARFIN see P001
	PANORAM D-31 see P037
	PANTHERINE see P007
	PANWARFIN see P001
P089	Parathion
	PCP see P090
	PENNCAP-M see P071
	PENOXYL CARBON N see P048
P090	Pentachlorophenol
	Pentachlorophenate see P090
	PENTA-KILL see P090
	PENTASOL see P090
	PENWAR see P090
	PERMICIDE see P090
	PERMAGUARD see P090
	PERMATOX see P090
	PERMITE see P090
	PERTOX see P090
	PESTOX III see P085
	PHENMAD see P092
	PHENOTAN see P020
P091	Phenyl dichloroarsine
	Phenyl mercaptan see P014
P092	Phenylmercury acetate
P093	N-Phenylthiourea
	PHILIPS 1861 see P008
	PHIX see P092
P094	Phorate
P095	Phosgene
P096	Phosphine
P097	Phosphorothioic acid, 0,0-dimethyl ester, 0-ester with N,N-dimethyl benzene sulfonamide
	Phosphorothioic acid 0,0-dimethyl-0-(p-nitrophenyl) ester see P071
	PIED PIPER MOUSE SEED see P108
P098	Potassium cyanide
P099	Potassium silver cyanide
	PREMERGE see P020
P100	1,2-Propanediol
	Propargyl alcohol see P102
P101	Propionitrile
P102	2-Propyn-1-o1
	PROTHROMADIN See P001
	QUICKSAM see P092
	QUINTOX see P037
	RAT AND MICE BAIT see P001
	RAT-A-WAY see P001
	RAT-B-GON see P001
	RAT-O-CIDE #2 see P001
	RAT-GUARD see P001
	RAT-KILL see P001
	RAT-MIX see P001
	RATS-NO-MORE see P001
	RAT-OLA see P001
	RATOREX see P001
	RATTUNAL see P001
	RAT-TROL see P001
	RO-DETH see P001
	RO-DEX see P108
	ROSEX see P001
	ROUGH & READY MOUSE MIX see P001
	SANASEED see P108
	SANTOBRITE see P090
	SANTOPHEN see P090
	SANTOPHEN 20 see P090
	SCHRADAN see P085
P103	Selenourea
P104	Silver Cyanide
	SMITE see P105
	SPARIC see P020
	SPOR-KIL see P092
	SPRAY-TROL BRAND RODEN-TROL see P001
	SPURGE see P020
P105	Sodium azide
	Sodium coumadin see P001
P106	Sodium cyanide
	Sodium fluoroacetate see P056
	SODIUM WARFARIN see P001
	SOLFARIN see P001
	SOLFOBLACK BB see P048
	SOLFOBLACK SB see P048
P107	Strontium sulfide
P108	Strychnine and salts
	SUBTEX see P020
	SYSTAM see P085
	TAG FUNGICIDE see P092
	TEKWAISA see P071
	TEMIC see P070
	TEMIK see P070
	TERM-I-TROL see P090
P109	Tetraethyldithiopyrophosphate
P110	Tetraethyl lead
P111	Tetraethylpyrophosphate
P112	Tetranitromethane
	Tetraphosphoric acid, hexaethyl ester see P062
	TETROSULFUR BLACK PB see P048
	TETROSULPHUR PBR see P048
P113	Thallic oxide
	Thallium peroxide see P113
P114	Thallium selenite
P115	Thallium (i) sulfate
	THIFOR see P092
	THIMUL see P092
	THIODAN see P050
	THIOFOR see P050
	THIOMUL see P050
	THIONEX see P050
	THIOPHENIT see P071
P116	Thiosemicarbazide
	Thiosulfan tionel see P050
P117	Thiuram
	THOMPSON'S WOOD FIX see P090
	TIOVEL see P050
P118	Trichloromethanethiol
	TWIN LIGHT RAT AWAY see P001
	USAF RH-8 see P069
	USAF EK-4890 see P002
P119	Vanadic acid, ammonium salt
P120	Vanadium pentoxide
	VOFATOX see P071
	WANADU see P120
	WARCOUMIN see P001
	WARFARIN SODIUM see P001
	WARFICIDE see P001
	WOFOTOX see P072
	YANOCK see P057
	YASOKNOCK see P058
	ZIARNIK see P092
P121	Zinc cyanide
P122	Zinc phosphide (R,T)
	ZOOCOUMARIN see P001

[1] The Agency included those trade names of which it was aware; an omission of a trade name does not imply that the omitted material is not hazardous. The material is hazardous if it is listed under its generic name.

(f) The commercial chemical products or manufacturing chemical intermediates, referred to in paragraphs (a), (b) and (d) of this section, are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in § 261.5 (a) and (b). These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste No.	Substance[1]
	AAF see U005
U001	Acetaldehyde
U002	Acetone (I)
U003	Acetonitrile (I,T)
U004	Acetophenone
U005	2-Acetylaminoflourene
U006	Acetyl chloride (C,T)
U007	Acrylamide
	Acetylene tetrachloride see U209
	Acetylene trichloride see U228
U008	Acrylic acid (I)
U009	Acrylonitrile
	AEROTHENE TT see U226
	3-Amino-5-(p-acetamidophenyl)-1H-1,2,4-triazole, hydrate see U011
U010	6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyi)8-methoxy-5-methylcarbamate azirino(2',3':3,4) pyrrolo(1,2-a) indole-4, 7-dione (ester)
U011	Amitrole
U012	Aniline (I)
U013	Asbestos
U014	Auramine
U015	Azaserine
U016	Benz[c]acridine
U017	Benzal chloride
U018	Benz[a]anthracene
U019	Benzene
U020	Benzenesulfonyl chloride (C,R)
U021	Benzidine
	1,2-Benzisothiazolin-3-one, 1,1-dioxide see U202
	Benzo[a]anthracene see U018
U022	Benzo[a]pyrene
U023	Benzotrichloride (C,R,T)
U024	Bis(2-chloroethoxy)methane
U025	Bis(2-chloroethyl) ether
U026	N,N-Bis(2-chloroethyl)-2-naphthylamine
U027	Bis(2-chloroisopropyl) ether
U028	Bis(2-ethylhexyl) phthalate
U029	Bromomethane
U030	4-Bromophenyl phenyl ether
U031	n-Butyl alcohol (I)
U032	Calcium chromate
	Carbolic acid see U188
	Carbon tetrachloride see U211
U033	Carbonyl fluoride
U034	Chloral
U035	Chlorambucil
U036	Chlordane
U037	Chlorobenzene
U038	Chlorobenzilate
U039	p-Chloro-m-cresol
U040	Chlorodibromomethane
U041	1-Chloro-2,3-epoxypropane
	CHLOROETHENE NU see U226
U042	Chloroethyl vinyl ether
U043	Chloroethene
U044	Chloroform (I,T)
U045	Chloromethane (I,T)
U046	Chloromethyl methyl ether
U047	2-Chloronaphthalene
U048	2-Chlorophenol
U049	4-Chloro-o-toluidine hydrochloride
U050	Chrysene
	C.I. 23060 see U073
U051	Cresote
U052	Cresols
U053	Crotonaldehyde
U054	Cresylic acid
U055	Cumene
	Cyanomethane see U003
U056	Cyclohexane (I)
U057	Cyclohexanone (I)
U058	Cyclophosphamide
U059	Daunomycin
U060	DDD
U061	DDT
U062	Diallate
U063	Dibenz[a,h]anthracene
	Dibenzo[a,h]anthracene see U063
U064	Dibenzo[a,i]pyrene
U065	Dibromochloromethane
U066	1,2-Dibromo-3-chloropropane
U067	1,2-Dibromoethane
U068	Dibromomethane
U069	Di-n-butyl phthalate
U070	1,2-Dichlorobenzene
U071	1,3-Dichlorobenzene
U072	1,4-Dichlorobenzene
U073	3,3'-Dichlorobenzidine
U074	1,4-Dichloro-2-butene
	3,3'-Dichloro-4,4'-diaminobiphenyl see U073
U075	Dichlorodifluoromethane
U076	1,1-Dichloroethane
U077	1,2-Dichloroethane
U078	1,1-Dichloroethylene
U079	1,2-trans-dichloroethylene
U080	Dichloromethane
	Dichloromethylbenzene see U017
U081	2,4-Dichlorophenol
U082	2,6-Dichlorophenol
U083	1,2-Dichloropropane
U084	1,3-Dichloropropene
U085	Diepoxybutane (I,T)
U086	1,2-Diethylhydrazine
U087	0,0-Diethyl-S-methyl ester of phosphorodithioic acid
U088	Diethyl phthalate
U089	Diethylstilbestrol
U090	Dihydrosafrole
U091	3,3'-Dimethoxybenzidine
U092	Dimethylamine (I)
U093	p-Dimethylaminoazobenzene
U094	7,12-Dimethylbenz[a]anthracene
U095	3,3'-Dimethylbenzidine
U096	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	Dimethylcarbamoyl chloride
U098	1,1-Dimethylhydrazine
U099	1,2-Dimethylhydrazine
U100	Dimethylnitrosoamine
U101	2,4-Dimethylphenol
U102	Dimethyl phthalate
U103	Dimethyl sulfate
U104	2,4-Dinitrophenol
U105	2,4-Dinitrotoluene
U106	2,6-Dinitrotoluene
U107	Di-n-octyl phthalate
U108	1,4-Dioxane
U109	1,2-Diphenylhydrazine
U110	Dipropylamine (I)
U111	Di-n-propylnitrosamine
	EBDC see U114
	1,4-Epoxybutane see U213
U112	Ethyl acetate (I)
U113	Ethyl acrylate (I)
U114	Ethylenebisdithiocarbamate
U115	Ethylene oxide (I,T)
U116	Ethylene thiourea
U117	Ethyl ether (I,T)
U118	Ethylmethacrylate
U119	Ethyl methanesulfonate
	Ethylnitrile see U003
	Firemaster T23P see U235
U120	Fluoranthene
U121	Fluorotrichloromethane
U122	Formaldehyde
U123	Formic acid (C,T)
U124	Furan (I)
U125	Furfural (I)
U126	Glycidylaldehyde
U127	Hexachlorobenzene
U128	Hexachlorobutadiene
U129	Hexachlorocyclohexane
U130	Hexachlorocyclopentadiene
U131	Hexachloroethane
U132	Hexachlorophene
U133	Hydrazine (R,T)
U134	Hydrofluoric acid (C,T)
U135	Hydrogen sulfide
	Hydroxybenzene see U188
U136	Hydroxydimethyl arsine oxide
	4,4'-(Imidocarbonyl)bis(N,N-dimethyl)aniline see U014
U137	Indeno(1,2,3-cd)pyrene
U138	Iodomethane
U139	Iron Dextran
U140	Isobutyl alcohol
U141	Isosafrole
U142	Kepone
U143	Lasiocarpine
U144	Lead acetate
U145	Lead phosphate
U146	Lead subacetate
U147	Maleic anhydride
U148	Maleic hydrazide
U149	Malononitrile
	MEK Peroxide see U160
U150	Melphalan
U151	Mercury
U152	Methacrylonitrile
U153	Methanethiol
U154	Methanol
U155	Methapyrilene
	Methyl alcohol see U154
U156	Methyl chlorocarbonate
	Methyl chloroform see U226
U157	3-Methylcholanthrene
	Methyl chloroformate see U156
U158	4,4'-Methylene-bis-(2-chloroaniline)
U159	Methyl ethyl ketone (MEK) (I,T)
U160	Methyl ethyl ketone peroxide (R)
	Methyl iodide see U138
U161	Methyl isobutyl ketore
U162	Methyl methacrylate (R,T)
U163	N-Methyl-N'-nitro-N-nitrosoguanidine
U164	Methylthiouracil
	Mitomycin C see U010
U165	Naphthalene
U166	1,4-Naphthoquinone
U167	1-Naphthylamine
U168	2-Naphthylamine
U169	Nitrobenzene (I,T)
	Nitrobenzol see U169
U170	4-Nitrophenol
U171	2-Nitropropane (I)
U172	N-Nitrosodi-n-butylamine
U173	N-Nitrosodiethanolamine
U174	N-Nitrosodiethylamine
U175	N-Nitrosodi-n-propylamine
U176	N-Nitroso-n-ethylurea
U177	N-Nitroso-n-methylurea
U178	N-Nitroso-n-methylurethane
U179	N-Nitrosopiperidine
U180	N-Nitrosopyrrolidine
U181	5-Nitro-o-toluidine
U182	Paraldehyde
	PCNB see U185
U183	Pentachlorobenzene
U184	Pentachloroethane
U185	Pentachloronitrobenzene
U186	1,3-Pentadiene (I)
	Perc see U210
	Perchlorethylene see U210
U187	Phenacetin
U188	Phenol
U189	Phosphorous sulfide (R)
U190	Phthalic anhydride
U191	2-Picoline
U192	Pronamide
U193	1,3-Propane sultone
U194	n-Propylamine (I)
U196	Pyridine
U197	Quinones
U200	Reserpine
U201	Resorcinol
U202	Saccharin
U203	Safrole
U204	Selenious acid
U205	Selenium sulfide (R,T)
	Silvex see U233
U206	Streptozotocin
	2,4,5-T see U232
U207	1,2,4,5-Tetrachlorobenzene
U208	1,1,1,2-Tetrachloroethane
U209	1,1,2,2-Tetrachloroethane
U210	Tetrachloroethene
	Tetrachloroethylene see U210
U211	Tetrachloromethane
U212	2,3,4,6-Tetrachlorophenol
U213	Tetrahydrofuran (I)
U214	Thallium (I) acetate
U215	Thallium (I) carbonate
U216	Thallium (I) chloride
U217	Thallium (I) nitrate
U218	Thioacetamide
U219	Thiourea
U220	Toluene
U221	Toluenediamine
U222	o-Toluidine hydrochloride

Hazardous Waste No.	Substance[1]
U223	Toluene diisocyanate
U224	Toxaphene
	2,4,5-TP see U233
U225	Tribromomethane
U226	1,1,1-Trichloroethane
U227	1,1,2-Trichloroethane
U228	Trichloroethene
	Trichloroethylene see U228
U229	Trichlorofluoromethane
U230	2,4,5-Trichlorophenol
U231	2,4,6-Trichlorophenol
U232	2,4,5-Trichlorophenoxyacetic acid
U233	2,4,5-Trichlorophenoxypropionic acid alpha, alpha, alpha- Trichlorotoluene see U023
	TRI-CLENE see U228
U234	Trinitrobenzene (R,T)
U235	Tris(2,3-dibromopropyl) phosphate
U236	Trypan blue
U237	Uracil mustard
U238	Urethane
	Vinyl chloride see U043
	Vinylidene chloride see U078
U239	Xylene

[1] The Agency included those trade names of which it was aware; an omission of a trade name does not imply that it is not hazardous. The material is hazardous if it is listed under its generic name.

Appendix I—Representative Sampling Methods

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the Agency to be representative of the waste.

Extremely viscous liquid—ASTM Standard D140–70 Crushed or powdered material—ASTM Standard D346–75 Soil or rock-like material—ASTM Standard D420–69 Soil-like material—ASTM Standard D1452–65

Fly Ash-like material—ASTM Standard D2234–76 [ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103]

Containerized liquid wastes—"COLIWASA" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," [1] U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460. [Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, Ohio 45268]

Liquid waste in pits, ponds, lagoons, and similar reservoirs.—"Pond Sampler" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." [1]

This manual also contains additional information on application of these protocols.

[1] These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams," EPA 600/2–80–018, January 1980.

Appendix II— EP Toxicity Test Procedure

A. Extraction Procedure (EP)

1. A representative sample of the waste to be tested (minimum size 100 grams) should be obtained using the methods specified in Appendix I or any other methods capable of yielding a representative sample within the meaning of Part 260. [For detailed guidance on conducting the various aspects of the EP see "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," SW–846, U.S. Environmental Protection Agency Office of Solid Waste, Washington, D.C. 20460.[1]]

2. The sample should be separated into its component liquid and solid phases using the method described in "Separation Procedure" below. If the solid residue [2] obtained using this method totals less than 0.5% of the original weight of the waste, the residue can be discarded and the operator should treat the liquid phase as the extract and proceed immediately to Step 8.

3. The solid material obtained from the Separation Procedure should be evaluated for its particle size. If the solid material has a surface area per gram of material equal to, or greater than, 3.1 cm^2 or passes through a 9.5 mm (0.375 inch) standard sieve, the operator should proceed to Step 4. If the surface area is smaller or the particle size larger than specified above, the solid material should be prepared for extraction by crushing, cutting or grinding the material so that it passes through a 9.5 mm (0.375 inch) sieve or, if the material is in a single piece, by subjecting the material to the "Structural Integrity Procedure" described below.

4. The solid material obtained in Step 3 should be weighed and placed in an extractor with 16 times its weight of deionized water. Do not allow the material to dry prior to weighing. For purposes of this test, an acceptable extractor is one which will impart sufficient agitation to the mixture to not only prevent stratification of the sample and extraction fluid but also insure that all sample surfaces are continously brought into contact with well mixed extraction fluid.

5. After the solid material and deionized water are placed in the extractor, the operator should begin agitation and measure the pH of the solution in the extractor. If the pH is greater than 5.0, the pH of the solution should be decreased to 5.0 ± 0.2 by adding 0.5 N acetic acid. If the pH is equal to or less than 5.0, no acetic acid should be added. The pH of the solution should be monitored, as described below, during the course of the extraction and if the pH rises above 5.2, 0.5N acetic acid should be added to bring the pH down to 5.0 ± 0.2. However, in no event shall the aggregate amount of acid added to the solution exceed 4 ml of acid per gram of solid. The mixture should be agitated for 24 hours and maintained at 20°–40° C (68°–104° F) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45–A pH Controller manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123 or its equivalent, in conjunction with a metering pump and reservoir of 0.5N acetic acid. If such a system is not available, the following manual procedure shall be employed:

(a) A pH meter should be calibrated in accordance with the manufacturer's specifications.

(b) The pH of the solution should be checked and, if necessary, 0.5N acetic acid should be manually added to the extractor until the pH reaches 5.0 ± 0.2. The pH of the solution should be adjusted at 15, 30 and 60 minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than 0.5N pH units.

(c) The adjustment procedure should be continued for at least 6 hours.

(d) If at the end of the 24-hour extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (4 ml per gram of solids) has not been added, the pH should be adjusted to 5.0 ± 0.2 and the extraction continued for an additional four hours, during which the pH should be adjusted at one hour intervals.

6. At the end of the 24 hour extraction period, deionized water should be added to the extractor in an amount determined by the following equation:

V = (20)(W) − 16(W) − A

V = ml deionized water to be added

W = weight in grams of solid charged to extractor

A = ml of 0.5N acetic acid added during extraction

7. The material in the extractor should be separated into its component liquid and solid phases as described under "Separation Procedure."

8. The liquids resulting from Steps 2 and 7 should be combined. This

[1] Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[2] The percent solids is determined by drying the filter pad at 80° C until it reaches constant weight and then calculating the percent solids using the following equation:

$$\frac{\text{(weight of pad + solid) − (tare weight of pad)}}{\text{initial weight of sample}} \times 100 = \%\ \text{solids}$$

combined liquid (or the waste itself if it has less than ½ percent solids, as noted in Step 2) is the extract and should be analyzed for the presence of any of the contaminants specified in Table I of § 261.24 using the Analytical Procedures designated below.

Separation Procedure

Equipment: A filter holder, designed for filtration media having a nominal pore size of 0.45 micrometers and capable of applying a 5.3 kg/cm² (75 psi) hydrostatic pressure to the solution being filtered shall be used. For mixtures containing nonabsorptive solids, where separation can be affected without imposing a 5.3 kg/cm² pressure differential, vacuum filters employing a 0.45 micrometers filter media can be used. (For further guidance on filtration equipment or procedures see "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.")

Procedure: [3]

(i) Following manufacturer's directions, the filter unit should be assembled with a filter bed consisting of a 0.45 micrometer filter membrane. For difficult or slow to filter mixtures a prefilter bed consisting of the following prefilters in increasing pore size (0.65 micrometer membrane, fine glass fiber prefilter, and coarse glass fiber prefilter) can be used.

(ii) The waste should be poured into the filtration unit.

(iii) The reservoir should be slowly pressurized until liquid begins to flow from the filtrate outlet at which point the pressure in the filter should be immediately lowered to 10–15 psig. Filtration should be continued until liquid flow ceases.

(iv) The pressure should be increased stepwise in 10 psi increments to 75 psig and filtration continued until flow ceases or the pressurizing gas begins to exit from the filtrate outlet.

(v) The filter unit should be depressurized, the solid material removed and weighed and then transferred to the extraction apparatus, or, in the case of final filtration prior to analysis, discarded. Do not allow the material retained on the filter pad to dry prior to weighing.

(vi) The liquid phase should be stored at 4°C for subsequent use in Step 8.

B. Structural Integrity Procedure

Equipment: A Structural Integrity Tester having a 3.18 cm (1.25 in.) diameter hammer weighing 0.33 kg (0.73 lbs.) and having a free fall of 15.24 cm (6 in.) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA., 22314, as Part No. 125, or it may be fabricated to meet the specifications shown in Figure 1.

Procedure:

1. The sample holder should be filled with the material to be tested. If the sample of waste is a large monolithic block, a portion should be cut from the block having the dimensions of a 3.3 cm (1.3 in.) diameter x 7.1 cm (2.8 in.) cylinder. For a fixated waste, samples may be cast in the form of a 3.3 cm (1.3 in.) diameter x 7.1 cm (2.8 in.) cylinder for purposes of conducting this test. In such cases, the waste may be allowed to cure for 30 days prior to further testing.

2. The sample holder should be placed into the Structural Integrity Tester, then the hammer should be raised to its maximum height and dropped. This should be repeated fifteen times.

3. The material should be removed from the sample holder, weighed, and transferred to the extraction apparatus for extraction.

Analytical Procedures for Analyzing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium or silver: "Methods for Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (EPA–600/4–79–020, March 1979),

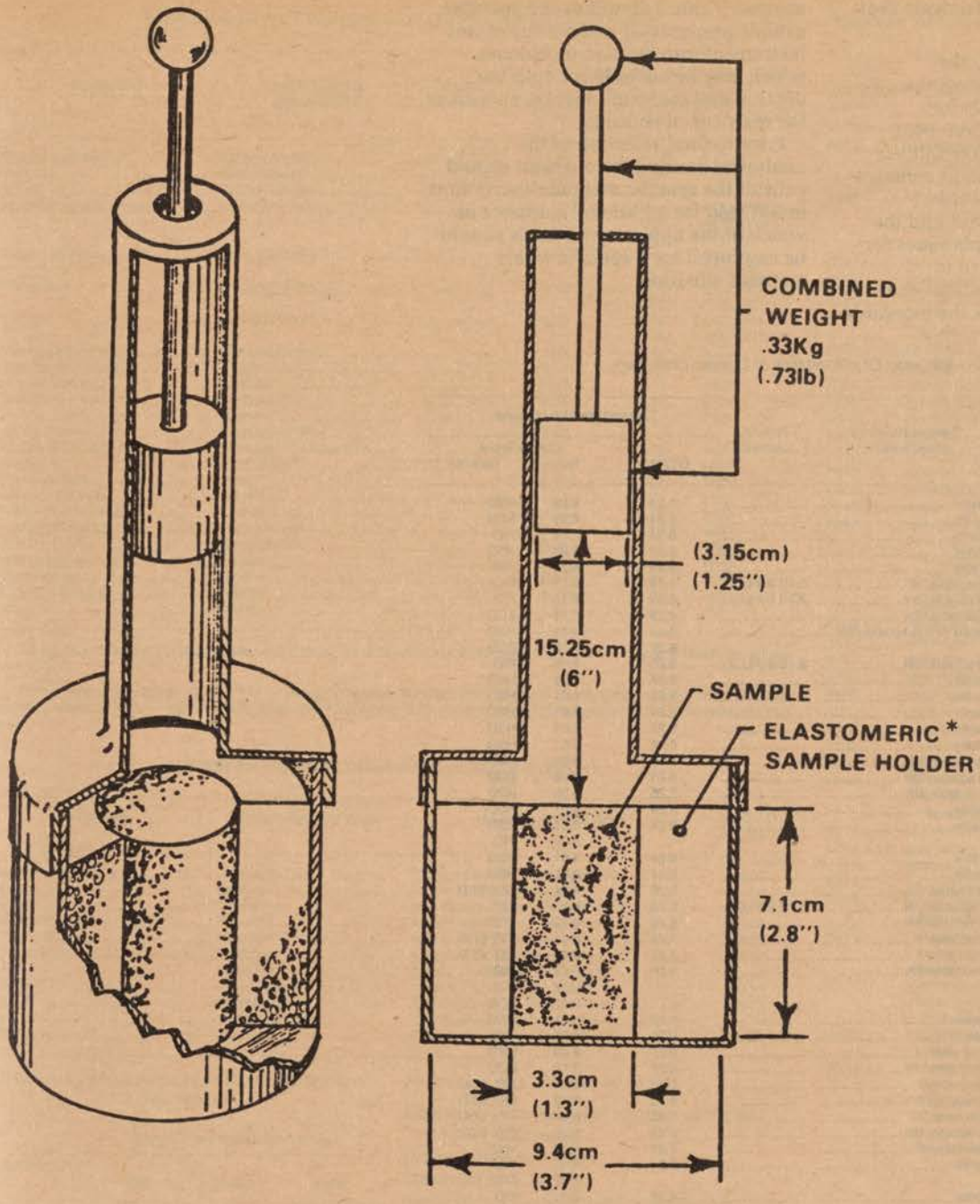
(2) For Endrin; Lindane; Methoxychlor; Toxaphene; 2,4-D; 2,4,5-TP Silver: in "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," September 1978, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 42568,

as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

For all analyses, the method of standard addition shall be used for the quantification of species concentration. This method is described in "Test Methods for the Evaluation of Solid Waste." (It is also described in "Methods for Analysis of Water and Wastes.")

BILLING CODE 6560-01-M

[3] This procedure is intended to result in separation of the "free" liquid portion of the waste from any solid matter having a particle size >0.45um. If the sample will not filter, various other separation techniques can be used to aid in the filtration. As described above, pressure filtration is employed to speed up the filtration process. This does not alter the nature of the separation. If liquid does not separate during filtration, the waste can be centrifuged. If separation occurs during centrifugation the liquid portion (centrifugate) is filtered through the 0.45um filter prior to becoming mixed with the liquid portion of the waste obtained from the initial filtration. Any material that will not pass through the filter after centrifugation is considered a solid and is extracted.



*ELASTOMERIC SAMPLE HOLDER FABRICATED OF MATERIAL FIRM ENOUGH TO SUPPORT THE SAMPLE

Figure 1

COMPACTION TESTER

BILLING CODE 6560-01-C

Appendix III—Chemical Analysis Test Methods

Tables 1, 2 and 3 specify the appropriate analytical procedures, described in "Test Methods for Evaluating Solid Waste" (SW–846), which should be used in determining whether the waste in question contains a given toxic constituent. Table 1 identifies the analytical class and the approved measurement techniques for each organic chemical listed in Appendix VII. Table 2 identifies the corresponding methods for the inorganic species. Table 3 identifies the specific sample preparation and measurement instrument introduction techniques which may be suitable for both the organic and inorganic species as well as the matrices of concern.

Prior to final selection of the analytical method the operator should consult the specific method descriptions in SW–846 for additional guidance on which of the approved methods should be employed for a specific waste analysis situation.

Table 1.—*Analytical Characteristics of Organic Chemicals*

Compound	Sample handling class/fraction	Non-GC methods	Measurement techniques		
			GC/MS	Conventional GC	Detector
Acetonitrile	Volatile		8.24	8.03	NSD
Acrolein	Volatile		8.24	8.03	NSD
Acrylamide	Volatile		8.24	8.01	FID
Acrylonitrile	Volatile		8.24	8.03	NSD
Benzene	Volatile		8.24	8.02	PID
Benz(a)anthracene	Extractable/BN	8.10 (HPLC)	8.25	8.10	FID
Benzo(a)pyrene	Extractable/BN	8.10 (HPLC)	8.25	8.10	FID
Benzotrichloride	Extractable/BN		8.25	8.12	ECD
Benzyl chloride	Volatile or Extractable/BN		8.24	8.01	HSD
			8.25	8.12	ECD
Benz(b)fluoanthene	Extractable/BN	8.10 (HPLC)	8.25	8.10	FID
Bis(2-chloroethoxymethane)	Volatile		8.24	8.01	HSD
Bis(2-chloroethyl)ether	Volatile		8.24	8.01	HSD
Bis(2-chloroisopropyl)ether	Volatile		8.24	8.01	HSD
Carbon disulfide	Volatile		8.24	8.01	HSD
Carbon tetrachloride	Volatile		8.24	8.01	HSD
Chlordane	Extractable/BN		8.25	8.08	HSD
Chlorinated dibenzodioxins	Extractable/BN		8.25	8.08	ECD
Chlorinated biphenyls	Extractable/BN		8.25	8.08	HSD
Chloroacetaldehyde	Volatile		8.24	8.01	HSD
Chlorobenzene	Volatile		8.24	8.01	HSD
				8.02	PID
Chloroform	Volatile		8.24	8.01	HSD
Chloromethane	Volatile		8.24	8.01	HSD
2-Chlorophenol	Extractable/BN		8.25	8.04	FID, ECD
Chrysene	Extractable/BN	8.10 (HPLC)	8.25	8.10	FID
Creosote	Extractable/BN		[1]8.25	8.10	ECD
Cresol(s)	Extractable/A		8.25	8.04	FID, ECD
Cresylic acid(s)	Extractable/A		8.25	8.04	FID, ECD
Dichlorobenzene(s)	Extractable/BN		8.25	8.01	HSD
				8.02	PID
				8.12	ECD
Dichloroethane(s)	Volatile		8.24	8.01	HSD
Dichloromethane	Volatile		8.24	8.01	HSD
Dichlorophenoxy-acetic acid	Extractable/A		8.25	8.40	HSD
Dichloropropanol	Extractable/BN		8.25	8.12	ECD
2,4-Dimethylphenol	Extractable/A		8.25	8.04	FID, ECD
Dinitrobenzene	Extractable/BN		8.25	8.09	FID, ECD
4,6-Dinotro-o-cresol	Extractable/A		8.25	8.04	FID, ECD
2,4-Dinitrotoluene	Extractable/BN		8.25	8.09	FID, ECD
Endrin	Extractable/P		8.25	8.08	HSD
Ethyl ether	Volatile		8.24	8.01	FID
				8.02	FID
Formaldehyde	Volatile		8.24	8.01	FID
Formic acid	Extractable/BN		8.25	8.06	FID
Heptachlor	Extractable/P		8.25	8.06	HSD
Hexachlorobenzene	Extractable/BN		8.25	8.12	ECD
Hexachlorobutadiene	Extractable/BN		8.25	8.12	ECD
Hexachloroethane	Extractable/BN		8.25	8.12	ECD
Hexachlorocyclopentadiene	Extractable/BN		8.25	8.12	ECD
Lindane	Extractable/P		8.25	8.08	HSD
Maleic anhydride	Extractable/BN		8.25	8.06	ECD, FID
Methanol	Volatile		8.24	8.01	FID
Methomyl	Extractable/BN	8.32 (HPLC)			
Methyl ethyl ketone	Volatile		8.25	8.01	FID
				8.02	FID
Methyl isobutyl ketone	Volatile		8.25	8.01	FID
				8.02	FID
Naphthalene	Extractable/BN		8.25	8.10	FID
Napthoquinone	Extractable/BN		8.25	8.06	ECD, FID
				8.09	FID
Nitrobenzene	Extractable/BN		8.25	8.09	ECD, FID
4-Nitrophenol	Extractable/A		8.24	8.04	ECD, FID
Paraldehyde (trimer of acetaldehyde).	Volatile		8.24	8.01	FID

Table 1.—*Analytical Characteristics of Organic Chemicals—Continued*

Compound	Sample handling class/fraction	Non-GC methods	Measurement techniques		
			GC/MS	Conventional GC	Detector
Pentachlorophenol	Extractable/A		8.25	8.04	ECD
Phenol	Extractable/A		8.25	8.04	ECD, FID
Phorate	Extractable/BN			8.22	FPD
Phosphorodithioic acid esters	Extractable/BN			8.06	ECD, FID
				8.09	ECD, FID
				8.22	FPD
Phthalic anhydride	Extractable/BN		8.25	8.06	ECD, FID
				8.09	ECD, FID
2-Picoline	Extractable/BN		8.25	8.06	ECD, FID
				8.09	ECD, FID
Pyridine	Extractable/BN		8.25	8.06	ECD, FID
				8.09	ECD, FID
Tetrachlorobenzene(s)	Extractable/BN		8.25	8.12	ECD
Tetrachloroethane(s)	Volatile		8.24	8.01	HSD
Tetrachloroethene	Volatile		8.24	8.01	HSD
Tetrachlorophenol	Extractable/A		8.24	8.04	ECD
Toluene	Volatile		8.24	8.02	PID
Toluenediamine	Extractable/BN		8.25		
Toluene diisocyanate(s)	Extractable/nonaqueous		8.25	8.06	FID
Toxaphene	Extractable/P		8.25	8.08	HSD
Trichloroethane	Volatile		8.24	8.01	HSD
Trichloroethene(s)	Volatile		8.24	8.01	HSD
Trichlorofluoromethane	Volatile		8.24	8.01	HSD
Trichlorophenol(s)	Extractable/A		8.25	8.04	HSD
2,4,5-TP (Silvex)	Extractable/A		8.25	8.40	HSD
Trichloropropane	Volatile		8.24	8.01	HSD
Vinyl chloride	Volatile		8.24	8.01	HSD
Vinylidene chloride	Volatile		8.24	8.01	HSD
Xylene	Volatile		8.24	8.02	PID

[1] Analyze for phenanthrene and carbazole; if these are present in a ratio between 1.4:1 and 5:1, creosote should be considered present.

ECD = Electron capture detetor; FID = Flame ionization detector; FPD = Flame photometric detector; HSD = Halide specific detector; HPLC = High pressure liquid chromotography; NSD = Nitrogen-specific detector; PID = Photoionization detector.

Table 2—*Analytical Characteristics of Inorganic Species*

Species	Sample handling class	Measurement technique	Method number
Antimony	Digestion	Atomic absorbtion-furnace/flame	8.50
Arsenic	Hydride	Atomic absorbtion-flame	8.51
Barium	Digestion	Atomic absorbtion-furnace/flame	8.52
Cadmium	Digestion	Atomic absorbtion-furnace/flame	8.53
Chromium	Digestion	Atomic absorbtion-furnace/flame	8.54
Cyanides	Hydrolysis	Atomic absorbtion-spectroscopy	8.55
Lead	Digestion	Atomic absorbtion-furnace/flame	8.56
Mercury	Cold Vapor	Atomic absorbtion	8.57
Nickel	Digestion	Atomic absorbtion-furnace/flame	8.58
Selenium	Hydride digestion	Atomic absorbtion-furnace/flame	8.59
Silver	Digestion	Atomic absorbtion-furnace/flame	8.60

Table 3.—*Sample Prepartion/Sample Introduction Techniques*

Sample handling class	Physical characteristics of waste [1]		
	Fluid	Paste	Solid
Voltile	Purge and trap.	Purge and trap.	Headspace.
	Direct injection.	Headspace	
Semivolatile and nonvolatile.	Direct injection.	Shake out	Shake out. Soxhlet. Sonication.
	Shake out		
Inorganic	Direct injection.		
	Digestion	Digestion	Digestion.
	Hydride	Hydride	Hydride.

[1] For purposes of this Table, fluid refers to readily pourable liquids, which may or may not contain suspended particles. Paste-like materials, while fluid in the sense of flowability, can be thought of as being thixotropic or plastic in nature, e.g. paints. Solid materials are those wastes which can be handled without a container (i.e., can be piled up without appreciable sagging).

Procedure and Method Number(s)

Digestion—See appropriate procedure for element of interest.
Direct injection—8.80
Headspace—8.82
Hydride—See appropriate procedure for element of interest.
Purge & Trap—8.83
Shake out—8.84
Sonication—8.85
Soxhlet—8.86

Appendix VII.—*Basis for Listing Hazardous Wastes*

EPA hazardous waste No.	Hazardous constituents for which listed
F001	tetrachloroethylene, methylene chloride trichloroethyllene, 1,1,1-trichloroethane chlorinated fluorocarbons, carbon tetrachloride
F002	tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, o-dichlorobenzene, trichlorofluoromethane
F003	N.A.
F004	cresols and cresylic acid, nitrobenzene
F005	methanol, toluene, methyl ethyl ketone, methyl isobutyl ketone, carbon disulfide, isobutanol, pyridine
F006	cadmium, chromium, nickel, cyanide (complexed)
F007	cyanide (salts)
F008	cyanide (salts)
F009	cyanide (salts)
F010	cyanide (salts)
F011	cyanide (salts)
F012	cyanide (complexed)
F013	cyanide (complexed)
F014	cyanide (complexed)
F015	cyanide (salts)
F016	cyanide (complexed)
K001	benzene, benz(a)anthracene, benzo(a)pyrene, chrysene, 4-nitrophenol, toluene, naphthalene phenol, 2-chlorophenol, 2,4-dimethyl phenol, 2,4,6-trichlorophenol, pentachlorophenol, 4,6-dinitro-o-cresol, tetrachlorophenol
K002	chromium, lead
K003	chromium, lead
K004	chromium
K005	chromium, lead
K006	chromium
K007	cyanide (complexed), chromium
K008	chromium
K009	chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid
K010	chloroform, formaldehyde, methylene chloride, methyl .chloride, paraldehyde, formic acid, chloroacetaldehyde
K011	acrylonitrile, acetonitrile, hydrocyanic acid
K012	acrylonitrile, acetonitrile, acrolein, acrylamide
K013	hydrocyanic acid, acrylonitrile, acetonitrile
K014	acetonitrile, acrylamide
K015	benzyl chloride, chlorobenzene, toluene, benzotrichloride
K016	hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene
K017	epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2-chloroethyl) ethers], trichloropropane, dichloropropanols
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene
K019	ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride

Appendix VII.—*Basis for Listing Hazardous Wastes*—Continued

EPA hazardous waste No.	Hazardous constituents for which listed
K020	ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride
K021	antimony, carbon tetrachloride, chloroform
K022	phenol, tars (polycyclic aromatic hydrocarbons)
K023	phthalic anahydride, maleic anhydride
K024	phthalic anhydride, polynuclear tar-like materials, naphthoquinone
K025	meta-dinitrobenzene, 2,4-dinitrotoluene
K026	paraldehyde, pyridines, 2-picoline
K027	toulene diisocyanate, toluene-2,4-diamine, tars (benzidimidazapone)
K028	1,1,1-trichloroethane, vinyl chloride
K029	1,2.-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinlyidene chloride, chloroform
K030	hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride
K031	arsenic
K032	hexachlorocyclopentadiene
K033	hexachlorocyclopentadiene
K034	hexachlorocyclopentadiene
K035	cresote, benz(a)anthracene, benz(b)fluoroanthene, benzo(a)pyrene
K036	toulene, phosphorodithioic and phosphorothioic acid esters
K037	toulene, phosphorodithioic and phosphorothioic acid esters
K038	phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters
K039	phosphorodithioic and phosphorothioic acid esters
K040	phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters
K041	toxaphene
K042	hexachlorobenzene; ortho-dichlorobenzene
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol
K044	N.A.
K045	N.A.
K046	lead
K047	N.A.
K048	chromium, lead
K049	chromium, lead
K050	chromium
K051	chromium, lead
K052	lead
K053	chromium
K054	chromium
K055	chromium, lead
K056	chromium, lead
K057	chromium, lead
K058	chromium, lead
K059	N.A.
K060	cyanide, naphthalene, phenolic compounds, arsenic
K061	chromium, lead, cadmium
K062	chromium, lead
K063	chromium, lead
K064	lead, cadmium
K065	lead, cadmium
K066	lead, cadmium
K067	lead, cadmium
K068	lead, cadmium
K069	chromium, lead, cadmium

N.A.—Waste is hazardous because it meets either the ignitability, corrosivity or reactivity characteristic.

Appendix VIII—Hazardous Constituents

Acetaldehyde
(Acetato)phenylmercury
Acetonitrile
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts
2-Acetylaminofluorene
Acetyl chloride
1-Acetyl-2-thiourea
Acrolein
Acrylamide
Acrylonitrile
Aflatoxins
Aldrin
Allyl alcohol
Aluminum phosphide
4-Aminobiphenyl
6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methylcarbamate azirino(2',3':3,4) pyrrolo(1,2-a)indole-4,7-dione (ester) (Mitomycin C)
5-(Aminomethyl)-3-isoxazolol
4-Aminopyridine
Amitrole
Antimony and compounds, N.O.S.[1]
Aramite
Arsenic and compounds, N.O.S.
Arsenic acid
Arsenic pentoxide
Arsenic trioxide
Auramine
Azaserine
Barium and compounds, N.O.S.
Barium cyanide
Benz[c]acridine
Benz[a]anthracene
Benzene
Benzenearsonic acid
Benzenethiol
Benzidine
Benzo[a]anthracene
Benzo[b]fluoranthene
Benzo[j]fluoranthene
Benzo[a]pyrene
Benzotrichloride
Benzyl chloride
Beryllium and compounds, N.O.S.
Bis(2-chloroethoxy]methane
Bis(2-chloroethyl) ether
N,N-Bis(2-chloroethyl)-2-naphthylamine
Bis(2-chloroisopropyl) ether
Bis(chloromethyl) ether
Bis(2-ethylhexyl) phthalate
Bromoacetone
Bromomethane
4-Bromophenyl phenyl ether
Brucine
2-Butanone peroxide
Butyl benzyl phthalate
2-sec-Butyl-4,6-dinitrophenol (DNBP)
Cadmium and compounds, N.O.S.
Calcium chromate
Calcium cyanide
Carbon disulfide
Chlorambucil
Chlordane (alpha and gamma isomers)
Chlorinated benzenes, N.O.S.
Chlorinated ethane, N.O.S.
Chlorinated naphthalene, N.O.S.
Chlorinated phenol, N.O.S.
Chloroacetaldehyde
Chloroalkyl ethers
p-Chloroaniline
Chlorobenzene
Chlorobenzilate
1-(p-Chlorobenzoyl)-5-methoxy-2-methylindole-3-acetic acid
p-Chloro-m-cresol
1-Chloro-2,3-epoxybutane
2-Chloroethyl vinyl ether
Chloroform
Chloromethane
Chloromethyl methyl ether
2-Chloronaphthalene
2-Chlorophenol
1-(o-Chlorophenyl)thiourea
3-Chloropropionitrile
alpha-Chlorotoluene
Chlorotoluene, N.O.S.
Chromium and compounds, N.O.S.
Chrysene
Citrus red No. 2
Copper cyanide
Creosote
Crotonaldehyde
Cyanides (soluble salts and complexes), N.O.S.
Cyanogen
Cyanogen bromide
Cyanogen chloride
Cycasin
2-Cyclohexyl-4,6-dinitrophenol
Cyclophosphamide
Daunomycin
DDD
DDE
DDT
Diallate
Dibenz[a,h]acridine
Dibenz[a,j]acridine
Dibenz[a,h]anthracene(Dibenzo[a,h] anthracene)
7H-Dibenzo[c,g]carbazole
Dibenzo[a,e]pyrene
Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene
1,2-Dibromo-3-chloropropane
1,2-Dibromoethane
Dibromomethane
Di-n-butyl phthalate
Dichlorobenzene, N.O.S.
3,3'-Dichlorobenzidine
1,1-Dichloroethane
1,2-Dichloroethane
trans-1,2-Dichloroethane
Dichloroethylene, N.O.S.
1,1-Dichloroethylene
Dichloromethane
2,4-Dichlorophenol
2,6-Dichlorophenol
2,4-Dichlorophenoxyacetic acid (2,4-D)
Dichloropropane
Dichlorophenylarsine
1,2-Dichloropropane
Dichloropropanol, N.O.S.
Dichloropropene, N.O.S.
1,3-Dichloropropene
Dieldrin
Diepoxybutane
Diethylarsine
0,0-Diethyl-S-(2-ethylthio)ethyl ester of phosphorothioic acid
1,2-Diethylhydrazine
0,0-Diethyl-S-methylester phosphorodithioic acid
0,0-Diethylphosphoric acid, 0-p-nitrophenyl ester
Diethyl phthalate
0,0-Diethyl-0-(2-pyrazinyl)phosphorothioate
Diethylstilbestrol
Dihydrosafrole
3,4-Dihydroxy-alpha-(methylamino)-methyl benzyl alcohol
Di-isopropylfluorophosphate (DFP)
Dimethoate
3,3'-Dimethoxybenzidine
p-Dimethylaminoazobenzene
7,12-Dimethylbenz[a]anthracene
3,3'-Dimethylbenzidine
Dimethylcarbamoyl chloride

[1] The abbreviation N.O.S. signifies those members of the general class "not otherwise specified" by name in this listing.

1,1-Dimethylhydrazine
1,2-Dimethylhydrazine
3,3-Dimethyl-1-(methylthio)-2-butanone-0-((methylamino) carbonyl)oxime
Dimethylnitrosoamine
alpha,alpha-Dimethylphenethylamine
2,4-Dimethylphenol
Dimethyl phthalate
Dimethyl sulfate
Dinitrobenzene, N.O.S.
4,6-Dinitro-o-cresol and salts
2,4-Dinitrophenol
2,4-Dinitrotoluene
2,6-Dinitrotoluene Di-n-octyl phthalate
1,4-Dioxane
1,2-Diphenylhydrazine
Di-n-propylnitrosamine
Disulfoton
2,4-Dithiobiuret
Endosulfan
Endrin and metabolites
Epichlorohydrin
Ethyl cyanide
Ethylene diamine
Ethylenebisdithiocarbamate (EBDC)
Ethyleneimine
Ethylene oxide
Ethylenethiourea
Ethyl methanesulfonate
Fluoranthene
Fluorine
2-Fluoroacetamide
Fluoroacetic acid, sodium salt
Formaldehyde
Glycidylaldehyde
Halomethane, N.O.S.
Heptachlor
Heptachlor epoxide (alpha, beta, and gamma isomers)
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
Hexachloroethane
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene
Hexachlorophene
Hexachloropropene
Hexaethyl tetraphosphate
Hydrazine
Hydrocyanic acid
Hydrogen sulfide
Indeno(1,2,3-c,d)pyrene
Iodomethane
Isocyanic acid, methyl ester
Isosafrole
Kepone
Lasiocarpine
Lead and compounds, N.O.S.
Lead acetate
Lead phosphate
Lead subacetate
Maleic anhydride
Malononitrile
Melphalan
Mercury and compounds, N.O.S.
Methapyrilene
Methomyl
2-Methylaziridine
3-Methylcholanthrene
4,4'-Methylene-bis-(2-chloroaniline)
Methyl ethyl ketone (MEK)
Methyl hydrazine
2-Methyllactonitrile
Methyl methacrylate
Methyl methanesulfonate
2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime
N-Methyl-N'-nitro-N-nitrosoguanidine
Methyl parathion
Methylthiouracil
Mustard gas
Naphthalene
1,4-Naphthoquinone
1-Naphthylamine
2-Naphthylamine
1-Naphthyl-2-thiourea
Nickel and compounds, N.O.S.
Nickel carbonyl
Nickel cyanide
Nicotine and salts
Nitric oxide
p-Nitroaniline
Nitrobenzene
Nitrogen dioxide
Nitrogen mustard and hydrochloride salt
Nitrogen mustard N-oxide and hydrochloride salt
Nitrogen peroxide
Nitrogen tetroxide
Nitroglycerine
4-Nitrophenol
4-Nitroquinoline-1-oxide
Nitrosamine, N.O.S.
N-Nitrosodi-N-butylamine
N-Nitrosodiethanolamine
N-Nitrosodiethylamine
N-Nitrosodimethylamine
N-Nitrosodiphenylamine
N-Nitrosodi-N-propylamine
N-Nitroso-N-ethylurea
N-Nitrosomethylethylamine
N-Nitroso-N-methylurea
N-Nitroso-N-methylurethane
N-Nitrosomethylvinylamine
N-Nitrosomorpholine
N-Nitrosonornicotine
N-Nitrosopiperidine
N-Nitrosopyrrolidine
N-Nitrososarcosine
5-Nitro-o-toluidine
Octamethylpyrophosphoramide
Oleyl alcohol condensed with 2 moles ethylene oxide
Osmium tetroxide
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
Parathion
Pentachlorobenzene
Pentachloroethane
Pentachloronitrobenzene (PCNB)
Pentacholorophenol
Phenacetin
Phenol
Phenyl dichloroarsine
Phenylmercury acetate
N-Phenylthiourea
Phosgene
Phosphine
Phosphorothioic acid, O,O-dimethyl ester, O-ester with N,N-dimethyl benzene sulfonamide
Phthalic acid esters, N.O.S.
Phthalic anhydride
Polychlorinated biphenyl, N.O.S.
Potassium cyanide
Potassium silver cyanide
Pronamide
1,2-Propanediol
1,3-Propane sultone
Propionitrile
Propylthiouracil
2-Propyn-1-ol
Pryidine
Reserpine
Saccharin
Safrole
Selenious acid
Selenium and compounds, N.O.S.
Selenium sulfide
Selenourea
Silver and compounds, N.O.S.
Silver cyanide
Sodium cyanide
Streptozotocin
Strontium sulfide
Strychnine and salts
1,2,4,5-Tetrachlorobenzene
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethane, N.O.S.
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
Tetrachloroethene (Tetrachloroethylene)
Tetrachloromethane
2,3,4,6-Tetrachlorophenol
Tetraethyldithiopyrophosphate
Tetraethyl lead
Tetraethylpyrophosphate
Thallium and compounds, N.O.S.
Thallic oxide
Thallium (I) acetate
Thallium (I) carbonate
Thallium (I) chloride
Thallium (I) nitrate
Thallium selenite
Thallium (I) sulfate
Thioacetamide
Thiosemicarbazide
Thiourea
Thiuram
Toluene
Toluene diamine
o-Toluidine hydrochloride
Tolylene diisocyanate
Toxaphene
Tribromomethane
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethene (Trichloroethylene)
Trichloromethanethiol
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
2,4,5-Trichlorophenoxyacetic acid (2,4,5-T)
2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex)
Trichloropropane, N.O.S.
1,2,3-Trichloropropane
0,0,0-Triethyl phosphorothioate
Trinitrobenzene
Tris(1-azridinyl)phosphine sulfide
Tris(2,3-dibromopropyl) phosphate
Trypan blue
Uracil mustard
Urethane
Vanadic acid, ammonium salt
Vanadium pentoxide (dust)
Vinyl chloride
Vinylidene chloride
Zinc cyanide
Zinc phosphide

[FR Doc. 80-14307 Filed 5-16-80; 8:45 am]
BILLING CODE 6560-01-M

federal register

Monday
May 19, 1980

Part IV

Environmental Protection Agency

Hazardous Waste Management System

Proposal To Modify 40 CFR Part 261—Hazardous Waste Lists

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL 1471-4]

Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to add eleven wastes to the interim final list of hazardous wastes which it is promulgating today under Section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). The effect of adding these wastes to the hazardous waste list will be to make them subject to the management standards issued by EPA under Sections 3002 through 3006 and 3010 of RCRA (Parts 262 through 265, 122 through 124 of this Chapter and 45 FR 12746).

DATES: EPA will accept public comments on the proposed listings until July 18, 1980. Any person may request a hearing on this proposal by filing a request with John P. Lehman, whose address appears below, by June 9, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments and requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste [WH-565], U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001."

The public docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Alan S. Corson, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: Section 3001 of RCRA requires EPA to publish criteria for listing hazardous waste and to list particular hazardous wastes. In today's **Federal Register** EPA is promulgating interim final criteria for listing hazardous wastes (§ 261.11) along with an interim final list of hazardous wastes (Part 261, Subpart D). The Agency is now proposing to expand this list of hazardous wastes to add eleven wastes which EPA has determined meet its interim final listing criteria.

Included in this proposed supplemental listing are five wastes generated in the organic chemicals industry, four wastes from the manufacture of pesticides, one waste stream from the wood preserving industry and one waste stream from the non-ferrous metals industry. All eleven of these wastes were identified by the Agency in the course of developing the necessary technical data to support the interim final hazardous waste list promulgated today. These wastes and the hazards they pose to health or the environment are:

(1) *Distillation bottoms and heavy ends from the production of 1,1,1-trichloroethane.* These two wastes contain known carcinogens, many of which are soluble in water or are volatile. If the waste is improperly managed, the carcinogens may contaminate surface water, groundwater, or air.

(2) *Vacuum stripper discharge from chlordene chlorinator in the production of chlordane.* This waste contains dissolved or suspended highly toxic constituents which are soluble and may migrate through leaching from the waste if the waste is improperly managed.

(3) *Untreated wastewater from the production of 2,4-D.* This waste contains carcinogens and mutagens which are soluble in water. If the waste is improperly managed, these constituents can contaminate surface water or groundwater.

(4) *Wastewater from the production of methomyl.* This waste contains toxic compounds, a carcinogen and mutagenic substances. If this waste is improperly managed, these compounds could migrate from the waste and contaminate groundwater and surface water.

(5) *Distillation residues both light ends and bottoms from the production of phthalic anyhride from ortho-xylene.* These two wastes contain toxic compounds, a known carcinogen, and a suspected carcinogen. Some of these compounds are soluble in water, and, if the waste is improperly managed, these compounds can contaminate surface water and groundwater. If the residues are improperly incinerated, these compounds (or equally or more toxic degradation products) may be emitted into the air.

(6) *Wastewater from wood preserving processes that use creosote and/or pentachlorophenol.* This waste contains carcinogens, mutagens and toxic compounds, many of which are soluble in water or are volatile. If the waste is improperly managed, these compounds can contaminate surface water, groundwater, or air.

(7) *Untreated process wastewater from the production of toxaphene.* This waste contains toxaphene, a carcinogenic and extremely toxic compound. If the waste is improperly managed, this compound could migrate from the waste and contaminate groundwater and surface water.

(8) *Process wastewater from creosote production.* This waste contains a number of known carcinogens. If this waste is improperly managed, these compounds are capable of migrating and persisting in the environment and could contaminate surface water and groundwater.

(9) *Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.* This waste contains toxic heavy metals which, when solubilized, can contaminate surface water and groundwater if the waste is improperly managed.

When surface water, groundwater, or air is contaminated, human health or the environment can be adversely affected.

BACKGROUND DOCUMENT: Background documents have been prepared in support of this proposed rule. Copies are available for review in all EPA Regional office libraries, in the EPA headquarters (Public Information Reference Unit) Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. and in the docket located in Room 2711, Waterside Mall, 401 M Street, S.W., Washington, D.C.

ECONOMIC, ENVIRONMENTAL AND REGULATORY IMPACTS: In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107, EPA policy as stipulated in 39 FR 37419, October 21, 1974, and Executive Order 12044, analyses of the economic, environmental, and regulatory impacts were performed for the entirety of Subtitle C. EPA does not believe that amending Part 261 to add these additional wastes is a major action for the purposes of Executive Order 12044, in part because the wastes are generated by processes which produce other listed wastes and because the cost of managing those other listed wastes has already been accounted for in the final Regulatory Analysis which was prepared for the entirety of Subtitle C. However, EPA requests that any date commenters have on the generation rates of the wastes listed in the proposal, current management costs and practices for these wastes or on the cost or economic impacts of the proposed

regulations be sent to John P. Lehman at the address listed above.

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend Title 40 CFR, Part 261, by revising 40 CFR, Part 261, as follows:

§ 261.32 [Amended]

1. In § 261.32, add the following waste streams:

Industry	EPA hazardous waste No.*	Hazardous waste	Hazardous code
Wood preservation.		Wastewater from wood preserving processes that use creosote or pentachlorophenol.	(T).
Organic chemicals.		Distillation bottoms from the production of 1,1,1-trichloroethane.	(T).
		Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	(T).
		Vacuum stripper discharge from chlordene chlorinator in the production of chlordane.	
		Distillation light ends from the production of phthalic anhydride from ortho-xylene.	(T).
		Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	(T).
Pesticides.....		Untreated process wastewater from the production of toxaphene.	(T).
		Untreated wastewater from the production of 2,4-D.	(T).
		Wastewater from the production of methomyl.	(T).
		Process wastewater from creosote production.	(T).
Secondary lead.		Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	(T).

*The EPA Hazardous Waste Number will not be assigned until the listed waste is promulgated.

[FR Doc. 80-14308 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

federal register

Monday
May 19, 1980

Part V

Environmental Protection Agency

Hazardous Waste Management System

Standards Applicable to Generators of Hazardous Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL 1470-7]

Standards for Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act, as amended, seeks to promote the protection of human health and the environment and to conserve valuable material and energy resources. In order to accomplish this, the Act establishes a national program to improve solid waste management, including the control of hazardous waste, the promotion of resource conservation and recovery, and the establishment of environmentally sound solid waste disposal practices.

The EPA promulgated regulations establishing standards for generators of hazardous waste. These regulations were published in the **Federal Register** on February 26, 1980 (45 FR 12722). The amendments published today are both administrative and technical changes to the regulations which are intended to clarify the operation of these regulations. Areas of change include clarification of the effective date and compliance date of the regulation; clarification of the applicability of the regulations to generators which treat, store, or dispose of hazardous waste on-site; a corrected citation to the Part 261 provisions establishing equivalent test methods for determining whether a waste is a hazardous waste; inclusion of a generator's requirement to designate a facility or accept the waste if it cannot be delivered to the designated or alternate facility; a technical correction concerning placarding for rail shipments; expanded requirements for accumulation time in tanks and for contingency plans; addition of the EPA mailing address for generators who are required to notify the Administrator of international shipments; a corrected citation to triple rinsing in the Farmers section; and additions to the Annual Report (EPA Forms 8700-13, 8700-13A and 8700-13B).

DATES: Effective date: November 19, 1980. EPA will accept public comment on these regulations and amendments for administrative errors only (e.g., typographical errors, inaccurate cross references) until July 18, 1980. No extension in the effective date will be made, however, as a result of such comments.

ADDRESSES: The official docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

For information on implementation of these regulations, contact your EPA Regional Office.

FOR FURTHER INFORMATION CONTACT: For technical assistance on these regulations contact Harry W. Trask or Rolf P. Hill, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202-755-9150). For single copies of the amended Part 262 preamble and regulations published today and for copies of the February 26, 1980 version which contained a more descriptive preamble of this whole Part, contact Edward Cox, Solid Waste Publications, 26 W. St. Claire, Cincinnati, Ohio 45268 (513) 684-5362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

SUPPLEMENTARY INFORMATION:

I. Authority

These amendments are issued under authority of sections 2002(a), 3001, 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 ("RCRA" or "the Act"), 42 U.S.C. 6912(a), 6921, 6922, 6923, 6924, 6925.

II. Background

This regulation was published in the **Federal Register** in proposed form for public review and comment on December 18, 1978 as 40 CFR Part 250, Subpart B (43 FR 58969 *et seq.*). The Agency held five public hearings and received a substantial number of written comments on the proposal. The public comment period closed on March 16, 1979.

After consideration of the views of the public, the Agency promulgated the Part 262 regulations in the **Federal Register** February 26, 1980 and promulgates these amendments today.

These amendments are in two categories, administrative amendments and technical amendments. Administrative amendments are corrections or clarifications which are being made to meet the intent of Part 262 preamble and regulations. The technical amendments address the additions or changes which were specified in the February 26, 1980 preamble to the Part 262 regulations.

III. Amendments

1. Effective Date

RCRA establishes the effective date of Subtitle C regulations as "the date six months after the date of promulgation thereof . . ." (Section 3010(b)). Regulations implementing Section 3001 (40 CFR Part 261) identify characteristics of hazardous waste and list particular wastes as hazardous. These regulations are essential in determining who must comply with the Subtitle C regulations. Therefore, EPA intends to make the effective date of regulations implementing Sections 3002 and 3003 six months from the date of promulgation of Part 261. Since Part 261 is promulgated today, the effective date is November 19, 1980.

Some confusion developed when in the **Federal Register** EPA stipulated that the "effective date" was August 26, 1980 and that the "compliance date" was six months after the promulgation of 40 CFR Part 261. For determining the date at which generators will be subject to these regulations, the August 26, 1980 date is incorrect. All generators must comply with these regulations as of November 19, 1980.

2. Purpose, Scope and Applicability

The generator's responsibility to comply with these regulations when treating, storing or disposing of hazardous waste on-site has been clarified. Section 262.10(b) of the February 26, 1980 **Federal Register** stated that a generator who "treats, stores, or disposes of hazardous waste . . ." must only comply with certain sections of Part 262.

It was the Agency's intent, as indicated in the note which followed § 262.10, that the provision only applied to generators who treat, store or dispose of hazardous waste on-site. This administrative amendment clarifies § 262.10(b) by specifying that a generator who "treats, stores, or disposes of hazardous waste on-site . . ." must only comply with certain sections of Part 262. If he treats, stores, or disposes of all of his waste on-site, he need only comply with those specific sections of Part 262 which are identified in § 262.10(b). As a treater, storer, or disposer, however, he must comply with 40 CFR Parts 264, 265 and 122. For those portions of hazardous waste that a generator ships off-site, he must comply with all of the Part 262 regulations.

3. Hazardous Waste Determination

Section 262.11(c)(1) identified two ways for a generator to determine by testing whether the waste he generated was a hazardous waste as identified in

Subpart C of 40 CFR Part 261. The first was by using the EPA Part 261 tests. The second was using equivalent testing methods approved by the Administrator. The citation to the equivalent testing methods which appeared in the February 26 rule was incorrect. Equivalent methods are now described in 40 CFR 260.21.

4. Designated Facility

In the preamble to the final rules promulgated February 26, 1980, the Agency discussed the generator's responsibility to either "designate another facility or instruct the transporter to return the waste" if the transporter was unable to deliver the hazardous waste to the designated facility or the alternate facility. The text of the regulation inadvertently omitted this requirement. A new subparagraph, § 262.20(d), is added today which includes this requirement and makes these regulations consistent with the preamble to the final rules for this Part and the requirements of § 263.21(b).

5. Placarding

Placarding requirements are described in § 262.33. The rule promulgated February 26 required generators to offer the appropriate placard to the initial transporter. DOT, however, has a special requirement for placarding of rail shipments (49 CFR 172.508). The shipper (generator) according to DOT is the person responsible for properly placarding a rail shipment rather than simply offering the appropriate placard. EPA recognizes this difference and is applying the same responsibility for shipments of hazardous waste by rail. This administrative amendment clarifies the operation of § 262.33 by requiring generators to placard rail shipments rather than just offering the appropriate placard. It removes an inconsistency which inadvertently occurred between EPA's and DOT's regulations.

6. Accumulation Time

The preamble to the regulations promulgated on February 26 stated that "accumulation of hazardous waste in storage tanks meeting the technical standards of the Part 264 and 265 regulations" would be added when those standards were promulgated. This amendment requires that the accumulation of hazardous waste in tanks meet the interim status standards in Part 265, Subpart J (except for the waste analysis and trial tests required for treatment tanks). Part 262 may be amended again to include the Part 264 final standards for tanks when they are promulgated later this year.

The container management section of the 40 CFR Part 265, Subpart I regulations, published elsewhere in today's **Federal Register**, is not cited in its entirety as applicable to the accumulation of wastes in DOT containers. Rather, only the sections requiring inspection of the accumulation area (§ 265.174) and buffer zones between the container storage area and adjacent property lines (as required for ignitable and reactive wastes under § 265.176) are stipulated. Since generators who ship hazardous waste off-site are already required to comply with DOT container standards (e.g., must not leak and must be compatible with the waste), these sections from Subpart I were not cited. The Agency believes that it is unnecessary and potentially confusing to require generators to comply with two very similar standards for containers. Such duplication also would not provide additional protection of human health and the environment.

The proposed rule which appeared in the **Federal Register** December 18, 1978 indicated that the Agency was seeking comments regarding the desirability of requiring contingency plans for generators who accumulated hazardous waste. The preamble to the February 26 Part 262 regulations also indicated that the Agency was considering the inclusion of such provisions for generators who accumulated hazardous waste on-site. This amendment requires that such generators comply not only with the Contingency Plan and Emergency Procedures of 40 CFR Part 265, Subpart D but also with the Preparedness and Prevention requirements of 40 CFR Part 265 Subpart C and the personnel training requirements of § 265.16.

These plans and procedures are required of owners or operators of treatment, storage, or disposal facilities, and the Agency believes that there is little difference between accumulation of hazardous waste for shipment off-site and storage so far as potential damage to human health and the environment is concerned. Therefore, the same standards for protection of human health and the environment should apply. (The February 26 preamble and the Background Document discuss the rationale for the accumulation provisions in more detail.)

Similarly, the rationale for requiring all the Part 265, Subpart J requirements for generators who accumulate hazardous waste on-site for 90 days or less (without obtaining a permit) and for requiring certain standards for managing containers and personnel training is based on the belief that less stringent standards could jeopardize human health and the environment.

7. Recordkeeping

Section 262.40(b) which appeared in the February 26, 1980 **Federal Register** did not specify the date from which copies of the Annual and Exception Report were to be kept for three years. This amendment initiates the three year retention period from the due date of the report (March 1).

8. International Shipments

The rule which was promulgated February 26, 1980 required that generators who ship hazardous waste outside the jurisdiction of the United States notify the Administrator prior to the first shipment of each different hazardous waste in each calendar year. This amendment includes a specific address as a means to expedite EPA's handling of this information. In addition, the generator is specifically required to include the name and address of the foreign consignee.

The regulations published elsewhere in today's **Federal Register** under 40 CFR Part 123 do not permit States to be authorized to receive the generator's notice of international shipment. This amendment includes a note reminding generators that they are required to notify the Administrator, rather than the local State authority.

9. Triple Rinsing

The citation for triple rinsing of containers which appeared in the February 26, 1980 **Federal Register** referenced Part 260 of the regulation. The Agency decided to include the triple rinsing provisions in Part 261 rather than in the Part 260 definitions. This amendment corrects the citation for the triple rinsing provisions.

10. Annual Reporting

The Annual Report for generators was promulgated in § 262.41 of the February 26, 1980 **Federal Register.** It consisted of a cover form (8700–13) and a type A form (8700–13A). Each part of this Report had associated instructions. This report was intended for use by generators who shipped hazardous waste to an off-site treatment, storage, or disposal facility. Annual Reports are also required for owners or operators of treatment, storage, or disposal facilities. In an effort to simplify the reporting requirements for the regulated community, the Agency has combined both reports into a single report with similar instructions for each part. Accordingly, the form and instructions which were promulgated in the February

26, 1980 **Federal Register** are amended in today's Part 262. A Facility Annual Report form (8700–13B) and the associated instructions are also promulgated today in Parts 264 and 265.

The changes which appear on the first page of the Hazardous Waste Report (EPA form 8700–13) are not extensive. Section I, (Type of Report), has been modified to include Part A for Generator Annual Reports, Part B for Facility Annual Reports, and Part C for Unmanifested Waste Reports.

The major change which occurred on this form was the addition of a new Section VIII entitled Cost Estimates for Facilities. Both closure and post-closure costs for treatment, storage, or disposal facilities must now be included as required by Parts 264 and 265 promulgated today.

On the Part A report, only minor heading changes have occurred (e.g., to the Waste Identification section) and a general renumbering of all sections due to the addition of the Cost Estimates for Facilities section. Also, the applicability of Part A reports to generators who ship hazardous waste off-site to facilities which they do not own or operate is clarified. Since facility owners or operators are required to file Annual Reports by Part 264, the Agency found it unnecessary to burden generators who treat, store, or dispose of hazardous waste on-site by requiring them to file two nearly identical reports on the same waste. Therefore, generators who ship hazardous waste off-site to a facility which they own or operate or who treat, store or dispose of hazardous waste on-site are not required to file the Part A report. Rather, they are required to file the Part B report for those wastes.

The amended instructions for Generator Annual Report (Part A) are included in Part 262 in today's **Federal Register.** The instructions for Facility Annual Reports (Part B) and Unmanifested Waste Reports (Part C) are published in Parts 264 and 265 elsewhere in today's **Federal Register.**

10. State Programs

The preamble to the February 26, 1980 regulation did not discuss the effect of EPA authorization of State programs on the applicability of these regulations. This Part applies in States which have not received interim or final authorization to operate the hazardous waste management system in lieu of the Federal program. With two exceptions, the provisions of these regulations do not apply in States which have been authorized under the provisions of 40 CFR Part 123. Section 40 CFR 123.128(d), enables States to obtain interim authorization while allowing EPA to administer and enforce the Federal manifest system as established in 40 CFR Parts 262 and 263. Further, EPA will not authorize States to receive the notice of international shipment required in § 262.50. Even in States whose programs are authorized, generators shipping their hazardous waste to a foreign country will be required to notify EPA four weeks prior to the initial shipment.

IV. OMB Review

The preamble to the February 26, 1980 regulations indicated that OMB had not completed its review of the recordkeeping and reporting provisions of the section 3002, 3003 and 3010 standards. OMB has now completed its review and has approved all of those provisions. EPA has developed an evaluation plan for the entire hazardous waste regulatory program. The plan commits EPA to an evaluation of each of those provisions and to modifying them, if necessary, based on the practical experience gained during implementation.

The provisions of § 262.34(a)(5) of this amendment pertaining to recordkeeping and reporting have been submitted to the Office of Management and Budget for review in light of the requirements of the Federal Reports Act, 44 U.S.C. 3501, *et seq.* Time has not permitted completion of this review.

Dated: May 8, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR Part 262 is revised to read as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Subpart A—General

Sec.

262.10 Purpose, scope, and applicability.
262.11 Hazardous waste determination.
262.12 EPA identification numbers.

Subpart B—The Manifest

262.20 General requirements.
262.21 Required information.
262.22 Number of copies.
262.23 Use of the manifest.

Subpart C—Pre-Transport Requirements

262.30 Packaging.
262.31 Labeling.
262.32 Marking.
262.33 Placarding.
262.34 Accumulation time.

Subpart D—Recordkeeping and Reporting

262.40 Recordkeeping.
262.41 Annual reporting.
262.42 Exception reporting.
262.43 Additional reporting.

Subpart E—Special Conditions

262.50 International shipments.
262.51 Farmers.

Appendix—Form

Annual Report (EPA Form 8700–13).

Authority: Secs. 2002(a), 3001, 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978, (42 U.S.C. 6912(a), 6921, 6922, 6923, 6924, 6925)

Subpart A—General

§ 262.10 Purpose, scope, and applicability.

(a) These regulations establish standards for generators of hazardous waste.

(b) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this Part with respect to that waste: Section 262.11 for determining whether or not he has a hazardous waste, § 262.12 for obtaining an EPA identification number, § 262.40(c) and (d) for Recordkeeping, § 262.43 for additional reporting and if applicable, § 262.51 for Farmers.

(c) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in this Part.

(d) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.51 is not required to comply with other standards in this Part or 40 CFR Parts 122, 264, or 265 with respect to such pesticides.

(e) A person who generates a hazardous waste as defined by 40 CFR Part 261 is subject to the compliance requirements and penalties prescribed in Section 3008 of the Act if he does not comply with the requirements of this Part.

Note.— A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in 40 CFR Parts 264, 265, and 266 and Part 122.

§ 262.11 Hazardous waste determination.

A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4 and 261.5.

(b) He must then determine if the waste is listed as a hazardous waste in Subpart D of 40 CFR Part 261.

Note.— Even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the Administrator that the waste from his

particular facility or operation is not a hazardous waste.

(c) If the waste is not listed as a hazardous waste in Subpart D of 40 CFR Part 261, he must determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

§ 262.12 EPA identification numbers.

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700–12. Upon receiving the request the Administrator will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

Subpart B—The Manifest

§ 262.20 General requirements.

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest before transporting the waste off-site.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

§ 262.21 Required information.

(a) the manifest must contain all of the following information:

(1) A manifest document number;

(2) The generator's name, mailing address, telephone number, and EPA identification number;

(3) The name and EPA identification number of each transporter;

(4) The name, address and EPA identification number of the designated facility and an alternate facility, if any;

(5) The description of the waste(s) (e.g., proper shipping name, etc.) required by regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203;

(6) The total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle.

(b) The following certification must appear on the manifest: "This is to certify that the above named materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the EPA."

§ 262.22 Number of copies.

The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

§ 262.23 Use of the manifest.

(a) The generator must:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with § 262.40(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipment of hazardous waste within the United States solely by railroad or solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility. Copies of the manifest are not required for each transporter.

Note.—See § 263.20(e) for special provisions for rail or water (bulk shipment) transporters who deliver hazardous waste by rail or water to the designated facility.

Subpart C—Pre-Transport Requirements

§ 262.30 Packaging.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 CFR Parts 173, 178, and 179.

§ 262.31 Labeling.

Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172.

§ 262.32 Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
Generator's Name and Address ————.
Manifest Document Number ————.

§ 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

§ 262.34 Accumulation time.

(a) A generator may accumulate hazardous waste on-site without a permit for 90 days or less, provided that:

(1) All such waste is shipped off-site in 90 days or less;

(2) The waste is placed in containers which meet the standards of § 262.30 and are managed in accordance with 40 CFR 265.174 and 265.176 or in tanks, provided the generator complies with the requirements of Subpart J of 40 CFR Part 265 except § 265.193;

(3) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(4) Each container is properly labeled and marked according to § 262.31 and § 262.32; and

(5) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265 and with § 265.16.

(b) A generator who accumulates hazardous waste for more than 90 days

is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 122.

Subpart D—Recordkeeping and Reporting

§ 262.40 Recordkeeping.

(a) A generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1).

(c) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(d) The periods or retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

§ 262.41 Annual reporting.

(a) A generator who ships his hazardous waste off-site must submit Annual Reports:

(1) On EPA forms 8700–13 and 8700–13A according to the instructions on the form (See the Appendix to this Part);

(2) To the Regional Administrator for the Region in which the generator is located;

(3) No later than March 1 for the preceding calendar year.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit an Annual Report covering those wastes in accordance with the provisions of 40 CFR Parts 264, 265, and 266 and 40 CFR Part 122.

§ 262.42 Exception reporting.

(a) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(b) A generator must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

§ 262.43 Additional reporting.

The Administrator, as he deems necessary under section 2002(a) and section 3002(6) of the Act, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 CFR Part 261.

Subpart E—Special Conditions

§ 262.50 International shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States must comply with the requirements of this Part and with the special requirements of this section.

(b) When shipping hazardous waste outside the United States, the generator must:

(1) Notify the Administrator in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year;

(i) The waste must be identified by its EPA hazardous waste identification number and its DOT shipping description;

(ii) The name and address of the foreign consignee must be included in this notice;

(iii) These notices must be sent to: Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A–107), United States Environmental Protection Agency, Washington, D.C. 20460.

Note.—This requirement to notify will not be delegated to States authorized under 40 CFR Part 123. Therefore, all generators must notify the Administrator as required above.

(2) Require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;

(3) Meet the requirements under § 262.21 for the manifest, except that:

(i) In place of the name, address, and EPA identification number of the designated facility, the name and address of the foreign consignee must be used;

(ii) The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(c) A generator must file an Exception Report, if:

(1) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter; or

(2) Within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(d) When importing hazardous waste, a person must meet all requirements of § 262.21 for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

§ 262.51 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this Part or other standards in 40 CFR Parts 122, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.33(c) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

Appendix—Form—Annual Report (EPA Form 8700–13)

BILLING CODE 6560-01-M

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

Please print or type with ELITE type *(12 characters per inch)*.

EPA U.S. ENVIRONMENTAL PROTECTION AGENCY
HAZARDOUS WASTE REPORT

PLEASE PLACE LABEL IN THIS SPACE

I. TYPE OF HAZARDOUS WASTE REPORT

PART A: GENERATOR ANNUAL REPORT
THIS REPORT IS FOR THE YEAR ENDING DEC. 31, 19__

PART B: FACILITY ANNUAL REPORT
THIS REPORT FOR YEAR ENDING DEC. 31, 19__

PART C: UNMANIFESTED WASTE REPORT
THIS REPORT IS FOR A WASTE RECEIVED *(day, mo., & yr.)* __ __ – __ __ – 19__

INSTRUCTIONS: You may have received a preprinted label attached to the front of this pamphlet; affix it in the designated space above—left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Sections II, III, and IV below blank. If you did not receive a preprinted label, complete all sections. "Installation" means a single site where hazardous waste is generated, treated, stored, or disposed of. Please refer to the specific instructions for generators or facilities before completing this form. The information requested herein is required by law *(Section 3002/3004 of the Resource Conservation and Recovery Act)*.

II. INSTALLATION'S EPA I.D. NUMBER

F (1–2) | (3–13) | X/A (14) | C (15) 1

III. NAME OF INSTALLATION

(39–47)

IV. INSTALLATION MAILING ADDRESS

STREET OR P.O. BOX
C 3 (15–16) (45)

CITY OR TOWN (40) | ST. (41–42) | ZIP CODE (47 – 51)
C 4 (15–16)

V. LOCATION OF INSTALLATION

STREET OR ROUTE NUMBER
C 5 (15–16) (45)

CITY OR TOWN (40) | ST. (41–42) | ZIP CODE (47 – 51)
C 6 (15–16)

VI. INSTALLATION CONTACT

NAME *(last and first)* (45) | PHONE NO. *(area code & no.)* (46 – 55)
C 2 (15–16)

VII. TRANSPORTATION SERVICES USED *(for Part A reports only)*

List the EPA Identification Numbers for those transporters whose services were used during the reporting year represented by this report.

VIII. COST ESTIMATES FOR FACILITIES *(for Part B reports only)*

A. COST ESTIMATE FOR FACILITY CLOSURE	B. COST ESTIMATE FOR POST CLOSURE MONITORING AND MAINTENANCE *(disposal facilities only)*
C 1 G (15–18) $ (18 – 18), (19 – 21), (22 – 24)	$ (25 – 27), (28 – 30), (31 – 33)

IX. 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. PRINT OR TYPE NAME _____ B. SIGNATURE _____ C. DATE SIGNED _____

EPA Form 8700-13 (5-80)

Please print or type with ELITE type *(12 characters/inch)*.

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

GENERATOR ANNUAL REPORT – PART A

(Collected under the authority of Section 3002 of RCRA.)

FOR OFFICIAL USE ONLY *(Items 1 and 2)*

1. DATE RECEIVED – – 19

2. TYPE OF REPORT

X. GENERATOR'S EPA I.D. NO. G

XI. FACILITY'S EPA I.D. NO.

XII. FACILITY NAME *(specify)*

XIII. FACILITY ADDRESS *(street or P.O. box, city, state, & zip code)*

XIV. WASTE IDENTIFICATION

LINE NUMBER	A. DESCRIPTION OF WASTE	B. DOT HAZARD CLASS	C. EPA HAZARDOUS WASTE NUMBER *(see instructions)*	D. AMOUNT OF WASTE	E. UNIT OF MEASURE *(enter code)*
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

XV. COMMENTS *(enter information by line number — see instructions)*

EPA Form 8700-13A (5-80)

BILLING CODE 6560-01-C

PAGE ____ OF ____

General Instructions, Hazardous Waste Report (EPA Form 8700–13)

Important: READ ALL INSTRUCTIONS BEFORE COMPLETING THIS FORM.

Section I. Type of Hazardous Waste Report

Part A: Generator Annual Report—For generators who ship their waste off-site to facilities which they do not own or operate, fill in the reporting year for this report (e.g., 1982).

Note.—Generators who ship hazardous waste off-site to a facility which they own or operate must complete the facility (Part B) report instead of the Part A report.

Part B: Facility Annual Report—For owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste, fill in the reporting year for this report (e.g., 1982).

Part C: Unmanifested Waste Report—For facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, fill in the date the waste was received at the facility (e.g. 04–12–1982).

Section II thru Section IV. Installation I.D. Number, Name of Installation, and Installation Mailing Address

If you received a preprinted label from EPA, attach it in the space provided and leave Sections II through IV blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete Section II through Section IV.

Section V. Location of Installation

If your installation location address is different than the mailing address, enter the location address of your installation.

Section VI. Installation Contact

Enter the name (last and first) and telephone number of the person who may be contacted regarding information contained in this report.

Section VII. Transportation Services Used (For Part A Reports ONLY)

List the EPA Identification Number for each transporter whose services you used during the reporting year.

Section VIII. Cost Estimates for Facilities (For Part B Reports ONLY)

A. Enter the most recent cost estimate for facility closure in dollars. See Subpart H of 40 CFR Parts 264 or 265 for more detail.

B. For disposal facilities only, enter the most recent cost estimate for post closure monitoring and maintenance. See Subpart H of 40 CFR Parts 264 or 265 for more detail.

Section IX. Certification

The generator or his authorized representative (Part A reports) or the owner or operator of the facility or his authorized representative (Parts B and C reports) must sign and date the certification where indicated. The printed or typed name of the person signing the report must also be included where indicated.

Note.—Since more than one page is required for each report, enter the page number of each sheet in the lower right corner as well as the total number of pages.

Generator Annual Report, Part A Instructions (EPA Form 8700–13A)

Generator Annual Report for generators who ship their hazardous waste off-site to facilities which they do not own or operate.

Important: READ ALL INSTRUCTIONS BEFORE COMPLETING THIS REPORT.

Section X. Generator's Identification Number

Enter your EPA identification number.

Example:

X. GENERATOR'S EPA I.D. NO.												
G	N	J	D	7	8	4	6	2	1	3	8	3

Section XI. Facility's Identification Number

Enter the EPA identification number of the facility to which you sent the waste described below in Section XIV (a separate sheet must be used for each facility to which you sent hazardous waste.)

Section XII. Facility Name

Enter the name of the facility corresponding to the facility's EPA identification number in Section XI.

Section XIII. Facility Address

Enter the address of the facility corresponding to the facility's EPA identification number in Section XI.

Section XIV. Waste Identification

All information in this section must be entered by line number. Each line entry will describe the total annual amount of each waste shipped to the facility identified in Section XI, above.

Section XIV–A. Description of Waste

For hazardous wastes that are listed under 40 CFR Part 261, Subpart D, enter the EPA listed name, abbreviated if necessary. Where mixtures of listed wastes were shipped, enter the description which you believe best describes the waste.

For unlisted hazardous waste identified under 40 CFR Part 261, Subpart C, enter the description which you believe best describes the waste. Include the specific manufacturing or other process generating the waste (e.g., green sludge from widget manufacturing) and, if known, the chemical or generic chemical name of the waste.

Section XIV–B. DOT Hazard Class

Enter the two digit code from Table 1 which corresponds to the DOT hazard class of the waste described. (If the waste described has been shipped under more than one DOT hazard class, use a separate line for each DOT hazard class.)

Table 1

DOT hazard class	Code
Combustible	01
Corrosive	02
Etiologic agent	03
Explosive A	04
Explosive B	05
Flammable gas	06
Flammable liquid	07
Flammable solid	08
Irritating agent	09
Nonflammable gas	10
Organic peroxide	11
ORM–E	12
Oxidizer	13
Poison A	14
Poison B	15
Radioactive	16

Section XIV–C. EPA Hazardous Waste Number

For listed wastes, enter the EPA Hazardous Waste Number from 40 CFR Part 261, Subpart D, which identifies the waste.

For a mixture of more than one listed waste, enter each of the applicable EPA Hazardous Waste Numbers. Four spaces are provided. If more space is needed, continue on the next line(s) and leave all other information on that line blank.

XIV. WASTE IDENTIFICATION					
LINE NUMBER	A. DESCRIPTION OF WASTE	B. DOT HAZARD CLASS	C. EPA HAZARDOUS WASTE NUMBER (see instructions)	D. AMOUNT OF WASTE	UNIT OF MEASURE (enter code)
1	Steel finishing sludge	02	K060 K061 K062 K063	41246	T
2			K064		

For unlisted hazardous wastes, enter the EPA Hazardous Waste Numbers from 40 CFR Part 261, Subparts C, applicable to the waste. If more than four spaces are required, follow the procedure described above.

Section XIV–D. Amount of Waste

Enter the amount of this waste you shipped to the facility identified in Section XI and include the weight of containers if left at the treatment, storage, or disposal facility.

Section XIV–E. Unit of Measure

Enter the unit of measure code for the quantity of waste described on this line. Units of measure which must be used in this report and the appropriate codes are:

Units of measure	Code
Pounds	P
Short tons (2,000 lbs)	T
Kilograms	K
Tonnes (1,000 kg)	M

Units of volume may not be used for reporting but must be converted into one of the above units of weight taking into account the appropriate density or specific gravity of the waste.

Section XV. Comments

This space may be used to explain or clarify any entry. If used, enter a cross reference to the appropriate Section number.

Note.—Since more than one page is required for each report, enter the page number of each sheet in the lower right corner as well as the total number of pages.

[FR Doc. 80–14665 Filed 5–16–80; 8:45 am]

BILLING CODE 6560–01–M

federal register

Monday
May 19, 1980

Part VI

Environmental Protection Agency

Hazardous Waste Management System

Standards Applicable to Transporters of Hazardous Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 263

[FRL 1470-8]

Standards for Transporters of Hazardous Waste

AGENCY: Environmental Protection Agency.
ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act, as amended, seeks to promote the protection of human health and the environment and to conserve valuable material and energy resources. In order to accomplish this, the Act establishes a national program to improve solid waste management, including the control of hazardous waste, the promotion of resource conservation and recovery, and the establishment of environmentally sound solid waste disposal practices.

The Part 263 regulations published February 26, 1980 in the **Federal Register** and the amended version published today establish standards for transporters of hazardous waste. These amendments are administrative changes to the regulations. Areas of change include: clarification of the effective date and compliance date of the regulation, clarification of the recordkeeping retention time, and an additional telephone number(s) for reporting discharges.

DATES: Effective date: November 19, 1980. EPA will accept public comment on these regulations and amendments for administrative errors only (e.g., typographical errors, incorrect cross references) until July 18, 1980. No extension in the effective date will be made, however, as a result of such comments.

ADDRESSES: The official docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C., and is available for viewing from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

For information on implementation of these regulations, contact your EPA Regional Office.

FOR FURTHER INFORMATION CONTACT: For technical assistance on these regulations, contact Harry W. Trask or Carolyn Barley, Office of Solid Waste, (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460 (202-755-9145). For single copies of the amended Part 263 preamble and regulations published today and for copies of the February 26, 1980 version which contains a more descriptive preamble of this whole Part, contact Edward Cox, Solid Waste Publications, 26 West Saint Claire, Cincinnati, Ohio 45268 (513/684-5362). Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

SUPPLEMENTARY INFORMATION:

I. Authority

These amendments are issued under authority of Sections 2002(a), 3001, 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 ("RCRA" or "the Act"), 42 U.S.C. 6912(a), 6921, 6922, 6923, 6924, 6925.

II. Background

This regulation was published in the **Federal Register** in proposed form for public review and comment on April 28, 1978 as 40 CFR Part 250, Subpart C (43 FR 18506 *et seq.*). The Agency held six public hearings, one of which was a joint hearing with the Department of Transportation (DOT) and received a substantial number of written comments on the proposal. The public comment period closed on March 16, 1979.

After consideration of the views of the public, the Agency promulgated the Part 263 regulations in the **Federal Register** February 26, 1980 and promulgates this amended version today.

These amendments are administrative amendments and are corrections or clarifications to the intent of Part 263 preamble and regulations.

III. Amendments

1. Effective Date

RCRA establishes the effective date of Subtitle C regulations as "the date six months after the date of promulgation thereof . . ." (Section 3010(b)). Regulations implementing Section 3001 (40 CFR Part 261) identify characteristics of hazardous waste and list particular wastes as hazardous. These regulations are essential in determining who must comply with the Subtitle C regulations. Therefore, EPA intends to make the effective date of regulations implementing Sections 3002 and 3003 six months from the date of promulgation of Part 261. Since Part 261 is promulgated today, the effective date is November 19, 1980.

Some confusion developed when in the **Federal Register** EPA stipulated that the "effective date" was August 26, 1980 and that the "compliance date" was six months after the promulgation of 40 CFR Part 261. For determining the date at which transporters will be subject to these regulations, the August 26, 1980 date is incorrect. All transporters must comply with these regulations as of November 19, 1980.

2. Recordkeeping

Section 263.22 (b) and (c) which appeared in the February 26, 1980 **Federal Register** did not specify the length of time the transporter was required to retain a copy of the manifest or shipping paper. These amendments clarify this requirement by requiring records to be kept for three years from the date the manifest was accepted by the initial transporter. This time period is consistent with the other manifest recordkeeping requirements.

3. Discharge Reporting

The regulations which appeared in the February 26, 1980 **Federal Register** concerning immediate action for discharges did not include a telephone number(s) for reporting discharges which occur outside the toll free calling area. Therefore, Section 263.30(c)(1) is amended to include a toll call telephone number for transporters to use when reporting discharges which occur outside the continental United States. DOT will also amend 49 CFR 171.15 to require carriers (transporters) to use this toll number when applicable.

Section 263.30(d) limited water (bulk shipment) transporters to telephone reporting of discharges to either a toll free number or a District of Columbia number. Since it is not always practicable for water transporters (bulk shipment) to report discharges using these two numbers, EPA is amending this section to reference the Coast Guard's broader telephone reporting requirements found in 33 CFR 153.203.

4. State Programs

The preamble to the February 26, 1980 regulation did not discuss the effect of EPA authorization of State programs on the applicability of these regulations. This Part applies in States which have not received interim or final authorization to operate the hazardous waste management system in lieu of the Federal program. With one exception, the provisions of these regulations do not apply in States which have been authorized under the provisions of 40 CFR Part 123. Section 40 CFR 123.128(d) enables States to obtain interim authorization while allowing EPA to administer and enforce the Federal manifest system as established in 40 CFR Parts 262 and 263.

IV. OMB Review

The preamble to the February 26, 1980 regulations indicated that OMB had not completed its review of the recordkeeping and reporting provisions of the Section 3002, 3003 and 3010 standards. OMB has now completed its review and has approved all of those provisions. EPA has developed an evaluation plan for the entire hazardous waste regulatory program. The plan commits EPA to an evaluation of each of those provisions and to modifying them, if necessary, based on the practical experience gained during implementation.

Dated: May 8, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR Part 263 is revised to read as follows:

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

Subpart A—General

Sec.
263.10 Scope.
263.11 EPA Identification Numbers.

Subpart B—Compliance With the Manifest System and Recordkeeping

263.20 The Manifest System.
263.21 Compliance with the Manifest.
263.22 Recordkeeping.

Subpart C—Hazardous Waste Discharges

263.30 Immediate Action.
263.31 Discharge Clean Up.

Authority: Sec. 2002(a), 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978, (42 U.S.C. 6912, 6922, 6923, 6924, 6925).

Subpart A—General

§ 263.10 Scope.

(a) These regulations establish standards which apply to persons transporting hazardous waste within the United States if the transportation requires a manifest under 40 CFR Part 262.

Note.—The regulations set forth in Parts 262 and 263 establish the responsibilities of generators and transporters of hazardous waste in the handling, transportation, and management of that waste. In these regulations, EPA has expressly adopted certain regulations of the Department of Transportation (DOT) governing the transportation of hazardous materials. These regulations concern, among other things, labeling, marking, placarding, using proper containers, and reporting discharges. EPA has expressly adopted these regulations in order to satisfy its statutory obligation to promulgate regulations which are necessary to protect human health and the environment in the transportation of hazardous waste. EPA's adoption of these DOT regulations ensures consistency with the requirements of DOT and thus avoids the establishment of duplicative or conflicting requirements with respect to these matters. These EPA regulations which apply to both interstate and intrastate transportation of hazardous waste are enforceable by EPA.

DOT has revised its hazardous materials transportation regulations in order to encompass the transportation of hazardous waste and to regulate intrastate, as well as interstate, transportation of hazardous waste. Transporters of hazardous waste are cautioned that DOT's regulations are fully applicable to their activities and enforceable by DOT. These DOT regulations are codified in Title 49, Code of Federal Regulations, Subchapter C.

EPA and DOT worked together to develop standards for transporters of hazardous waste in order to avoid conflicting requirements. Except for transporters of bulk shipments of hazardous waste by water, a transporter who meets all applicable requirements of 49 CFR Parts 171 through 179 and the requirements of 40 CFR sections 263.11 and 263.31 will be deemed in compliance with this Part. Regardless of DOT's action, EPA retains its authority to enforce these regulations.

(b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators of permitted hazardous waste management facilities.

(c) A transporter of hazardous waste must also comply with 40 CFR Part 262, Standards Applicable to Generators of Hazardous Waste, if he:

(1) Transports hazardous waste into the United States from abroad; or

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

Note.—Transporters who store hazardous waste are required to comply with the storage standards in 40 CFR Parts 264 and 265 and the permit requirements of 40 CFR Part 122.

§ 263.11 EPA identification number.

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the Administrator.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Administrator using EPA Form 8700–12. Upon receiving the request, the Administrator will assign an EPA identification number to the transporter.

Subpart B—Compliance With the Manifest System and Recordkeeping

§ 263.20 The manifest system.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest, signed by the generator in accordance with the provisions of 40 CFR Part 262.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with § 263.22; and

(3) give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraphs (c) and (d) of this section do not apply to rail or water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by rail or water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial rail or water (bulk shipment) transporter obtains the date of delivery and signature of the rail or water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each rail or water (bulk shipment) transporter in accordance with § 263.22.

(f) Transporters who transport hazardous waste out of the United States must:

(1) indicate on the manifest the date the hazardous waste left the United States; and

(2) sign the manifest and retain one copy in accordance with § 263.22(c); and

(3) return a signed copy of the manifest to the generator.

§ 263.21 Compliance with the manifest.

(a) The transporter must deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

§ 263.22 Recordkeeping.

(a) A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by rail or water (bulk shipment), each rail or water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required in § 263.20(e)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) A transporter who transports hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(d) The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

Subpart C—Hazardous Waste Discharges

§ 263.30 Immediate action.

(a) In the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area).

(b) If a discharge of hazardous waste occurs during transportation and an official (State or local government or a Federal Agency) acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must:

(1) Give notice, if required by 49 CFR 171.15, to the National Response Center (800–424–8802 or 202–426–2675); and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

§ 263.31 Discharge clean up.

A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

[FR Doc. 80–14666 Filed 5–16–80; 8:45 am]

BILLING CODE 6560–01–M

federal register

Monday
May 19, 1980

Part VII

Environmental Protection Agency

Hazardous Waste Management System

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

Page Intentionally Left Blank

III. *Interim Status Standards*
A. *Authority*
B. *Criteria for Interim Status Standards*
C. *Added Requirements*
1. Ground-Water and Leachate Monitoring
2. Incinerators
3. Thermal Treatment
4. Closure and Post-Closure
5. Ignitable, Reactive, or Incompatible Wastes
6. Landfill Rules
7. Waste Analysis
8. Site Selection Standards
D. *Compliance Period*
E. *Notes and Variances*
F. *Equity*
1. Common Permit Effective Date
2. Case-by-Case Interim Status Standards
3. No Intention to Obtain Permits
IV. *General Issues*
A. *Degree of Hazard*
1. Classification of Waste by Risk
2. Tailoring of Management Standards
3. Response to Degree of Hazard Objectives
B. *Volatile Waste*
C. *Performance Versus Design and Operation Standards*
D. *Notes, Variances, and Equivalency*
E. *Commercial Products Standards*
F. *Storage of Recycled Waste*
G. *General Standards for Storage*
H. *Owner or Operator*
I. *Inactive Facilities*
J. *New Facilities and Existing Facilities*
K. *References to Other Acts, Regulations, and Standards*
L. *Integration With Other Acts*
1. Underground Injection Control Program
2. Ocean Disposal Program
3. NPDES Permitted Facilities
a. Regulation of POTWs as Section 3004 Facilities
b. Regulation of NPDES Treatment Train Facilities under Section 3004
c. Regulation of Sewage Sludge under Subtitle C
4. BAT Toxics and Pretreatment Standards
5. Clean Air Act
6. Toxic Substances Control Act
7. Surface Mining Control and Reclamation Act
8. National Environmental Policy Act
M. *Special Wastes*
1. Changes in the Section 3001 Characteristics
2. Phasing and Increased Flexibility in Parts 264 and 265
V. *Detailed Analysis of Phase I Rules*
A. *Subpart A—General*
1. Purpose, Scope, and Applicability
a. Ocean Disposal
b. Underground Injection
c. POTWs
d. Authorized State RCRA Programs
e. Part 261 Exclusions, Including Small Quantities of Hazardous Waste, and Recycled or Re-used Hazardous Waste
f. Generators Who Accumulate On-site, Farmers, and Totally Enclosed Treatment Facilities
2. Relationship to Interim Status Standards
3. Imminent Hazard Action
B. *Subpart B—General Facility Standards*
1. Identification Number
2. Required Notices
3. General Waste Analysis
4. Security
5. General Inspection Requirements
6. Personnel Training
7. General Requirements for Ignitable, Reactive, or Incompatible Wastes
C. *Subpart C—Preparedness and Prevention,* and *Subpart D—Contingency Plan and Emergency Procedures*
1. Defer Regulations Until Permit Issued
2. Tailor Rules to Circumstances
3. Protection Inside Versus Outside Facilities
4. Delete Contingency Plan
5. Ground-Water Contamination
6. Implementation of the Contingency Plan
7. Submission of Contingency Plans
8. Confidential Information
9. Insufficient Time for Plan Submission
10. Emergency Coordinator
11. Resuming Operations After an Emergency
D. *Subpart E—Manifest System, Recordkeeping, and Reporting*
1. General Issues
a. Burden
b. Class of Hazard
2. Manifest System
a. Manifest Copies
b. Manifest Discrepancies
c. Manifest Retention
3. Recordkeeping
a. Congressional Intent
b. Operating Record
c. Warrantless Inspections
d. Nomenclature for Waste Information
4. Reporting
a. Joint Filing of Reports
b. Submission of the Annual Report
c. Certification Statement
d. Unmanifested Waste Report
E. *Subpart F—Ground-Water Monitoring*
1. Applicability
2. Ground-Water Monitoring System
3. Sampling and Analysis
4. Preparation, Evaluation, and Response
5. Recordkeeping and Reporting
F. *Subpart G—Closure and Post-Closure*
1. Period of Post-Closure Care
2. Notice in Deed to Property
3. Amendment and Submission of Plans
4. Time Allowed for Closure
5. Post-Closure Permits
G. *Subpart H—Financial Requirements*
1. Liability
2. Financial Assurance
3. Cost Estimates
4. Publically-Owned Facilities
H. *Subpart I—Containers*
1. Condition of Containers
2. Compatibility of Waste With Container
3. Management of Containers
4. Inspections
5. Closure
6. Special Requirements for Ignitable or Reactive Waste
7. Special Requirements for Incompatible Wastes
8. Empty Non-Combustible Storage Containers
9. Paper Bags
I. *Subpart J—Tanks*
1. Definitions
2. General Operating Requirements
3. Waste Analysis and Trial Tests
4. Inspections
5. Ignitable, Reactive, or Incompatible Wastes
6. Closure
J. *Subpart K—Surface Impoundments*
1. Existing Surface Impoundments
2. Minimum Freeboard
3. Containment System
4. Waste Analysis and Recordkeeping
5. Inspections
6. Closure and Post-Closure
7. Ignitable, Reactive, or Incompatible Waste
K. *Subpart L—Piles*
1. Protection from Wind
2. Waste Analysis
3. Containment
4. Closure
5. Special Requirements for Ignitable or Reactive Waste
6. Special Requirements for Incompatible Wastes
L. *Subpart M—Land Treatment (Landfarms)*
1. Purpose of Treatment
2. Surface Water Run-on and Contaminated Run-off
3. Recordkeeping
4. Waste Analysis
5. Monitoring
6. Food-Chain Crops
7. Closure
8. Ignitable, Reactive, or Incompatible Wastes
M. *Subpart N—Landfills*
1. Landfill Cells
2. Surface Water Run-on
3. Contaminated Surface Water Run-off
4. Wind Dispersal
5. Surveying and Recordkeeping
6. Landfill Closure
7. Post-Closure Care
8. Ignitable or Reactive Waste
9. Incompatible Wastes
10. Bulk Liquid Waste
11. Containerized Liquid Waste
12. Empty Containers
N. *Subpart O—Incinerators*
1. General Operating Requirements
2. Monitoring and Inspections
3. Waste Analysis
4. Energy Recovery
5. Closure
O. *Subpart P—Thermal Treatment*
P. *Subpart Q—Chemical, Physical, and Biological Treatment*
Q. *Subpart R—Underground Injection*
VI. *OMB Review*
VII. *Supporting Documents*
A. *Background Documents*
B. *Reference Manuals*

I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), 3001 through 3007, and 3010 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6905, 6912(a) and 6921 through 6927, and 6930.

II. Introduction

A. Background

Early this year, EPA began issuing the regulations which comprise the Subtitle C hazardous waste management system. On February 26, 1980, it promulgated standards for generators and transporters of waste under Sections 3002 and 3003 of RCRA (Parts 262 and 263, respectively) and a public notice establishing procedures for filing a notice of hazardous waste activity under Section 3010. Today, in addition to these Part 264 and Part 265 regulations, EPA is publishing permit procedures, and guidelines for the approval of State hazardous waste programs under Sections 3005 and 3006 (Parts 122, 123, and 124) and the first phase of its Section 3001 hazardous waste list (part 261) and Part 260, which defines words and phrases used in Parts 261 through 265, and contains provisions generally applicable to all of those regulations.

The preamble to the Section 3001 regulations should be read for an introduction to the hazardous waste management problem in the United States and an explanation of the framework of Subtitle C. It also discusses many of the general issues and difficult problems the Agency has faced in finalizing the Section 3001 and Section 3004 regulations.

The Agency developed its Section 3004 regulations in tandem with its Section 3001 regulations, holding numerous meetings with experts in hazardous waste management, States, Federal agencies, industry, environmental groups, and other individuals and organizations to discuss possible management standards. EPA also circulated draft regulations for comment and held several public hearings. Based on the comments received in meetings, hearings, and on its draft regulations, and on information the Agency collected, on December 18, 1978, EPA proposed national standards for the location, design, operation, monitoring, closure, and post-closure care of facilities which treat, store, or dispose of hazardous waste (43 FR 58982–59022). The standards were designed to protect human health and the environment by ensuring the proper design, construction, and operation of hazardous waste management facilities in accordance with the mandate of Section 3004 of RCRA.

EPA held five public hearings on its December 18, 1978, proposal, at which several hundred persons testified. The Agency received over one thousand sets of written comments on the proposed Section 3004 regulations. The Agency has carefully considered all of the comments it received. Many of them raised difficult technical questions. Analysis and resolution of these questions is hampered in general by the Nation's lack of long-term experience with advanced waste management technologies. This limited experience has made it difficult to evaluate the accuracy of the often conflicting claims which the commenters made regarding the proposed Section 3004 standards.

It has become clear to the Agency that it may take several years, in some cases, to adequately develop the data and perform the analyses necessary to resolve the more complex technical issues raised by the regulations and the comments in a way that will allow promulgation of nationally applicable detailed technical standards. As a result, promulgation of regulations involving these issues is being postponed. On the other hand, some of the proposed regulations prescribed recordkeeping and reporting requirements, and many involved recognized "good management practices" which are not highly technical. This second category of standards is adequately supported by existing data, and can be promulgated now. Accordingly, the standards for hazardous waste management facilities will be promulgated and implemented in phases.

B. Overview

1. *Phasing of the Regulations.* The Phase I standards are being promulgated today. They include a nearly complete set of interim status standards, in Part 265, and most ot the general status (Part 264) administrative and non-technical operating standards. The interim status standards cover the following areas:

1. Purpose, Scope, and Applicability and other General Standards
2. Waste Analysis Requirements
3. Security
4. Inspections
5. Training
6. Preparedness and Prevention
7. Contingency Plans and Emergency Procedures
8. Manifest System, Recordkeeping, and Reporting
9. Ground-Water Monitoring
10. Closure and Post-Closure Care
11. Financial Requirements (Partial)
12. Use and Management of Containers
13. Tanks
14. Surface Impoundments
15. Waste Piles
16. Land Treatment
17. Landfills
18. Incinerators
19. Thermal Treatment
20. Chemical, Physical, and Biological Treatment
21. Underground Injection

The general status regulations promulgated today cover the first eight of these areas and are essentially identical to the corresponding interim status standards. The section of the preamble entitled "Interim Status Standards" explains when the interim status standards apply to facilities and when the general standards apply.

As previously mentioned, the Agency believes it may take several years to resolve all of the issues necessary to promulgate detailed national technical standards for some types of facilities (e.g., the design requirements for landfills). In the meantime, however, in order to issue permits which will protect human health and the environment, EPA must evaluate the technical capabilities of specific facilities to manage hazardous waste. Therefore, as an interim measure, EPA will publish in the near future Phase II of the Section 3004 regulations—a set of technical regulations which will allow permits to be issued based on the Agency's best engineering judgment of the technical requirements which individual facilities must meet. These regulations will allow permits to be processed in a manner that will ensure the protection of human health and the environment by evaluating hazardous waste management facilities in terms of both site-specific factors and the nature of the waste that the facility will manage. At a minimum, these regulations will contain a set of factors (e.g., distance to ground water and waste mobility) which must be considered. Where they are available, the regulations will also contain models, formulas, and performance standards to provide a standardized method of analysis. In determining whether a facility will adequately safeguard human health and the environment, the Regional Administrator will apply his best engineering judgment to data which the applicant submits concerning these factors.

The third phase of this regulatory program will involve the resolution of the complex technical issues described earlier, and the reproposal and ultimate promulgation of more definitive counterparts of the Phase II standards. These more definitive standards are expected to supplant the Phase II standards and make the permitting process more straightforward. In addition to standards for specific types of facilities, the Phase III regulations may also include standards for specific industries and waste which require special management standards.

The Agency believes that this three-phase regulatory strategy will give maximum protection to human health and the environment without imposing the more complex regulations as national technical standards before the controversial issues surrounding them can be fully investigated. This strategy also should not complicate implementation of the hazardous waste program. Its only effect will be to postpone by some months the beginning of facility permitting using the Phase II standards. Any postponement in issuing these Part 265 interim status regulations, however, would cause an unwarranted delay in commencement of the Subtitle C management program.

All the standards EPA is promulgating today are written so as to be broadly applicable to large numbers of facilities and vast amounts of hazardous waste. The Agency has been faced with the task of balancing the goals of broad applicability and regulatory specificity. EPA believes that the technical regulations promulgated today are clear and sufficiently straightforward so that any reasonably qualified engineer should be able to interpret and implement them.

EPA has used all of the information available to it to try to write standards which begin to address its mandate in Section 3004—to promulgate such standards as may be necessary to protect human health and the environment. Some members of the regulated industry may argue that the Agency should wait to promulgate its Section 3004 standards until it has an even broader data base and can write much more specific nationally applicable technical standards. EPA does not believe that it would be reasonable to wait longer. The Agency has been called upon to address an extremely serious environmental problem and must proceed as quickly as possible given its limited resources.

These standards form only the bare outline of those that will be coming in Phases II and III. Interim status standards are not the final answer to the long-term environmental problems caused by hazardous waste disposal; they really form the outline of the technical standards and best engineering judgment permits that are to come. Nevertheless, through the use of the manifest system, the recordkeeping and reporting requirements, and the closure, waste analysis, training, inspection, and contingency plan requirements, EPA will begin to bring under control environmentally disastrous practices that up to now have often gone largely unregulated.

2. *Organization of Regulations and Preamble.* EPA has totally reorganized its Subtitle C regulations in response to comments that its proposed regulations were difficult to read. Regulations implementing Section 3004 were originally proposed as Subpart D of Part 250 of Title 40 of the Code of Federal Regulations. The proposed interim status standards were specified in paragraph (c) of § 250.40. The interim status standards have been recodified as Part 265, while the general status standards (i.e., those independently enforceable standards which will be used to issue permits and which apply to facilities without interim status) appear in Part 264. Definitions of terms used in these regulations, like those used in Parts 261 through 263, are contained in § 260.10.

Subparts A of Parts 264 and 265 specify how the regulations are to be used and which facilities are subject to which regulations. All facilities which treat, store, or dispose of hazardous waste (as defined in the Part 261 regulations), other than those excluded in Subpart A are, by and large, subject to these regulations. Some of the regulations, however, apply only to certain kinds of facilities or contain special conditions for certain classes of facilities.

Subparts B to H (excluding Subpart F) of Part 265 and Subparts B to E of Part 264 contain standards which apply generally to all types of facilities. Subparts I to R of Part 265 contain standards for specific types of facilities (landfills, tanks, incinerators, etc.). The corresponding facility-specific Part 264 standards will be promulgated in Phases II and III of this regulatory program.

The remainder of this preamble is divided into four sections. The first section discusses the role of the interim status standards and the major issues raised by the commenters on those standards. The next section deals with a number of general issues which pertain to all of the Section 3004 standards. Many of the issues discussed in this section pertain to the Phases II and III regulations as much or more than they do to the Phase I regulations. EPA is making an effort, insofar as decisions have been made, to inform the public of how the standards for hazardous waste management facilities will develop over time. The third section is a subpart-by-subpart analysis of the final Phase I rules. This analysis summarizes the major issues raised by the commenters on each section of the proposed rules, and explains how the final rules reflect the Agency's resolution of these issues. The last section of the preamble describes the documents which support these regulations.

3. *Interim Final Provisions.* Most sections of these regulations have been changed in response to comments. Those sections which have been modified substantially are being issued as interim final regulations so that the public can comment on the modified standards before they are promulgated as "final final" regulations. All of the Part 264 and Part 265 regulations are promulgated today, however, for purposes of the six-month effective date under Section 3010(b).

Those sections of the regulations which EPA is promulgating as interim final are as follows:

PART 264

Sec.
264.12 Required notices.

PART 265

Subpart B—General Facility Standards

265.12 Required notices.
265.17 General requirements for ignitable, reactive, or incompatible wastes.

Subpart F—Ground-Water Monitoring

265.90 Applicability.
265.91 Ground-water monitoring system.
265.92 Sampling and analysis.
265.93 Preparation, evaluation, and response.
265.94 Recordkeeping and reporting.

Subpart G—Closure and Post-Closure

265.111 Closure performance standard.
265.112 Closure plan; amendment of plan.
265.113 Time allowed for closure.
265.117 Post-closure care and use of property; period of care.
265.118 Post-closure plan; amendment of plan.

Subpart I—Use and Management of Containers

265.176 Special requirements for ignitable or reactive waste.

Subpart J—Tanks

265.198 Special requirements for ignitable or reactive waste.

Subpart K—Surface Impoundments

265.228 Closure and post-closure.

Subpart L—Waste Piles

265.251 Protection from wind.
265.252 Waste analysis.
265.253 Containment.
265.256 Special requirements for ignitable or reactive waste.
265.257 Special requirements for incompatible wastes.

Subpart M—Land Treatment

265.272 General operating requirements.
265.273 Waste analysis.
265.276 Food chain crops.
265.278 Unsaturated zone (zone of aeration) monitoring.
265.280 Closure and post-closure.

Subpart N—Landfills

Sec.
265.310 Closure and post-closure.
265.314 Special requirements for liquid waste.
265.315 Special requirements for containers.

Subpart O—Incinerators

265.343 General operating requirements.
265.345 Waste analysis.
265.347 Monitoring and inspections.
265.351 Closure.

Subpart P—Thermal Treatment

265.373 General operating requirements.
265.375 Waste analysis.
265.377 Monitoring and inspections.
265.381 Closure.
265.382 Open burning; waste explosives.

Subpart Q—Chemical, Physical, and Biological Treatment

265.405 Special requirements for ignitable or reactive waste.

Subpart R—Underground Injection

265.430 Applicability.

Certain sections of the Part 265 regulations were proposed as general status standards, and have not been so substantially modified that the Agency is accepting further public comments on their substance. However, because they have now been incorporated in the interim status standards, EPA will accept comments on the propriety of their inclusion as such. As the preamble indicates, almost all of the additions to the interim status standards were made in response to comments, but EPA believes that additional public comments will assist the Agency in any necessary adjustments to the Part 265 standards. The Agency will accept comments on the propriety as interim status standards of the following sections:

PART 265

Subpart B—General Facility Standards

Sec.
265.13 General waste analysis.

Subpart J—Tanks

265.192 General operating requirements.
265.193 Waste analysis and trial tests.

Subpart K—Surface Impoundments

265.222 General operating requirements.
265.223 Containment system.
265.225 Waste analysis and trial tests.
265.229 Special requirements for ignitable or reactive waste.
265.230 Special requirements for incompatible wastes.

Subpart M—Land Treatment

265.281 Special requirements for ignitable or reactive waste.
265.282 Special requirements for incompatible wastes.

Subpart N—Landfills

Sec.
265.302 General operating requirements.
265.312 Special requirements for ignitable or reactive waste.

Subpart Q—Chemical, Physical, and Biological Treatment

265.401 General operating requirements.
265.402 Waste analysis and trial tests.

It is EPA's intent to act on all interim final portions of these regulations prior to their effective date.

III. Interim Status Standards

Section 3005(e) of RCRA specifies that if the owner or operator of a facility which is in existence on October 21, 1976, (the date of enactment of RCRA) notifies EPA, as required by Section 3010 of RCRA, and properly applies for a permit, the facility owner or operator is to "be treated as having been issued such permit." EPA refers to such an owner or operator as one who has "interim status" (the title of subsection 3005(e)). Accordingly, for facility owners or operators who have notified EPA and applied for a permit, the interim status period extends from the date the initial Section 3001 through 3005 regulations go into effect to the date final administrative action on the individual permit application is taken.

Congress, in enacting this provision, apparently recognized that it will take a considerable period of time for EPA to act on all facility permit applications. The provision for interim status, to allow a smooth transition to full regulation under new national standards, allows owners and operators of existing facilities to continue to operate them until decisions on their permit applications are made.

The Agency expects that most of the approximately 26,000 prospective permittees will notify EPA of their hazardous waste activities (as required by Section 3010 of RCRA and explained in a notice of February 26, 1980 (45 FR 12745–54)) and will apply for a permit. Considering the potential number of applicants, the potential administrative complexity of issuing hazardous waste permits, the limited staff that EPA expects to have available to review and negotiate permit applications, and EPA's experience with the National Pollutant Discharge Elimination System (NPDES) permit program under the Clean Water Act, the Agency estimates that it will take several years to act on all permit applications. Therefore, many prospective permittees will be operating in interim status for an extended period of time. In keeping with the intent of Congress that hazardous waste management be regulated by national standards as quickly as possible, and with the statutory structure making Section 3004 standards independent of the Section 3005 permitting process (see discussion below), EPA believes that these prospective permittees should at least comply with selected minimum requirements of Section 3004 during interim status.

The Agency believes that permit applicants with interim status should not be expected to meet all of the Phase II and Phase III Part 264 standards, because some of the specific requirements of these standards may be inappropriate for certain facilities, and different requirements may be substituted when a permit is issued using the variance provisions in the regulations. Alternatively, during permitting under the Phase II regulations, each permit will be issued on the basis of the permit writer's "best engineering judgment." In addition, some permittees may be allowed a reasonable period of time to come into compliance with certain of the general Section 3004 (i.e., Part 264) standards, as permitted by Section 3005(c) of RCRA. The Agency believes that decisions regarding certain standards and all individual compliance shedules should be made in the permit issuance process where there is full opportunity for public participation and for interaction between the Agency and the permit applicant.

On the other hand, given Congress' intent that hazardous waste management be regulated as quickly as possible, and the independent enforceability of the Section 3004 standards, EPA believes that prospective permittees should begin to meet at least those threshold requirements of Section 3004 which apply generally to all facilities and which will definitely be included in all permits. This will begin to achieve RCRA's goal of protecting human health and the environment.

The Agency has chosen a middle course between, on the one hand, having no requirements applicable during the interim status period and, on the other, making the complete set of independently enforceable standards apply.

A. Authority

A number of commenters supported the concept of interim status standards and agreed that authority for these requirements exists in Section 3004 of the Act. Others stated that neither Section 3005 nor Section 3010 of RCRA authorizes EPA to impose facility requirements during the interim status period. They recommended deleting the interim status standards, because EPA

has the power to deal with imminent hazards under Section 7003, and because those facilities not posing an imminent hazard can continue under existing local control until new permits are issued.

These commenters apparently misunderstood the relationship of Section 3004 to Sections 3005, 3008, and 3010 of RCRA. The Section 3004 regulations are independently enforceable national standards which apply to owners and operators of hazardous waste facilities. Section 3008 authorizes enforcement actions against persons violating *any requirement* of Subtitle C. Thus, enforcement actions against persons violating the Section 3004 requirements are authorized by Section 3008.

EPA does not believe that the "requirements of Subtitle C" referred to in Section 3008 are only those requirements incorporated in a permit pursuant to Section 3005. The requirement that facility owners and operators comply with the permit requirements of Section 3005 is one independent requirement of Section 3004 (see Section 3004(7)).

Section 3005(c) requires that EPA determine that a facility complies with the Section 3004 requirements before issuing a permit. Permit revocation under Section 3005(d) also is based on non-compliance with Section 3005 *or* Section 3004 requirements. Thus, under the terms of the statute, Section 3004 standards are independently enforceable and are "requirements of Subtitle C" within the meaning of that term in Section 3008. As the preambles to Parts 122 and 123 of the consolidated permit regulations discuss, EPA will, however, regard compliance with a duly issued RCRA permit as compliance with the terms of the statute except for the case of state-issued permits that fail to reflect EPA suggestions made during EPA review.

Section 3005(a) requires that EPA promulgate regulations requiring owners or operators of hazardous waste facilities to have a permit, and prohibits treating, storing, or disposing of hazardous waste without a permit after the effective date of these regulations. Section 3010(b) states that all of the Subtitle C regulations, including both Section 3004 and 3005 regulations, take effect six months after they are promulgated.

Thus, on the effective date of the Section 3004 regulations, facility owners and operators are required to comply with all of the Section 3004 standards and have a permit under Section 3005 in order to operate legally. Clearly, it is beyond the capability of facility owners or operators to comply with all of the Section 3004 requirements, and beyond the capability of the Agency (or authorized States) to issue all permits, within the six months between the date the regulations are promulgated and their effective date.

Section 3005(e) resolves part of this problem by authorizing facility owners or operators, under certain conditions, to obtain interim status. This allows owners or operators to be treated as having been issued a permit until EPA makes a final administrative disposition of their permit application, and thus satisfies the mandates of Section 3005(a) and of Section 3004(7) which prohibit operations without a permit. Having interim status thus relieves the owner or operator of a facility of the possibility of being prosecuted for operating without a permit. It does not, however, relieve owners and operators of facilities of the necessity to comply with the Section 3004 standards when they become effective.

As discussed above, Section 3004 standards are independently enforceable requirements which apply to all treatment, storage, and disposal of hazardous waste. In addition to the automatic applicability of Section 3004 standards, however, EPA interprets the language of Section 3005(e)(3), that a person shall be treated as having been issued a permit, to mean that a person who operates with interim status must accept the responsibilities and liabilities associated with being a permittee. Thus the conditions of Section 3004 which are imposed on permit holders by operation of Section 3005 (c) and (d) are also applicable to owners or operators of facilities with interim status because they "shall be treated as having been issued such permit."

For the reasons noted above (i.e., that decisions regarding certain standards and all individual compliance schedules should be made in the permit issuance process), the Agency does not believe that permit applicants with interim status should be expected to meet all of the general Section 3004 standards immediately. Hence, the Agency decided to promulgate separate interim status standards to avoid the burden on existing facilities which could otherwise result if all of the Section 3004 standards were applied immediately.

The Administrator's general rulemaking authority under Section 2002(a)(1) of RCRA provides an additional basis for the establishment of interim status standards and the relief to permit applicants of the need for immediate compliance with all of the Part 264 Section 3004 standards, as they are promulgated. Section 2002(a) states:

"In carrying out this Act, the Administrator is authorized to:

(1) Prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this Act;"

The Agency believes, for the technical and policy reasons mentioned above, that the establishment of interim status standards is an appropriate use of this general rulemaking authority.

B. Criteria for Interim Status Standards

In general, EPA used the following criteria for deciding which standards should apply during interim status:

(1) The standards can be met in a straightforward manner without need for substantial interpretation by, or negotiation with, EPA. EPA's limited resources will be consumed at the outset of the program with implementing other features of this complex regulatory program, such as the notification and manifest system, enforcement, and the permitting process itself. The Agency, therefore, plans to minimize individual contact with the regulated community during the interim status period. If individual applicants are to have substantial contact with the Agency during interim status, it will be more productive for the Agency to put its resources into implementing the full standards through the permitting process which the Act envisions, rather than postponing or slowing down the implementation of the full standards so that a more complex set of interim standards can be implemented.

(2) Compliance does not require substantial capital expenditures which are properly the result of the certainty of permit conditions. Many of the technical regulations could require costly construction or retrofitting, and the designs underlying these expenditures will be the subject of discussion during the permitting process. The Agency believes it is unreasonable to require costly construction during interim status, which may then be disallowed or required to be modified during permitting.

(3) Compliance can be achieved within the six-month period between the date the regulations are promulgated and the date they become effective. Many of the Part 264 standards may entail time for equipment delivery, construction, installation, training, and shakedown which could significantly exceed the six months available. While the Agency could delay the effective date of regulations requiring an implementation period longer than six months, a multitude of different effective dates for different regulations could

complicate the implementation process, leading to confusion.

It should be emphasized that the Agency used these criteria only as guidelines in developing the interim status regulations. The Agency has included other requirements in the interim status standards which are exceptions to these guidelines when it judged that requirements were of unusual importance and that the benefits to be gained from early implementation of the requirements would substantially outweigh the disadvantages. One important exception involves the closure and post-closure care regulations. Improper facility closure and abandonment has historically been a major cause of human health impacts and environmental damage. The Agency believes that no facility should be closed during interim status without being closed properly. Therefore, permit applicants who close all or parts of their facilities during interim status will be required to meet the full closure and post-closure care requirements, including the requirement to have the plans for those activities approved by the Agency. Similarly, even though the ground-water monitoring provisions do not meet the criteria for interim status standards specified earlier, owners or operators of surface impoundments, landfills, and land treatment facilities are also required to comply with these provisions during the interim status period (although EPA has provided a 12-month delay in the date for compliance). The Agency believes it of prime importance to require owners or operators of these facilities to monitor ground water during interim status in order to know whether an existing facility may already have contaminated the ground water. The rationales for other standards which are exceptions to these guidelines are discussed below.

The Agency views the interim status standards as dynamic regulations which, for many facilities, may be in effect for a number of years before permits are issued or denied. As the need and support for additional regulations becomes clear, the Agency expects to add to this initial set of interim status standards through additional rulemaking. EPA will, of course, continue to refine both the Part 264 and Part 265 regulations as the state of technology of hazardous waste management improves.

As discussed previously, promulgation of parts of the Section 3004 standards will be phased in over time. Consequently, the Agency is specifying the interim status standards independently of the general Section 3004 standards. This procedure will allow the initial phase of the RCRA hazardous waste control program to be implemented without further delay. It will also avoid the ambiguity and confusion which can arise when standards are extensively referenced and cross-referenced, as was the case in the December 1978 proposal.

The Agency received numerous comments from a wide cross-section of commenters concerning general issues raised by the proposed interim status standards. These comments fall into the following areas, which are discussed in turn below:

(1) requirements to be added to interim status standards;

(2) compliance period for some or all standards;

(3) notes and variances; and

(4) equity.

C. Added Requirements

Several commenters felt that the scope of the proposed interim status standards should be expanded to include all requirements of the general Section 3004 regulations which could be implemented immediately and that would be unlikely to require modification when a permit is issued. In general, EPA agrees.

Several of the more important suggestions for additional interim status standards are discussed below.

1. *Ground-Water and Leachate Monitoring.* The proposed interim status standards required ground-water and leachate monitoring at landfills and surface impoundments where one or both of these monitoring systems were already in place. Several commenters suggested requiring ground-water and leachate monitoring at *all* facilities during interim status, whether or not such systems were already in place. They felt that exempting some sites from conducting this monitoring would mean that local and State implementing authorities would be deprived of the warning needed to determine if sites are endangering ground water and local water supplies. Further, some of the commenters stated that ground-water monitoring systems must be installed at all facilities that receive permits. They felt that EPA should not postpone monitoring until the final permit was issued, because that could take five years or longer. Other commenters felt that monitoring data were essential to (1) identify sites which are violating the human health and environmental standards, and (2) to trigger appropriate action against those sites, even though the human health and environmental standards were not proposed as interim status standards.

The Agency has considered these comments carefully. First of all, it should be noted that leachate monitoring in the unsaturated zone beneath existing landfills and surface impoundments will not be required in Phase II of the general Section 3004 standards for technical reasons (see the preamble discussion on Ground-Water Monitoring for details). However, the Agency has determined that leachate monitoring is technically feasible and appropriate for land treatment facilities (land farms), and, therefore, has added this requirement to the interim status standards for these facilities (see the preamble discussion on Land Treatment facilities).

The Agency does not believe that *all* facilities require ground-water monitoring systems during the interim status period or otherwise. For example, it would be an unnecessary expense with little benefit to human health or the environment to require above-ground storage tanks or incinerators to have ground-water monitoring systems, because leakage of hazardous waste into the ground can be detected visually at these facilities. The Agency believes ground-water monitoring is appropriate primarily at facilities where hazardous waste is purposely placed onto or into the land—such as at landfills, surface impoundments, injection wells, and land treatment facilities—and where ground-water location, quantity, and usage, and other factors such as geology and climate, indicate the need for ground-water monitoring.

Another issue is whether or not all landfills, surface impoundments, and land treatment facilities should have ground-water monitoring systems during the interim status period. There are a number of factors upon which this issue turns. On the one hand, it is true that nearly all landfills, surface impoundments, and land treatment facilities will eventually be required to install ground-water monitoring systems as a permit condition. If these systems are installed during interim status, they would supply several years of monitoring data and early warning of potential ground-water contamination problems which would otherwise be unavailable. Given the recent spate of ground-water problems identified at hazardous waste disposal facilities (see Ground-Water Monitoring Background Document), there is good reason for requiring ground-water monitoring during the interim status period.

On the other hand, the planning and construction of ground-water monitoring systems takes time, and should be overseen by qualified hydrogeologists.

Also, ground-water monitoring systems may be inappropriate in some circumstances. Furthermore, the proposed ground-water sampling and analysis requirements were extensive, and contained provisions for variances in some cases.

On balance, the Agency has decided that the advantages—in terms of increased human health and environmental protection—of requiring all landfills, surface impoundments, and land treatment facilities to have ground-water monitoring systems during the interim status period outweigh the drawbacks outlined above. However, the Agency is concerned about the short time in which facilities currently operating without ground-water monitoring systems must comply, i.e., Section 3010(b) provides that Section 3004 standards take effect six months after their promulgation. Consequently, the Agency has written the final interim status standards to require that all hazardous waste landfills, surface impoundments, and land treatment facilities have ground-water monitoring systems within 18 months of the promulgation of the regulations unless the owner or operator conducts hydrogeological studies which demonstrate that such a system is unnecessary. This delayed schedule for compliance should allow enough time to properly plan and install the systems. In addition, to minimize the need for owners or operators to interact with the Agency, the ground-water sampling and analysis requirements have been simplified so that variances are no longer necessary.

While these regulations require owners and operators of surface impoundments, landfills and land treatment facilities to begin to set up ground-water monitoring programs, the Agency has yet to specify the appropriate corrective action that is to follow the discovery and initial assessment of contamination. The Agency believes that its ground-water protection strategy under Section 3004 is a critical element of the entire Subtitle C program. EPA, therefore, intends to develop that standard as part of the Phase II regulations, which better allows the Agency to integrate its ground-water protection objectives with its strategy for setting other environmental performance objectives.

The absence of a specific ground-water quality protection standard in Part 265 does not in any sense undermine the need for ground-water monitoring requirements during the interim status period. The monitoring system required here is designed to answer two questions. Has the facility contaminated ground-water? If so, what is the degree of contamination? The answers to these questions will be essential to whatever ground-water quality protection standard (and corrective action) is included in the Phase II regulations. Moreover, a careful assessment of these issues will require an examination of background ground-water quality, for which owners and operators of surface impoundments, landfills, and land treatment facilities can and should begin to monitor.

2. *Incinerators.* The proposed regulations contained detailed requirements for the operation of hazardous waste incinerators. These included destruction efficiency, combustion levels, detailed monitoring and inspection, and trial burns. These were not made applicable during the interim status period. A comment suggested that the proposed monitoring and inspection requirements should be made applicable during the interim status period.

Full application of those standards would require major capital outlays for equipment which may not be readily available and which might need to be altered during the permitting process. On the other hand, existing damage incidents and operator requests (in comments on the proposed regulations) for emission variances during start-up and shut-down periods show that improper incineration of hazardous waste can be a serious health problem. In addition, for some facilities, the interim status period will last longer than EPA had expected at the time the regulations were first proposed.

Because of this the Agency is now issuing, on an interim final basis, a set of "threshold" requirements designed to assure a basic level of environmental and human health protection throughout the interim status period. These standards are discussed in the Subpart O analysis in this preamble and in an accompanying background document. They meet EPA's informal interim status criteria while offering protection from the most serious dangers of hazardous waste incineration.

3. *Thermal Treatment.* The proposed regulations contained no provisions specifically applicable to all types of thermal treatment of hazardous waste. Commenters feared that the proposed incineration regulations, focusing on flame combustion techniques, would unduly restrict innovative treatment of hazardous waste in other thermal treatment facilities. The Agency wishes to encourage the development of new techniques that can adequately render waste less hazardous or non-hazardous, or more amenable to transport or store. Thus, these regulations include a new set of standards—Subpart P—regulating other forms of thermal treatment.

The risks associated with the thermal treatment of hazardous waste are similar to those posed by hazardous waste incineration. The Agency has therefore designed, for the interim status period, a set of "threshold" requirements to provide a basic level of protection for human health and the environment. They are discussed in the Subpart P analysis in this preamble and in an accompanying background document. They are being issued on an interim final basis.

4. *Closure and Post-Closure.* A number of commenters suggested adding the requirement for submitting a closure plan to EPA (as outlined in proposed § 250.43–7(c)) to the interim status standards.

Upon reviewing the comments, it is clear that some members of the public did not understand the Agency's intention regarding closure plans during the interim status period. The Agency intended that each facility owner or operator with interim status would prepare a closure plan for his facility, to include estimates of closure costs, and post-closure costs, if applicable. The owner or operator would then use this information as the basis for complying with the financial requirements (a closure trust fund, and post-closure trust fund, if applicable). However, the Agency did not believe that it was necessary for owners or operators routinely to *submit* these closure plans to the Agency for review during the interim status period. In EPA's opinion, the Agency staff should focus their attention on issuing permits and on enforcement matters, rather than reviewing closure plans. The Agency can ensure that closure plans are prepared when it conducts facility inspections. Further, the facility owner or operator must submit a closure plan with Part B of his permit application. No later than the time the permit is considered, the Agency will review the plan and require it to be revised, if necessary.

EPA agrees with the thrust of comments in this area, though, and should an owner or operator wish to close his facility during the interim status period (i.e., before final administrative action on the permit application) he must contact the Regional Administrator 180 days before he expects to begin closure. At that time, the Agency will review the closure plan and require it to be adjusted as necessary. These procedures have been clarified in the final rules. (See Closure

and Post-Closure Care Background Document for details.)

5. *Ignitable, Reactive, or Incompatible Wastes.* Several commenters suggested that the proposed standards which restricted the handling of ignitable, reactive, and incompatible wastes at certain facilities be included in the set of interim status standards. These standards were not, for the most part, proposed as interim status standards because the extensive and complex provisions in the Notes (i.e., variances) to these proposed standards would have required extensive interaction with the Agency. However, many commenters suggested that owners and operators should be allowed to make for themselves the judgments embodied in the Notes, without obtaining the approval of the Regional Administrator. As discussed below, the Agency decided that this could be made a workable arrangement and has made the objectives of the Notes a self-executing part of the regulations. Deletion of the requirement for approval of the Regional Administrator now allows inclusion of these regulations in the interim status regulations. They now appear in § 265.17 and are discussed in the Subpart B analysis of this preamble. The inclusion in the interim status standards of fairly extensive requirements for the analysis of waste should provide owners and operators with sufficient information to safely handle ignitable, reactive, or incompatible wastes under these regulations.

6. *Landfill Rules.* Several commenters felt that requirements for landfill diversion structures and cover material should be included in the interim status standards.

The need for landfill diversion structures arises from the potential for precipitation from outside the active portion of the facility to run onto the active portion and become contaminated. This contaminated water may then run off into surface waters creating a threat to human health and the environment. A related problem involves precipitation which falls directly on the active portion of a facility. It may also become contaminated run-off, and thereby cause similar problems.

The Agency shares the commenters' concern regarding contaminated surface water run-off, and agrees that provisions for its control should be included in the final interim status regulations. Similarly, these problems also may arise at land treatment facilities. Accordingly, during the interim status period, the final rules require that run-on must be diverted away from the active portions of a landfill or land treatment facility, and the run-off from the active portions of a facility must be collected. These provisions are discussed in the Subpart N section of this preamble.

Landfill cover material requirements were not proposed as interim status standards because cover requirements can vary on a site-specific basis, and the proposed requirement was subject to a Note (i.e., variance). The Agency has decided not to include a landfill cover requirement in the final interim status standards, except for final cover during closure (see discussion in the Subpart N section of this preamble).

7. *Waste Analysis.* Some commenters felt that sampling and analysis of hazardous waste by facility owners or operators (proposed § 250.43(f), (g), and (h)) should be included as an interim status standard.

Waste sampling and analysis provisions were not specifically proposed as interim status standards. On the other hand, some level of waste analysis was required by the need to meet other interim status standards such as the prohibition on placing wastes in tanks or containers that previously held an incompatible material. In response to the numerous comments received on these proposed standards (see the Waste Analysis Background Document and the Subpart B section of this preamble), the Agency has modified the requirements for waste sampling and analysis. The facility owner or operator is now required to prepare and follow a waste analysis plan that is appropriate to the waste that is handled and to the type of facility. In addition to the general waste analysis standards applicable to all facilities, waste analysis requirements specific to different types of facilities (e.g., landfills and tanks) are also included in each technical section of the regulations.

The Agency believes that these sampling and analysis requirements are amenable to all waste management facilities, so that variances to the waste analysis standards are no longer necessary. Furthermore, the Agency believes that facility owners or operators need to know certain information about the wastes they handle in order to handle them safely and to comply with the reporting and technical requirements of the Phase I regulations. Consequently, both general and specific waste analysis requirements have been added to the interim status standards.

8. *Site Selection Standards.* Some commenters felt that the general site selection standards (proposed § 250.43–1) should be made a part of the interim status requirements, because omitting these standards would be "contrary to the intent of the law and completely unacceptable."

Section 3004(4) of the Act specifies that regulations must include such requirements for the location of hazardous waste facilities as are necessary to protect human health and the environment, and the Agency proposed location standards in § 250.43–1. The Agency excluded them from the interim status requirements, however, because there would have been few options, other than closure, for existing facilities which were already located in areas restricted by the proposed site location standards. Immediate closure of such facilities during the interim status period might cause a severe shortage of hazardous waste facilities and could well lead to illegal dumping, which would only exacerbate the problems EPA is trying to control. The Agency is in the process of finalizing its site location standards for promulgation as part of the Phase II standards. EPA believes there may be circumstances where variances or waivers to site location standards will be in the best interests of protecting human health and the environment. Therefore, the Agency has continued to exclude site selection standards from the interim status requirements. EPA believes that such standards should be applied on a case-by-case basis during the permitting process.

D. Compliance Period

Many commenters suggested alternate schedules for compliance with the interim status requirements. The suggested schedules spanned the range from before, at, and up to a year after the effective date of the regulations. EPA does not have the authority to require owners and operators to comply with requirements *before* the effective date of the regulations. Those commenters requesting that the effective date of the interim status standards be deferred *beyond* the six-month period after promulgation of the regulations argued that these six months would be used for analyzing waste and preparing permit applications, and thus additional time would be needed to comply with the substantive interim status requirements, such as those for security and the development of contingency plans.

The Agency does not agree with these arguments. Wastes listed in the Section 3001 regulations need not be analyzed to fill out the permit application necessary for the owner or operator of a facility to obtain interim status. For nonlisted wastes, it takes a maximum of 24 hours to perform the test protocols to determine whether or not a waste

stream meets one of the hazardous waste characteristics specified in the Section 3001 regulations. In any event, these tests must be completed within 90 days (not six months) in order to comply with the notification requirements of Section 3010 of RCRA.

The comments on what period EPA should allow for compliance with the interim status standards were submitted before the permit application regulations under Section 3005 of RCRA were proposed, and therefore, commenters may have assumed that applying for a permit would be a difficult and time-consuming task. However, the permit rules specify a two-step permit application process. A facility owner or operator may satisfy Section 3005(e) of RCRA, and thereby qualify for interim status (provided Sections 3005(e)(1) and (2) are also complied with), by submitting Part A of the permit application within six months after promulgation of the Section 3005 (Part 122) regulations. The Agency believes that assembling the information required in Part A is neither difficult nor time-consuming. Consequently, the burden of preparing Part A of the permit application should be substantially less than the commenters anticipated. Most of the substantive information is not required until Part B is submitted, just before the Agency is ready to review the application. For some facilities, this may take several years.

The final security requirements have been made more flexible than they were in the proposed rules (see the preamble discussion on Subpart B). The Agency believes that facilities should be able to comply with these requirements within the six-month period following the promulgation of the regulations. The Agency also believes that a facility owner or operator should be able to prepare a contingency plan and the other plans required by the interim status standards within this same time frame.

For all of the reasons given above, the Agency does not believe that a compliance period longer than six months is justified, except to install new ground-water monitoring systems and to construct surface water run-off controls.

E. Notes and Variances

Many commenters suggested that the applicability, during the interim status period, of the "Notes" in the proposed rules should be clarified. Some commenters felt that the regulations should allow facility owners or operators with interim status to make good faith judgments of their own compliance with the applicable regulations, including the provisions of the attendant "Notes," without special approval from the Agency.

In response to numerous comments concerning the "Note" system in general, the Agency has incorporated all of the alternative standards and other substantive "Notes" directly into the final rules (as discussed *infra*). Consequently, there should be no confusion as to whether or not certain alternative standards are allowed during the interim status period. The "Comments" included with these regulations are not intended to create alternatives to the requirements of the regulations.

The Agency agrees that, to a certain degree, facility owners or operators should be allowed to make good faith judgments as to whether or not certain alternative requirements apply to them during interim status. The final rules typically specify that a facility owner or operator may choose to follow alternative requirements allowed by a variance, *provided* he can demonstrate the facts and rationale supporting that judgment when requested to do so by the Regional Administrator. Thus, a self-implementing system (as requested by the commenters) applies to variances during the interim status period, but that system is subject to oversight by EPA, which can request evidence to support the variance at any time. It is likely that the Agency will review this evidence only in conjunction with making a routine facility inspection or when the Agency has reason to believe that a violation has occurred.

In any event, variances will be reviewed by EPA during the permitting process, and will be reflected in the permit conditions if a facility owner or operator can demonstrate eligibility for the variance as the regulations require.

F. Equity

Many commenters expressed concern that inequities are likely to develop in permitting facilities during the interim status period. Below are the three major concerns raised by the commenters on this issue.

1. *Common Permit Effective Date.* EPA estimated in the preamble to the proposed regulations that it could take up to five years to issue all of the permits. Several commenters pointed out that EPA or an authorized State may review one facility's permit application early in the period and impose a compliance schedule to meet the full set of Section 3004 standards, while a similar competing facility might be subject only to the interim status standards for several years until its permit application is reviewed.

To minimize potential inequities, several commenters urged EPA to establish a definite period during which only the interim status standards apply, regardless of when a permit is issued. In other words, all permits and permit requirements would become effective at the same time. The interim status period, according to some commenters, should be sufficiently long to ensure that essentially all of the permits would be issued. Others specifically suggested a five-year period as is prescribed by the Clean Water Act.

Unlike the Clean Water Act, which mandated a specific date by which all waste water treatment systems were to be in compliance with the BPT requirements, there is no language in RCRA which suggests that EPA should, or could use a similar approach. Further, EPA believes that the suggested approach is inconsistent with the clear Congressional mandate in RCRA to provide safer hazardous waste management practices as quickly as possible.

2. *Case-by-Case Interim Status Standards.* Some commenters suggested that interim status requirements should be imposed on existing facilities on a case-by-case basis using the past operating experience of these facilities with which State environmental agencies should be familiar. The commenters felt that these case-by-case evaluations would be more equitable than the "blanket" proposed approach.

The Agency does not agree that interim status standards should be applied on a case-by-case basis. This approach would be a *de facto* permit program. It would require the Agency to commit substantial resources to these case-by-case preliminary analyses which would be better spent in developing final permits. It is difficult to see how this approach could be considered more equitable than uniform national standards which apply to everyone, as proposed. Consequently, the Agency has not adopted a case-by-case approach for the interim status standards.

3. *No Intention To Obtain Permits.* Commenters suggested that many facility owners or operators who never intend to actually obtain a permit will take advantage of the interim status period by applying for a permit, using unrealistically low estimates for establishing closure and post-closure funds, competing in the market place with legitimate owners or operators for the several years it will take to fully review permit applications, and then close their facilities prior to permit issuance or final denial. Because EPA proposed to issue an identification

number to each facility owner or operator who meets the requirements for interim status under Section 3005(e) of RCRA, commenters suggested that ways of countering the above problem would be: (a) before issuing an identification number, inspect each facility to determine the facility owner's or operator's financial capability and his potential to comply ultimately with the requirements of RCRA, or (b) issue identification numbers only to those facility owners or operators who presently hold valid State or Federal NPDES permits to receive and dispose of specific hazardous waste compounds.

The Agency shares the concern expressed by these commenters, but disagrees with their suggested solutions. Interim status is achieved automatically by a facility owner or operator who complies with Section 3005(e) of RCRA. EPA cannot initially withhold interim status from facility owners or operators who otherwise qualify, based on the Agency's subjective judgments of financial capability, intent to ultimately comply with RCRA's requirements, or on the basis of State or Federal permits issued under other statutes. If EPA becomes aware of facilities which are not meeting the interim status standards, the Agency can bring an enforcement action against them under Section 3008 of RCRA, or can move quickly towards final disposition of the facility's permit application.

The Agency has made it clear in the regulations that facility owners or operators who choose to close their facilities while in interim status (before a permit is issued or denied) must do so in accordance with the full set of closure requirements and post-closure requirements (if they apply). Thus, these owners or operators will not escape the responsibilities (and costs) of complying with these requirements. Consequently, the potential inequities which the commenters feared should be greatly reduced, if not totally eliminated.

IV. General Issues

A. Degree of Hazard

The proposed Sections 3001 and 3004 regulations did not create a classification scheme which separated hazardous wastes into varying *degrees* of hazard or risk for purposes of regulation. The proposed Section 3004 regulations did, however, take into account certain types of hazardous properties or *classes* of hazard in imposing management requirements. For instance, certain management requirements were proposed for wastes with ignitable and reactive properties that were not proposed for other wastes.

A large number of commenters argued, for a variety of reasons, that a *degree* of hazard system is necessary in order to effectively implement the hazardous waste control program. Several commenters suggested that wastes should be classed into two or more levels of hazard (i.e., "extremely hazardous" or "hazardous"), depending on the intrinsic risk associated with the waste. Many commenters stated that because the intrinsic hazard presented by a waste is a function of certain *chemical and physical parameters*, classification by risk should be based on a quantification of these parameters. On the other hand, several commenters felt that the hazard persented by a waste is a function of its *management* and, therefore, wastes should be classed into hazard levels according to how they are managed. Many commenters suggested using a combination of intrinsic hazard and hazard based on management.

In support of these suggestions, a number of commenters argued that the two-part definition of "hazardous waste" given in Section 1004(5) of RCRA requires a system for classifying wastes by degree of hazard. They claimed that one class should consist of those wastes described in the first part of the definition, i.e., those wastes which "cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness," and that the other class should consist of those wastes described in the second part of the statutory definition of hazardous waste, i.e., those wastes which "pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

The suggestions made by the commenters differed widely in the complexity of the suggested hierarchy or classification system for risks, and in the relationship of the resulting risk classes to the waste management standards. Many commenters supported the concept of a degree of hazard system but did not propose a specific approach for carrying it out.

The degree of hazard proposals were based primarily on concerns about the *priority* of implementation and the *economic burdens* that might be imposed if the same standards were applied both to wastes with relatively low hazard and wastes with higher hazard. Accordingly, commenters generally associated one of the following objectives with a degree of hazard system:

(1) Phasing of the regulations to address first the wastes which present the greatest risk to human health and the environment. (This comment was frequently coupled with the issue of a perceived national shortfall of facility capacity.)

(2) Tailoring of management standards to the properties of wastes so that adequate protection of human health and the environment could be achieved without overregulating some wastes, and thus unnecessarily increasing the economic burden of the regulations.

(3) Setting quantity threshold levels below which small quantities of wastes could be exempted from some or all of the Subtitle C management requirements without significant impact on human health and the environment.

The Agency believes that the final regulations, when promulgated in full, will achieve each of these objectives, although without adoption of a degree of hazard system. EPA has made the decision not to adopt a degree of hazard system with full realization of the conceptual appeal of such a system and the recognition that all wastes do not present the same level of risk to human health and the environment. The Agency has taken this position for two reasons:

(1) The Agency does not believe that any of the degree of hazard systems suggested by commenters (or any the Agency could itself conceive) are capable of actually distinguishing different degrees of hazard among the myriad hazardous wastes and also reasonably relating management standards to these degrees in a technically and legally defensible way.

(2) The Agency believes that the final regulations already achieve the objectives of a degree of hazard system; thus, such a potentially complex and challengable system is unnecessary.

1. *Classification of Waste by Risk.* The central element of a degree of hazard system is a classification of hazardous wastes according to their level of hazard or risk to human health and the environment. The Agency is convinced that all of the degree of hazard classification schemes suggested by commenters and otherwise considered by the Agency are extremely judgmental and prone to arbitrariness.

Classification of wastes by intrinsic hazard would require the Agency to make determinations such as the following:

(1) Levels of hazard within a characteristic, i.e., whether one ignitable waste is more hazardous than another ignitable waste;

(2) Levels of hazard within listed wastes, i.e., whether all properties which form the basis for listing (e.g.,

carcinogenicity, bioaccumulativity) present different degrees of hazard;

(3) Relative hazard of different characteristics, i.e., whether an ignitable waste is more hazardous than a reactive waste.

Furthermore, most wastes exhibit more than one characteristic, i.e., a waste may be ignitable, toxic, and bioaccumulative, so that the difficulty of the classification task is compounded.

With the exception of a few well known wastes of extremely high hazard, such as dioxin, the Agency generally lacks the information or techniques to make these distinctions between hazardous wastes. While distinctions between *some* very high hazard wastes and other much lower hazard wastes may be possible, there is a broad middle ground where classification by degree of hazard would be extremely difficult. This is particularly true when all potentially hazardous wastes must be considered, not just those on which there is significant information available and for which hazard distinctions may be obvious.

The task of classifying wastes by degree of hazard is all the more difficult because an assessment of hazard, i.e., risk to public health, cannot be made based on intrinsic hazard alone, but must be based on the likelihood of *exposure* as well. Exposure assessments depend on many situation-specific factors that determine the pathways through which exposure may occur, e.g., the hydrogeology, proximity and use of ground water and surface water, etc. Making exposure assessments the purpose of constructing a multi-level degree of hazard system would prove enormously complicated, if not impossible.

2. *Tailoring of Management Standards.* The second element of a degree of hazard system is to establish different management standards for the different degrees of hazard. While the Agency agrees with commenters that it is desirable for the regulations to provide for flexibility to achieve tailoring of management requirements, EPA does not believe that the best approach to tailoring is to prescribe nationally applicable requirements based on the degree of hazard of a waste.

Within the universe of hazardous wastes, distinctions in technical management requirements can best be based on the actual properties of the waste, i.e., the type or *class* of hazard a waste presents, and on local site conditions, rather than on the *level* of hazard of a waste. In the final regulations the Agency has included a number of tailored waste management requirements relating to waste classes, i.e, properties such as ignitability, reactivity, compatibility, or liquid state. EPA plans to continue to differentiate among waste classes in its Phase II and Phase III regulations. The Agency found it far easier to justify differences in regulatory requirements for these classes of waste, than to base facility performance, design, or operation on intrinsic hazard levels. For example, one can readily justify a prohibition of hazardous waste containing free liquids in landfills because they create hydraulic head, and thus promote leaching. However, different facility design requirements for dealing with, for example, an acutely toxic waste versus a less toxic waste are much less clearly defined. In such cases, differences in intrinsic hazard may be overshadowed by the *types* of constituents in a waste (i.e., do they migrate rapidly, or are they persistent), by the amount of waste, or by the site conditions (e.g., type of soil, or distance to ground water).

Distinctions in management requirements can also be made based on the local site conditions and peculiarities of the waste involved. Factors such as hydrogeology, rainfall, and soil type can be considered on a case-by-case basis as a part of the permitting process given appropriate flexibility in the regulations. Such a case-by-case consideration of site conditions and, to some extent, waste properties, is feasible and desirable, and the Agency plans to adopt such a system in its Phase II regulations.

Thus, the Agency has concluded that it does not have the necessary technical information and criteria to develop a technically supportable set of national standards which would rank wastes by degree of hazard; the Agency also has not determined that it is feasible or beneficial to relate management standards to an abstractly conceived degree of hazard, rather than to the waste's actual properties and the site conditions. Furthermore, EPA believes that its current and intended future regulations will otherwise accomplish the objectives of a degree of hazard system

3. *Response to Degree of Hazard Objectives.* It is difficult for the Agency to demonstrate fully how its regulatory scheme under RCRA responds to all of the objectives of a degree of hazard system because the regulations are being promulgated in two major phases. The first phase includes the definition of hazardous waste in Part 261 as well as a limited set of management standards in Parts 264 and 265. The second phase will include the bulk of the technical management requirements. The Phase II standards in particular will effectively achieve at least as much flexibility in management standards as would a degree of hazard system.

As discussed above, the commenters generally associated one or more of three objectives with a degree of hazard system: (1) Phasing of the regulations to include highest risk wastes in the system first; (2) tailoring of management standards to particular wastes to avoid over-regulation; and (3) setting quantity threshold levels below which small quantities of wastes could reasonably be exempted from some or all of the Subtitle C requirements. Although still developing the Phase II regulations, EPA can describe its basic regulatory approach and some specifics of its initial response to commenters' requests for phasing, tailoring, and threshold levels.

The Phase I regulations accomplish the objectives of phasing in several ways, although they were not designed specifically for that purpose. The listing of wastes in Part 261 includes primarily wastes of high intrinsic hazard because those are the wastes on which significant health effects information has been most readily available. The listing process itself is a phasing mechanism which brings additional waste under RCRA Subtitle C control over time. Also, the exclusion levels for small quantity generators are set initially at 1000 kg/mo, but will be phased down to 100 kg/mo over time. There is also an administrative mechanism for phasing during implementation to deal with the capacity issue. Each EPA regional office and authorized State implementing the regulations will have the flexibility to administer the permitting and enforcement process in such a way that the most severe human health and environmental problems are addressed first.

The Phase I regulations provide for tailoring of waste management standards by providing significant flexibility. In addition, some specific requirements for certain waste classes of hazard are incorporated.

The Phase I standards under Part 265 are minimum requirements which the Agency believes are appropriate for all wastes during the interim status period. Some of these standards are administrative requirements dealing with manifests, recordkeeping, and reporting that are minimums for adequate tracking of all waste. Other general technical requirements, such as waste analysis, training, and contingency plans, provide flexibility by requiring the owner or operator to

prepare a plan in which he details the requirements for his specific facility. Other more technical requirements such as ground-water monitoring and closure, also allow significant flexibility for the owner or operator to include site-specific factors in the requirements for his facility. For example, the closure standards require a plan addressing various performance factors. Specifics of how to close the facility to meet these objectives are left to the owner or operator, subject to approval by the Regional Administrator. Many other parts of the technical standards for the interim status period provide similar flexibility.

The Phase II technical standards will continue to provide a basis for tailoring standards to particular sites. The Phase II regulations are sometimes referred to in the preamble to these regulations as "best engineering judgment" regulations. The Agency envisions that these regulations will provide basic performance requirements and a set of relevent technical factors that relate to those performance standards. Specific permit requirements will then be based on the engineering judgment of the permitting officials, supplemented by technical reference manuals. This system will allow maximum flexibility for tailoring of the specific permit requirements based on waste specific and site-specific knowledge. This case-by-case approach is appropriate because the possible combinations of types of waste and types of management scenarios throughout the Nation are almost limitless.

Finally, the Agency has established thresholds for exemption of wastes from small quantity generators through the combination of a general exclusion, and specific exclusions, based on considerations of hazard. Although not based on a comprehensive degree of hazard system, the exclusion level for some wastes has been set at very low levels based on case-by-case hazard determinations.

In summary, the Agency believes that the final regulations accomplish the objectives of a degree of hazard system, while avoiding the enormous problems that would be associated with development and implementation of such a system.

B. Volatile Waste

Because most hazardous waste can volatilize into the air to some degree, EPA is concerned about the treatment, storage, or disposal of hazardous waste which could result in the emission of toxic compounds into the air.

In the proposed regulations, volatile waste was defined as any hazardous waste mixture with a true vapor pressure greater than 78 mm Hg at 25° C. Using this definition, the proposed regulations contained a number of prohibitions and limitations on the management of volatile waste in various types of facilities.

A number of people commented on the impracticality of the limitations and prohibitions on volatile waste, and felt it was inappropriate to use the OSHA permissible exposure levels for airborne contaminants as a mechanism for allowing variances to the prohibitions (i.e., under the proposed regulations, if an owner or operator could show that his facility could manage volatile wastes so that the OSHA levels for pollutants in the air were not exceeded, then he was allowed to do so).

Although no comments directly addressed the proposed definition of volatile hazardous wastes, EPA became concerned about a number of technical difficulties associated with defining volatile waste solely in terms of the waste's vapor pressure. First, vapor pressure is only one of the several factors which influence the volatilization rate of hazardous waste. Other factors (such as solubility, temperature, molecular weight of the waste, and surface area of a landfill or impoundment) can lead to radically different volatilization rates for compounds with similar vapor pressures. Second, if the vapor pressure of a hazardous waste mixture were used to determine whether it is a volatile waste (and thus, subject to more stringent standards than non-volatile waste), owners or operators might dispose of toxic compounds with high pure vapor pressures by mixing them with compounds with low vapor pressures. Third, EPA is concerned that there is not enough information about the inhalation toxicity of individual compounds in waste to substantiate an estimate of a safe volatilization rate.

Since the regulations were proposed, the Agency has examined several alternatives for defining and controlling volatile waste. These included attempts to develop a new definition, and a new variance provision. However, because these attempts thus far have not been successful, the Agency is not defining volatile waste as a waste class at this time.

The primary or secondary purpose of some of the interim status standards, however, is to reduce airborne emissions that result from volatilization. For example, the final cover requirements for landfills, and the requirement that waste storage drums be kept closed, will reduce volatile emissions from these devices.

Nonetheless, EPA is concerned that there may be little control of volatilization for surface impoundments, open tanks, and land treatment facilities in the Phase I rules.

This is clearly an area in which there is a great need for additional information regarding how to properly define volatile waste, how to relate the quantity of volatile waste being land disposed to the toxicity of volatile compounds, and how to arrive at appropriate control measures to minimize emission of these compounds to the air. The Agency is committed to solving this problem and will continue its investigations.

The Agency solicits comment and data on this matter. As information becomes available, the Phase II and Phase III regulations will contain additional provisions to control volatile wastes and the interim status standards may be revised where appropriate.

C. Performance Versus Design and Operation Standards

In the proposed standards, the Agency relied primarily on facility design and operation standards in an effort to provide specific requirements which could be easily understood and interpreted by permit applicants and permit writers alike, and which could be easily enforced. Recognizing that these specific standards might discourage the development of new technology, or that different design and operation requirements might be necessary for particularly facilities in certain locations handling certain types of waste, the Agency attempted to incorporate flexibility into the regulations by supplementing some standards with "Notes." Each "Note" described the circumstances under which the Regional Administrator would allow deviation from the specific standard to which the "Note" applied. No deviations were allowed for those proposed standards not accompanied by "Notes."

In addition to the design and operation standards, the proposed regulations contained overriding performance standards (i.e., human health and environmental standards) for protecting ground water, surface water, and air quality. These were very elementary ambient performance standards which were to be used in unusual waste management situations where the design and operation standards were insufficient to protect human health and the environment.

Several commenters pointed out significant drawbacks to using the proposed human health and environmental standards as fail-safe mechanisms for regulating hazardous

waste management. In response to these comments, the Agency has deleted the human health and environmental standards from the Section 3004 regulations.

EPA's strategy in the proposed rules of relying primarily on design and operation standards was also criticized by many commenters. Most of their comments focused on four concerns regarding regulations based on design and operation standards: (1) design and operation standards discourage innovative technology, (2) design and operation standards eliminate flexibility for permit officials to allow for local situations, (3) some existing facilities may be unable to comply with the design and operation standards and yet may be environmentally acceptable, and (4) RCRA does not authorize the establishment of design and operation standards.

The Agency rejects this fourth point. Section 3004 of RCRA states that: "The Administrator shall promulgate regulations establishing such *performance* standards applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment." However, it *also* states that: "Such standards shall include, but need not be limited to, requirements respecting:

(1) Treatment, storage, or disposal of all such wastes received by the facility pursuant to such *operating methods, techniques, and practices* as may be satisfactory to the Administrator; and

(2) The *location, design, and construction* of such hazardous waste treatment, storage, or disposal facilities;" (emphasis added).

Thus Section 3004 of RCRA authorizes both performance standards and specific design and operation standards.

Nonetheless, the Agency believes that some of the arguments for greater flexibility raised in the first three points have merit, and the Agency has evaluated several approaches to respond to these commenter's concerns.

One approach which the Agency considered was to accommodate the requests for greater flexibility through specific changes in the regulations. These changes include establishing a class of hazard system, and expanding and clarifying the variances. These topics are discussed elsewhere in this preamble. These changes are desirable, and they have been incorporated to a limited extent in the interim status standards. They will be more evident in the technical regulations yet to be issued under Phases II and III. However, these changes do not fully and directly address the commenters criticism of the proposed rules, because they do not really shift the emphasis from design and operation standards.

A second approach which the agency has used to a very limited extent in these rules and is considering for the Phase II rules is to expand the use of "operation performance standards," which, for example, could place limits on emissions or specify results. Such standards are advantageous because they provide more flexibility than design and operation standards. Operation performance standards were already implicit in many of the proposed design and operation regulations. The Agency plans to make them more explicit in the Phase II rules.

The Agency believes that using operation performance standards, in conjunction with the other changes in the regulations mentioned above, should provide a much more flexible approach for designing and operating facilities than was possible under the proposed rules, while avoiding the many disadvantages of ambient performance standards. Using operation performance standards also directly responds to the majority of comments on this issue. It should be noted, however, that the Agency has retained explicit facility design and operation standards where their use is appropriate such as in the emergency preparedness and response regulations.

D. Notes, Variances, and Equivalency

As was mentioned in the discussion above, the Agency attempted to incorporated flexibility into some of the proposed design and operation standards by allowing variances from the standards. These variances were specified in "Notes" which accompanied many of the standards. In most cases, these "Notes" required that, in order to deviate from the prescribed standard, the applicant had to show that the modification to the standard would provide an *equivalent degree of protection or performance* as the prescribed standard. In reviewing the comments requesting more flexibility in the regulations, it became clear that many commenters had simply ignored the "Notes." This was obvious from the many specific complaints about the impracticality of certain standards under certain conditions without reference to the attendant "Notes," which were designed to provide the flexibility to deal with such conditions.

Other commenters felt that the permitting official would be reluctant to use the "Notes," because to do so would require him to decide whether the substitute design or operation modification would provide equivalent performance. The commenters believed that permit writers would not want to make these types of decisions because it would place their technical and professional reputations on the line. Specific suggestions made by commenters to rectify this problem, and to incorporate additional flexibility into the regulations, included:

(1) Incorporate the "Notes" into the regulations to make the variance procedure an integral part of the permitting process;

(2) Provide variance procedures for more standards than those included in the proposed rules;

(3) Provide a general variance procedure which would apply to all standards; and

(4) Provide guidance on what is meant by "equivalent performance."

As mentioned earlier, the Agency agrees with suggestions (1) and (2), and has incorporated them into the Phase I regulations, and also will do so in the Phase II and III regulations.

EPA does not agree that variances to *all* standards should be allowed. For example, every facility needs a contingency plan. Furthermore, for most variances to be implemented with a maximum degree of specificity, they must be tailored to the individual standard. For these reasons, the Agency has chosen not to develop one general variance procedure to apply to all regulations.

The Agency has attempted to lessen the need for demonstrating "equivalent performance" by making the variance procedures more specific. By so doing, in a few cases, there may be some decreased latitude in the degree of permissible variation from the standard than was the case when variances were keyed to demonstration of "equivalent performance." The Agency believes, however, that the reduced potential for confusion and disagreement between the Agency and the regulated community associated with this change outweighs this slight loss in flexibility.

During the interim status period, allowable variances to Part 265 standards are self-implemented by the facility owner or operator, subject to EPA oversight (see discussion under "Interim Status Standards"). The Part 264 Phase I standards contain some variance provisions and the Agency expects that the Part 264 Phase II technical standards will also contain variances where appropriate. The Agency intends that permit writers make full use of the flexibility available through these variances to Part 264 standards, where allowable and

appropriate, because this is the essence of the best engineering judgment approach discussed earlier.

Data on the applicability of many variances, among other things, will be included in the Part 264 Phase II Reference Manuals (discussed later in this preamble) which will be available to permit writers and the public.

E. Commercial Products Standards

Several types of materials (process wastes, residues, etc.) which may be classified as hazardous wastes are being used to make commercial products, e.g., fuel oil, building blocks, and soil conditioners. Aside from a few radioactive special wastes, no hazardous waste standards were proposed to cover these products.

The Agency, however, addressed the issue of commercial products in the preamble to the proposed regulations and EPA indicated that it was considering developing standards for re-use of hazardous waste. One suggested approach would require a product made from hazardous waste not to pose a threat to human health or the environment greater than the threat posed by the virgin product it replaces. The Agency requested commenters to indicate other feasible regulatory approaches and to provide data which could be used to support commercial product standards.

Comment response to EPA regulation of commercial products was almost entirely negative. Several commenters questioned EPA's authority to promulgate such standards under RCRA and suggested that product regulation is more properly the purview of the Consumer Product Safety Commission and the Toxic Substances Control Act. Others pointed out that the Agency should encourage recovery, recycling, and re-use but that regulation discourages such activities.

EPA believes it has the authority under RCRA to regulate the management of materials which can be classified as hazardous wastes even when that management involves the re-use of the waste as a product. (The reader is referred to the preamble accompanying the promulgation of the Part 261 regulations of this Chapter for a discussion of the circumstances under which recycled materials may be classified as hazardous wastes.) Also, the focus of the Consumer Product Safety Commission is not on wastes and products made from them. EPA believes that waste-related matters should, in most cases, be dealt with under RCRA, although EPA also may choose to promulgate some standards dealing with the re-use of wastes under the Toxic Substances Control Act.

On the other hand, EPA sees several problems with setting generic requirements for the processing for re-use, and re-use of hazardous wastes. First, it is difficult to determine generically how hazardous wastes can be appropriately re-used or processed for re-use. The Agency recognizes that the approach in the preamble to the proposed regulations, which would have required all products made from hazardous waste to be at least as safe as virgin products, is flawed and is not adopting it at present.

The Agency agrees with the substantial body of comment which urged the Agency not to place the hazardous waste stigma on recovered products without very good cause. Recovery or re-use is generally among the best of all possible ways to minimize the hazardous waste problem—it removes the need for disposal while conserving resources and energy and eliminating the wastes associated with making virgin products. Regulating the processing or re-use of hazardous wastes into products could decrease acceptance of these products in the marketplace.

The Agency has concluded that the best approach is case-by-case regulation of specific processing or re-uses of hazardous waste where the potential hazards of uncontrolled processing and re-use are clear. Certain of these requirements may be included in the Phase II standards.

F. Storage of Recycled Waste

In the Phase I regulations under RCRA Section 3004, the Agency has decided to regulate storage of hazardous waste which is listed in Subpart D of Part 261 prior to its use, re-use, recycling, reclamation, or treatment for these purposes. Several damage cases point to the need for a storage regulation for such wastes at this time. The Agency may include additional requirements in the Phase II or Phase III standards. On and after the effective date of these Phase I regulations, storage of such wastes in containers, tanks, piles, or surface impoundments, until it is used, re-used, recycled, reclaimed, or treated for these purposes is subject to control under these regulations. These requirements apply both to on-site and off-site facilities. Facility owners or operators who store such waste prior to its use, re-use, recycling, reclamation, or treatment for these purposes must comply with the RCRA Section 3010 notification and Section 3005 permit application requirements (see 40 CFR Part 122) in order to qualify for interim status.

G. General Standards for Storage

The proposed § 250.44 storage standards required that storage be conducted so that no discharge of hazardous waste occurred. Because most wastes have some vapor pressure, the proposed rules specified that all hazardous waste must be stored in covered tanks or containers. Many commenters claimed that this "no discharge" performance standard for all storage was technically infeasible and inconsistent with the concept of controlled air emissions under the Clean Air Act and controlled discharges under the Clean Water Act. They also felt that the requirement to store waste only in tanks and containers was unduly burdensome; they claimed that (1) it is unnecessary to store low-volatility wastes in covered storage devices, and (2) it is impractical to store bulk-solid or semi-solid materials in enclosed tanks or containers. For these reasons, the commenters recommended that storage be allowed in devices other than storage tanks and containers, e.g., basins, surface impoundments, and piles.

EPA developed the proposed "no-discharge" standard based on its interpretation of the RCRA definition of "storage," which means ". . . containment . . . in such a manner as not to constitute disposal . . . ." RCRA defines "disposal" as:

> 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 ground waters.

EPA interpreted this statutory language as requiring "no discharge" (emission) from any hazardous waste storage facility.

Although some commenters considered this a proper interpretation of the Act, others took strong exception to it as noted above. Commenters also contended that the standard was inconsistent with the approach of Section 3004 of RCRA which in their view is to minimize adverse effects. The standards for storage, they argued, should recognize that there are environmentally responsible ways other than no discharge to store hazardous wastes, and should approach the problem by minimizing the potential for discharges, or requiring only that no significant discharges occur. On a narrower level, commenters argued that under the definition of disposal, air

emissions from materials that have not been discharged onto land or water are not "disposal"; thus, RCRA does not mandate the prohibition of air emissions from tanks or containers.

These comments suggest perhaps a more basic issue concerning storage. While RCRA defines storage as containment in such a manner as not to constitute disposal, it does permit disposal under appropriate conditions. Thus, it seems anomalous in the Section 3004 regulations to require an absolute prohibition of emissions when handling of wastes is called "storage," while permitting some level of emissions in other facilities performing "disposal." Surface impoundments, indeed, appear to fall somewhere between a clear example of storage, such as a sealed container, and a clear example of disposal, such as a landfill. An unlined impoundment, for example, may be used to accumulate hazardous wastes for a number of years, and over that time at least some of the waste will almost certainly migrate into the soil under the impoundment. Yet, if at the end of its life the residue and contaminated soil are removed, the impoundment might be rendered non-hazardous, and certainly presents a different picture from a landfill. This situation suggests that the proper focus for regulation of storage facilities is on whether the wastes will eventually be removed from the facility. This approach to storage, under interim status, is reflected primarily in appropriate standards for closure and financial responsibility (i.e., the cost estimate for closure).

The Agency believes that RCRA permits this approach. The definition of storage in RCRA refers to "containment . . . either on a temporary basis or for a period of years," which is a central factor in the current regulatory definition. RCRA apparently would permit the Agency to regulate treatment, storage, and disposal without anywhere prescribing different standards or approaches for facilities falling into different statutory categories; indeed, the statute typically, as in Section 3004, mentions "treatment, storage, and disposal" in a single phrase, indicating that the same statutory provisions apply to all three. This is to be compared with RCRA's much different treatment of generators, and of transporters. This is not to say, of course, that the Agency cannot or should not prescribe quite different standards for facilities that are storage facilities (under some regulatory definition) than for disposal facilities, but simply to say that RCRA permits the Agency to use that concept of storage which seems most appropriate for regulatory purposes.

With these considerations in mind, and recognizing the impracticality of completely eliminating emissions from most types of facilities, the Agency has redefined "storage" to mean "the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere."

A few commenters suggested that the Agency consider adding a standard which would limit the time or quantity (or both) of waste that can be stored at a hazardous waste facility. Any such standard would best be based on the type of waste to be stored, the design and construction of the containment device used to store the material, and the climatic conditions under which the storage is to take place. At present, the Agency lacks sufficient data to develop such standards, and a detailed consideration of such information can for now best be made in permitting proceedings. However, the Agency expects to examine further appropriate limitations for storage, and may propose regulations in the future.

In addition, the closure and financial responsibility requirements will set limits indirectly on the quantity of hazardous waste in storage. The Phase II financial standards are expected to require that adequate funds be placed in the closure trust (or other acceptable mechanism) to close the facility at any given time, considering the amount of waste on hand. The amount of these funds will create a definite upper limit on the amount of waste in storage at any time, and will create financial incentives for owners and operators to minimize this amount.

H. Owner or Operator

In a majority of cases, the owner and operator of a hazardous waste treatment, storage, or disposal facility are the same person or corporation. However, it is not uncommon for an operator to lease the land and perhaps structures from a landowner. In a few cases, the owner of the land, the owner of the structures, and the operator may all three be different persons or companies.

In the proposed regulations, the Agency used the term "owner/operator" when referring to any or all of these parties, and defined the term to mean "the person who owns the land on which a facility is located and/or the person who is responsible for the overall operation of the facility." Commenters complained that the definition was vague and ambiguous and that it was not clear who (the owner or operator) was responsible or liable for what. A few commenters also pointed out that for a few of the requirements, only the owner can legally comply—a case in point being the requirement to record a note on the deed in proposed § 250.43–7(b).

The Agency's first priority is to protect human health and the environment. Thus, where there has been a default on any of the regulatory provisions, the Agency will attempt to gain compliance as quickly as possible. In so doing, the Agency may bring enforcement action against either the owner or operator or both. EPA considers the owner (or owners) and operator of a facility jointly and severally responsible to the Agency for carrying out the requirements of these regulations.

One reason for this joint responsibility is that, as the commenters pointed out, there is at least one provision of the Section 3004 regulations that only the owner can comply with—that is the requirement to record a notation on the deed to property where hazardous waste remains after closure. Second, if the owner is not bound by the regulations, EPA could have a very hard time trying to implement and enforce the closure and financial responsibility provisions of the regulations. Third, the legislative history of RCRA indicates that responsibility for complying with the regulations pertaining to hazardous waste facilities should rest equally with owners and operators where the owner is not the operator (H.R. Rep. No. 94–1491, 94th Cong., 2d Sess. 28 (1976)).

With most of the regulations, the Agency is primarily concerned with compliance, and is secondarily concerned with who ensures compliance. The Agency believes that decisions concerning who should be responsible for ensuring compliance for which requirements can properly and adequately be a matter between the owner and operator. Nonetheless, both the owner and operator ultimately remain responsible, regardless of any arrangement between them.

Some facility owners have historically been absentees, knowing and perhaps caring little about the operation of the facility on their property. The Agency believes that Congress intended that this should change and that they should know and understand that they are assuming joint responsibility for compliance with these regulations when they lease their land to a hazardous waste facility. Therefore, to ensure their knowledge, the Agency will require owners to co-sign the permit application and any final permit for the facility. Part 122 of the consolidated permit

regulations has been changed to reflect this.

The Agency agrees with those commenters who pointed out that in a few cases only the owner can legally comply with a requirement. Where this is so, the Agency has specified the "owner" in these final regulations. EPA has also changed its usage of the term "owner/operator" to "owner or operator" to indicate when EPA will be satisfied by compliance by either party (but also to indicate that the Agency may enforce against either or both).

I. Inactive Facilities

RCRA is written in the present tense and its regulatory scheme is prospective. Therefore, the Agency believes Congressional intent to be that the hazardous waste regulatory program under Subtitle C of RCRA is to control primarily hazardous waste management activities which take place after the effective date of these regulations. Thus, the proposed Subtitle C regulations did not by their terms apply to inactive (either closed or abandoned) disposal facilities.

Comments received on the subject pointed out the need to protect the public from inactive and abandoned disposal sites, stressing that because these facilities are normally very poorly designed and situated, they represent a more severe hazard than new facilities. Love Canal and other disasters were cited to support this argument.

The Agency agrees that inactive and abandoned hazardous waste sites (particularly dumps, landfills, and lagoons) may pose serious hazards to human health and the environment. RCRA already provides one tool which can be used to deal with the problem of inactive and abandoned sites—the imminent hazard provision of Section 7003. This provision—which is applicable to both inactive and active sites—can be used to obtain injunctive relief from any party who can be shown to be causing or contributing to ". . . an imminent and substantial endangerment to health or the environment . . . ."

The Agency is actively using Section 7003 and other applicable laws to force responsible parties to bear the costs of cleaning up sites posing a hazard. These authorities will remain in place and continue to be actively employed even after the effective date of the Subtitle C regulations.

To provide site cleanup in those situations where the responsible parties are unknown or lack the funds to do the job, the Administration has proposed "Superfund" legislation currently pending in Congress.

While RCRA's regulatory scheme is generally prospective, certain inactive facilities, or portions of inactive facilities, because of their relationship to facilities which continue to operate, may be subject to some RCRA Subtitle C regulatory controls. Some existing landfills or other facilities are expected to close if they do not or cannot meet the Subtitle C standards. The owners or operators may then design a facility which meets the standards and apply for a permit to locate it on land immediately adjacent to the inactive portion. This is not an improper action, but, in some cases, problems associated with the inactive site (leachate, emissions, etc.) may interfere with the ability of the owner or operator to adequately monitor the "new" facility. In these cases, the Regional Administrator may require that the owner or operator of the new facility ensure that certain actions are taken on the inactive site, in order to minimize or eliminate any interference with monitoring or enforcement activities at the "new" facility.

J. New Facilities and Existing Facilities

In some regulatory programs regulated operations are subject to different requirements, depending on how old the operation is when the regulatory program begins. Often, existing operations are exempted or are subject to less stringent regulations than new operations.

The original language of RCRA did not distinguish between new and existing facilities. Consequently, EPA made the proposed Section 3004 regulations applicable to both new and existing facilities. The Agency recognized, however, that some existing facilities would have difficulty complying with some of the regulations. The Agency envisioned that the "Note" (variance) procedure, as well as the use of compliance schedules would accommodate the possible difficulties associated with retrofitting existing facilities.

The Agency received numerous comments on this general issue. The most frequent comment on the subject concerned RCRA coverage of NPDES permitted wastewater treatment impoundments. Nearly all commenters were opposed to having RCRA cover these impoundments, citing the impracticality of retrofitting existing lagoons to meet the proposed standards. Specific comments addressed:

(a) The tremendous cost associated with lining existing impoundments or building new ones,

(b) The costs of transporting wastes to off-site facilities from manufacturing operations which may be located in areas which are unsatisfactory for waste management,

(c) The likelihood that many manufacturing plants would have to close while the impoundment was being retrofitted, and

(d) The possibility that some existing facilities may not be polluting now and may never in the future pollute the environment, even though they do not meet all of the proposed RCRA surface impoundment standards.

After substantial additional study, EPA has concluded that the proposed surface impoundment regulations can be changed to answer many of the commenters' concerns about their application to existing wastewater treatment impoundments. The Agency, in keeping with its general guideline of not imposing major capital expenditures on existing facilities during interim status will not require extensive retrofitting of existing surface impoundments in the interim status standards. Furthermore, it is anticipated that the general regulations yet to be promulgated in Phases II and III will also not require retrofitting of these facilities, if the owner or operator can demonstrate that the impoundment is not contributing statistically significant quantities of contaminants to ground water. The Phase I regulations require a ground-water monitoring program in order to determine whether an impoundment is polluting. Regulations yet to be issued in Phases II and III of this regulatory program will set forth additional technical requirements for impoundments. Most of these requirements probably will not apply to existing impoundments found not to be affecting ground water.

The Agency believes that this regulatory approach will (1) substantially reduce the number of existing NPDES facilities which might otherwise had to have been retrofitted, closed, or replaced in order to comply with the proposed Subtitle C rules, and (2) ensure that human health and the environment is protected. Further, this approach is consistent with pending Congressional amendments to RCRA.

Some commenters suggested that all existing facilities, and particularly existing landfills, should be regulated differently than new facilities. After careful consideration, the Agency has concluded, for the following reasons, that landfills do not pose the special problems or deserve the same consideration as "existing" facilities that surface impoundments do:

(1) Sections of landfills are typically filled in sequentially; i.e., one trench or part (cell) of the total landfill area is

filled and then another part is filled. This activity may or may not be done in discrete increments, but it is almost always done in progression moving away from a starting point. Thus, owners or operators can close existing portions of most landfills at virtually any time without retrofitting the facility and can design the unclosed portion in accordance with the RCRA standards. This option is not available to impoundment owners or operators because the entire base of the impoundment is normally covered with wastes from the beginning of operations.

(2) Impoundments are usually temporary structures; i.e., wasted are normally removed from such facilities when they are closed. By contrast, landfills normally constitute permanent disposal; i.e., wastes remain in landfills essentially forever.

(3) Landfills are not normally integrally connected to manufacturing operations. Therefore, any necessary retrofitting which requires diverting solid waste to storage or other facilities would not be likely to cause the manufacturing operation to shut down during the retrofit period. This is not the case with surface impoundments, which typically are integral components of manufacturing operations.

Similarly, except for some minor changes, the Agency could find no good reason for making major distinctions between new and existing incinerators, storage facilities, and other kinds of facilities in these Phase I regulations.

Commenters also pointed to the impracticality of the siting standards, which would have required closure of all existing facilities which were not located in areas which met the proposed siting requirements. No location standards are included in the Phase I regulations (see preamble discussion on "Interim Status Standards"). EPA is considering what relief consonant with RCRA's human health and environmental protection mandate might be granted to existing facilities unable to comply with the location standards. EPA expects to address these considerations in the Phase II standards.

K. References to Other Acts, Regulations, and Standards

In the proposed regulations, many references were made to legislation and regulations other than RCRA to alert owners and operators that these laws and regulations might apply to their facilities. These included references to proposed and final Federal regulations, State standards, industry standards, and Executive Orders.

Many comments were received concerning this practice. These comments challenged the legality and the appropriateness of referencing or incorporating standards from other regulations. Several commenters stated that, by citing requirements from other legislation or regulations in RCRA regulations, EPA would be including provisions that are subject to change by the authority responsible for the referenced regulation, without regard for required public participation under the Administrative Procedure Act (5 U.S.C. § 533). Other commenters discussed the potential for duplicate civil or criminal penalties which would result form EPA references to other acts in the Section 3004 standards. Commenters stated that Congressional intent was not to make a violation under one set of regulations a violation under another. For example, in the view of commenters, a National Pollution Discharge Elimination System (NPDES) permit violation should not automatically be a RCRA permit violation.

The Agency agrees with certain of these arguments and has deleted references to other acts, regulations or laws which would constitute an unwarranted imposition of duplicate liability. However, EPA always may adopt language identical or similar to that of another statute, regulation, or code of practice, if, in EPA's judgment, the standard is pertinent and independently supportable under RCRA. For example, the requirement for set-back distances for tanks containing ignitable waste is adopted directly from the National Fire Protection Association (NFPA) "Flammable Combustible Code—1977" for storage tanks; it is independently supportable for RCRA purposes, and is now effective regardless of changes made by NFPA.

L. Integration With Other Acts

1. *Underground Injection Control Program.* The final RCRA interim status standards regulate the underground injection of hazardous waste until these activities receive a permit under a State UIC program approved or promulgated under the Safe Drinking Water Act (SDWA). Thereafter, they will receive a permit by rule under RCRA. However, underground injection facilities typically have above-ground treatment and storage operations which are and will remain subject to RCRA controls as hazardous waste management facilities. Thus, most of these facilities will ultimately require both RCRA and UIC permits. To facilitate the granting of these permits, EPA has consolidated the permit and State program authorization procedures for the two programs. These consolidated procedures will allow EPA, or a State, if it has an approved program, to process RCRA and UIC permits together, thereby avoiding overlap and inconsistencies. (See the preamble discussion on Subpart A and on Subpart R—Underground Injection for more details on the integration of RCRA and SDWA.)

2. *Ocean Disposal Program.* The disposal of hazardous waste in the ocean is regulated under the authority of the Marine Protection, Research, and Sanctuaries Act. EPA has, therefore, in Part 122 of the consolidated permit regulations, granted these facilities a permit by rule to avoid duplicative regulation. However, most ocean disposal operations involve on-shore facilities which may store or treat hazardous waste prior to ocean disposal. These storage and treatment facilities are subject to these Section 3004 regulations and will require a RCRA permit. Therefore, it will be necessary to coordinate the two EPA regulatory programs which have jurisdiction in this area. In addition, where wastes subject to RCRA control are delivered directly to a barge or other vessel which conducts ocean disposal operations, such vessels will have to comply with certain requirements of RCRA. This is necessary to complete the manifest system. Thus, the owners of such vessels must notify the Agency in accordance with Section 3010 of RCRA and comply with the manifest requirements. The permit by rule provisions of Part 122 make these obligations clear.

3. *NPDES Permitted Facilities.* Commenters raised three major issues with regard to the coverage of NPDES permitted facilities and their wastes under RCRA. These are discussed in turn below. One, commenters questioned the exclusion of POTWs from regulation under Section 3004. Proposed § 250.40(c)(3) required that POTWs that received hazardous waste by truck or rail comply only with the manifest system; other POTWs were not subject to Subtitle C at all because mixed industrial and domestic sewage waste streams were considered "domestic sewage," and thus not "solid waste." Two, commenters questioned the inclusion, as facilities subject to Section 3004 regulations, of industrial wastewater treatment train facilities with discharges permitted under Section 402 of the Clean Water Act; and three, commenters questioned the exclusion of sewage sludge from regulation as a hazardous waste, as proposed in § 250.10(d)(2)(iii). The Section 3001 preamble analyzes and responds to these comments in some detail because all three issues depend on whether

certain materials are "solid waste" and thus, if hazardous, subject to regulation under Subtitle C of RCRA.

a. *Regulation of POTWs as Section 3004 Facilities.* To summarize, domestic sewage, which is excluded from the statutory definition of solid waste in Section 1004(27) of RCRA, is defined in § 261.4 of the Section 3001 regulations as "untreated sanitary wastes that pass through a sewer system." In addition, any mixture of domestic sewage and other wastes that pass through a sewer system to a POTW for treatment are excluded from the regulatory definition of solid waste. That regulatory exclusion is based on the legislative history of the Solid Waste Disposal Act. EPA believes that such mixed waste streams properly should be subject to controls under the Clean Water Act's construction grants program and pretreatment programs. Because the treatment of sewage by privately owned treatment works is not similarly controlled by EPA, there is no exclusion in the Section 3001 regulations for mixed waste streams going to such facilities. On the other hand, publicly owned or privately owned wastewater treatment works that receive hazardous waste by truck, rail or pipe are treatment or storage facilities subject to Section 3004 regulations, although as the Purpose, Scope and Applicability (Subpart A) discussion in this preamble points out, the same expressions of Congressional intent that led EPA to treat mixed waste streams passing through sewer systems to POTWs differently than those flowing to private treatment works also have led the Agency to treat POTWs and private treatment works differently under Section 3004 and 3005 regulations.

b. *Regulation of NPDES Treatment Train Facilities Under Section 3004.* The second issue raised by commenters was that the exclusion of "solid or dissolved materials in . . . industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act" from the definition of "solid waste" in Section 1004(27) of RCRA, excluded facilities that are part of treatment trains leading to such discharges from Subtitle C coverage. EPA disagrees and construes the exclusion for point sources to apply only to actual discharges into navigable waters, not to industrial wastewaters upstream from the point of discharge. The result of EPA's interpretation is that, as proposed, surface impoundments, tanks, lagoons, holding ponds and other facilities used to treat, store, or dispose of hazardous industrial wastewaters must meet applicable Section 3004 standards and must obtain a Section 3005 permit. The standards to which existing surface impoundments will be subject are discussed in the section of this preamble entitled "New and Existing Facilities" and the section on surface impoundments (Subpart K).

c. *Regulation of Sewage Sludge Under Subtitle C.* EPA agrees with the commenters who argued that sewage sludge from POTWs should not be categorically exempted from regulation as a hazardous waste. Those sewage sludges which are hazardous now fall within the jurisdiction of Subtitle C of RCRA. The Section 3001 preamble summarizes and responds to the comments on this issue and also discusses EPA's efforts to integrate and coordinate its regulatory actions governing sewage sludge.

4. *BAT Toxics and Pretreatment Standards.* Many commenters strongly urged avoiding conflicts between these RCRA regulations and other regulatory programs, including the BAT and pretreatment programs.

The Clean Water Act provides a comprehensive scheme for the regulation of discharges to navigable waters. This scheme includes a role for EPA in the establishment of effluent limitations guidelines that set technology based effluent limitations for specific pollutants in the effluents of certain classes of industrial point sources. These standards, and other applicable requirements such as State water quality standards, are used by EPA and approved States in the establishment of specific permit conditions under the NPDES program.

The effluent limitations guidelines may be written for conventional pollutants (e.g., suspended solids, fecal coliform, biochemical oxygen demand) or toxic pollutants (a list of over 65 chemical substances and heavy metals). For conventional pollutants, dischargers must achieve effluent limits attainable by the "best conventional pollutant control technology" (BCT) by July 1, 1984. For toxic pollutants, dischargers must achieve effluent limits attainable by the "best available technology economically achievable" (BAT) by July 1, 1984.

In addition, the Clean Water Act created a pretreatment program, which provides the basis for regulating discharges to sewers served by publicly-owned treatment works. This program is designed to insure that users of public sewer systems do not discharge pollutants into the system that would (1) interfere with the operation of the treatment works, (2) cause the POTW's discharge to navigable waters to exceed the requirements that would otherwise be applicable to the user's discharge if he had discharged directly, or (3) interfere with the POTW's ability to safely dispose of its sewage sludge. Solid waste pollution is one of the factors EPA considers when analyzing water problems and developing BAT and pretreatment regulations. While these RCRA regulations are designed primarily to address ground-water pollution from hazardous waste management, the Agency clearly has authority under RCRA to address surface water and air pollution. Thus there is overlapping jurisdiction between the CWA and RCRA.

Due to the specific exclusion of discharges permitted under Section 402 in Section 1004(27) from RCRA, and the comprehensiveness of the Clean Water Act programs, EPA has decided to rely on those programs to regulate the discharge of wastewater effluents (which may be hazardous) to navigable waters. In addition, the Agency's pretreatment program will be used to regulate such discharges to sewer systems served by POTW's.

It must be recognized, however, that this use of Clean Water Act programs to regulate hazardous wastes only extends as far as the jurisdiction and goals of those programs. Management activities and environmental objectives for hazardous waste facilities which are not addressed by the Clean Water Act, or which can be addressed more efficiently under RCRA, are and will continue to be addressed under RCRA regulations. Thus, for example, pretreatment unit operations may require a RCRA permit to operate if the feed to the facility is hazardous and the process is not integrally connected (via pipe or conveyor) to a manufacturing operation. Likewise any impoundment containing a hazardous waste is covered by these regulations, particularly with regard to their effect on air and ground water, until the hazardous waste in the impoundment comes within CWA jurisdiction.

5. *Clean Air Act.* Owner and operators of hazardous waste management facilities must comply with all applicable standards promulgated under the authority of the Clean Air Act. However, at the moment, very few hazardous emission pollutant standards or new source performance standards under the Federal Clean Air Act apply to hazardous waste facilities.

RCRA, in Section 1006(b) calls upon the Administrator to integrate these regulations with the Clean Air Act, "to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act" and in the Clean Air Act. Significantly, Section 1006(a) does *not* include the Clean Air

Act in the list of statutes whose regulatees are excluded from RCRA regulation to the extent such regulation is "inconsistent" with the other Act. This statutory structure grants considerable discretion to the Administrator in choosing which statute to rely upon for the most efficient and effective control of hazardous wastes affecting the air.

The hazardous pollutant provisions of the Clean Air Act require the use of certain procedures for each pollutant regulated. Because wastes are usually complex mixtures of many materials, hazardous waste facilities are capable of emitting thousands of different substances to the air, many of which are toxic. The procedures of the Clean Air Act would be a less efficient way to control a large number of hazardous air pollutants than RCRA, under which design, operation, or performance criteria (such as incinerator destruction efficiencies) can be set more easily for the many pollutants emitted by facilities. Therefore, the Agency has chosen RCRA as the primary vehicle for controlling air emissions from hazardous waste facilities.

In developing regulations to control air emissions from hazardous waste facilities, the Agency's greatest challenge has been in correlating waste volatility characteristics with potential air emission hazards. As stated earlier in this preamble, EPA has thus far been unable to develop a protocol for predicting hazard potential based on the volatility of a waste, but is continuing its investigations.

6. *Toxic Substances Control Act.* Final rules regarding disposal and marking requirements for polychlorinated biphenyls (PCBs) were promulgated on February 17, 1978, and May 31, 1979, under Section 6(e) of the Toxic Substances Control Act (TSCA). Those rules are intended to protect the environment from further contamination resulting from improper handling and disposal of PCBs.

Because of the potential overlap between the RCRA hazardous waste management standards and the TSCA PCB marking and disposal regulations, the Agency solicited comments in the preamble to the proposed RCRA regulations on how it should manage the TSCA PCB regulations (and by inference, other specific toxic wastes) vis-a-vis the RCRA regulations. Most commenters were equally divided between two positions:

(1) Publish the TSCA PCB and RCRA regulations independently and exempt PCBs from RCRA requirements, or

(2) Merge the PCB rules with the RCRA standards and co-promulgate them.

To minimize confusion and the burden on the regulated community, the Agency has tentatively determined that wherever possible, hazardous waste management control will be covered under RCRA. It has not been possible to complete this task to date, but the Agency expects to incorporate the TSCA PCB disposal regulations into the Phase II RCRA regulations.

Special disposal requirements for specific wastes will, in the future, normally be proposed as an amendment to these RCRA regulations but may be co-promulgated under TSCA authority.

7. *Surface Mining Control and Reclamation Act.* The Office of Surface Mining (OSM) of the Department of the Interior administers the Surface Mining Control and Reclamation Act (SMCRA). The primary purpose of SMCRA is to protect the environment from the effects of surface mining of coal, although surface disposal of underground coal mining waste is also covered. Thus there is overlapping authority with RCRA. The Agency is negotiating an agreement with OSM whereby RCRA control of coal mining wastes would be deferred to OSM. Such an agreement will be based on a determination by EPA that the SMCRA regulations provide control equivalent to that which RCRA would impose. In anticipation of such an agreement, the Agency has deferred regulation of coal mine waste under RCRA.

8. *National Environmental Policy Act.* The National Environmental Policy Act (NEPA) requires the preparation of a statement which considers environmental impacts, alternatives, and resource commitments for any "major federal action significantly affecting the quality of the human environment." At least ten appellate decisions have considered the applicability of that requirement to EPA. All ten have concluded that the Agency is exempt from the requirements of NEPA because its own processes provide for the "functional equivalent" of that Act. These analyses are concisely summarized in *State of Maryland v. Train,* 415 F. Supp. 116, 122 (D. Md., 1976):

> Where federal regulatory action is circumscribed by extensive procedures, including public participation, for evaluating environmental issues and is taken by an agency with recognized environmental expertise, formal adherence to the NEPA requirements is not required unless Congress has specifically so directed.

These Subtitle C regulations have been developed through an extensive evaluation of environmental issues. This was specifically required by the statutory mandate to consider what might "be necessary to protect human health and the environment," and by the Agency's developed environmental expertise and concern. That evaluation underlies this preamble and the Background Documents prepared to help develop specific sections of these regulations. Extensive public participation at many public meetings, following pre-proposal circulated drafts, and in hundreds of comments, helped the Agency in evaluating environmental issues raised by these regulations. Federal, State, and local agencies all participated in this process. Congress, well aware of the "functional equivalency" rule, did not alter that status in the RCRA statute. Thus the Agency is not bound by NEPA's requirements. The Agency has, however, voluntarily prepared an Environmental Impact Analysis which will be available to the public in EPA Headquarters and Regional libraries.

M. Special Wastes

The proposed regulations established a class of solid wastes for which, if hazardous, application of the full set of Subtitle C standards was deferred. These solid wastes, called "special wastes" were cement kiln dust, utility waste (ashes and sludges), phosphate rock mining and beneficiation wastes, uranium and other mining wastes, and gas and oil drilling muds and oil production brines. For hazardous portions of these solid wastes, a very limited subset of the Subtitle C standards was to be applicable pending completion of studies defining the most appropriate waste management practices.

When the proposed rules were issued, the Agency had only limited information on these wastes. However, the information the Agency did have suggested that application of the full set of proposed waste management standards would not be appropriate.

The attributes of these wastes which caused the Agency to reach this conclusion were:

(1) The total annual quantity of each of these wastes (both hazardous and non-hazardous portions) was very large, and individual disposal facilities tended to involve very large piles or ponds. Should large volumes of the wastes be hazardous, the size of the facilities could have made the application of some of the regulations technically infeasible or unpracticable.

(2) Any portions of the wastes which did fail the proposed hazardous waste characteristics were thought to be on the

margins of failure. Thus the hazardous portions of the wastes appeared to have relatively low intrinsic hazard relative to other wastes. However, the Agency's data base was very limited.

(3) The Agency did not believe that it had sufficient information to propose specific alternate waste management requirements without additional study.

The Agency's proposed approach to special wastes generated widespread and divergent protest from both the regulated community and the public. Commenters generally objected either to the concept of the special waste category or to the need for, or the sufficiency of, the limited standards proposed for that category. Many commenters identified other solid wastes which they urged also be defined as special wastes. The major comments were:

(1) EPA should not regulate these wastes at all unless it can demonstrate that the wastes, as presently managed, pose a significant threat to human health and the environment.

(2) Many of the limited standards proposed are not suitable for these wastes because of the low hazard and large volume of the wastes. The requirement for facility security was a particular target of criticism.

(3) The stigma of singling out these wastes and regulating the hazardous portions under Subtitle C will impact negatively on the potential for their reuse.

(4) The singling out of only these few hazardous wastes for special favored treatment is inequitable when there are other wastes with similar characteristics which must bear the full regulatory burden. Commenters suggested about 50 additional wastes to be added to the special waste category.

(5) If these wastes (or portions thereof) fail the 3001 characteristics, then they pose significant hazards to human health and the environment and therefore should be regulated like any other hazardous waste.

Several commenters recommended alternatives to the special waste category:

(1) The Agency should replace the special waste category with a variance procedure involving public participation.

(2) The standards for a given waste should be determined on a case-by-case basis with requirements specified in the permits for each facility and location.

The thrust of many of the comments was universal disapproval of the special waste category as proposed.

In the course of its consideration of the comments, including proposed additions to the special waste category, EPA made two significant changes in the basic structure and content of the Subtitle C regulations. These are (1) changes in the toxicity and corrosivity hazardous waste characteristics under Part 261 which narrow the category of waste which will be brought into Subtitle C by these characteristics, and (2) the incorporation of significantly more flexibility, through phasing and standard-setting, in the Parts 264 and 265 regulations. The Agency now has concluded that these changes accomplish the objectives of, and eliminate the need for, a special solid waste category.

1. *Changes in the Section 3001 Characteristics.* In response to comments, the toxicity and corrosivity hazardous waste characteristics have been modified and now include more demanding conditions for defining a hazardous waste. In the proposed regulations, a waste would have been considered hazardous under the toxicity characteristic if the extract from that waste (obtained through the defined Extraction Procedure) contained any hazardous constituents in the Primary Drinking Water Standards (PDWS) at a concentration of more than 10 times the PDWS limits. In the final regulations, the characteristic concentration bringing a hazardous waste under regulation has been increased from 10 to 100 times the PDWS. Thus, waste extracts must contain a tenfold higher concentration of one of the PDWS substances than originally proposed in order for the waste now to be brought under Subtitle C control by that characteristic. The reasons for the change in this characteristic are explained in the Toxicity Characteristic Background Document.

The upper and lower limits of pH which define a hazardous waste also have been revised in response to comments so that the corrosivity characteristic now is more demanding in signaling a waste as hazardous. The basis for this change is explained in the Corrosivity Characteristic Background Document.

These changes have had two important effects on the special waste concept. One is that a much smaller portion of the proposed special solid wastes are expected to fail the characteristics and be subject to control as hazardous wastes. The data available to the Agency indicate that most of the special wastes that would have entered the control system would have done so due to toxic extracts between 10 and 100 times the PDWS. Thus, the probability that large volumes of the proposed special solid wastes will be hazardous now appears remote. Second, those portions of the proposed special solid wastes which do fail the characteristics can no longer be labeled "low hazard" wastes. Thus the concern over the inapplicability of the proposed regulations to hazardous special wastes due to the potentially large volume and low level of hazard of these wastes is not a valid concern in the final regulations.

2. *Phasing and Increased Flexibility in Parts 264 and 265.* To the extent that special accommodation for any of the hazardous portions of these wastes may still be needed, the second major regulatory change, i.e., the incorporation of more flexibility in the hazardous waste management requirements through regulatory changes and phasing of requirements, will accomplish essentially the same result as the proposed special solid waste category. This is true for the hazardous portions of those wastes proposed as special solid wastes as well as for all of the wastes that commenters suggested should be special solid wastes.

The new three-stage regulatory process itself provides the same opportunity for phased regulation as the creation of the special waste category. Initial regulations under Phase I standards include administrative and limited technical requirements which provide a basic level of environmental protection similar to that provided in the limited standards proposed for the hazardous portions of special wastes.

The plans for Phase II of the regulations will allow hazardous waste facilities to be permitted largely on the basis of performance standards coupled with the "best engineering judgment" of the Regional Administrator. This flexibility will allow the permit writer to consider site- and waste-specific factors in determining specific design and operating permit requirements. Thus, unnecessary or overly stringent requirements should not be forced upon any hazardous wastes by the regulations. To the extent the Agency becomes aware of the inapplicability of certain requirements on a site- or waste-specific basis, it is committed to making needed regulatory changes as quickly as possible. In addition, the Agency plans to gather further information both on the proposed special solid wastes and on at least some of the wastes suggested by commenters as special solid wastes, and where needed, develop technical standards or guidance specific to these wastes in the Phase III regulations and thereafter. Additional data and information on these, as well as the other solid and hazardous wastes the

Agency is studying also will be useful in issuing best engineering judgment permits under the Phase II Section 3004 regulations.

In consideration of all of the above factors, the Agency has concluded that the special solid waste category is no longer necessary. It has been eliminated in these final Phase I regulations. Those portions of the six proposed special wastes which are determined by the characteristics to be hazardous will be subject to the applicable Part 264 and 265 regulations.

The Agency is, however, temporarily delaying imposition of the regulations for two of the wastes EPA originally proposed as special solid wastes, i.e., oil and gas drilling muds and oil production brines, and utility waste. This temporary deferral is in response to action by Congress to exempt these wastes from most Subtitle C regulation for a limited time pending completion of certain EPA studies. Congress has not yet completed action on the amendments which would mandate this deferral. However, bills have been passed both in the House and Senate, indicating strong Congressional intent to mandate a deferral of regulations for these two proposed special solid wastes.

In the absence of a regulatory deferral by EPA, the hazardous portions of these wastes would be subject to the requirements of the regulations on their effective date. In order to be in compliance by the effective date, the facilities handling these wastes would need to take certain actions soon, involving possibly significant expenditures, which could then be halted in mid-stream by final Congressional action. In EPA's view, such a situation would be inefficient and counterproductive. Therefore, Part 261 defers the effective date of the regulations for the hazardous portions of the proposed oil and gas and utility special wastes. The other proposed special solid wastes are the subject of bills which have passed either the House or the Senate, but only the oil and gas and utility waste deferrals are contained in both the House and Senate bills. EPA is not presuming the outcome of the additional proposed deferrals, but will, where necessary, amend Part 261 regulations after the currently proposed amendments to RCRA are finally acted on by Congress.

V. Detailed Analysis of Phase I Rules

A. Subpart A—General

Subparts A of Parts 264 and 265 contain requirements under three general headings. The first is "Purpose, Scope, and Applicability" (§§ 264.1 and 265.1). These provisions explain who is subject to the regulations in the Part, and whether there are any circumstances under which a person is excluded from coverage by the regulations or subject only to limited requirements. The second section in Part 264 (§ 264.3) explains the relationship of Part 264 requirements (which EPA has termed "general standards" or "permitting standards") to Part 265 requirements (the "interim status standards"). Section 265.1(b) is the counterpart of § 264.3. It explains that the Part 265 regulations, rather than the Part 264 regulations, are applicable to an owner or operator who has fully complied with the requirements for interim status under Section 3005(e) of RCRA, and who has not had final administrative action taken on his permit application. Sections 264.4 and 265.4 notify people who handle hazardous waste that imminent hazard actions may be brought notwithstanding any other provisions of the regulations. Each of these sections is discussed in detail below.

1. *Purpose, Scope, and Applicability.* The content of this section has changed substantially from the proposal. This preamble discussion explains the final requirements, and, in addition, contains a table showing the correlation of each of the paragraphs in proposed § 250.40 with the final regulations.

Paragraphs (a) of §§ 264.1 and 265.1 set forth the purpose of the Section 3004 regulations and are self-explanatory.

Paragraphs (b) of §§ 264.1 and 265.1 state the general applicability of the regulations, which is to all owners and operators of facilities that treat, store, or dispose of hazardous waste (TSDFs), except as specifically provided otherwise in the Parts 264, 265, or 261 regulations.

Paragraphs (c) through (g) of § 264.1 and paragraph (c) in § 265.1 delimit the general applicability of the regulations. In addition, each Subpart in Parts 264 and 265 contains an applicability section. Some of these special applicability sections now merely refer back to the requirements in §§ 264.1 and 265.1, but Subparts F through R of Part 265 contain applicability sections which limit the applicability of the requirements in those sections to certain kinds of facilities. The requirements in Subpart N of Part 265, for example, apply only to owners and operators of facilities which dispose of hazardous waste in landfills (which include waste piles used as disposal facilities).

a. *Ocean Disposal.* Paragraph (c) of § 264.1 states that the requirements of Part 264 apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act (MPRSA) only to the extent they are included in a RCRA permit by rule granted to such a person under Part 122 (i.e., the RCRA Section 3005 regulations). The preamble to the Part 122 regulations explains the basis of EPA's decision to issue such persons RCRA permits by rule. Basically, EPA has found that compliance with an ocean dumping permit issued under 40 CFR Part 220 (Ocean Dumping under MPRSA) provides the human health and environmental protection mandated by RCRA. Persons carrying out such disposal, however, must comply with certain recordkeeping and reporting requirements which are necessary for EPA to ensure that the "cradle-to-grave" management system for hazadous waste established in RCRA tracks all manifested hazardous waste.

Paragraph (c)(1) of § 265.1 excludes persons disposing of waste by ocean disposal subject to a MPRSA permit from coverage under Part 265 (interim status standards). The Part 265 requirements never apply to such people because on the effective date of RCRA regulations persons disposing of hazardous waste in accordance with MPRSA permits automatically receive RCRA permits by rule which require them to comply with selected Part 264 requirements.

Treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea is covered by the Parts 264 and 265 regulations because MPRSA offers no regulatory scheme comparable to RCRA for such facilities.

b. *Underground Injection.* Coverage under RCRA of persons disposing of hazardous waste by underground injection is complicated because, depending on the circumstances, such persons are subject to regulation (1) by RCRA Part 265 standards, (2) by RCRA Part 264 standards, (3) by State standards effective under an authorized hazardous waste program (under Section 3006 of RCRA, 40 CFR Part 123, Subparts A, B, and F), (4) by State standards effective under an approved underground injection control program (under the Safe Drinking Water Act (SDWA), 40 CFR Part 123, Subparts A and C), or (5) by Federal standards in a State with an EPA promulgated underground injection control program under SDWA. The preamble to the Part 122, Subpart C, regulations explains these various regulatory schemes and their statutory underpinnings. Because Section 3004 of RCRA requires that all owners and operators of facilities which

treat, store, or dispose of hazardous waste must have a RCRA permit, these Section 3004 (Parts 264 and 265) regulations and the Section 3005 (Parts 122 and 124) regulations so provide.

Part 265 standards (as stated in § 265.1(c)(2)) do not apply to persons disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control Program approved or promulgated under the Safe Drinking Water Act. That means that the Part 265 interim status regulations do apply to persons disposing of hazardous waste by underground injection who have met the Section 3005(e) requirements for interim status and who either (1) do not have such a SDWA UIC permit, or (2) do not have a RCRA permit and are injecting hazardous waste underground in a State without an authorized RCRA program that covers underground injection.

Part 264 requirements (see § 264.1(d)) apply to people disposing of hazardous waste with permits issued under an UIC program approved or promulgated under SDWA only to the extent that they are included in § 122.45 (Requirements for UIC permits for wells injecting hazardous wastes). The same reasoning that applies to hazardous waste disposal under an MPRSA permit applies to SDWA UIC permits. Although all of the technical requirements for waste disposal by means of underground injection have not yet been promulgated under the Safe Drinking Water Act, EPA is including this section to state its intention to issue a RCRA permit by rule to persons who meet SDWA requirements. EPA will insure that the combination of UIC technical requirements, and § 122.45, which incorporates appropriate requirements from Part 264 for underground injection of hazardous waste, meets RCRA's human health and environmental protection mandate.

The implication of § 264.1(d) is that until an underground injection facility receives a SDWA UIC permit, it is subject to RCRA interim status standards (if the owner or operator has met the requirements of Section 3005(e) of RCRA) or must have a RCRA permit. EPA intends, as part of its Phase II Section 3004 regulations to promulgate technical requirements that can be used to issue interim (two year) permits to Class I (and perhaps Class IV) underground injection wells. Until then, or until permitted by a SDWA UIC program, all hazardous waste disposal by underground injection is governed by the RCRA interim status standards. See the discussion of the Subpart R standards in this preamble for an explanation of those requirements. EPA believes that this system will ensure that underground injection of hazardous waste is carried out in accordance with the purposes and requirements of both RCRA and SDWA, while avoiding unnecessary dual regulation. For a more detailed discussion of this issue, see the preamble to Part 122, Subpart C.

As with on-shore facilities associated with ocean disposal, above-ground treatment or storage of hazardous waste associated with an underground injection facility is covered by Parts 264 and 265 regulations. The Safe Drinking Water Act is designed to protect underground sources of drinking water and does not have authority comparable to RCRA's to ensure human health and environmental protection from all aspects of potential pollution (air, land, surface, and ground water) from above-ground facilities that treat, store, or dispose of hazardous waste.

c. *POTWs.* As discussed above in the section of this preamble on "NPDES Permitted Facilities," the regulatory definition of solid waste excludes hazardous waste that is mixed with domestic sewage and passes through a sewer system to a publicly-owned treatment works. That exclusion is based on the legislative history of the Solid Waste Disposal Act. As discussed in the Part 122 preamble, EPA believes that the reasoning which led the Agency to exempt such hazardous waste mixed with domestic sewage from the definition of solid waste, also applies to the decision of what sort of RCRA requirements to impose on POTWs which receive hazardous waste which has not lost its character as solid waste (i.e., hazardous waste which is discharged to the POTW by truck or rail, or through a pipe which carries only industrial waste).

EPA will issue POTWs which receive hazardous waste a permit by rule. The Agency's reasoning is that the wastes will be placed in a facility subject to an extensive set of Federal regulatory and subsidy provisions that should be sufficient to deal with any hazardous waste problems. In addition, this exemption for POTWs from most of the Section 3004 requirements is based on Congressional intent that EPA avoid disruption of the existing patterns of funding and operation of such facilities. Note, however, that in order for a POTW to qualify for this permit by rule, it must have and be in compliance with an NPDES permit, must comply with certain of the RCRA recordkeeping and reporting requirements, and must meet all applicable Federal, State, and local pretreatment requirements (such requirements are applicable to truck or rail shipments of hazardous waste just as if they had come through a sewer, pipe, or similar conveyance).

Paragraph (c)(3) of § 265.1 excludes the owner and operator of a POTW that treats, stores, or disposes of hazardous waste from coverage by Part 265. Paragraph (e) of § 264.1 provides that the requirements of Part 264 apply to such owners and operators only when included in a RCRA permit by rule. This scheme is the same as that described above for ocean disposal in accordance with an MPRSA permit. The interim status standards never apply to POTWs because owners and operators of POTWs are required to comply with the Part 264 requirements which are included in their permit by rule.

d. *Authorized State RCRA programs.* Paragraph (c)(4) of § 265.1 provides that the Part 265 requirements do not apply to persons treating, storing, or disposing of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A and B (i.e., full authorization), or Subpart F (i.e., interim authorization) of 40 CFR Part 123. This exclusion is provided in the regulations because Section 3006 of RCRA states that authorized State programs are to operate in lieu of the Federal program. Thus Federal requirements, as a general rule, do not apply in States with authorized RCRA programs. The exception to this rule is a State with Phase I, but not Phase II interim authorization as discussed below and in the preamble to Part 123, Subpart F. Pursuant to Section 3006 of RCRA and Part 123 requirements, a State program must be "substantially equivalent" to the Federal program to receive interim authorization; a State program must be "equivalent, consistent, and provide for adequate enforcement" to receive full authorization.

Paragraph (f) of § 264.1 establishes the same sort of general inapplicability of Part 264 requirements as is established for Part 265 requirements, with one exception. The one exception is that Part 264 requirements do apply in States which have only Phase I interim authorization. In such States, EPA retains the authority to issue hazardous waste permits because the State program does not yet have that authority. Such a lack of State permitting authority could last in a State for a maximum of about nine months. As noted in the Part 123 preamble discussion of this issue, EPA would rarely exercise this authority, but if the Agency failed to retain such authority,

EPA would be in effect prohibiting the permitting of any facilities in such a State during that period. Because of Section 3005 of RCRA, no new facilities could begin operations. Because newer facilities, subject to full Federal requirements, generally will be the better facilities, such a result certainly seems anomalous, particularly in light of the current shortfall of environmentally acceptable hazardous waste management facilities in the United States.

There is one additional aspect to the applicability of Parts 264 and 265 in States with authorized RCRA programs. That is the regulation of hazardous waste disposal by underground injection in such States. As mentioned briefly above, and as discussed in the Part 123 preamble, States seeking authorization to operate RCRA hazardous waste programs in lieu of the Federal program will have an option to include coverage of underground injection facilities. If a State which receives interim or full authorization chooses not to regulate underground injection under its RCRA program (prior to the opportunity to receive approval for a State UIC program under the Safe Drinking Water Act), the Parts 264 and 265 requirements will remain effective for underground injection facilities in that State. EPA realizes such a result will subject underground injection facility owners and operators to regulation by both State and Federal agencies, but sees no real alternative. EPA does not believe that it should mandate that State RCRA programs include coverage of underground injection facilities. No such requirement was proposed with the State authorization requirements, and such a decision could disrupt the progress many States have been making towards developing all of the legislative and regulatory authority necessary to receive interim or full authorization under RCRA. On the other hand, it seems fair and reasonable to give States the chance to include such facilities in their programs because if a State has sufficient authority, a facility owner or operator then need deal only with the State.

e. *Part 261 Exclusions, Including Small Quantities of Hazardous Waste, and Recycled or Re-used Hazardous Waste.* Sections 264.1 and 265.1 both provide that Parts 264 and 265 are not applicable if specifically provided otherwise in 40 CFR Part 261. Part 261 covers the identification and listing of those solid wastes which must be handled as hazardous waste according to the standards established by EPA under Sections 3002 through 3005. Among other things, Part 261 contains regulatory definitions of solid waste and hazardous waste, a list of materials which are excluded from all or a portion of certain Subtitle C requirements, and establishes special requirements for generators of small quantities of hazardous waste. Thus EPA believes it is appropriate for the Parts 264 and 265 requirements to refer people to the Part 261 regulations which designate which wastes are within Subtitle C control, when those wastes must begin to be managed in accordance with Part 262 through 265 standards, and when a hazardous waste ceases to be a hazardous waste. The exclusions in § 261.4 (i.e., the statements of which materials are not solid wastes and which solid wastes are not hazardous wastes) are not included in the Parts 264 and 265 regulations. Owners and operators of treatment, storage, and disposal facilities should read the Part 261 regulations to determine to what extent the wastes they handle are subject to the Parts 264 and 265 regulations.

EPA has, in §§ 264.1(g)(1) and 261.1(c)(5), excluded from regulation under Parts 264 and 265 facilities permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the only hazardous waste the facility handles is excluded from regulation under the small quantity provisions of § 261.5. Section 261.5, among other things, excludes certain small quantities of hazardous waste from regulation under Parts 262 through 265, if the generator of those small quantities ensures delivery of them to a facility which has (1) interim status, (2) a RCRA permit, or (3) is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. To avoid the confusion that could result if this third category of facility were not specifically excluded from regulation in Parts 264 and 265, EPA has provided an exclusion. The special regulatory requirements for hazardous waste produced by small quantity generators are discussed in the preamble to Part 261 and an accompanying background document.

EPA also has referenced in Parts 264 and 265 (see §§ 264.1(g)(2) and 265.1(c)(6)) the exclusion from most Subtitle C requirements provided in § 261.6 for hazardous waste that is used, re-used, recycled, or reclaimed. Such waste is subject to transportation and storage requirements prior to its re-use and reclamation and the provisions of § 261.6 which so provide are referenced in Parts 264 and 265. Regulation of re-used and recycled waste is discussed in the preamble to Part 261.

f. *Generators Who Accumulate On-Site, Farmers, and Totally Enclosed Treatment Facilities.* The last three exclusions from Part 264 and 265 requirements are two activities carried on by certain generators of hazardous waste and one type of facility which EPA believes need not be subject to any RCRA Section 3004 requirements in order to ensure protection of human health and the environment.

40 CFR 262.34 exempts generators who accumulate hazardous waste on-site for 90 days or less (for subsequent shipment off-site) from the requirement to have a permit, provided they comply with certain requirements that EPA deems sufficient to protect human health and the environment during that period. These requirements are specified in § 262.34. If a farmer disposes of waste pesticides in accordance with § 262.51, those wastes are exempt from all Section 3004 requirements. This is another exemption made in the Part 262 regulations which EPA is codifying in the Part 264 and 265 regulations to avoid confusion. Both of these exemptions are discussed in the preamble to the Part 262 regulations (45 FR 12724–12732, February 26, 1980) and the supporting material for those regulations.

The third exemption is for owners and operators of "totally enclosed treatment facilities," as defined in 40 CFR 260.10. Commenters pointed out that in some production processes, wastes (particularly acid and alkaline solutions) are treated in pipes and other types of totally enclosed on-site facilities, often resulting in a non-hazardous discharge.

EPA agrees that to classify on-site "totally enclosed systems," such as pipes, as hazardous waste treatment facilities and to require them to meet Section 3004 standards and obtain a permit would not make a great deal of sense. Accordingly, for the reasons discussed below under "Supart Q—Chemical, Physical, and Biological Treatment Facilities," EPA has exempted these facilities from regulation under Parts 264 and 265 and from the requirement to obtain a permit in Part 122. Persons who handle hazardous waste in what they believe to be a "totally enclosed treatment facility" should carefully read the definition of that term in § 260.10.

2. *Relationship to Interim Status Standards.* Section 264.3 puts owners and operators of TSDFs on notice that they are required to comply with Part 265 requirements, rather than Part 264 requirements, if they have qualified for interim status under Section 3005(e) of RCRA and final administrative

disposition of their permit application has not been made. Section 265.1(b) is a parallel requirement.

3. *Imminent Hazard Action.* Sections 264.4 and 265.4 put owners and operators of TSDFs on notice that nothwithstanding any of the other provisions of those parts, imminent hazard actions may always be brought pursuant to Section 7003 of RCRA when the statutory elements of such an action are established.

Correlation of Proposed and Final Rules for Purpose, Scope, and Applicability

Subject	Proposed rule	Final rule	Explanation
Purpose of requirements	§ 250.40(a)	§§ 264.1(a) and 265.1(a)	The proposed and final rules contain the same standard.
State program requirements; EPA enforcement authority.	§ 250.40(b)	Part 123	The requirements a State program must meet to receive interim or full authorization under Section 3006 of RCRA are now set out in Part 123. EPA's independent enforcement authority is established in Section 3008 of RCRA and discussed, in the context of its use in a State with an authorized RCRA program, in the Part 123 preamble.
Compliance with permit requirements	§ 250.40(c)	§ 264.1(b), Part 122, and Part 123	The Part 264 standards are independently enforceable national standards, but the circumstances under which EPA will consider compliance with an EPA or a State RCRA permit compliance with the standards are provided in Parts 122 and 123 regulations, and discussed in the preamble to those Parts.
Special waste standards	§ 250.40(c)(1)	Deleted	See the discussion in this preamble entitled "Special Wastes."
Interim status standards	§ 250.40(c)(2)	Part 265	For ease of reference, and because EPA is phasing its Section 3004 standards, the interim status standards are now set out in a separate Part (Part 265) of Title 40 of the Code of Federal Regulations.
POTW exemption	§ 250.40(c)(3)	§§ 264.1(e) and 265.1(c)(3)	This exemption is discussed in the Section 3004 preamble in the section on Subpart A requirements.
Requirement for ID code	§ 250.40(c)(4)	§ 264.11	This requirement was properly a generally applicable facility standard rather than a scope of coverage requirement so it has been made a Subpart B (General Facility Standards) standard.
Receipt of hazardous waste only from small quantity generators.	§ 250.40(c)(5)	§§ 261.5, 264.1(g)(1), and 265.1(c)(5).	This exclusion is discussed in the preamble to Part 261.
Receipt of unmanifested hazardous waste	§ 250.40(c)(6)	§§ 264.76 and 265.76	This reporting requirement has been placed in Subpart E (Manifest System, Recordkeeping, and Reporting) of Parts 264 and 265 where it more properly belongs.
Use of requirements for:			
Assessing State programs	§ 250.40(d)(1)	Part 123	How EPA will use the Section 3004 requirements to assess State programs for interim and full authorization is more properly the subject of the Section 3006 regulations and is set out in Part 123 and discussed in the preamble to that Part.
Issuing permits	§ 250.40(d)(2)	Part 122	The use of the Part 264 standards in issuing, reissuing, or revising permits is more properly the subject of the Section 3005 (i.e., the Part 122) regulations and is set out there and discussed in that preamble. The decision to incorporate the proposed "Notes," (i.e., variances) directly into the Section 3004 standards is discussed in the Section 3004 preamble. EPA's position on reopening and modification of permits is discussed in the Part 122 preamble.
Bringing enforcement action against:			
TSDF with a State permit	§ 250.40(d)(3)(i)	Part 123	The circumstances under which EPA will enforce State requirements which are not included in State permits is discussed in the preamble to Part 123.
TSDF with no permit or pending permit application.	§ 250.40(d)(3)(ii)	§§ 264.1(b), 264.3, and 265.1(b)	Part 264 standards are independently enforceable national standards which apply of their own force to owners and operators of TSDFs who do not have interim status. Compliance with Part 264 standards does not, of course, relieve an owner or operator from the requirement to get a permit under Part 122, nor does it insulate him from an action under Section 7003 of RCRA, or an action seeking an order for compliance with certain Part 265 requirements, should those requirements be more extensive than the extant Part 264 requirements.
Requirements do not apply:			
Domestic sewage	§ 250.40(e)(1)	Part 261	§ 261.4 excludes materials that are not solid wastes for purposes of Subtitle C requirements; domestic sewage is so excluded.
Irrigation return flows	§ 250.40(e)(2)	Part 261	§ 261.4 excludes materials that are not solid wastes for purposes of Subtitle C requirements; irrigation return flows are so excluded.
CWA Section 402 discharge	§ 250.40(e)(3)	Part 261	§ 261.4 excludes materials that are not solid wastes for purposes of Subtitle C requirements; discharges permitted under Section 402 of the CWA are so excluded. This exclusion does not exclude from Subtitle C regulation industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.
Source, special nuclear, or by-product material.	§ 250.40(e)(4)	Part 261	§ 261.4 excludes materials that are not solid wastes for purposes of Subtitle C requirements; source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, is so excluded.
Section 111 and 112 air emissions	§ 250.40(e)(5)	Deleted	This exclusion from Subtitle C coverage didn't really "fit" with the rest of the exclusions, which are of solid or hazardous wastes. Although this exclusion has been deleted from the regulations, EPA's policy is not to promulgate any requirements under RCRA which would be inconsistent with point source air emission regulations under Sections 111 and 112 of the Clean Air Act.
Disposal of hazardous waste via underground injection.	§ 250.40(e)(6)	§§ 264.1(d) and 265.1(c)(2); Parts 122 and 123.	As discussed in the Section 3004 preamble in the section on Subpart A requirements, and in the preambles to the Parts 122 and 123 regulations, the disposal of hazardous waste via underground injection is subject to certain RCRA requirements.
Ocean disposal of hazardous waste	§ 250.40(e)(7)	§§ 264.1(c) and 265.1(c)(1); Part 122.	As discussed in the Section 3004 preamble in the section on Subpart A requirements, ocean disposal of hazardous waste subject to a MPRSA permit is subject to a RCRA (Part 122) permit by rule.

B. Subpart B—General Facility Standards

Subpart B of both Parts 264 and 265 contains a number of discrete sets of standards, each of which applies to owners and operators of all hazardous waste facilities. The Subpart includes requirements for waste analysis, security, inspections, and training—all of which were contained in § 250.43 of the proposed rules.

1. *Identification Number.* Sections 264.11 and 265.11 of Subpart B contain a standard which requires that the owner or operator apply to EPA for an identification code. This requirement was in the Purpose, Scope, and Applicability section of the proposed rules. However, because the standard is applicable to all facilities, the Agency believes that it is more logical to include the standard in the General Facility section of the final rules.

2. *Required Notices.* Sections 264.12 and 265.12 require that the owner or operator of a facility notify the Regional Administrator at least four weeks in advance of the date of any shipments of hazardous waste from foreign sources. This requirement is a corollary to the proposed § 250.20(c)(3) standard, which required generators who ship their waste to foreign countries to inform the foreign government having jurisdiction over the facility to which the waste is to be sent. The Agency believes that this requirement is necessary in order for EPA to effectively oversee the transportation and management of hazardous waste imported to the United States.

Sections 264.12 and 265.12 also require that, before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator of the RCRA Section 3004 and Section 3005 requirements. The Agency has added this requirement to the final rules in order to minimize the possibility that an unsuspecting buyer may purchase a facility, not knowing that this purchase entails his having to comply with these Subtitle C regulations. However, it should be noted that if the "old" owner or operator fails to comply with this standard, the "new" owner or operator is still required to comply with all applicable RCRA regulations, including those in Part 122 establishing requirements for permits.

Section 264.12 also requires the owner or operator of an off-site facility to inform the generator in writing that the facility has the appropriate permit(s) for, and will accept, the generator's waste. The Agency believes this provision, which was suggested in the comments, is necessary for the proper functioning of the manifest system, because Part 262 requires that generators send their hazardous waste only to a facility with appropriate permits for the waste (or to facilities whose owner or operator has interim status). A written certification by the facility owner or operator thus assures the waste generator that the requirements of Part 262 are satisfied. It also avoids the potential problem of a generator designating a facility on the manifest which has the appropriate permits for his waste, but which has not agreed to accept the waste.

The rest of this section of the preamble discusses the comments received on the proposed § 250.43 standards contained in this Subpart.

3. *General Waste Analysis.* The purpose of the proposed waste analysis standards was to ensure that owners or operators possessed sufficient information on the properties of the wastes which they managed, to be able to treat, store, or dispose of their waste in a manner which would not pose a threat to human health or the environment. The proposed standards included requirements which specified the level of analysis to be performed on wastes managed at facilities, the minimum frequency with which these analyses were to be repeated, and the properties of the waste which were to be determined to verify the identity of each truckload, shipment, or batch of hazardous waste managed at facilities.

The Agency received many comments which stated that the generator should be required to provide the owner or operator with the information needed to comply with the Section 3004 waste analysis standards, because the generator is more familiar with the properties of the waste than is the owner or operator, and it would thus be less expensive for the generator to conduct the required analysis. The Agency believes, however, that although many generators may be familiar with the properties of the waste which they generate, there are many companies which generate waste about whose properties the generators know very little. In the latter case, for those companies lacking analytical equipment, the cost of sending their waste to commercial laboratories for analysis is comparable to the cost of analysis at facilities with on-site labs, or facilities which sub-contract their analytical work. In addition, many generators will not have the "hands on" knowledge of the information needed to treat, store, or dispose of the waste at any particular type of facility. Owners or operators will necessarily be in a better position to use that knowledge. The Agency believes that the approach taken in the proposed rules (whereby owners or operators can either conduct the analysis themselves or acquire the analysis from the generator) provides as flexible and cost effective a means as that suggested by the commenters, to ensure that owners or operators obtain the information needed to manage hazardous waste.

A number of commenters suggested that the regulations should specify that the waste analysis required under the Section 3001 regulations satisfies the requirements for waste analysis required under Section 3004. The Agency does not agree with these commenters because the information needed to characterize a waste (as required in proposed § 250.13) may overlap with, but is not identical to, the information needed to manage a waste (as required in proposed § 250.43). For example, to treat a waste, one needs to know not only the chemical composition of the waste, but also the compatibility of the waste with the techniques and chemical reagents used at the facility to treat the waste. The waste analysis required under Section 3001 may not provide the latter type of information, and thus, does not fully satisfy the requirements for waste analysis prescribed under Section 3004. However, the standard has been revised to make it clear that data developed pursuant to Section 3001 may be included in the data base that the owner or the operator compiles to comply with the Section 3004 waste analysis standards.

Several commenters felt that the nature and the scope of the required analysis should be more specific. The Agency purposely wrote objective-oriented waste analysis standards in proposed § 250.43 because the information needed to treat, store, or dispose of waste differs depending on the methods used to manage waste (e.g., the information needed to incinerate waste differs from that needed to neutralize waste). However, the Agency agrees that the regulations can be somewhat more detailed regarding the standards for waste analysis. For this

reason, in addition to the general waste analysis standards which apply to all facilities, the final rules also include, in most technical sections of the regulations, waste analysis standards specific to the management method regulated in that particular section. For example, the § 265.345 standards for incineration contain specific parameters (e.g., halogen and sulfur content and heating value) for which waste must be analyzed before it is incinerated. By including the more detailed informational requirements in the technical sections of the regulations, while leaving the more general requirements in the general facility section of the regulations, the Agency believes that the regulations are specific enough so that owners or operators will know what is expected of them, and yet are flexible enough so that an owner or operator will only be required to conduct analyses which are appropriate for the management methods used at his facility.

Several commenters objected to the minimum annual retesting requirement, stating that it was unnecessary to re-analyze waste when the owner or operator is confident that the properties of the wastes are unchanged.

The Agency believes that the properties of most waste streams vary within the course of a year, and therefore most owners or operators should re-analyze waste, at least annually, to determine if such variations will influence the effectiveness of the method used at the facility to manage waste. However, if the owner or operator correctly believes that the properties of the waste which he manages will not change, then to re-analyze the waste would be an unnecessary expense. Therefore, the minimum annual retesting requirement has been deleted from the revised rules. However, the regulations do require that, at a minimum, waste must be re-analyzed (1) when the owner or operator is notified, or has reason to believe, that the process or operation generating the waste has changed in a way that would lead him to believe that the hazardous property or characteristics of the waste would change, and (2) for off-site facilities, when the results of the verification analysis required in §§ 264.13 and 265.13 indicate that the composition or characteristics of the waste do not match the identity of the waste designated on the accompanying manifest.

Objections were also raised regarding the requirement to analyze waste for the four properties specified in proposed § 250.43(h) (i.e. physical appearance, specific gravity, pH, and vapor pressure), because analysis for these properties is not appropriate for all categories of waste. Many commenters also felt that to require owners or operators to sample each truckload of waste for these four properties was unreasonable for multiple truckloads of waste which have uniform physical and chemical characteristics.

The Agency agrees that measuring for the four properties specified in proposed § 250.43(h) may be inappropriate for certain categories of waste and may be unnecessary for multiple truckloads of uniform waste. Therefore, the four properties have been deleted from the waste analysis standards. Instead, the final rules require that owners or operators develop and follow a waste analysis plan which specifies the tests to be used, and the frequency with which these tests will be conducted, to determine the identity of incoming waste managed at the facility. The plan must be prepared and followed during interim status. The Regional Administrator may request the plan at any time after the effective date of these regulations. The Agency also will review the content of the plan when it evaluates the facility's permit application. Where the Regional Administrator believes that the facility's waste analysis plan is inadequate, he will require that the plan be modified to include procedures which he believes are appropriate to determine the identity of incoming waste to the facility.

In addition to the procedures used to determine the identity of incoming waste, the final rules also require that the facility's waste analysis plan describe:

(1) the parameters for which each waste will be analyzed in the detailed chemical and physical analysis required for each waste managed at the facility;

(2) the test methods to be used to test for these parameters; and

(3) the sampling methodology which will be used to obtain representative samples of the waste to be analyzed.

The Agency believes that the requirement for developing and maintaining a waste analysis plan will not only allow owners or operators to tailor their waste analysis procedures to the type of wastes and techniques which the facility uses to manage these wastes, but will also provide the Agency with a review mechanism which will encourage owners or operators to conduct thorough analyses of the wastes which they manage. Compliance with the self-developed waste analysis plan, as with the other plans required in these regulations, is a separate, enforceable, regulatory requirement.

EPA is promulgating waste analysis requirements in Part 265, but will accept comments on their appropriateness as interim status standards because they were not specifically proposed as interim status standards.

4. *Security.* The purpose of the proposed security standards was to prevent the unknowing or unauthorized entry of people or livestock onto the active portions of facilities. To accomplish this objective, the proposed rules included requirements which specified the height of the fence, the means to control entry at the gate, and the height of the letters on the warning sign which was to be posted at the entrance to the active portion of the facility. However, the proposed rules contained rather flexible variances from the specific requirements for fences and signs.

Most of the comments received on the security standards addressed the requirement for a six-foot fence. The majority of the commenters felt that the standard should allow means other than a six foot fence (or the alternatives specified in the "note" to the standard) to prevent entry onto a facility. Several commenters suggested that the standard be written in terms of a performance standard, and a few commenters noted that the implicit performance standard in the proposed rules, which required the *prevention* of unauthorized entry onto a facility, should be changed to require the *deterrence* of unauthorized entry onto a facility, because it is impractical to construct a non-climbable fence. In addition, a number of commenters suggested that facilities should not have to comply with the security requirements if the wastes are sufficiently benign so that people need not be kept away from the site. Furthermore, a few commenters pointed out that the active portion of a facility should not have to be surrounded by a fence if the active portion is located within a facility or plant that meets the security requirements.

In response to these comments, the security standards have been rewritten to include the general performance standard that a facility's security system must prevent the *unknowing* entry of people, and minimize the potential for the *unauthorized* entry of people or livestock onto the active portions of facilities. The final rules contain two conditions for an exemption from the performance standard: (1) if unauthorized or unknowing entry will not result in injury to people or livestock who might enter the facility, and (2) if such entry will not result in injury to the environment (e.g., as a result of

disturbing the waste or the equipment within the active portion). Because these two conditions are rarely concurrently satisfied, the Agency does not expect that many sites will be exempt from the security requirements.

To indicate how to comply with the general performance standard, a revision of the proposed fencing requirement has been provided in the final rules. The height of a fence, if used, is not specified, and alternatives to fences are allowed. In addition, the standard has been made more flexible by allowing the use of an around-the-clock surveillance system, instead of the physical barrier (i.e., a fence) specified in the proposed rules, to control entry onto a facility. The Agency believes that a continuous surveillance system can be as effective as a physical barrier to control access to the active portion because, when an unauthorized person approaches this area, facility guards or facility personnel can ensure that the person does not enter the active portion.

The Agency agrees that when access to the facility is already controlled by an adequate security system, to erect a fence or other barrier around the active portion would not provide additional protection to human health and the environment. Accordingly, EPA has clarified the regulations so that an owner or operator can demonstrate that the active portion of his facility complies with the security regulations, based upon the security system of the facility (or the manufacturing operation) within which the active portion is located.

In addition, a number of commenters pointed out that the proposed standard, which only required signs to be posted at the gates to the active portion of the facility, could result in inadequate warning to unknowing persons approaching facilities where fences are not used to control access to the facility. For this reason, several commenters suggested that the standard should require that signs be posted in sufficient numbers to be seen from any approach to the active portion of the facility.

The Agency agrees that because the security systems (including fences) used to control access to facilities will not be impenetrable, signs should be posted along the periphery of the active portion to warn unknowing people that entering onto the active portion is potentially hazardous. Therefore, EPA has taken the commenters' suggestion and has revised the requirement for the placement of the warning signs.

Although the Agency received no criticism of the four-inch lettering requirement for signs, the underlying theme of the majority of the comments was that the proposed security standards were too specific. Because the Agency believes that the four-inch lettering requirement may have been too inflexible, a more performance-oriented provision, which requires that the warning on the sign be legible from at least 7½ meters (25 feet), has been substituted for it in the final rules. This new approach will provide more flexibility.

The Agency believes that because the "note" to the proposed standard provided a variance to the requirement for the statement: "Warning—Unauthorized Personnel Keep Out" on the sign, no comments were received on this aspect of the standard. The Agency believes that a variance to the wording requirement should be retained in the final rules for existing signs, because it would be unnecessarily expensive to replace signs at facilities which do not contain the exact wording specified in the final standard, but which nonetheless give adequate warning to unknowing people to stay away. However, to make sure that the new signs posted at hazardous waste facilities are uniform, the Agency believes that they should contain the wording specified in the standard. Therefore, in the final rules, the variance to the message on the sign only applies to existing signs.

In addition, the Agency has substituted the word "danger" for "warning" in the final rules. The reason for this change is that word "danger," more than "warning," indicates the potential for harm.

5. *General Inspection Requirements.* § 250.43–6 of the proposed regulation specified seven parts or aspects of a facility which owners or operators were required to inspect daily for specific signs of deterioration or malfunction. Owners or operators were also required to record observations noted during the inspection in the facility's operating log.

The Agency received many comments concerning the specific listing of required inspection items (i.e., dikes, fences, etc.) and the absolute requirement for *daily* inspections. Several of the commenters noted that for some of the listed items (for example, fugitive emissions), the required inspections were either not applicable to all facility types, or would be impractical to implement. Others noted that such a list could not include all of the possible items which should be inspected. As for inspection frequency, many of the comments argued that daily inspections are simply unnecessary. They pointed out that, in many cases, the rate of deterioration is so slow (in the corrosion of tanks, and the erosion of dikes, for example) that occasional inspections are sufficient to reveal any problems long before failure occurs.

The thrust of these comments was that the specific items to be inspected and the frequency of inspection should be determined by the owner or operator on a case-by-case basis. The Agency agrees, and has revised the regulations to require the owner or operator to develop and follow his own written inspection schedule. This will be based on the facility's criticial processes, equipment, and structures, and on the potential for failure and the rate of any deterioration processes (corrosion, erosion, etc.) which may lead to failure. Compliance with the plan is a separate, enforceable regulatory requirement.

During the permitting process, the Agency will review the inspection schedule for its adequacy in protecting human health and the environment, for comprehensiveness, and for consistency with inspection schedules for similar facilities. The Agency will also assist the owner or operator in optimizing the efficiency and effectiveness of the schedule based on its experience with similar facilities. During interim status, consultation and review with the Agency will not normally be required.

The Agency realizes that not all owners or operators are equally knowledgeable. Therefore, EPA has retained minimum specific inspection requirements, which include some obvious inspection points, and some minimum frequencies for inspecting them. These requirements have been incorporated into the regulations for specific facility types (tanks, surface impoundments, etc.) to clarify how they are to be applied to these facilities.

The final rules also require the owner or operator to make a record of all inspections, and to keep it on file for three years. In addition to information on the observations, this record must specify when the inspection was made, who made it, and when any repairs were made. The record can take the form of an inspection checklist; this would combine the recordkeeping with a useful inspection procedure. In any case, the record will help assure the Agency that the owner or operator is in fact conducting inspections, and is making any needed repairs. Additionally, should an environmental or human health incident actually occur, these records will help to reconstruct the events that led to it, and may also provide a valuable resource for any emergency decisions. As one incidental benefit, the record will help management audit the reliability of equipment, the efficiency of maintenance activities, and the effectiveness of the inspection schedule.

6. *Personnel Training.* The purpose of the proposed training requirements was to reduce the potential for mistakes which might threaten human health or the environment by ensuring that facility personnel acquire expertise in the areas to which they are assigned. The proposed standards included requirements which specified the time by which facility personnel must obtain the training necessary to do their jobs, the records to be maintained at the facility of the training received by its employees, and the minimum frequency with which the initial training received by the employees must be reviewed. In addition, the proposed rules required facility personnel to be familiar with the facility's contingency plan.

Many of the comments received on the proposed rules addressed the format and content of the required training programs. Some commenters suggested that the standards allow in-house training programs and on-the-job training in place of the formal classroom instruction in hazardous waste management required in the proposed rules. Several other commenters requested that the regulations specify the type, length, and intensity of the courses of instruction to be administered to facility personnel.

The Agency agrees that formal classroom instruction may not always be the best approach to training, and that supervised on-the-job training is a valid substitute for, or supplement to, formal instruction. Accordingly, the final training standards reflect the Agency's acceptance of in-house training programs and on-the-job training as a means of complying with the training requirements. However, the content, schedule, and techniques to be used in the on-the-job training program must be described in the training records maintained at the facility and will be subject to approval during the permitting process. Compliance with the program described in the training records is a separate, enforceable regulatory requirement.

Given the variability in waste types, management processes, and employee functions at hazardous waste facilities, the Agency believes that it is neither necessary nor desirable to rigidly specify training courses in regulations. However, the Agency is preparing a training manual which will provide advice on desirable types of instruction for the various jobs carried out at hazardous waste management facilities.

Several commenters were concerned that the six-month period for complying with the training requirements may be too short, because there may be a shortage of formal training programs in hazardous waste management.

The Agency believes that its acceptance of supervised on-the-job training to achieve compliance with the training requirements will help to offset the problems caused by a possible shortage of formal training programs. Where formal programs are unavailable, a facility can use in-house training programs and supervised on-the-job training to provide the required training. Because the majority of the Phase I standards are non-technical (e.g., the manifest and recordkeeping requirements), the Agency believes that most training can be conducted in-house. When the Phase II standards are promulgated, facility personnel will have another six months from the effective date of the Phase II standards to acquire the expertise needed to comply with the additional standards. Thus, the shortage in formal courses in hazardous waste managment should not cause facility personnel to miss the deadline by which compliance with the training requirements must be achieved.

Commenters suggested that the six-month "grace period" for untrained employees should not be extended to employees hired after the effective date of these regulations. Work and training schedules may make that an impractical requirement, but the Agency has decided, for safety reasons, to require that untrained employees work only in supervised positions.

A number of commenters were also concerned that the requirement for detailed written job descriptions might lead to union grievances and arbitration. For this reason, the commenters suggested that the standard be revised to allow the job descriptions to be written in a manner similar to descriptions for other similar positions in the same company location or bargaining unit.

It was not the Agency's intent to interfere in labor-management issues. EPA's only interest in the job descriptions of facility personnel is to enable the Agency to determine if each person is receiving a level training that is commensurate with the person's duties and responsibilities. Since the Agency believes that the suggested revision of the recordkeeping requirements will not diminish the Regional Administrator's ability to make this determination, the standards have been revised according to the commenters' suggestion.

Two other standards have now been placed with the training requirements. The first of these standards specifies the length of time the facility must keep training records. This requirement was proposed in the section of the regulations dealing with Manifest, Recordkeeping, and Reporting (§ 250.43–5). However, in order to reduce the need to cross-reference within the regulations, the Agency has decided to place all of the recordkeeping standards which deal with training into the section of the regulations on training. Similarly, the elements of the facility's emergency response procedures with which facility personnel must become familiar have been incorporated into the training requirements.

7. *General Requirements for Ignitable, Reactive, or Incompatible Wastes.* As discussed earlier, the Agency has added general requirements for handling ignitable, reactive, or incompatible wastes in § 265.17 of the interim status standards. In the Phase II regulations, the Agency plans to amend Part 264 by moving § 264.36 to a new § 264.17(a), and by adopting § 265.17(b) as a new § 264.17(b). Therefore, the Agency will use any comments on § 265.17 for that purpose also.

As the present definition of incompatible wastes reveals, the problems posed by incompatible wastes fall into two general areas. The first covers wastes which are incompatible with the materials containing them because they would corrode or otherwise cause the decay of those materials. The standards in the substantive regulations were drawn from the proposed standards for storage generally, tanks, containers, treatment generally, basins, and chemical, physical, and biological treatment facilities, and now are applied to waste piles as well, because they pose similar problems. The Agency has chosen slightly different solutions to these problems for containers, tanks and treatment facilities, and waste piles. These solutions are discussed in the separate sections for these types of equipment or facilities.

The second and broadest group of problems is the potential for the creation of harmful reactions or substances during the mixing of incompatible wastes and the treatment of ignitable or reactive wastes. The proposed definition of incompatible wastes, Appendix I to Subpart D of proposed Part 250, and the Note to proposed § 250.45(c) indicated that a variety of substances and reactions were of concern. The present definition and substantive regulations have been drawn from these proposed regulations with some modifications.

The regulations and Appendix V have been coordinated, as suggested in part by one commenter. Several standards have been deleted. The part of the proposed definition concerning the

volatilization of ignitable and toxic chemicals has been partly subsumed into the parts covering production of flammable or toxic fumes and gases. As explained elsewhere, further regulation of volatile waste is being postponed. The part of the proposed definition covering shock-sensitive, friction-sensitive, and similarly unstable substances has been deleted because reactive substances are adequately covered in the sections dealing directly with them, and there are few or no damage incidents resulting from the production of such substances from non-reactive wastes. The detailed air emission formulas in the Note to proposed § 250.45(c) have been eliminated in response to comments that the OSHA standards employed there were not generally appropriate for the circumstances of waste treatment, storage, and disposal facilities.

Finally, Appendix I to Subpart D of proposed Part 250 indicated in Groups 2–A and 2–B that toxic wastes were incompatible with flammable or explosive wastes because mixtures of them would release toxic substances in fires or explosions. No comments were received on this standard, but the Agency is still considering whether and how toxic and ignitable, flammable, or reactive wastes or materials should be segregated during treatment, storage, or disposal in order to avoid the release of toxic substances in case of fire or explosion. The problem is compounded by the fact that some toxic substances are themselves ignitable, flammable, or reactive. This portion of the Appendix (now Appendix V to Part 265) has been deleted for the time being, and the Agency solicits comments on this problem.

Many commenters pointed out that incompatible wastes such as acids and bases are frequently mixed so that they will neutralize each other, and that this may be done safely so that violent reactions are avoided. Consequently, the regulations have been modified to allow mixing incompatible wastes if the general standards described below are complied with. In addition, contrary to the contention of one commenter, materials other than wastes, such as treatment reagents or non-hazardous wastes, may be incompatible with hazardous wastes and are therefore included in the incompatible waste regulations. These requirements have been extended to storage facilities as well as treatment and disposal facilities, because they can experience similar problems when incompatible wastes are mixed. If facility operators mix incompatible wastes, they must anticipate the reactions which may occur and the substances which may be formed, and control the mixing so as to avoid or control the reactions and substances produced.

The general standards in § 265.17(b) are intended to insure that several undesirable results are avoided when ignitable or reactive wastes are handled or incompatible wastes are mixed. Extreme heat or pressure, fires or explosions, violent reactions, and damage to the structural integrity of the device or facility containing the waste are clearly undesirable because of the likelihood that they will cause or lead to injury or death of facility personnel, and the spread of toxic wastes into the environment. These standards were uncontroversial. The production of uncontrolled flammable fumes or gases in sufficient quantities to pose the risk of fire or explosion is undesirable for similar reasons. The creation of uncontrolled toxic dusts, mists, fumes, and gases in sufficient quantities to threaten human health is also prohibited, in order to protect both facility personnel and people off-site. The Agency is primarily concerned here with gases such as chlorine, hydrogen sulfide, and hydrogen cyanide, which some mixtures of wastes or waste treatment processes may produce. As explained elsewhere, the Agency need not rely on the Clean Air Act to regulate airborne emissions from hazardous waste facilities.

Finally, because the possible undesirable results from the mixing or handling of wastes may be enormously varied, the general regulations prohibit the creation of conditions like the ones mentioned above which threaten human health or the environment. This standard requires owners and operators of facilities to be aware of the possible results of treatment, storage, or disposal of ignitable or reactive wastes, and the commingling of incompatible wastes, to avoid conditions which would pose threats to human health or the environment similar to the ones specifically listed in the regulation.

The regulations on ignitable or reactive wastes are typically more restrictive than those on incompatible wastes. While incompatible wastes require attention primarily at the time they are introduced into a facility or treatment process, ignitable or reative wastes pose a continuing danger of ignition or reaction, and require continuing protection from conditions which would cause them to ignite or react. This is sometimes practical in containers, tanks, and waste piles. However, since landfills, surface impoundments, and land treatment facilities generally cannot be managed so that this protection is provided, ignitable or reactive wastes may be placed in such facilities only if they are treated before or immediately after placement in the facility so that they are no longer ignitable or reactive. This relaxation of the complete bar in the proposed rule responds to comments indicating that such treatment is not uncommon and should not be prohibited. The regulations require that this treatment meet the same standards applied to the mixing of incompatible wastes.

The Agency is currently considering adding another class of incompatible wastes to these regulations. It would declare incompatible those wastes which would solubilize or otherwise mobilize another hazardous waste or constituent in a landfill, land treatment facility, or surface impoundment, and thus increase the likelihood that the mobilized waste or constituent would be leached into ground water. Because the potential scope of this concept is so broad—even water could be considered incompatible with many wastes—the Agency currently believes that it would be most practical to implement such a regulation by listing only specified pairs of wastes as being incompatible. Those currently under consideration are:

(1) PCBs and organic solvents,

(2) Organic pesticides and organic solvents, and

(3) Metal-containing wastes and acids.

The first material in each of these pairs can be substantially mobilized by the second, but may be relatively immobile in its absence. It therefore seems prudent to dispose of such pairs in separate landfill cells, land treatment areas, or impoundments. The Agency requests comment on this concept of incompatibility, on these and other possible pairs of wastes which might be listed as incompatible under this standard, and on circumstances under which these wastes can safely be commingled in land disposal facilities.

C. Subpart C—Preparedness and Prevention and Subpart D—Contingency Plan and Emergency Procedures

Section 250.43–3 of the proposed rules contained three general types of provisions: (1) Requirements for developing contingency plans for effective action to minimize unanticipated damage from the treatment storage, or disposal of hazardous waste; (2) requirements for preparedness and prevention measures to minimize the need for ever using contingency plans, and (3) requirements for emergency response measures to be

taken during and after situations in which a contingency plan is implemented. In the final rules, standards for preparedness and prevention have been made a separate Subpart because: (1) They contain explicit facility requirements (e.g., fire protection equipment, and aisle space) which are independent of the implementation of a facility contingency plan; (2) it is more logical to discuss preparedness and prevention aspects of facility operations before discussing planning for and response to emergencies which may or may not occur; and (3) placement of the three types of standards in the same section in the proposed rules tended to be confusing because the requirements for developing and implementing the contingency plan were interspersed with requirements for preparedness and prevention. However, preparedness and prevention, contingency plans, and emergency response are all discussed in this section of the preamble because they are closely related, and many of the comments received on these requirements addressed all of them simultaneously.

The final Part 264 and 265 Subpart C preparedness and prevention rules are intended to minimize the possibility of and effect of a release, fire, or explosion which could threaten human health or the environment. They require that facilities have, where necessary, internal communications or alarm systems, equipment capable of summoning external emergency assistance from local agencies, fire control equipment, spill control equipment, and decontamination equipment. This equipment, where required, must be routinely tested, and maintained in proper operating condition.

Subpart C also requires that employees operating the facility have immediate access to both internal and external communications systems, where these are required. In addition, where needed, aisle space must be maintained to allow the unobstructed movement of emergency equipment to any area of facility operation. Precautions to prevent accidental ignition or reaction of waste are specified. And lastly, facility owners or operators must attempt to make arrangements for local authority to provide emergency support, where this is appropriate.

The final Part 264 and 265 Subpart D contingency plan rules are intended to minimize hazards to human health and environment in the event of fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste to air, soil, or surface water. The contingency plan must include:

- A description of the planned response to emergencies at the facility,
- Any arrangements with local and State agencies to provide emergency response support, where needed,
- A list of the facility's emergency coordinators,
- A list of the facility's emergency equipment, and
- An evacuation plan, where necessary.

Rules for distributing and amending the plan are specified, as is the requirement that a facility emergency coordinator be either present, or on call, whenever the facility is in operation.

Provisions for emergency procedures specified in Subpart D of the final rules include:

- Immediate notification of employees, and local, State, and Federal authorities of any imminent or actual emergencies,
- Immediate assessment of possible hazards to the environment and human health outside the facility,
- Measures to preclude the spread of fires and explosions to other waste,
- Proper management of residues,
- Rehabilitation of emergency equipment and notification of authorities before operations are resumed, and
- Recordkeeping and reporting to EPA on the nature and consequences of any incident that requires implementing the contingency plan.

Commenters from many organizations submitted numerous comments on the proposed requirements for contingency plans, preparedness, and emergency response. Highlights of these issues are discussed below:

1. *Defer Regulations Until Permit Issued.* Some commenters suggested that the contingency plan, preparedness, and emergency response requirements should be negotiated when a permit is issued, and thus should not apply to facilities during the interim status period.

The Agency sees no reason to delay implementing these requirements until a permit is issued. Most of the requirements are explicit and straightforward, and therefore, do not require negotiation with or interpretation by the Regional Administrator before they can be implemented. Those proposed requirements which might have been interpreted as requiring negotiation with EPA, have been rewritten to eliminate the need for interaction with the Agency during the interim status period. For this reason, some of the final Part 265 rules applicable during interim status are written differently than the corresponding Part 264 rules.

2. *Tailor Rules to Circumstances.* Many commenters felt that the proposed contingency plan, preparedness, and emergency response provisions should be restructured to allow requirements to be tailored to particular circumstances. In the same vein, other commenters complained that the proposed provisions were overly restrictive for some types of facilities (e.g., facilities which handled only "low" hazard waste, such as utility boiler fly ash or waste oil).

The Agency recognizes that there are different types of facilities handling many different kinds of wastes in widely differing circumstances with respect to climate, proximity to people, etc. In the proposed rules, the "Notes" following certain provisions provided some flexibility to account for these differences. In the final rules, these "Notes" have been incorporated into the regulations. Further, the Agency has expanded the concept of case-by-case determination of appropriate requirements with many revisions throughout the final rules to provide greater flexibility. In addition, requirements specific to particular circumstances (e.g., ignitable and reactive waste) have been clearly identified in the final rules.

3. *Protection Inside Versus Outside Facilities.* Several commenters questioned whether the proposed contingency plan and emergency response provisions were designed to deal with the potential for damage to human health and the environment both *inside* and *outside* hazardous waste facilities.

RCRA's mandate to protect human health and the environment is not limited to dangers occurring outside hazardous waste management facilities. In fact, many of the damage cases cited in the background documents involve death or injury to facility personnel, as well as threats to people outside the facility.

The Agency is concerned about the health and safety of facility personnel. The RCRA Section 3002 regulations for waste manifests and waste shipping container labeling and marking, and the Section 3004 waste analysis, training, inspection, and facility design and operation regulations, are designed, among other things, to reduce hazards to facility personnel.

In addition, the RCRA contingency and emergency response plans should include steps to respond to both internal and external threats. In designing internal plans to respond to employee health threats, however, respondents

must recognize that primary responsibility for regulating workplace health and safety rests with the Occupational Safety and Health Administration of the Department of Labor.

4. *Delete Contingency Plan.* Some commenters felt that the provision regarding the proposed contingency plan provision was unnecessary and should be deleted, because the Spill Prevention, Control, and Countermeasures (SPCC) plan required by the Clean Water Act would be sufficient to fulfill contingency planning requirements for hazardous waste management facilities.

The Agency disagrees with this comment. The universe of facilities which are currently required to have an SPCC plan is not identical to the universe of hazardous waste facilities controlled under RCRA. Further, the proposed rules for RCRA contingency plans are not identical to the SPCC plan requirements, and the SPCC plan is not an adequate substitute for RCRA contingency plan requirements. However, the two plans can be complementary. (See later discussion.)

5. *Ground-Water Contamination.* Commenters were concerned that the proposed rules seemed to address only acute emergencies, and argued that the contingency plan should include the responses to be taken if ground-water contamination were detected.

The Agency agrees that the discharge of any hazardous waste, whether sudden or non-sudden, is a potential threat to people or the environment, and therefore, is of concern to the Agency. However, the Agency has concluded that the ground-water monitoring regulations, rather than the contingency plan regulations, are the appropriate place to deal with contingency planning and response to ground-water contamination incidents. The final ground-water monitoring rules include requirements for evaluating ground-water analyses, and requirements for planning and describing the response required where a potential ground-water problem is identified.

6. *Implementation of the Contingency Plan.* Several commenters suggested that the final rules should make it clear that the provisions of the contingency plan need only be implemented in the event of a discharge or release of hazardous waste from the facility which has the potential for damaging human health or the environment.

It was not the Agency's intention to require facility owners or operators to invoke their contingency plan when insignificant amounts of hazardous waste are released (e.g., very small spills or a leaking valve). The final rules have been reworded to better reflect the Agency's original intent.

7. *Submission of Contingency Plans.* The proposed rules required that copies of the contingency plan and any amendments be filed, as soon as they were prepared, with the Regional Administrator, and local agencies that might be called upon to provide emergency services. Also, the contingency plan was to be submitted to the Regional Administrator as part of the facility permit application. Many commenters argued that facility owners or operators should be required to maintain contingency plans on file, but not be required to submit plans and amendments to the Regional Administrator or to local emergency or health agencies. The commenters offered the following reasons to support their position:

SPCC plans are required to be available for inspection, but are not required to be submitted; RCRA plan requirements should be consistent with this.

Contingency plans are amended frequently; it is burdensome to everyone to file amended plans.

Local authorities may refuse to accept plans; therefore, the rule is unenforceable.

Plans submitted to local authorities are relegated to obscure files; therefore, the rule is useless.

Similarly, some commenters felt that contingency plans should be filed with local authorities only when a release of hazardous waste would require their response or endanger those under their protection, or when a facility handles "extremely" hazardous waste.

The Agency believes that the contingency plan requirement is an important part of the overall RCRA Section 3004 standards, and that EPA should ensure that each facility has an acceptable plan. Because the Agency accomplishes this by requiring that a contingency plan be:

Prepared by each facility,

Amended as necessary,

Made available to EPA inspectors during on-site reviews, or to the Regional Administrator when requested, and

Submitted to EPA as part of the permit application, the Agency agrees that contingency plans and revisions need not be submitted routinely to EPA. This approach is consistent with SPCC plan requirements, which are being revised to require that plans be submitted to EPA only upon request of the Regional Administrator.

However, the Agency disagrees with the commenter's arguments regarding the need for local authorities to have an up-to-date facility contingency plan. The final rules require that the contingency plan must be amended in the following cases:

If there are revisions to applicable regulations (interim status);

If there are revisions to the facility permit (permitted status);

If the plan fails in an emergency;

If there are changes in the facility design, construction, operation, maintenance, or other circumstances that materially increase the potential for fires, explosions, or releases of hazardous waste or change the response necessary in an emergency;

If there are changes in the person(s) qualified to act as facility emergency coordinator;

If there are changes in the emergency equipment at the facility.

The Agency believes that all these reasons for amending the plan are important, and that local authorities, where appropriate, have a need to know about these changes. The first four cases could involve significant amendments to a facility's contingency plan, but such amendments should occur infrequently. The last two cases may occur more often, but the change and notification requirements are not burdensome.

The proposed rule required facility owners or operators to file contingency plans with local authorities. It did not require these authorities to accept them. The Agency believes that most local authorities are responsible and competent, and that they rarely will reject facility plans or relegate them to obscure files. Nevertheless, if they do refuse to accept a facility's plan, the facility owner or operator will have complied with the rule if he can document in the operating record that he submitted a contingency plan to local authorities.

The proposed rules used the phrase ". . . who may be called upon to provide emergency services." This phrase means that a contingency plan need not be filed with local authorities if the nature of the waste handled at a facility, or if the internal emergency response capabilities at the facility, are such that local authorities will not be called upon to provide services either to the facility or to people outside the facility. This provision has been retained in the final rules.

8. *Confidential Information.* Several commenters claimed that facility contingency plans frequently contain confidential information which companies would insist not be maintained in public files. Therefore, the commenters felt contingency plans should not be submitted to EPA (or by extension, to local authorities), but

rather maintained on the facility premises open to EPA inspection.

The contingency plan must be submitted to EPA with Part B of the permit application under 40 CFR Part 122, and will become a condition of any permit issued. The permit regulations state that permit-related information, asserted to be confidential at the time it is submitted, will be disclosed by EPA only in accordance with the procedures in 40 CFR Part 2. Because the contingency plan will be part of the permit, portions of contingency plans asserted to be confidential will be available to the public only in accordance with 40 CFR Part 2.

As stated earlier, the Agency believes that where appropriate to protect human health and the environment in emergencies, it is vital that local authorities have up-to-date facility contingency plans in their possession. A facility's contingency plan need not contain details of proprietary processes or operations. For this reason, the Agency does not believe that contingency plans often, if ever, need to be confidential.

9. *Insufficient Time for Plan Submission.* A few commenters stated that: "Requiring the submittal of an SPCC plan as part of a [RCRA] permit application is unreasonable since the development of an adequate and effective SPCC plan may require a significantly greater period of time than available between promulgation of the [RCRA] regulations and submissions of a [RCRA] permit application."

As described in the preamble discussion entitled "Interim Status Standards", to qualify for interim status, facilities must submit the Part A permit application to EPA within six months after promulgation of the RCRA Section 3001 regulations. They must submit Part B of the permit application upon request at a later date.

The facility contingency plan must be submitted with Part B, but is not required for Part A. Further, as noted above, the RCRA contingency plan may be merged with an existing SPCC plan, but the final rule does not require that an SPCC plan be submitted as part of a RCRA permit application. Moreover, the Agency believes that an acceptable RCRA facility contingency plan can be prepared within the six-month period between promulgation of the RCRA Section 3001 regulations and the effective date of these regulations. Consequently, each facility owner or operator is required to have a contingency plan on the effective date of these regulations, and to submit it to appropriate local authorities, even though it is not required to be submitted to EPA until a later date, with Part B of the permit application.

10. *Emergency Coordinator.* Many commenters felt it was unnecessary and burdensome for an emergency coordinator to be present at all times when a facility is in operation, as the proposed rules required. Some commenters pointed out that "in operation" can be interpreted to include passive or automated situations, such as storage in tanks or surface impoundments, but that, the possibility that an emergency will occur during these situations is small. These commenters suggested that the proposed rule should include a variance where emergency situations are unlikely to develop, or that the rule be modified to allow an emergency coordinator to be on call, rather than present on-site.

EPA agrees that there are many situations where the facility emergency coordinator's presence on-site is not essential. However, the Agency believes an emergency coordinator should at least be available (on call) to respond immediately to emergencies at the facility, initially by giving phone instructions to local authorities and facility personnel, but also by being able to be on-the-scene within a short time. This arrangement should impose no undue burden.

Several commenters felt that no one person could be cognizant of, and responsible for, all the duties of the emergency coordinator specified in the proposed rule. They suggested the rule be modified to allow an "emergency coordination team" under the supervision of the facility's management.

The Agency recognizes that the emergency coordinator's duties are many and varied, and fully expects that many people with different disciplines will be required to assist the emergency coordinator in fulfilling these duties. However, based on analysis of past emergencies, the Agency feels strongly that there must be a single person in charge during an emergency with the responsibility and necessary authority to direct response measures. A "team" approach dilutes responsibility and authority, and can lead to divisiveness or confusion under stress. Consequently, the Agency disagrees with these last comments and has retained the proposed approach in the final rule. However, the final rule does not preclude the use of a response team, as long as one person has central responsibility over it.

11. *Resuming Operations After an Emergency.* The proposed rules required the facility's emergency coordinator to prohibit the facility from accepting any waste which was incompatible with material released during an emergency until clean-up procedures were completed, emergency equipment was restored to pre-accident condition, and the affected area was declared safe by EPA, State, or local officials. One commenter felt that the decision that the facility could safely resume operations should be the responsibility of the facility emergency coordinator, rather than EPA or other government officials.

The Agency agrees that it would be unreasonable to require a formal declaration by government officials that a facility is safe to operate before allowing the facility to accept potentially incompatible wastes. It is quite possible that a release, fire, or explosion could occur in one part of a facility without affecting the safety of operations in other parts of the facility. Thus, it would be unnecessary to keep the whole facility from accepting a waste just because the waste may be incompatible with the material released during an emergency in one limited part of the facility.

However, EPA, State and local officials have a responsibility to ensure that human health and the environment are protected. This is particularly true where a facility has had a release, fire, or explosion of sufficient magnitude to invoke the facility's contingency plan. The Agency believes that the owner or operator should be required to notify EPA and appropriate State and local authorities that cleanup procedures following an emergency have been completed, before the part(s) of the facility affected by the emergency begin to accept potentially incompatible waste. This notification will allow EPA, State, and local authorities to be informed about the current status of facility operations.

D. Subpart E—Manifest System, Recordkeeping, and Reporting

The principal purpose of the manifest system, established in the Part 262 regulations, is to track hazardous waste from its origin with the generator, through its trip with the transporter, to its disposition at a treatment, storage, or disposal facility. The regulations in Subpart E of Parts 264 and 265 specify requirements concerning the return of the manifest from the facility owner or operator to the generator. These requirements form the last step in the information loop initiated in the Part 262 manifest requirements for generators.

Subpart E of Parts 264 and 265 also includes requirements for recordkeeping and reporting. One purpose of these requirements is to ensure that the regulated community complies with the

hazardous waste regulations, by providing the enforcement agency with sufficient information to monitor facility operations. A second purpose of the records required in Subpart E is to ensure prompt, proper, and effective response to emergencies, by providing facility owners and operators, and local authorities, with information which allows them to accurately assess any hazard posed to human health and the environment and to respond accordingly.

The Agency received numerous comments from many sources on the proposed rules for manifests, recordkeeping, and reporting. Some comments raised general issues applicable to the entire Subpart; others were specific to the requirements for either manifest, recordkeeping, or reporting. This preamble discusses the general issues first, followed by a section-by-section analysis of the comments specific to the three types (i.e., manifest, recordkeeping, or reporting) of Subpart E standards.

1. *General Issues.* a. *Burden.* Many commenters felt that the proposed manifest, recordkeeping, and reporting requirements were excessive, particularly for small firms. They stated that the requirements were unnecessary and impractical—particularly in requiring the various reports and signatures of treatment, storage, and disposal operators—and did not contribute substantially to human health and environmental protection. Other commenters were concerned that the paperwork associated with the requirements would be duplicative, and require additional personnel in government and industry to process.

The Agency does not agree that the proposed manifest, recordkeeping, and reporting requirements imposed an *unnecessary* burden on the waste management community. Numerous past documented damage cases have resulted from improper waste disposal in part because wastes were not tracked, and little liability or responsiblity was assigned or accepted by the waste generators, transporters, or disposers. These requirements are designed to minimize the likelihood of incidents like these occurring again. To this end, the Agency believes that the various records, reports, and signatures of treaters, storers, and disposers are necessary to allow EPA enforcement officials to assign responsibility, and ultimately liability, in cases where problems arise.

The Agency does not agree that the resulting paperwork will be *duplicative.* The Agency has made every effort to eliminate any duplication, and has documented these attempts in the Reports Impact Analysis, which was developed in response to the President's campaign to reduce paperwork. The total RCRA interim status administrative cost, including the cost of complying with notification, manifest, recordkeeping, and reporting requirements as well as other requirements such as inspections and preparing closure plans, is estimated at about 36 million dollars initially and 40 million dollars annually thereafter. Considering that an estimated 72,000 installations will be regulated under this program, the Agency does not believe that, for the waste management community in general, the cost of this aspect of the program will be excessive.

b. *Class of Hazard.* A few commenters supported the reporting of detailed information on "truly" hazardous wastes, but added that, for other wastes, this information is not needed and would not be of value.

The Agency agrees with the concept that information needs could vary with the class or degree of hazard of a waste. As noted earlier in this preamble, EPA is developing a class of hazard system for the technical waste management requirements under the Section 3004 regulations. The Agency believes, however, the final manifest, recordkeeping, and reporting requirements are the minimum necessary for any hazardous waste, regardless of class of hazard. The Agency anticipates the possibility of adding different recordkeeping and reporting requirements in the future for the classes of highest hazard identified in the new system.

2. *Manifest System.* The final rules require owners or operators of facilities which receive waste from off-site to sign, date, and return a copy of the manifest to the transporter immediately, and to the generator within 30 days of receiving the waste. Owners or operators must also note significant discrepancies in the type or quantity of waste received, and notify EPA if discrepancies cannot be resolved. This section of the preamble discusses the major comments received on the proposed § 250.43–5(a) manifest requirements.

a. *Manifest Copies.* The Agency proposed a 30-day period for the facility owner or operator to return the manifest to the generator in order to allow the facility owner or operator to return the manifests at the same time as he sends monthly bills to generators, thus reducing paperwork and postage costs. A number of commenters supported the proposed 30-day time period allowed for transmitting the manifest as reasonable, and argued that it should be retained to (1) allow an orderly return of manifests, (2) greatly reduce paperwork and the chances of losing one of the manifests, and (3) allow the generator to prepare his reports based on receipt of submittals at expected times rather than on a continuous stream of manifests received at varying intervals.

A number of other commenters requested that the time period be shortened to one day, or one or two weeks, to (1) allow more effective and timely follow-up on waste shipments, (2) give generators more time to complete exception reports, and (3) avoid losing documents. However, some commenters argued against requiring owners or operators to immediately return manifests, claiming that this was unreasonable because time would be needed to check out any discrepancies, and record data from the manifest. These commenters felt a shorter return period would not provide any enforcement benefit, nor prevent illegal dumping.

Still other commenters recommended that the period be extended to allow more time for recording data from each manifest for reporting.

After careful review of these comments, the Agency has decided to retain the proposed 30-day time period allowed for returning manifests to the generator. The Agency believes that a 30-day time period is reasonable, and does not preclude returning manifests within a shorter time period should a generator insist upon it.

The final Part 262 rules require that, if the generator does not receive a properly signed manifest within 45 days of the waste's shipment to a hazardous waste facility, he must make an exception report to EPA. One commenter suggested that owners or operators should return manifests to the permitting agency, rather than to the generator, to eliminate the need for the generator to make exception reports. Another commenter argued that the regulation should be flexible enough to allow manifests to be returned to either an authorized State agency or the generator, in order to allow States to become aware of exceptions earlier. A related comment argued that States with programs that are adequate to identify missing shipments should have the authority not to require the manifest be returned to the generator. Another commenter recommended that efforts be made to reduce the number of copies of manifests that must be distributed and retained in order to minimize costs and space requirements.

The Agency strongly believes that the waste generator, rather than EPA,

should be responsible for ensuring that his hazardous waste actually arrives at the intended facility. The manifest routing system is designed to provide the generator with the feedback information necessary to make that determination. While this system may require more copies of manifests to be distributed and maintained than would be the case in other systems, it will result in more timely and effective discovery of errant shipments and allow prompt enforcement actions. The rationale for the EPA manifest system is discussed in more detail in the Section 3002 Background Document.

b. *Manifest Discrepancies.* Proposed § 250.43–5(a)(4) required that owners or operators notify the Regional Administrator immediately when there is a discrepancy between the type or quantity of waste designated on the manifest, and the type or quantity of waste actually received at the facility. Several commenters felt that the proposed rule would result in the Agency being inundated with unnecessary paperwork, resulting from facilities reporting inadvertent or unimportant errors. They suggested that the Agency specify allowable deviations which would not require submitting a discrepancy report to the Regional Administrator.

The Agency agrees that it is reasonable to set limits which would not routinely trigger discrepancy findings, but which also do not allow excessive amounts of hazardous waste to be unaccounted for.

Many factors entered into the decision regarding the limits to set on the variation in amounts of waste which would trigger a discrepancy notation and report. Because of the limits on the sensitivity and calibration of weighing scales, as well as possible variations in volume and density measurements, it would seem reasonable to allow relatively large errors for bulk shipments, such as 5 to 10 percent. Further, the Agency does not wish to be swamped with discrepancy reports as a consequence of setting the discrepancy limits too tightly.

Consequently, for the final rule, the Agency has selected an allowable discrepancy limit of 10 percent in weight of the manifested waste amount for bulk shipments. This limit, however, does not apply to batch shipments. A discrepancy of one drum in a shipment is sufficient cause for the facility owner or operator to start follow-up procedures in the final rules. The Agency decided to apply a different limit to batch shipments—even though the Agency recognizes that the amounts of waste involved can vary considerably—because such discrepancies can be detected by a simple count.

Another kind of possible discrepancy between the waste manifest and the actual shipment is a difference in the chemical or physical nature of the waste. The Agency's intention in this respect is to have facilities flag obvious differences in waste type (such as waste solvents received instead of the waste acids listed on the manifest), as opposed to more subtle changes, such as part-per-million variations in the concentrations of heavy metals within a sludge. The Agency wishes to ensure that a facility is properly equipped to handle the wastes it receives, and is not subject to surprises in waste type introduced by mistake or on purpose by waste generators or transporters. The Subpart B requirements for waste sampling and analysis should, in most cases, ensure that facilities discover obvious differences in waste type.

The Agency believes that a distinction should be made between *discovering* a discrepancy and *reporting* the discrepancy. The Agency believes that the facility owner's or operator's logical and reasonable response, upon discovering a discrepancy in waste amount or type is for him to contact the waste generator, and the transporter if necessary, and try to resolve the discrepancy. Therefore, the final rules now specify that discrepancies should be reported to EPA only if they cannot be resolved satisfactorily. By so doing, the number of discrepancy reports can be reduced, and the reports submitted to the Agency will focus on truly significant discrepancies.

Several commenters felt that the proposed requirement for immediate discrepancy reporting was too stringent. They asked that a time limit be set to report discrepancies, because more time might be needed to determine that a discrepancy in fact exists. Some commenters suggested that a time limit of 10 working days would make the system more efficient. Other commenters suggested that a more practical requirement would be 30 days from receipt of the shipment.

The Agency agrees with the commenters that the regulations should specify a time frame for reporting discrepancies to the Regional Administrator. All discrepancies should be discovered soon after the waste arrives at the disposal facility. Discrepancies in amount should be found at the weighing station or waste receiving area before the facility owner or operator signs the incoming manifest. Discrepancies in type can be discovered by inspecting the waste, in some cases, or by sampling and analyzing the waste, which usually takes a few hours.

The Agency expects that the facility owner or operator will attempt to reconcile most potentially reportable discrepancies through telephone conversations with the waste generator or transporter. It should be possible to check records, etc., and provide feedback in a matter of days, even including mailing time. Consequently, the Agency believes that it is possible to discover and reconcile discrepancies within 15 days of receiving the waste at the disposal facility. The final rules, therefore, specify that within 15 days after receiving the waste, unresolved significant discrepancies and attempts to reconcile them must be reported in a letter to the Regional Administrator, with a copy of the manifest at issue.

A commenter suggested that if there are discrepancies in the manifest, the hazardous waste should not be accepted until the generator or transporter reconciles the discrepancies.

The Agency agrees in principle that significant discrepancies in the manifest should be reconciled between the generator or transporter and the disposer. However, the Agency disagrees with the suggestion that the Agency require that the waste *not* be accepted by the disposer. In the Agency's view, it is more protective of human health and the environment for wastes to be accepted by a responsible disposer, and properly managed while reconciliation is attempted, rather than for the waste to be rejected with the possibility that it may then be improperly disposed elsewhere. Consequently, the suggestion has not been adopted in the final rule. However, the disposer is not obligated by these regulations to accept the shipment if there is a significant discrepancy in quantity or type.

c. *Manifest Retention.* Proposed § 250.43–5(b)(6) required the owner or operator of a facility accepting deliveries of hazardous waste from off-site sources for treatment, storage, or disposal, to retain for three years a copy of each manifest or delivery document, as certified by the generator, transporter, and owner or operator of the facility. This rule has been moved from the recordkeeping section to the manifest section of the final rules in order to consolidate all manifest-related requirements in one location within the rules.

One commenter stated that all facilities accepting waste should retain all manifests for the duration of the facility's operation, rather than for only three years. The commenter argued that problems at Love Canal surfaced 25

years after the last recorded use of the dump, and that three years is too short a period for recordkeeping, considering the longevity of many hazardous materials and their potential threat to human health and the environment.

The Agency agrees that *records* of all hazardous wastes handled at a facility should be kept until facility closure. However, the Agency does not agree that all hazardous waste *manifests* need be kept on file for that long a period.

The Agency anticipates both short-range and long-range uses for hazardous waste records. Retaining manifests for a three-year period is sufficient for the majority of enforcement cases involving generation and transportation of hazardous waste, which will likely be discovered and acted upon within that period. Thus, the Agency has specified a three-year retention period for manifests in the rules for generators (Section 3002) and transporters (Section 3003), as well as in these rules for facility owners or operators. For longer-range uses, such as responding to Love Canal-type situations, the facility recordkeeping rules require owner or operators to retain *records* (but not necessarily manifests) of all hazardous waste handled at the facility until facility closure. However, that requirement allows the owner or operator the flexibility to design a recordkeeping system suitable to the specific needs of his operation. Larger facilities may use automatic data processing systems. Smaller facilities may choose to retain manifests as the basis for recordkeeping.

In addition, the Agency will receive and retain reports which summarize the waste transported to each facility. These reports will contain a description of the waste, the quantity of the waste, and the numerical identifier of the generator or transporter. In this way, the Agency will be able to review and summarize the data on the annual reports for a particular facility, should any emergency or slow release problem arise at the facility after the manifests have been destroyed.

3. *Recordkeeping.* The final rules require facility owners or operators to keep records of the type and quantity of each hazardous waste received and how this waste is treated, stored, or disposed. Also, records are to be kept on the location of waste, waste analyses, inspections, personnel training, monitoring results, incidents that require implementing the facility contingency plan, and cost estimates for closure and post-closure care. This section of the preamble discusses the major comments received on the proposed § 250.43–5(b) recordkeeping requirements.

a. *Congressional Intent.* A commenter claimed that the proposed recordkeeping requirements were contrary to Congressional intent because manifests are not required for on-site diposal of hazardous waste, yet the information required to be kept by the proposed regulation was substantially identical to the information on a manifest.

The Agency disagrees that recordkeeping at on-site facilities is contrary to Congressional intent. Section 3004(l) of RCRA which mandates recordkeeping at hazardous waste facilities, makes no distinction between on-site and off-site facilities. The manifest is primarily a waste transport tracking and control document. Recordkeeping requirements for facilities are independent of the manifest and serve different purposes. The core information which appears on the manifest, e.g., origin, quantity, and type of waste, is also necessary for recordkeeping purposes.

b. *Operating Record.* A commenter suggested that the proposed term "operating log" be changed to the term "operating record" to allow the use of automatic data processing systems.

The Agency agrees that the use of an ADP system is consistent with the recordkeeping system flexibility intended by the proposed regulations. Further, the large area of some facilities, and the variety of functions performed at some facilities, make it very unlikely that all required information would be recorded in one operating log at only one location. In writing the proposed rules the Agency assumed a number of logs, or records, would be maintained at a site. All such records at a facility taken together would then constitute the facility's operating log.

The term "operating record" more accurately reflects the Agency's intentions and expected commercial practice, than does the term "operating log." The Agency has therefore changed all references in the final regulations from "log" to "record."

c. *Warrantless Inspections.* A commenter, relying on *Marshall V. Barlow's, Inc.*, 413 U.S. 266 (1978), suggested that the proposed requirement that the operating record be open to any duly designated employee or agent of the Agency authorized warrantless administrative inspections without the consent of facility's owner or operator.

EPA's information-gathering activities under RCRA Section 3007 are subject to the Fourth Amendment's protection against unreasonable searches as enuniciated by the Supreme Court in *Marshall V. Barlow's, Inc.*, supra. It should be noted that the Supreme Court in *Barlow's*, quoting *Almeida-Sanchez V. United States* (413 U.S. 266, 271), emphasized that:

> A central difference between those cases [involving warrantless searches of pervasively regulated industries] and this one is that businessmen engaged in such Federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade whereas the petitioner here was not engaged in any regulated or licensed business. The businessman in a regulated industry in effect consents to the restrictions placed on him.

EPA's exercise of its Section 3007 authority will be conducted in a manner consistent with the decision.

d. *Nomenclature for Waste Information.* One commenter complained that proposed § 250.43–5(b)(2)(i)(A), which required using DOT or EPA waste descriptions in the operating record, was confusing.

The Agency allowed the use of DOT, as well as EPA nomenclature, to describe waste on the proposed operating record, because the manifest, which contains much of the information needed to fill in the record, describes waste using DOT nomenclature. The Agency thought that providing the flexibility of using either the Agency's or DOT's terminology in the operating record, would be the most cost-effective and least burdensome method for recording waste management information.

In retrospect, the Agency now believes this was not the best approach. The proposed Section 3004 rules for *recordkeeping* applied to both on-site and off-site facilities, although separate rules for on-site facility *reporting* were contained in the proposed Section 3002 rules. On-site facilities do not use manifests, and thus recordkeeping based on DOT nomenclature is not appropriate for these facilities. Therefore, to simplify the rules, and to avoid confusion between on-site and off-site facility recordkeeping requirements, the Agency has decided to use EPA nomenclature for all facility recordkeeping and reporting.

4. *Reporting.* The final rules require facility owners or operators to file an annual report summarizing the type and quantity of each hazardous waste received, and how this waste is treated, stored, or disposed of at the facility. In addition, owners or operators are required to make reports to the EPA Regional Adminstrator within 15 days after wastes are received without a manifest; incidents such as fires, explosions, and releases; and problems detected via ground-water monitoring.

Reporting requirements for facility owners or operators that generate and

dispose of their waste at the same location (i.e., on-site disposers) were specified in the proposed Section 3002 rules. Because these rules were nearly identical to those specified in the proposed Section 3004 reporting requirements, the Agency has consolidated the reporting requirements for both on-site and off-site facilities in these final Section 3004 rules.

This section of the preamble discusses the major comments received on the proposed § 250.43–5(c) reporting requirements.

a. *Joint Filing of Reports.* Commenters suggested that firms with more than one site should be allowed to submit reports for all sites. Another commenter felt the regulations should allow for an assumption of duties contract between the generator and the facility owner or operator whereby legal responsibility for complying with the generator reporting requirements can be allocated to the owner or operator.

If a corporate headquarters maintains the records for the various facilities it controls, both the proposed and final rules allow the firm's headquarters to submit reports for each of its facilities.

The Agency cannot prohibit owners or operators from assuming responsibility for the generator's reporting if they choose to do so. Contract law provides the mechanism for owners or operators to assume these responsibilities. If, however, the generator's contracted duties are not performed, the generator will be held responsible for not complying with the RCRA reporting requirements.

b. *Submission of the Annual Report.* The proposed rules required that the facility's annual report be sent to the Regional Administrator within four weeks after the closing date of the reporting year. Some commenters felt that this turnaround time was too short because:

(a) Most large firms will require more than four weeks to prepare the annual report;

(b) The paperwork burden of the report is so great that the facility will have to stop operations in order to complete the report if the required turnaround time is only 30 days; and

(c) Four weeks does not allow sufficient time for recent manifests to be returned.

The Agency agrees that it may take more than 30 days to compile the information needed to complete the facility annual report. The owners or operators of both on-site and off-site facilities may be generators of hazardous waste sent elsewhere, as well as disposers of hazardous waste. To allow waste generators sufficient time to collect all manifests in order to file their annual report, the final Section 3002 rules allow 60 days, rather than 30 days, from the end of the calendar year to file the annual report. In order to be consistent with the reporting requirements for waste generators, and to avoid unnecessary confusion by specifying separate deadlines for generators and facilities, the deadline for submitting the annual report for all waste managment facilities has also been extended to 60 days.

c. *Certification Statement.* The proposed rules required that facility owners or operators sign on the annual report form a statement which certified that the information on the form was true, accurate, and complete. Several commenters objected to the proposed wording of the certification statement on the report form. They suggested that the phrase "to the best of my knowledge" be inserted, and the word "personal" be deleted, from the certification statement because:

(a) The person signing the certification may not have compiled the actual information reported, and thus, will not have personal knowledge of each of the many pieces of information reported, and

(b) The proposed wording of the statement places the individual who signs the report in the position of being criminally liable for errors beyond his control. In many instances, an error could be made even though there was a good faith effort to submit accurate information.

These commenters also felt that the sentence "I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." should be deleted from the statement. They claimed that the sentence was unnecessary, because it is evident that anyone who knowingly submits a false report to the Federal government is subject to significant penalties.

The Agency agrees that the certification statement should reflect, to the extent possible, the signer's personal knowledge of the truth, accuracy, and completeness of the submission. The owner or operator or his authorized representative may not have firsthand knowledge of the truth, accuracy, and completeness of the information submitted. Accordingly, the Agency has changed the certification statement on the annual report to require the owner or operator or his authorized representative to state that "based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete." This formulation, adopted from EPA's NPDES regulations, recognizes both the limits of the signer's personal knowledge and the Agency's need for accurate and complete information. It allows the owner or operator to respond on the basis of his belief, but sets forth precisely what the basis of that belief must be.

The Agency disagrees with a commenter's suggestion that EPA delete from the certification statement: "I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." The Agency included this sentence in the statement to impress upon the signer the necessity for submitting complete and accurate information. The Agency believes that some owners or operators may not realize that the knowing submission of false information to EPA may subject the signer to significant penalties. Therefore, the sentence has been retained in the certification statement in the final rules.

d. *Unmanifested Waste Report.* The proposed rules required owners or operators to file a quarterly report to the Regional Administrator describing hazardous waste received at the facility not accompanied by a manifest, unless the waste was not required to be accompaned by a manifest because of the exclusions provided in the Section 3002 rules.

Some commenters felt the unmanifested waste reporting requirement should be deleted because it was burdensome, unnecessary, and submitted so infrequently as to make the information of little or no value to the Agency.

The Agency disagrees that the information contained in the report is useless. Because of the uncertainty associated with unmanifested hazardous waste, the Agency wants to know as much as it can about the waste, as soon as possible. Prompt submission of the details regarding unmanifested waste will enable the Agency to ensure that the facility is managing the waste (with which the facility may have limited management experience) in an appropriate manner. It will also allow the Agency to detect any suspicious patterns of unusually high incidences of unmanifested waste in particular areas.

However, the Agency does agree that the reports will be more useful for enforcement purposes if they are submitted soon after the unmanifested waste is received. Therefore, in the final rules, the report is required to be returned to the Agency within 15 days of the date the waste is received at the facility. The Agency does not believe

that requiring a 15-day turn-around time for these reports will be burdensome. This is because it is illegal to transport hazardous waste without a manifest, and thus, the incidence of unmanifested waste arriving at a facility—and the attendant need to fill out a report for these wastes—should be infrequent.

Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, it may be difficult for the facility owner or operator to determine whether an unmanifested waste report should be filed. In such cases, the Agency suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator should file an unmanifested waste report for the hazardous waste movement.

E. Subpart F—Ground-Water Monitoring

The Agency received many comments on the ground-water and leachate monitoring portions of the proposed regulation. Based on these comments the Agency has made substantial changes in these interim status regulations. In particular the regulations have been changed to require ground-water monitoring at surface impoundments, landfills, and land treatment facilities. The proposed interim status regulation required ground-water monitoring only at those surface impoundments and landfills where a ground-water monitoring system was already in place. EPA has decided, therefore, to issue this Subpart as "interim final" to provide an opportunity for further public comment on this portion of the regulation.

The proposed regulation required leachate monitoring in addition to ground-water monitoring at landfills and surface impoundments. Such a system was to collect leachate samples in the zone of aeration between the water table and the primary liner or natural soil barrier of the disposal facility. Variances were allowed for owners or operators who could demonstrate that an alternative leachate monitoring technique would detect leaks as effectively as the prescribed system.

Many commenters raised objections to the leachate monitoring requirement, arguing that it was expensive, redundant and technically infeasible. Some commenters suggested that leachate monitoring be used in lieu of ground-water monitoring or that the Regional Administrator have the option to waive leachate monitoring for specific facility locations or designs. The most frequently mentioned comment was that it was virtually impossible to install leachate monitoring systems at existing landfills and surface impoundments.

While EPA still believes that leachate monitoring can be an effective and useful detection device in addition to ground-water monitoring, the Agency has decided not to require leachate monitoring during the interim status period. This decision is based on the technical problems associated with such a system at landfills and surface impoundments. Monitoring of leachate in the aeration zone has not been widely used to date. EPA is aware of research investigations on the use of lysimeters and other techniques to monitor leachate, but is not aware of any applications of aeration zone monitoring beneath a full-sized disposal facility to determine whether the facility is leaking.

Available leachate monitoring technology generally involves the placement of probes (lysimeters) beneath the disposal facility. Since each probe is not generally capable of monitoring a large area, many of them would have to be placed under a facility in order to detect a localized flaw in the landfill design. It may not be possible to place such devices below an existing landfill or surface impoundment without completely removing the waste and re-designing the facility. Moreover, once such a system is in place, the probes tend to fail over time due to deterioration or plugging. It is difficult to determine when such a failure occurs and, if discovered, the damage is generally irreparable. Under these circumstances EPA does not believe that leachate monitoring should be a general requirement for landfills and surface impoundments during interim status. The Agency will continue to examine the appropriateness of leachate monitoring at new landfills and surface impoundments. Depending upon the results of these studies, the Agency may include leachate monitoring requirements in the Phase II or Phase III regulations.

At land treatment facilities, however, soil pore water monitoring (the equivalent of leachate monitoring) is feasible, even at existing facilities. Such a system can provide valuable information on the effectiveness of the land treatment processes occurring in the soil. However, it is no substitute for ground-water monitoring for determining actual contamination of ground water. This requirement is discussed in more detail in the "Land Treatment" portion of this Preamble.

EPA believes that a reliance on ground-water monitoring, instead of leachate monitoring, at landfills and surface impoundments will adequately protect human health and the environment. As will be described later, the monitoring system required for all such facilities relies on testing for indicator parameters at the edge of the waste management area. Such a scheme should give the owner or operator, as well as EPA, a relatively prompt indication of any leakage from the facility into ground water.

The following is a discussion of the specific elements of the interim status ground-water monitoring requirements:

1. *Applicability.* The proposed regulations specified a minimum ground-water monitoring system, capable of detecting and identifying hazardous waste or its constituents if they entered an underlying aquifer in sufficient quantities to cause a "significant" change in ground-water quality.

The proposed regulation contained a variance to the effect that a ground-water monitoring system would not be required, or a lesser degree of ground-water monitoring could be used, if the owner or operator could demonstrate, at the time a permit was issued, that geologic and hydrologic conditions underlying the facility indicated no potential for discharge to ground water. Some commenters argued that the current state of knowledge about ground-water monitoring is too limited to serve as a basis for regulation. The majority of commenters discussing this section, however, focused on the variance provision, suggesting that it allow consideration of a variety of factors. These included the existing suitability of the aquifer as an underground source of drinking water, waste characteristics, expense of monitoring and facility design.

Some commenters suggested relaxing the variance by changing "no potential" to "low potential". Some thought monitoring should be required only over an underground source of drinking water. Other commenters suggested that for deep water tables, as in the West, a variance or alternative monitoring technique would be appropriate.

These final interim status regulations require owners and operators to implement a ground-water monitoring program, including the installation, operation, and maintenance of a monitoring system specified in the regulations. The program must be capable of determining the facility's impact on ground-water quality in the uppermost aquifer underlying the facility. While EPA acknowledges that ground-water monitoring is complicated and that the current state of knowledge will continue to be improved, adequate monitoring methods for detecting

contaminant migration are available. In light of the crucial role which such monitoring plays in the assessment of environmental damage, a ground-water monitoring program must be a basic element of any disposal activity. The Agency will continue to refine these regulations as the state of the technology improves.

In focusing on the uppermost aquifer, EPA does not mean to suggest that it is unconcerned about contamination of deeper aquifers. The monitoring program seeks to detect contamination of the uppermost aquifer because that will be the first ground water to be affected by a leaking disposal facility. If an owner or operator knows, or wishes to assume, that his facility is contributing hazardous waste constituents to the ground water, the regulations allow him to install and operate a ground-water monitoring system other than the indicator parameter monitoring system discussed below. In this case he must implement the ground-water quality assessment program discussed in detail later.

In these final interim status regulations, the Agency has again incorporated a variance within the ground-water monitoring requirement. As the commenters suggested, a lesser degree of ground-water monitoring will be allowed in those circumstances where an owner or operator can demonstrate to the Regional Administrator that there is a low potential for hazardous waste constituents to migrate to water supply wells or to surface water via the uppermost aquifer. (Migration via the uppermost aquifer includes migration through such an aquifer to a deeper aquifer hydraulically connected to water supply wells or surface waters.) A complete waiver of monitoring is only available when the owner or operator can demonstrate that there will be no potential for migration to water supply wells or surface water.

An owner or operator who wishes to install a lesser degree of monitoring must document the justification for such an approach. That written demonstration must be certified by a qualified geologist or geotechnical engineer, kept on the facility premises, and, during interim status, provided to the Regional Administrator upon his request. Such a demonstration to support a lesser degree of monitoring must include an evaluation of (1) a water balance of precipitation, evapotranspiration, runoff and infiltration; (2) characteristics of the saturated and unsaturated zones; and (3) the proximity of the facility to water supplies or surface waters.

The Agency does not believe that aquifers underlying the facility that do not qualify as underground sources of drinking water should be exempted from consideration. Such aquifers may have other uses worthy of protection, or may be hydraulically connected to other water supply wells or surface waters needing protection.

RCRA's goal of protecting human health and the environment does not allow the Agency to reduce the basic monitoring requirements simply because of the cost. EPA has also rejected a consideration of the nature of the waste and the facility design as a basis for reduced monitoring requirements. EPA does not believe that the state of knowledge about hazardous wastes and facility designs is sufficiently certain to justify reductions in the basic monitoring system during interim status.

2. *Ground-Water Monitoring System.* The proposed regulation required the installation of at least four wells. At least one well was to be located hydraulically upgradient to yield samples of background ground-water quality. At least three were to be located hydraulically downgradient in order to detect migration from the facility. One of the three wells had to be located at the solid waste boundary. The downgradient wells were to be placed at different depths in order to detect potential migration. Owners and operators were required to case their wells and backfill the annular space in order to prevent migration of water down the well bore. The most frequent comment received on these requirements requested a more flexible approach to ground-water monitoring. Commenters were concerned that the Agency was proposing rigid requirements which would be too difficult to implement, considering the highly variable nature of subsurface conditions. They expressed concern over the required number, placement, and depth of wells and suggested various options.

Several commenters discussed the requirement for a minimum number of wells arguing that the number of wells needed will vary with conditions such as the hydrogeology of the area, the size of the facility, and the configuration of the waste management area. Some commenters believed that the proposed minimum number of wells was adequate while others suggested one, two or more than three wells.

These final regulations require that the owner or operator drill a sufficient number of wells to characterize the potential contamination of ground-water quality caused by his hazardous waste facility. On the upgradient side of the waste management area this means that there must be enough wells (at least one) to characterize background ground-water quality in the uppermost aquifer. The owner or operator must assure that the upgradient samples represent true background conditions and are not contaminated by the facility.

There must also be a sufficient number of downgradient wells to provide representative samples capable of detecting migration of hazardous waste constituents from the facility. EPA has retained its requirement that a minimum of three wells should be drilled at the downgradient side of the waste management area. This number was recommended to the Agency by several respected groups familiar with ground-water monitoring at disposal facilities. The public comments did not present a specific rationale for any other minimum number of wells.

While the Agency has maintained in the regulations the requirement for a minimum of three wells, it expects that many facilities will have to drill more than three wells because of the size of the facility or because of the complex hydrogeology below the facility. Ultimately the burden is on the owner or operator to develop the monitoring system necessary to accurately characterize the aquifer and detect migration. It should be recognized that an owner or operator that can present a convincing case for a lower number of wells has the option of justifying and installing such lesser monitoring under the terms of § 265.90(c) of this regulation.

Some commenters suggested that EPA specify a spacing interval and maximum or minimum depths for monitoring wells. Other commenters sought more flexibility in the standards, particularly in defining well depth, to allow for consideration of site-specific factors. EPA believes that the spacing and depth of wells should depend on the particular pattern of ground-water flow below a facility, making it extremely difficult to specify national minimums or maximums in this area. Thus the Agency has decided to leave the spacing and depth of wells up to the owners and operators. They will have to be able to justify their selection of a monitoring system in light of the particular hydrogeology below their facilities.

Commenters also suggested that the placement of monitoring wells between the waste boundary and the property boundary be a matter for owner or operator discretion. Two objections were raised to placement of wells at the solid waste boundary. First, commenters

argued that such placement was redundant in light of the requirement for leachate monitoring. Second, commenters suggested that if wells were placed close to the active portion of the facility, leachate that moved laterally in the soil below the facility would enter the annular space around the monitoring well and quickly pass into the ground-water.

EPA believes that the monitoring wells should be placed as close to the waste boundary as possible in order to give a prompt indication of ground-water contamination. This is particularly important since leachate monitoring has been deleted. If significant ground-water contamination occurs before detection, the difficulties of corrective action are made all the more severe. Therefore it is appropriate to place monitoring wells at the edge of the waste management area to provide early detection.

EPA does not believe that the placement of wells required in this regulation presents a significant risk that monitoring wells will become conduits for leachate passing to ground-water. EPA expects that most of the leachate flow will be vertical rather than horizontal. In addition, the regulation calls for monitoring at the edge of the waste management area rather than under the solid waste itself. This is to eliminate any suggestion that the wells should be drilled through any natural or artificial barrier that may contain the waste. The problem of migration of leachate will be reduced by place monitoring wells outside of any such containment barrier. Lastly, the regulations call for backfilling of the annular space around the monitoring well casing, which should reduce the risk of the "conduit" problem.

The few comments that addressed the requirements for casing wells and backfilling the annular space generally sought further clarification of the Agency's intent for the requirement. One commenter suggested that the term "casing" be clarified. Other commenters suggested design measures, such as gravel or sand packing, that would improve the well's capacity to provide representative samples. Another commenter suggested that EPA delete the requirement that backfill be "impermeable" because no backfill material is truly impermeable.

Generally EPA believes that this provision should be more performance-oriented. Thus the final Part 265 regulation specifies that the casing construction and any necessary gravel or sand packing should be directed toward the objective of collecting samples at the appropriate aquifer flow zone and of protecting the integrity of the bore hole. An open hole would not provide such assurances and thus it is clear that some well pipe structure capable of drawing samples at selected depths is required. Likewise backfilling should be directed at assuring the samples and the ground water itself are not contaminated, rather than the question of whether particular materials are truly impermeable. The regulation, therefore, has been changed to make clear that those are the objectives of the well design provision. Finally, these regulations do not require separate monitoring systems for each component of a facility that consists of more than one landfill, impoundment, or land treatment area. The Agency's past and present intent was and is that the ground-water monitoring system would be installed at the perimeter of the waste management area. That intent is specifically stated in these regulations.

3. *Sampling and Analysis.* The proposed regulations required the owner or operator to establish the background ground-water quality of the underlying aquifer for a "comprehensive" set of over 40 contaminants. The determination of this background quality was to be based on monthly sampling for one year. Thereafter, the facility was to sample annually for the "comprehensive" list. In addition the owner or operator was to sample at shorter intervals (that depended on ground-water flow rate) for a "routine" set of contaminants. The "routine" list of parameters included specific conductivity, pH, chloride, total dissolved solids, dissolved organic carbon and the principal hazardous constituents in the waste. A "Note" allowed a reduction in the "comprehensive" list of contaminants for those substances that would not result from the treatment, storage, or disposal of a particular waste.

Commenters questioned the need for monthly sampling to determine background water quality, arguing for a more flexible approach. The Agency believes that obtaining representative background data at a reasonably frequent interval is of critical importance in establishing an accurate ground-water monitoring system. As an initial step, annual monitoring is unacceptable because it cannot reflect seasonal fluctuations. The Agency has, therefore, decided to require quarterly background monitoring which should be more sensitive to seasonal fluctuations. Owners and operators are certainly free to monitor at greater frequencies to provide a more thorough characterization of the aquifer.

Several commenters suggested that the Agency specify particular procedures for sampling, sample preservation, and methods of analysis. The Agency is not at this time specifying such procedures in the regulations; there may be several acceptable approaches. Thus the regulations require the owner or operator to develop and follow a ground-water sampling and analysis plan. The terms of the plan will be enforceable against the owner or operator. The plan must specify procedures for sample collection, sample preservation and shipment, analytical procedures, and chain of custody control. Simply to provide guidance in this area, a comment in the regulation suggests that owners and operators consider using methods contained in two EPA publications: "Procedures Manual for Ground-Water Monitoring at Solid Waste Disposal Facilities" (August 1977) and "Methods for Chemical Analysis of Water and Wastes" (March 1979).

EPA received many comments on the list of parameters to be used in the sampling program. Those who argued that the list was too extensive said that some parameters were redundant and that variances should be allowed for contaminants not expected to be in the waste. They also suggested that the "routine" set of contaminants should be short and be used to trigger the need for more extensive monitoring. Those who believed that the list was not extensive enough argued that broad parameters such as dissolved organic carbon, biochemical oxygen demand, and chemical oxygen demand were insufficiently sensitive to detect some highly toxic organics which are dangerous at low levels. In addition, they suggested that the ground-water level be recorded because such fluctuations may require modification of the sampling program to make it effective.

The final regulations drop the reference to "comprehensive" and "routine" parameters. The regulations require monitoring for three sets of parameters that each serve a different purpose.

The first set reflect the aquifer's suitability as a drinking water supply. These parameters, contained in Appendix III, are those specified in the Interim Primary Drinking Water Regulations established under the Safe Drinking Water Act. Owners and operators are to test for these parameters quarterly during the first year only and report this information to the Regional Administrator.

While the Agency is concerned about ground-water protection for a variety of

purposes, use of ground water as a drinking water source is of particular concern. These interim status regulations do not establish a specific ground-water protection standard, but the Agency has decided that the Phase II regulations will, at a minimum, be designed to protect drinking water supplies. The purpose of the initial sampling for drinking water parameters is to identify facilities that may be severely degrading present and future drinking water supplies. The fact that a particular aquifer is becoming unsuitable as a drinking water source will be useful to the Agency in establishing priorities for permits. The Agency will focus its initial attention on facilities which appear to be having the greatest effect on an aquifer's suitability as a drinking water supply. By using contaminants from the Interim Primary Drinking Water Regulations the Agency does not mean to suggest that this specifies a complete list of the parameters that define an aquifer's potential as an acceptable drinking water supply, but these contaminants will be useful to the Agency in establishing its priorities.

The second set of parameters includes chloride, iron, manganese, phenols, sodium, and sulfate. These parameters are generally recognized as useful for characterizing ground-water quality. These contaminants are ubiquitous in the environment and are often used to characterize a ground-water supply's suitability for a variety of uses. The owner or operator is to draw quarterly samples for these parameters during the first year and annually thereafter. Information on these parameters will be useful in any assessment of ground-water contamination that follows the determination that a facility is leaking. Such information will, for example, assist the Agency in determining the extent to which contamination of the aquifer may be coming from sources other than the disposal facility.

The third set of parameters consists of four indicators that will be used to determine whether a facility is leaking. As indicated earlier the Agency will be developing its ground-water protection strategy as part of the Phase II regulations. For any such standard it will be important for a facility to answer the threshold question of whether hazardous waste constituents are entering the aquifer underlying the facility. The four indicators—specific conductance, pH, total organic carbon, and total organic halogen—reflect changes in the organic and inorganic makeup of the ground-water. A statistically significant change (increase or decrease for pH, increase only for the others) in these indicators between the initial background concentration or value and those from downgradient wells suggests that organic or inorganic substances are being introduced into the aquifer by the facility.

Increases in specific conductance indicate the presence of inorganic substances in the ground water. Likewise increases or decreases in pH suggest the presence of inorganic contamination. Total organic carbon (TOC) and total organic halogen (TOX) concentrations in ground water tend to increase as a result of organic contributions from a hazardous waste facility. The methodology to sample and analyze for these indicators is presently available. EPA believes that monitoring these indicators will be sufficient to make the threshold assessment of whether a facility is leaking. Certainly owners and operators are free to perform more extensive monitoring.

Since ground water monitoring data for the indicator parameters is to be evaluated statistically, the Agency has specified that each determination of the concentration or value of an indicator parameter in a ground water sample be based upon a minimum of four replicate measurements. This number of replicates, using generally accepted techniques, will assure a reasonable degree of accuracy, needed for the specified statistical testing, which is explained in the next section.

EPA agrees with the commenter who suggested that a determination of the ground-water elevation should be made each time a sample is taken. Such information will assist the owner or operator in determining whether the monitoring system is drawing samples from appropriately located wells. The regulation, therefore, includes a requirement that ground-water elevation be determined each time a sample is obtained.

In response to commenters EPA has specified a two-stage monitoring system. Broad indicators are used initially to determine whether a facility is leaking. If such leaking is detected, a more specific ground-water quality assessment program, described later in this Preamble, is initiated. EPA believes that the use of broad parameters as indicators is an appropriate strategy to determine whether a facility is leaking. In response to the general concern expressed by commenters on the number of parameters to be monitored, EPA has limited its requirements for indicator monitoring to four parameters which are necessary, at a minimum, to detect leaks. It is unlikely that a facility would selectively emit low levels of highly toxic organics that would thereby miss detection.

4. *Preparation, Evaluation, and Response.* According to the proposed regulations, detection of significant changes in ground-water quality required the operator to notify the Agency, to determine the cause and the extent of contamination, and to discontinue the facility's operation. Comments received showed that the proposed language did not clearly indicate whether these actions should be taken simultaneously or sequentially. Commenters stated that discontinuing operations, based solely upon a statistically significant monitoring result, was unjustified.

The final regulations have been revised to remove ambiguities. Also, rather than requiring that facility operations cease, the final regulations specify a sequential approach. Upon detecting any suspected discharge from the facility by statistical evaluation of the ground-water monitoring data, the owner or operator is required to notify the Regional Administrator, within one week of any such detection, that his facility may be contaminating the ground water. He must also, within 15 days after this notification, develop and submit to the Regional Administrator a plan, certified by a qualified geologist or geotechnical engineer, for assessing the quality of the ground water. The regulations require that an outline of such a ground-water quality assessment program be developed and kept on-hand at the facility by the time ground-water monitoring is initiated. The plan must specify: the number, location, and depths of monitoring wells to be used for the assessment; the sampling, analysis, and evaluation procedures to be followed; and a schedule of implementation. The owner or operator must then implement this plan and determine as quickly as technically feasible the rate and extent of migration and concentration of hazardous waste and hazardous waste constituents from the facility in the ground water. Within 15 days after completion of the first determination, he must submit to the Regional Administrator a report containing the results of the ground-water quality assessment. If the owner or operator can demonstrate, using newly acquired and previously gathered ground-water monitoring data (including the general water quality data developed to satisfy § 265.92(b)(2)), that his facility is not contributing hazardous waste or hazardous waste constituents to the ground water, he must so state in the report and may reinstate his original ground-water monitoring program.

However, if his assessment shows that hazardous wastes or hazardous waste constituents from his facility are entering the ground water, he must repeat the ground water assessment at least quarterly thereafter, until final closure of the facility.

Detection of statistically significant changes in the indicator parameters in the upgradient wells does not require implementation of ground-water quality assessment program. This information may be useful at a later time, though, in demonstrating that significant changes in downgradient water quality resulted from sources other than the hazardous waste facility.

As indicated earlier, an owner or operator may install an alternate ground-water monitoring system if he feels that monitoring for indicator parameters would show that his facility was affecting the ground water. Any such alternate monitoring program must be able to provide the above described ground-water quality assessment.

The final rule specifies different requirements for the duration of ground-water monitoring depending upon the operating status of the facility and the monitoring program utilized.

Monitoring of indicator parameters is intended to detect facility leakage into the ground water. If such leakage is detected the ground-water quality assessment program is to be implemented to establish the magnitude of the problem. If the assessment demonstrates the absence of hazardous waste constituents in the ground water, the owner or operator may reinstate indicator parameter monitoring until suspected leakage into the ground water is again detected. This detection could, of course, trigger the need for another ground-water quality assessment, and so on, throughout the active life of the facility, and for disposal facilities, throughout the postclosure care period as well. If, on the other hand, the first determination under the ground-water quality assessment program demonstrates that hazardous waste constituents have indeed entered ground water, the assessments must be repeated quarterly, until final closure of the facility. Since additional hazardous wastes will be received at the facility throughout this time, additional assessments are necessary to determine any further impact from these wastes on the ground-water quality.

If the first determination of ground-water contamination, by implementation of the ground-water quality assessment plan, occurs during the post-closure care period, however, the sources of contamination are expected to be relatively stable such that repeated assessments would only confirm the initial determination of contamination. For this reason only one ground-water quality assessment which demonstrates contamination is required during the post-closure care period. By a similar line of reasoning, those facilities which from the beginning utilize an alternate ground-water monitoring system, equivalent to a ground-water quality assessment program, are not required to make repeated assessments after final closure of the facility.

The more frequent monitoring (i.e., quarterly) under the assessment program is required to enable the Regional Administrator and the owner or operator to be fully aware of the extent of ground-water contamination. Such information will be useful, for example, in providing warning to downgradient ground-water users of any potential danger, if necessary.

The final regulations also require that any ground-water quality assessment which is initiated prior to facility closure be completed and reported to the Regional Administrator. An assessment which is underway may not, therefore, be halted merely because the facility closes.

The final rule also differs from the proposed version in the test for statistical significance. As proposed, analyses of ground-water quality were to be compared to the background quality established for each facility, using the single-tailed Student's t-test at the 95 percent confidence level. Commenters claimed that the Student's t-test at the 95 percent confidence level was too restrictive. Commenters stated that the Student's t-statistic is inappropriate because it is dependent upon a normal distribution, which cannot be assumed for ground-water data because of seasonal fluctuations. One commenter suggested establishing tolerance limits as an alternative to specifying a statistical test of significance.

After considering these comments, the Agency reproposed the statistical test on September 19, 1979 (44 FR 54323–54324) and specified the use of the Mann-Whitney U-test at the 95 percent confidence level. In specifying the Mann-Whitney U-test, which is a non-parametric test, the Agency sought to overcome the major weakness of the Student's t-test, namely, its underlying assumption of "normality." Commenters on the reproposal generally preferred the Student's t-test over the Mann-Whitney U-test, for two reasons. First, they were more familiar with the Student's t-test. Second, several commenters explained that while there is an underlying assumption of normality for the Student's t-test, it is tolerant of considerable departures from that assumption. The Agency has therefore again specified the Student's t-test in these final regulations.

The required statistical comparison in these regulations, however, differs from that proposed in several ways as a result of concerns which commenters raised on the broader topic of statistically differing ground-water quality. Commenters suggested that there was a high probability of statistically significant increases resulting from anticipated natural fluctuations in ground-water quality and from analytical error (i.e., false significance). The Agency has incorporated several changes which, when combined, should greatly minimize the possibility of "false" significance. These include: limiting to four the number of indicator parameters to be compared; performing the t-test at the 99 percent level of significance instead of the proposed 95 percent level; and intitially responding to detected statistically significant difference by taking additional ground-water check samples to confirm the significant difference.

In addition, to assure that accurate data is used by the owner or operator in the statistical comparisons, the Agency requires that four replicate measurements be made on each obtained ground-water sample for each indicator parameter. Four replicates provide 95 percent confidence that the average of the measured values will be within five percent of the actual value if generally accepted analytical procedures are followed.

In its investigations of statistical test procedures which could be useful in interpreting ground-water monitoring data, the Agency gave consideration to standard industrial quality control concepts and procedures for data evaluation. The Agency is aware that these procedures were developed for relatively well controlled and operated industrial processes. However, the conceptual basis of monitoring ground-water quality indicators is similar in the sense that the variation of the indicator measurements under typical circumstances should be predictable within limits. If no leakage from a hazardous waste facility or other hydrologic change has occurred, the ground-water quality indicator levels should remain within such limits. Excursions outside the limits would indicate that changes may have occurred that require further investigation. Quality control methods may be adaptable to such a situation.

Quality control methods also have the advantage of being generally accepted and understood. The basic approach in a ground-water monitoring program would be to use data gathered during a baseline period to establish limits that would encompass a range of typical variation in ground-water quality indicator parameters. Excursions outside these limits in subsequent monitoring samples would indicate the need for further investigation. While the Agency believes that the use in these regulations of the Student's t-test is appropriate, comment is requested on the use of a quality control approach in interpreting ground-water monitoring data. Such comments should identify specific procedures and concepts which appear amenable to this purpose.

5. *Recordkeeping and Reporting.* The proposed regulations required making quarterly reports of ground-water monitoring information and keeping ground-water quality data and analytical procedure records for a period of three years. The few commenters that addressed this provision made two points. First, they suggested that quarterly reporting was unnecessary. Second, one commenter suggested that the owner or operator send copies of any reports to State and local authorities.

The Agency has decided that annual reporting of the data on the indicator parameters should provide sufficient notice on general compliance with the regulations. The Agency can, of course, examine the data held by the owner or operator to comply with these regulations at any time. In the first year of monitoring, however, it is necessary to have more frequent monitoring and reporting to identify those aquifers that are in greatest jeopardy. Such information will be used to set priorities for consideration of permits. In keeping with that goal, the owner or operator must indicate in his quarterly report during the first year of monitoring which parameters exceed the contaminant limits specified in Appendix III.

These regulations require the owner or operator to retain his ground-water data for the active life of the site, and for the duration of the post-closure care period for disposal facilities, instead of the three-year period specified in the proposed regulations. The Agency believes that the actual monitoring data (i.e., all replicate measurements on all samples) may provide useful information in determining the type and extent of ground-water contamination. Since ground-water changes may occur slowly, it will be useful to have a history of the facility that is longer than three years. Both the owner or operator and the permitting authority should have access to such information when needed.

The regulations do not require the owner operator to send the ground-water report to State or local authorities. This step is unnecessary. Those States and local authorities that are interested in examining the reports may obtain copies from EPA or the authorized State agencies responsible for receiving such information.

Slightly different reporting requirements apply depending on whether the owner or operator is following the indicator program or the ground-water quality assessment program at the facility.

F. Subpart G—Closure and Post-Closure

The purpose of the final Part 265 closure and post-closure standards is to ensure that all hazardous waste management facilities are closed in a manner that (1) minimizes the need for post-closure maintenance, and (2) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of waste, leachate, contaminated rainfall, or waste decomposition products to ground or surface waters, and the atmosphere. There are two types of closure and post-closure requirements in these final rules: (1) general requirements, which are contained in Subpart G; and (2) specific technical requirements, which are included in the facility-specific regulations for landfills; land treatment facilities; surface impoundments; incinerators; tanks; and thermal, physical, chemical, and biological treatment facilities.

This section of the preamble focuses on the Subpart G general closure and post-closure requirements. The technical standards establish in more detail specific requirements and additional objectives for closure and post-closure. They also set forth factors owners and operators must consider in addressing those objectives. They are intended to give flexibility to facility owners or operators, and to reduce the possiblity for over response to these requirements. The technical standards are described in later sections of this preamble.

The final interim status regulations specify what facility owners or operators must do after wastes are no longer received for treatment, storage, or disposal. (This was called "closeout" in the proposed regulation but the term has been dropped because it was frequently confused with "closure".)

Closure is the period after wastes are no longer accepted, during which the owners or operators complete treatment, storage, and disposal operations, apply final cover to or cap landfills, and dispose of or decontaminate equipment. Post-closure is the period after closure during which owners or operators of disposal facilities must conduct certain monitoring and maintenance activities. EPA believes that if the disposal facility has been properly located, designed, operated, and closed, and no contaminant leakage problems have occurred during the operating life of the facility or during the post-closure care and maintenance period, then the probability of significant ground-water contamination is very small.

1. *Period of Post-Closure Care.* The proposed rules required that post-closure care be conducted for 20 years at disposal facilities. The Agency received numerous comments on this requirement. About half of these comments favored a period less than the 20 years proposed but the other half favored a longer period. Those supporting a longer period argued that the hazard posed by many wastes exists for an extremely long time, and that monitoring should be carried out perpetually, or for as long as the wastes are hazardous. Those favoring a shorter time argued that only a few wastes remain hazardous for more than a few years. These commenters felt that there was too much uncertainty and potential economic burden with the proposed standard, because it carried a potential for unnecessary monitoring.

As a result of the extensive comment, the Agency has considered the post-closure care issue, and has decided to extend the post-closure period from 20 to 30 years. EPA believes that eliminating leachate monitoring requirements makes it necessary to monitor ground water for a longer period of time, and that further analysis of financial requirements, as well as changes in these regulations, make it practical to do so.

Public comment persuaded EPA (see Background Document on Ground-water Monitoring) that existing leachate monitoring techniques are impractical, except at land treatment facilities. Thus, EPA has deleted the leachate monitoring requirements for landfills and surface impoundments. EPA had believed that leachate monitoring systems would act as early warning systems. Since it will take longer for contamination migration to reach ground-water monitoring points than it would have taken to reach leachate detection monitoring points, it is necessary to monitor for a longer period.

EPA is now convinced that it is reasonable to monitor and maintain

closed disposal facilities for 30 years. Because EPA no longer requires leachate and air monitoring, owners or operators need not provide the money for these activities. Furthermore, proposed changes in the financial regulations will make all financial requirements less costly. Owners or operators will be able to satisfy closure and post-closure responsibilities through a number of financial mechanisms, many of which are substantially less expensive than trust funds. (For a complete description of the proposed financial mechanisms, see the proposal section of this **Federal Register** and the Background Document on Financial Responsibility.) Also, in these proposed financial regulations for interim status, owners or operators may build closure trust funds during the expected site life, rather than by advancing all the money initially. This alternative will make trust funds less expensive. As a result, EPA is convinced that owners or operators can now maintain and monitor disposal sites for 30 years after closure.

However, because of the uncertainty caused by the lack of extensive experience with properly designed disposal operations, the Agency does not believe that an unalterable national rule is necessarily the best way to ensure human health and environmental protection. The permitting process will provide for case-by-case review of the period for post-closure care and the interim status standards permit EPA to shorten or lengthen the 30-year post-closure period as appropriate on a case-by-case basis. Thus, for example, if an owner or operator can demonstrate to the Regional Administrator that there is no need to monitor and maintain his closed disposal facility for the entire 30-year period, the period could be shortened. Representatives of the public, on the other hand, could also petition to have the monitoring period extended for cause.

EPA agrees with those commenters who pointed out that risks from some wastes persist for long periods of time. For organic wastes disposed of in an anaerobic environment, the decomposition to non-toxic products is very slow. Similarly, heavy metals remain toxic forever, and may be mobilized unless carefully managed. This may argue for perpetual monitoring of land disposal facilities. However, the Agency has found that it would be nearly impossible for small single facilities to finance such activities in perpetuity, after revenues cease. Thus, some form of national insurance is necessary to ensure perpetual monitoring of these facilities, because many of them would surely default if required to conduct perpetual monitoring. EPA is considering asking Congress to enact legislation to develop such a national insurance program. In the interim, the Agency has revised these interim status regulations to allow the Regional Administrator to extend some or all of the post-closure care requirements for cause, e.g., because contamination is detected or feared imminent.

2. *Notice in Deed to Property.* A number of commenters questioned the legality of the proposed standard which required the owner or operator to record, in the deed of the property, a stipulation restricting future use of the property. In response to these comments, the Agency has reworded the requirement, so that the owner or operator of a facility in which hazardous waste will remain after closure must submit evidence that a notation has been placed on the deed to the property, or on an appropriate alternate document. The notation must warn that Federal law limits post-closure use of the property by anyone in a manner that would disturb the integrity of the final cover, the liner(s), or the monitoring systems of the facility. During interim status, the owner must place the notation on the deed or alternative document, but need not submit evidence to EPA of having done so unless specifically requested by the Agency.

3. *Amendment and Submission of Plans.* Several commenters suggested that, during the operation of the facility before closure, owners or operators should be able to amend the closure plan and the closure cost estimates that they submitted as a requirement for the facility permit. They claimed that this would help ensure that the plan is current and that the closure funds are sufficient, and it would allow for operating changes which might affect closure. The Agency agrees, and has modified the regulations accordingly. During interim status, modifications to the closure plan must be made where appropriate, but need not be approved by EPA, since closure plans must be submitted to EPA only in the event that the site closes. The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. All of the above considerations apply to post-closure plans for disposal facilities as well. Both closure and post-closure plans are deemed requirements of Subtitle C, and the plans themselves are enforceable by EPA.

4. *Time Allowed for Closure.* Several commenters thought the proposed 90-day limit for completing disposal or for removing waste from facilities after wastes are no longer received, was too stringent and inflexible. The commenters argued that, at certain times of the year, weather would prevent completing waste disposal or removal at a facility, and that 90 days is not enough time to complete these activities at most facilities. EPA disagrees. Closure plans, which are developed far in advance of actual closure, can certainly be developed to ensure that wastes are disposed of or removed within 90 days of commencing closure. This should be the first activity conducted when a facility commences closure, and owners or operators should ensure that waste inventories are reduced to manageable levels before commencing closure in order to comply with the 90-day deadline.

The proposed regulations required that closure be completed within three years after the facility stopped accepting wastes. A number of commenters suggested that the time limit for closure activities was too long in most cases, and should be made more flexible. The Agency agrees, and has reworded the requirement to indicate that closure must be completed within six months. A variance procedure will allow a longer period, where it can be justified, although in no case may closure take more than three years.

5. *Post-Closure Permits.* EPA is considering a procedural mechanism somewhat different from those contained in prior proposals for dealing with the problems involved in monitoring facilities after closure and taking corrective action where necessary. As stated earlier in this preamble, EPA does not believe that Subtitle C of RCRA was intended to cover disposal sites for hazardous waste which were closed before the effective date of these regulations. However, a different situation is presented for the post-closure care of facilities which at one time had received a RCRA permit or interim status and operated under it. There can be little question that the statute intended EPA to require measures to be taken, for as long as necessary, to ensure that these facilities and the waste located there do not pose a threat to human health or the environment. One of the major purposes of the closure and financial responsibility provisions of the Part 264 and Part 265 regulations is to ensure that sites remain safe even after they cease active operation.

Under the structure of Subtitle C, the only consistent way to make sure that the necessary corrective measures can

be taken at closed sites is to make those sites subject to regulations under Section 3004. That is the only section of Subtitle C that authorizes substantive regulatory standards of the type in question.

However, Section 3004 applies only to "owners and operators of facilities for the treatment, storage, or disposal of hazardous waste," and can therefore be applied to closed sites only if the owners or operators of those sites are said to come within that definition. As noted above, policy considerations support reading the statute in this manner. In addition, the same conclusion is hard to avoid simply as a matter of textual interpretation, since land in which hazardous waste is buried is certainly either "storing" or "disposing" of those wastes within the meaning of the specific definitions of those terms given in RCRA Section 1004.

If owners or operators of inactive sites which once were covered by RCRA permit are still "storing" or "disposing" of those wastes, it follows that they must get a permit under Section 3005. Once again, that conclusion makes sense as a matter of policy as well as a strict matter of textual interpretation. For example, the provisions of the statute for EPA inspection and monitoring are best enforced as part of a permit. Though EPA believes that the terms of any post-closure RCRA permit should be strictly limited and require an absolute minimum of paperwork, there are strong policy reasons, as well as legal reasons, why a permit of this type might be essential to the overall operation of the program. For example, it might be very difficult for EPA to gain access to land to clean up a leaking site without the aid of permit terms authorizing that access.

Accordingly, in the near future EPA plans to develop proposed regulations calling for the owners or operators of closed sites that once were permitted or operated under interim status to apply for and receive a post-closure permit from EPA. EPA anticipates that the conditions of this permit will relate almost exclusively to general procedures concerning access, monitoring, and financial responsibility, and that cumbersome permit procedures will not be necessary. EPA anticipates that these will be lifetime permits.

It may be that this approach may reduce paperwork in the end, for example, by making possible the modification or elimination of the present requirement to record conditions on the facility title in State or local deed recording systems. EPA will be examining these questions further in the course of developing its proposal.

G. Subpart H—Financial Requirements

The proposed § 250.43–9 financial standards contained three types of financial assurance requirements (1) those assuring funds to conduct closure activities in accordance with the closure plan, (2) those assuring funds to conduct post-closure activities at disposal facilities in accordance with the post-closure plan and (3) those assuring funds to cover third party damage cases.

1. *Liability.* The financial responsibility requirements covering third party damages during the post-closure care period are not covered in the Part 265 interim status standards. As stated in the preamble to the proposed regulation, the Agency has been unable to identify a viable mechanism to provide for liability coverage during the post-closure care period, and is supporting an initiative in Congress which would set up a national fund to provide for such coverage.

During the life of the site, most companies are likely to seek private insurance to cover liability claims. Through discussions with the insurance industry, the Agency has determined that non-sudden pollution coverage often would be made effective only when a facility received a permit. Because facilities do not have permits during the interim status period, they might not be able to get insurance for non-sudden occurrences. Thus, site-life liability for non-sudden occurrences is not required during the interim status period. However, the Agency is proposing a rule requiring site-life liability for sudden and accidental occurrences during the interim status period. The Agency intends to add this rule to the interim status standards, after public comment, later this year.

2. *Financial Assurance.* The proposed financial standards assuring funds for closure and post-closure care required that owners or operators first estimate the cost of closure, and post-closure care where applicable, based on the closure and post-closure care plans. Then a trust fund was to established to assure that the necessary funds would be available. EPA received numerous comments asking that the trust fund requirement be restructured, and that financial instruments other than a trust fund be allowed. After considerable re-analysis, the Agency is convinced that other financial mechanisms can provide protection equivalent to trusts, and that the trust mechanism requirement could benefit from major restructuring. Because of the complexity of the subject matter and the magnitude of the changes, the Agency believes that the regulated community and the general public should have an opportunity to comment on the revised regulations before they are promulgated. As a result, the Agency is reproposing the specific requirements for the various financial instruments it intends to allow.

3. *Cost Estimates.* The Agency is promulgating in Phase I the requirement that owners or operators develop cost estimates for closure, and post-closure activities where applicable. Several commenters suggested that the Agency allow for partial closure in the cost estimate requirements. This had always been the Agency's intent. The reproposed rules better reflect this intent by requiring that funds be set aside equal to the highest cost of closing the facility, either at any given point leading up to closure, or at the point of final closure. Thus, facilities which close as they go (partially close) need obtain only a fraction of the financial assurance that will be required by those closing at the end of site operations.

A few commenters suggested that the closure and post-closure cost estimates be reviewed periodically to ensure continued accuracy. EPA agrees that changes in facility design and operation, and the uncertainties inherent in inflation and interest rates, make such a review highly desirable. Thus, the final rules require that the owner or operator prepare a new closure cost estimate whenever the closure plan is modified, and, for disposal facilities, a new post-closure cost estimate whenever the post-closure plan is modified. In addition, the final rules require that these estimates be indexed to inflation on an annual basis, using the U.S. Department of Commerce Gross National Product Implicit Price Deflator.

4. *Publicly Owned Facilities.* A few commenters suggested that publicly-owned facilities should be exempted from the financial requirements, because government institutions are permanent and stable, and have as their reason for being the health and welfare of their people. Therefore, according to the commenters, publicly-owned facilities would be more likely and more able financially to carry out their closure and post-closure responsibilities.

The Agency agrees that State and Federally-owned facilities will always have adequate resources to conduct closure and post-closure care activities properly. Therefore, an exemption for these facilities has been incorporated in a new "Applicability" section. (The other provisions of the section make it clear that the closure requirements apply to all other facilities, and that the post-closure requirements apply only to disposal facilities.)

The financial strength of local entities (cities and counties), on the other hand, is not as certain. Some local governments do become insolvent, and if small enough, might not be in a financial position to fulfill their closure and post-closure responsibilities. Further, some publicly-owned facilities are established as authorities, and are supported financially very much like corporations, i.e., they are not backed by the taxing authority of the local government. Because of these potential problems, the Agency has developed a revenue test which, if met, would qualify facilities owned by local governments for an exemption. Because this test is new, the Agency is proposing this provision for public comment.

H. Subpart I—Containers

Drums and other containers provide an inexpensive means for generators of hazardous wastes to accumulate and store the wastes, in a form which will be easy and relatively inexpensive to carry away. All too frequently, generators and others storing hazardous waste drums have simply put them somewhere out of sight, without any further concern about what would eventually happen to the wastes. The many damage incidents described in the background document on containers detail the awful consequences of this practice. The drums eventually weather and corrode, releasing their contents. Dumps of decaying drums have seriously contaminated surface water and ground water; have emitted fumes which have killed vegetation and nauseated and sickened nearby residents, facility operators, and enforcement officials; and have burned or exploded, injuring and killing facility personnel and sending clouds of toxic smoke and fumes over adjacent heavily populated areas, disrupting the activities and threatening the health of thousands of people.

The most elementary and straightforward precautions will frequently eliminate these problems. These regulations generally require nothing more than simple good practices in the management of containers of hazardous wastes—a level of care commensurate with the hazardous nature of the wastes stored. The Agency believes that these regulations should not be difficult to implement, and that they will provide a great improvement in the problems posed by current bad practices.

The final regulations for containers are largely taken from the standards proposed for interim status for containers, for storage generally, and for a few other activities that pertain to containers. As discussed below, requirements for ignitable, reactive, or incompatible wastes have been added, and the provisions concerning empty containers have been removed or absorbed in Part 261—Identification and Listing of Hazardous Waste.

1. *Condition of Containers.* The proposed regulation (§ 250.44–2(a)) required that wastes in leaking or damaged containers be recontainerized in containers in good condition. EPA received no comments on this requirement, and it has been retained in the final regulations. A provision has been added allowing wastes to be managed in other ways than recontainerization, so long as they meet the requirements of Part 265.

2. *Compatibility of Waste With Container.* The final regulation, requiring that containers or their liners be compatible with the wastes stored in them, is essentially identical to the proposed regulation (§ 250.44(h)) for storage generally. In contrast to the regulation for tanks, this regulation retains the standard that "the ability of the container to contain the waste [should not be] impaired" by the waste. While some corrosion by wastes may be permissible for tanks, the Agency believes that waste should not be stored in a container in which it may cause any substantial amount of corrosion. First, the concept of "useful life" does not work well with containers. Most tanks will remain under the supervision of a single owner or operator for a long period of time. However, a generator placing waste in a container will probably not know how long it will be stored, and the operator of a storage facility will probably not know just how long he can expect a container to last. Secondly, containers are generally constructed of lighter materials than tanks, and have seams which are more vulnerable to corrosion. Leakage due to corrosion is therefore more likely and less predictable for containers than for tanks.

3. *Management of Containers.* The proposed definition for containers implied that they were closable. The final definition is broader, indicating that any portable device containing hazardous waste comes under the regulations of this Part. The requirement that containers be kept closed now appears in the substantive regulations. Its purpose is, as it was originally, to minimize emissions of volatile wastes, to help protect ignitable or reactive wastes from sources of ignition or reaction, to help prevent spills, and to reduce the potential for mixing of incompatible wastes and direct contact of facility personnel with waste. While many commenters argued and the Agency agrees that storage may properly be conducted in open tanks and surface impoundments, requiring containers to be kept closed does not unnecessarily restrict storage options. All containers have lids or some other closure device, and keeping containers closed whenever possible is simply a matter of good operating practice. It is not expected that containers of hazardous waste need be opened routinely to inspect the waste or the container or for reasons other than to add or remove waste.

The proposed regulations also required (in § 250.44–2(b)) that containers be managed so that they do not rupture or leak. EPA received no comment on this provision, and it has been retained as proposed. Its purpose is to assure that, in addition to removing waste from containers in bad condition, owners and operators manage containers so that they stay in good condition, and handle them so that they do not rupture.

4. *Inspections.* As an adjunct to the general inspection requirements, the regulations for various types of facilities and equipment include specific inspection requirements. The regulations for containers call for weekly inspection of container storage areas for leaks and deterioration of the containers. Leaks and container deterioration are the primary source of damage from container storage which can be minimized through inspection. The proposed regulations (§§ 250.43–6(a) and 250.44(c)) called for daily inspections. Commenters believed that daily inspections were unnecessary, and that less frequent inspections would be adequate. The Agency agrees that corrosion of containers and the development of leaks is usually a slow process, and that daily inspections are typically more frequent than is necessary; weekly inspections should generally be adequate.

5. *Closure.* Because these regulations apply to the storage of hazardous wastes, the definition of storage requires that all hazardous wastes and hazardous waste residues must be removed at closure from a container storage facility or from that part of the facility being closed. The closure plan required by Subpart G must address this requirement. In removing hazardous wastes or residues, the owner or operator becomes a generator of hazardous wastes and must manage them in accordance with all applicable requirements of Parts 262, 263, and 265 of these regulations.

6. *Special Requirements for Ignitable or Reactive Waste.* The proposed rules did not contain any special standards for ignitable or reactive wastes. Simply as a matter of good practice, ignitable or reactive wastes should, of course, be protected from any conditions or materials that could cause them to ignite or react, in order to guard against fires, explosions, or violent reactions.

The requirement in these regulations that containers of ignitable or reactive waste be 15 meters (50 feet) from the facility's property line is taken from the National Fire Protection Association's (NFPA) Flammable and Combustible Code of 1977. The purpose of the setback required in the Code is to protect adjacent residences, businesses, and other public places from the acute effects of explosions and fires that may be caused in facilities that store flammable materials. While the Agency believes that the Code provides an adequate basis for requiring a minimum setback of 50 feet, the Agency does not yet have enough data to determine whether an additional setback should be required where highly explosive or toxic wastes are stored. The Agency expects to monitor the effectiveness of this regulation and revise it if necessary. Since the NFPA requirement is straightforward and already applies under OSHA regulations of facilities, it is appropriate for inclusion in the interim status standards. Since this regulation was not proposed, it is being promulgated interim final.

7. *Special Requirements for Incompatible Wastes.* General requirements for incompatible wastes are discussed above in the preamble section entitled "General Requirements for Ignitable, Reactive, or Incompatible Wastes."

The proposed interim status regulations contained a provision (§ 250.44(i)) prohibiting the placement of a hazardous waste in an unwashed container which had previously held an incompatible waste. The final regulations retain this provision, with the modification that placement of a waste in such an unwashed container is allowed if it will not violate the general standards for the handling of incompatible wastes. This regulation is required because even "empty" containers typically have a certain amount of waste remaining on the botton or the sides. The fact that the container itself may be compatible with both wastes will not prevent them from reacting with each other if they are incompatible. Compliance with this regulation will probably require owners or operators to wash empty containers or to be able to determine the properties of the materials they last contained through records, segregated storage of empty containers, tests, or some other means.

The final regulations also provide that incompatible wastes or materials must not be placed in the same container unless the general standards for incompatible wastes will be complied with. The proposed regulations did not contain such a provision because it was thought that placement of incompatible waste in containers was not typical. While such mixing may not be common, the Agency has decided as a matter of completeness that it should be covered by the incompatible waste regulations. The need for complying with the general requirements for incompatible wastes is as clear here as it is in other cases where incompatible wastes are mixed. The requirement is straightforward and appropriate for interim status.

The proposed regulations also contained a provision (§ 250.44–2(d)) that containers holding incompatible wastes should be separated or protected from each other to prevent mixing of incompatible wastes if containers should leak or break. The final regulation clarifies the proposed regulation. It extends it to containers stored near incompatible wastes in other containers or in piles, open tanks, or surface impoundments—where the incompatible wastes are exposed on the surface. It also indicates that protection will typically be in the form of a dike, berm, or wall. "Nearby" should be interpreted to mean close enough so that wastes from broken or leaking containers might commingle with incompatible wastes before the situation would be discovered and corrected in the ordinary course of operations.

8. *Empty Non-combustible Storage Containers.* The proposed interim status regulations contained a section (§ 250.44–2(f)) requiring empty non-combustible containers to be recycled in some fashion. This section was intended partly to assure proper management of the hazardous waste residues remaining in the empty containers, and partly to implement one of the objectives of Section 1003 of RCRA—to promote the recycling and recovery of material and energy resources. The Agency has reconsidered its position, in light of comments received on this section, and has changed the focus of these regulations to the protection of human health and the environment through the appropriate management of hazardous waste. Some contaminated containers are listed as hazardous wastes under Part 261 of these regulations, and must be managed as such or re-used. As a result, the regulations on empty non-combustible containers have been deleted from this Section.

9. *Paper Bags.* Another section of the proposed interim status regulations (§ 250.44–2(g)) required that contaminated paper bags be managed in closed secondary containers. EPA received a number of comments on this requirement arguing that the standard was unnecessary because the amount of waste which adheres to such bags is small, and that the bags can be properly managed by other means. In light of the comments, the Agency has reorganized the proposed regulations. Some bags and liners contaminated with certain toxic materials are now listed as hazardous wastes in Part 261 and must be managed like other hazardous wastes. Other contaminated bags are not declared hazardous and are no longer regulated under this Part. In either case, the proposed regulation is unnecessary and has been deleted.

I. Subpart J—Tanks

1. *Definitions.* In the proposed rules, the standards for tanks were markedly different from those for basins. Tanks were regulated as covered containment devices used for *storing* hazardous waste. By contrast, basins were regulated as uncovered containment devices used for *treating* hazardous waste. (The proposed rules did not address the use of tanks for treating hazardous waste.) Both tanks and basins were assumed to be constructed primarily of artificial materials or wood, rather than earthen materials.

The Agency's re-evaluation of its conception of storage now permits storage to be conducted in uncovered as well as covered devices, such as surface impoundments. Thus basins, as they were defined in the proposed regulations, are now recognized as appropriate storage devices, and the Agency has recognized that treatment as well as storage may be conducted in tanks. These changes have made the proposed regulations' concepts of basins and storage tanks essentially identical. As a result, the Agency has combined the two concepts into one: tanks are now defined to be "stationary device(s) designed to contain an accumulation of hazardous waste and constructed primarily of non-earthen materials . . . which provide structural support." Tanks are referred to as covered or uncovered when appropriate. The term

"basin" has been eliminated from the regulations.[1]

The Agency has reorganized the regulations to gather the proposed standards for tanks into one Subpart (Subpart J). This Subpart includes standards from those that were proposed for storage tanks (§ 250.44–1) and basins (§ 250.45–4), for storage generally (250.44), for treatment generally (§ 250.45), and for chemical, physical, and biological treatment facilities (§ 250.45–6). A number of other standards from the proposed Section 3004 standards have been incorporated into the present set of interim status standards for tanks. The following discussion is organized along the lines of the present Subpart J.

In addition, as explained under Subpart Q, the regulations for chemical, physical, and biological treatment facilities (Subpart Q) are essentially identical to the regulations for tanks. The following discussion therefore also serves to present the foundation for the Subpart Q regulations. References to tanks in the following discussion are also meant to include the waste containment components of chemical, physical, and biological treatment equipment.

The general operating requirements and the requirements for waste analysis and trial tests were proposed primarily for inclusion in the general standards and partly for inclusion in the interim status standards. They are therefore being promulgated interim final only to the extent that the Agency will consider comments on whether they are appropriate for inclusion in the interim status standards.

2. *General Operating Requirements.* The proposed interim status standards for storage (§ 250.44(h)) and the proposed general standards for basins (§ 250.45–4(b)(1), (d), and (e)) and chemical, physical, and biological treatment facilities (§ 250.45–6(a) and (b)(2)) included requirements which placed restrictions on the type of materials used to build tanks and the type of waste placed in them, to ensure that the waste was compatible with the construction material of the tank.

[1] The Agency also mistakenly proposed two definitions for storage tanks, in §§ 250.21 and 250.41. They were the same except that the latter provided that waste in storage tanks must be pumpable; this requirement was not intended and has been removed. In addition, basins were defined to be less than 100,000 gallons in capacity. This was included only to help distinguish basins from surface impoundments, which may be larger than 100,000 gallons. Because the 100,000 gallon limit proved confusing and because basins (now tanks) and surface impoundments are adequately distinguished by their construction materials, the 100,000 gallon limit has been deleted.

Few comments were received on these proposed standards. Some commenters suggested that the standards should be modified to reflect the fact that the construction materials of most tanks will inevitably be somewhat impaired by the chemical properties of the wastes they contain. The Agency agrees that tanks need not be designed to last forever. Therefore, the final rules have been modified to require that the ability of tanks to contain waste *during their intended life* is not impaired.

Proposed § 250.45–6(e) provided for a 2-foot freeboard for uncovered reaction vessels. Some commenters felt that the 2-foot freeboard requirement should be made more flexible by allowing owners or operators to use other methods to prevent hazardous waste from splashing over the rim of an uncovered tank. The Agency agrees that methods such as dikes, trenches, or diversion to stand-by tanks may provide a degree of protection equal to that afforded by 2 feet of freeboard. Therefore, the standard has been modified to require uncovered tanks to either have (1) 2 feet of freeboard or (2) a containment, drainage control, or diversion structure which has a capacity that equals or exceeds the volume of the top 2 feet of the tank.

In a similar vein, some commenters felt that the proposed requirement for an automatic waste feed cut-off or by-pass system (§ 250.45–6(g)) should be made more flexible by allowing owners or operators to use other types of emergency response systems in the event that their treatment process breaks down. The Agency agrees and has rewritten the standard in terms of a performance standard. The final standard requires that facilities at which hazardous waste is continuously fed into tanks be equipped with a means to prevent the inflow of waste to the tank, but it does not require that any particular method(s) be used to accomplish this objective. With the deletion of the requirement that the cut-off be automatic, the requirement is certainly appropriate for inclusion in the interim status standards because it should not require major equipment modification.

3. *Waste Analysis and Trial Tests.* As an adjunct to the inclusion of general requirements for waste analysis in the interim status standards, the Agency is including specific waste analysis standards for specific types of facilities and equipment. Those for tanks; chemical, physical, and biological treatment facilities; and surface impoundments are drawn from proposed § 250.45–6 (b) and (c), and combined into a single requirement for each type of facility. The purpose of these requirements is to prevent accidents and haphazard experimentation with new wastes or new treatment techniques when chemical treatment of large batches of waste is involved. Put another way, these requirements ensure that the operator knows not only the characteristics of the waste involved, but how that waste will behave in a treatment process, or how a new treatment process will affect the wastes and the facility. Haphazard experimentation or treatment of waste without trial tests may cause corrosion of containment devices, fires, explosions, and other problems associated with ignitable, reactive, or incompatible wastes. Trial tests, or documented information or similar wastes under similar treatment processes and similar operating conditions, should bring to light unanticipated problems before large batches of waste are treated.

The comments have prompted several changes to the proposed sections. The regulations have been revised to make clear the Agency's original intent that waste continuously flowing into a treatment process need not be continuously tested; tests or information are required only before the process is begun, or when the waste or treatment process changes significantly. Documented information may be used in place of tests when the information covers wastes, processes, and operating conditions similar to the ones to be undertaken. However, reliance on documented information does not relieve the owner or operator of primary responsibility for assuring that he complies with the remainder of the regulations.

4. *Inspections.* Citing the relative structural stability of tanks (and the dikes surrounding them), several commenters suggested that the proposed daily inspection schedule (§ 250.43–6 and § 250.44(c)) was unnecessary for tanks. EPA agrees that tanks and dikes need not be inspected daily, and has therefore changed the frequency for inspection of these aspects of facilities from daily to weekly. However, the daily inspection requirement has been retained for emergency response sytems (e.g., waste feed cut-off or by-pass systems), the data gathered from monitoring equipment (e.g., pressure and temperature gauges) and waste level indicators at tanks.

5. *Ignitable, Reactive, or Incompatible Wastes.* Requirements for ignitable, reactive, or incompatible wastes were

proposed for interim status in standards for storage (§ 250.44(i)) and in standards for treatment (§ 250.45(c) and Note), and for the general standards under basins (§ 250.45–4 (b) and (c)). Most of the requirements in the present regulation are discussed above in the general section on ignitable, reactive, or incompatible wastes.

The Agency has added a standard to the regulations which requires facilities storing or treating ignitable or reactive waste in tanks to comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks, contained in Tables 2–1 through 2–6 of the "Flammable and Combustible Code—1977". The purpose of this standard is to minimize the potential for injury to the facility, facility personnel, and the neighboring public from flying debris and toxic air emissions which could result from explosions or fires involving hazardous waste. The standard applies only to ignitable or reactive waste because the potential for fires and explosions is largely confined to such wastes. The NFPA standards already apply to many tanks containing ignitable materials under OSHA regulations. Since this requirement was not proposed, it is being promulgated interim final, and the Agency will consider comments on it.

6. *Closure.* The proposed interim status standards for basins (§ 250.45–4(h)) and the proposed general standards for chemical, physical, and biological treatment facilities (§ 250.45–6(h)) required that all hazardous waste and hazardous waste residues be removed when the facility closed, and be disposed of as hazardous waste. A few commenters contended that the requirement that all residues resulting from treatment processes would have to be managed as hazardous waste was inconsistent with the statement in the preamble to the proposed Section 3001 rules, which required that waste be analyzed only when the generator has reason to believe that his waste is hazardous. The Agency believes that treatment residues will normally be hazardous. To clarify its position, the Agency has revised the Part 261 rules so that they now specify that residues from hazardous waste treatment processes are a hazardous waste unless the owner or operator can demonstrate otherwise (see the Part 261 preamble for the rationale for this change). The present regulations recite this in a comment.

J. Subpart K—Surface Impoundments

Surface impoundments, also known as pits, ponds, or lagoons, are often used to treat, store, or dispose of hazardous waste. A surface impoundment is defined as a part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthern materials, although it may be lined with man-made materials. Impoundments are designed to hold an accumulation of liquid wastes and wastes containing free liquids. Some are lined with clay or synthetic materials to reduce or eliminate leakage to ground water. Leakage to ground water poses the most serious threat to human health and the environment from impoundments, but air emissions from volatile wastes and overtopping of the impoundment as a result of overfilling, precipation, or wind can also be serious problems. Discharges to surface water, which may be associated with such impoundments, are subject to control under the Clean Water Act (NPDES program).

The requirements for minimum freeboard, protective cover on dikes ("Containment System"), waste analysis and trial tests, special requirements for ignitable and reactive wastes, and special requirements for incompatible wastes were all proposed for inclusion in the general standards in a form not radically different from that proposed here. Since they were not proposed for inclusion in the interim status standards, they are being promulgated interim final only to the extent that the Agency solicits comments on whether they are suitable for inclusion in the interim status standards.

The final RCRA interim status regulations for surface impoundments involve the following issues.

1. *Existing Surface Impoundments.* Many commenters stated that the proposed general regulations were infeasible for existing surface impoundments. They argued that retrofitting thousands of existing impoundments would be impractical, and suggested less stringent regulations for existing impoundments, unless they were found to be causing an environmental problem. The Agency agrees that if an owner or operator can demonstrate that an existing surface impoundment is not contributing measurable quantities of contaminants to ground water, retrofitting should not be required in the interim status regulations. (To the extent the comments addressed issues relevant only to the general regulations, those comments will be addressed when the final general regulations are issued.) This issue was discussed at length in the previous discussion of Existing Facilities.

These regulations may require retrofitting of some existing surface impoundments for maintaining freeboard and providing protective cover for earthern dikes. However, these requirements are standard features of properly engineered surface impoundments, and should not pose a substantial burden to owners or operators of most impoundments.

2. *Minimum Freeboard.* The proposed general standards provided a minimum freeboard requirement. The Agency believes that such a freeboard requirement meets the criteria for interim status standards. It is accepted engineering practice to design surface impoundments with sufficient freeboard to protect against overtopping by waves or precipitation, and most surface impoundments already have 2 feet of freeboard. At least six states already require the 2-foot freeboard required in these regulations. As a result, an interim status freeboard requirement will not typically require large capital expenditures by owners or operators, nor will it require interaction with the Regional Administrator. For those facilities which do not meet the minimum freeboard requirements, the minimum freeboard can be established in a short period of time by such means as reducing the quantity of waste or adding additional height to the dikes.

The proposed regulation required that the freeboard in a surface impoundment be capable of containing rainfall from a 24-hour, 25-year storm, but not be less than 2 feet. The objective was to prevent spillover of hazardous waste from waves or rainfall, and to reduce the risk of overfilling. Comments varied from suggestions that there be no requirements for freeboard to suggestions for more stringent requirements.

The Agency has re-evaluated the effect of a 24-hour, 25-year storm, and has found that it would necessitate a smaller freeboard requirement than the specified minimum of 2 feet. It is thus unnecessary. The same is true of all other suggested storm standards, including the 24-hour, 100-year storm.

No comments focused on the specific measure of 2 feet for minimum freeboard. Engineering handbooks, textbooks, design manuals, and State regulations specify the need for a minimum 2-foot freeboard to prevent overtopping by waves or rainfall. Therefore, the Agency is retaining a 2-foot minimum freeboard requirement.

Some commenters suggested that level controls (coupled with NPDES discharge permits) should be allowed instead of a minimum freeboard. The Agency disagrees. Any level controls must still provide for a minimum freeboard to protect against overflows resulting from breakdowns in level control equipment, operator errors, waves, and significant

rainfall. In addition, since the Agency has deleted the phrase "average maximum" from the proposed definition of freeboard, the regulation now requires 2 feet of freeboard at all times during normal operation.

3. *Containment System.* The proposed general regulations required all earthen dikes to have an outside protective cover to minimize wind and water erosion. This requirement has been added to the interim status standards. Protective cover for earthern dikes is considered to be standard engineering practice, and many impoundments already have such a cover. Therefore, the Agency does not believe that a substantial capital cost, or any interaction with the Regional Administrator, will be necessitated by this requirement. The sole comment on this section stated that the purpose of protective cover, the preservation of the structural integrity of the impoundment, should be noted in the regulation. EPA agrees and has done so.

4. *Waste Analysis and Recordkeeping.* Waste analysis requirements were not included in the proposed interim status standards but were proposed as requirements in the general standards which applied to all facilities. However, the final interim status standards contain general waste analysis requirements in Subpart B, and in addition, include specific requirements for waste analysis in the standards for surface impoundments. Since these standards are essentially identical to those for tanks and chemical, physical, and biological treatement facilities, they are discussed in the section on tanks (Subpart J).

The proposed interim status standards required that the owner or operator keep records of the contents and location of each surface impoundment. This information will reduce the probability of accidental mixing of incompatible wastes, aid in resolving damage incidents, and assist in determining proper closure procedures. Because all hazardous waste facilities must keep records on the types and placement of wastes, the recordkeeping requirements for surface impoundments are included in the general recordkeeping requirements for all facilities under Subpart E.

5. *Inspections.* The proposed interim status standards required that surface impoundment dikes be inspected daily in order to detect and correct any deterioration of the dikes. This rule was intended to minimize the possibility of dike failure.

Comments supported the need for inspections, but recommended that they be conducted less frequently. Commenters argued that dike failure is a long-term event that can be detected with less frequent inspections, and that daily inspections would most likely be performed in a cursory manner. Most of the commenters recommended weekly, bi-weekly, or monthly inspections.

The Agency agrees that inspections on a weekly basis are generally sufficient to detect cracks, erosion, and other deterioration in a dike well in advance of dike failure. They should also not impose a large burden on the owner or operator. Additional inspection may be prudent during or after an unusual rainfall, and should be considered by the owner or operator in the inspection schedule required by § 265.15. On a routine basis, however, weekly inspections of the surface impoundment, particularly for cracks or leaks in dikes, represents the best balance between need and practicality.

The proposed regulations also required a daily inspection of any existing system used for detecting the failure of a liner system or natural soil barrier. This would ensure the timely detection of a failure of the impoundment liner system. This requirement has been subsumed in the general inspection requirements in § 265.15(b); the requirement for daily inspection has been replaced by a requirement that the owner or operator develop his own schedule.

The Agency believes that when surface impoundments are in operation, there may be significant daily fluctuations in the level of the wastes. This potential daily fluctuation could substantially reduce the amount of appropriate freeboard needed to prevent overtopping, and less-than-daily inspection would not be safe in some instances. Moreover, this inspection is usually quite simple. Consequently, daily inspection of freeboard is required.

6. *Closure and Post-Closure.* The proposed interim status regulations required that upon closure, all hazardous waste and residues were to be removed from a surface impoundment and disposed of as a hazardous waste, unless the impoundment met the proposed § 250.45–2 requirements for landfills and closed according to the landfill closure requirements. The proposed regulation was read by many commenters to allow existing surface impoundments to close as landfills under interim status only if they met the proposed general standards for design and construction of landfills as well as the standards for closure. Understandably, this drew strong objections. Such a requirement was not applied to landfills closing under interim status, and it was not intended to be extended to surface impoundments. Although it was not well reflected in the text of the proposed regulation, the Agency's intent was to require surface impoundments closing under interim status as landfills to meet only the interim status requirements for closure of landfills, that is, the closure and post-closure care requirements for landfills. The present regulations have been restructured along these lines.

In response to comments, the present regulations also allow more flexibility than the proposed interim status standards. If the owner or operator elects to avoid closing as a landfill, all hazardous wastes and hazardous residues must be removed from the surface impoundment, including (unless he can show that they are non-hazardous) the impoundment liner (if any) and underlying and surrounding contaminated soil. The choice whether to remove these materials or to close as a landfill is up to the owner or operator (subject to the approval of the Regional Administrator under Subpart G). In addition, the owner or operator may choose to remove only part of the hazardous materials and then close as a landfill. As a comment to the regulation points out, the detailed requirements for landfill closure may then be substantially reduced, because they depend on the amount and nature of the hazardous materials remaining, along with several other factors. The Regional Administrator may also adjust the post-closure care requirements as appropriate for the particular facility. The purpose of this approach is to provide the owner or operator with a wide choice of alternatives, while still assuring adequate protection of human health and the environment from any hazardous wastes remaining in the impoundment after closure.

The owner or operator's choice of closure plans may depend, in substantial part, on just how much material will have to be removed from the impoundment. The determination of the amount of material to be removed will be a function of the amount and mobility of the remaining hazardous wastes, judgments as to the precise nature of the cover needed, and the post-closure care required. The determinations for closure are ultimately subject to the approval of the Regional Administrator. In making this judgment, the Regional Administrator may require tests of residues or contaminated soil to be made by the owner or operator. For these reasons, it may benefit the owner or operator of a surface impoundment to submit a closure plan to the Regional Administrator substantially more than

180 days before the target date for the initiation of closure activities. In addition, owners and operators are discouraged from penetrating surface impoundment liners in order to sample and analyze underlying soil for contamination, unless prior discussions with the Regional Administrator confirm the desirability of this step. Liner penetration could greatly increase leakage of hazardous waste into the underlying soil.

A major requirement for an impoundment to be closed as a landfill is that the waste which remains in the impoundment must be capable of supporting the final cover. This may be accomplished by a combination of removing wastes (e.g., the liquid portion) and treating the residues (e.g., further dewatering, evaporation, or chemically stabilizing or solidifying the residues).

EPA believes that these regulations satisfy many of the concerns raised in the comments to the proposed interim status standards. Those comments stated that the surface impoundment closure requirements were improperly restrictive, that it might in some instances be preferable to leave the waste in place than to move it, and that the requirement for inert fill was unnecessary. These regulations provide flexibility for closure requirements and allow the wastes to be left in place. The requirement specifying the use of inert material for fill has been deleted. Comments on the general standards will be dealt with when those standards are promulgated.

Because the landfill closure requirements, on which the surface impoundment closure requirements are based, have been substantially modified and because there was some confusion surrounding the surface impoundment closure requirements proposed for interim status, this regulation is being promulgated interim final, and the Agency is soliciting comments on it. The Agency is especially interested in receiving comments on (1) whether the present landfill closure and post-closure care requirements need to be modified as they apply to surface impoundments, and (2) the number, size, and other characteristics of surface impoundments from which operators might opt to removal some or all of the hazardous wastes, residues and other contaminated materials during closure.

7. *Ignitable, Reactive, or Incompatible Wastes.* This topic was previously discussed in the general section of the same title which supplies the rationale for the regulation of these wastes in surface impoundments.

The issue of volatility has been deferred until more data is gathered (see discussion of "Volatility"). In the meantime, it must be emphasized that EPA does not condone the addition of volatile hazardous waste constituents to surface impoundments.

Several commenters requested that during emergencies they be permitted to place ignitable wastes, such as petroleum products, in surface impoundments used solely for emergencies. The regulation now permits this, and a similar provision has been made in the tank regulations. Furthermore, the section on ignitable or reactive wastes is not intended to cover stormwater collection and treatment ponds such as those at petroleum refineries, when they receive incidental amounts of oily material in otherwise non-contaminated run-off.

K. Subpart L—Piles

There were no regulations concerning the storage of hazardous waste in piles in the proposed regulations because the proposed rules required that wastes be stored in covered containers or tanks. The waste piles the Agency was aware of were generally used for disposal and were large enough to be properly managed as landfills. The final regulations still require that hazardous waste disposed of in piles be managed as a landfill. However, at public hearings during the comment period on the proposed regulations, the Agency became aware that hazardous wastes are occasionally stored in piles for which the landfill regulations are inappropriate. Comments at the hearings indicated that such piles are generally small, frequently less than 3 meters high. Many are in buildings or maintained outside on concrete or other pads. They are frequently used to accumulate waste before shipment, treatment, or disposal, and are typically composed of a single dry material.

The regulations in this Subpart are drawn partly from the landfill regulations (Subpart N) and partly from analogy to the storage regulations for tanks. Since none of the written comments gave details on how storage piles should be regulated, these regulations are founded largely on the descriptions of storage piles given at public hearings. Because none of these regulations were proposed as they relate to storage piles, they are being promulgated interim final, and the Agency especially solicits comment on them.

1. *Protection From Wind.* Because many piles are composed of dry, finely-divided materials, they are likely to be subject to wind dispersal. Wind-blown hazardous waste poses the obvious threat of pollution of nearby land and water, and the possibility of human health effects from inhalation or ingestion. The Agency is aware of one instance where material blowing from a very large pile of asbestos waste posed a health risk from inhalation. The interim status regulations therefore require that wastes piles containing a hazardous waste subject to wind dispersal be covered or otherwise managed so that wind dispersal is controlled. Piles inside buildings are already adequately managed for this purpose. In other cases, the Agency believes that owners and operators are in the best position to develop cost-effective measures to control wind dispersal of hazardous wastes.

2. *Waste Analysis.* The requirements in this section are intended as a refinement of the general requirements for waste analysis in § 265.13. As the regulation for waste piles and the comment to the regulation indicates, the basic purpose of waste analysis is to assure that incompatible wastes are not mixed, and that ignitable or reactive wastes are protected from sources of ignition or reaction. Facilities which receive only one or a few wastes which are stored in piles typically need not conduct a very sophisticated analysis of incoming wastes; the owner or operator can decide, for example, whether visual observation of the color and texture of the waste will meet the standard in the regulation.

3. *Containment.* Besides the requirements for closure, the major difference in the requirements between disposal piles and storage piles is that the former must have ground-water monitoring to detect contamination. If leachate or run-off from a pile is a hazardous waste, then owners and operators of the latter must either prevent the formation of leachate and run-off or control hazardous leachate and run-off.

If the owner or operator chooses to prevent the formation of leachate and run-off, he must protect the pile from precipitation and run-on, and must not place any liquids or wastes containing free liquids on the pile. (See the preamble section on landfills for a discussion of free liquids.) Piles kept in buildings will typically meet this requirement.

Alternatively, in order to control leachate and run-off, the pile must be placed on an impermeable base so that leachate and run-off can be collected, and run-on must be diverted away from the pile. The collected leachate and run-off must be managed as a hazardous waste, and an NPDES permit will be required if the leachate and run-off is

discharged through a point source to waters of the United States.

The purpose of this requirement is to protect against contamination of ground water, surface water, and surrounding land by leachate and run-off from hazardous waste piles.

4. *Closure.* Because these regulations apply to the storage of hazardous wastes, the definition of storage requires that all hazardous wastes and hazardous residues must be removed when the pile is closed. The definition of storage and the regulations in Subpart G also require that hazardous wastes and residues be removed from the pile base or the containment structure or other area on which the pile sat, and from any equipment or facility used to manage hazardous leachate or run-off from the pile. The closure plan required by Subpart G must address these requirements. In removing hazardous wastes or residues, the owner or operator becomes a generator of hazardous wastes and must manage them in accordance with all the requirements of Parts 262, 263, and 265 of these regulations.

5. *Special Requirements for Ignitable or Reactive Waste.* The problems posed by ignitable or reactive wastes are discussed above in the preamble section entitled "General Requirements for Ignitable, Reactive, or Incompatible Waste."

The first alternative for managing ignitable or reactive waste in piles—available when piling the waste renders the waste no longer ignitable or reactive—is the same alternative available for most other forms of storage or disposal and is straightforward. The second alternative—protecting the waste from any materials or conditions which may cause it to ignite or react—is analogous to the approach used for tanks. It may be practical for piles kept in buildings and in some other circumstances.

6. *Special Requirements for Incompatible Wastes.* These requirements are similar to the analogous requirements for containers. Because piles provide little containment of the piled waste, there is a possibility that piled wastes may commingle with other wastes stored nearby, or that adjacent piles may grow until they overlap. Commingling of incompatible wastes must be prevented by separation or by means of a dike, wall, or berm. In addition, if hazardous wastes are piled in the same place that incompatible wastes were previously piled, a reaction between the new waste and residues from the previous pile may occur. Thus the area must be decontaminated so that the proscribed reactions do not occur.

L. Subpart M—Land Treatment (Landfarms)

The Agency is now using the term "land treatment facility" in place of "landfarm" in order to employ a term which more accurately describes the purpose of this particular waste management practice. The terms "landfarm" and "landfarming" misleadingly imply a connection between hazardous waste disposal and crop production or soil beneficiation. The term "land treatment," in contrast, implies that the land or soil is used as a medium to treat hazardous waste. This meaning, which is reflected in the regulations, is consistent with the Agency's philosophy that applying hazardous waste to the soil is a waste management practice reserved for those waste streams that can be treated in a soil system. The limitations of this waste management practice are explained in more detail later. This practice simultaneously constitutes treatment and disposal of hazardous waste.

The proposed regulations included only the closure portion of the landfarming regulations in the interim status standards. The Agency has decided to include other portions of the regulation in the interim status regulations because they serve important environmental objectives, and generally meet the criteria for inclusion in interim status. It is important to regulate certain aspects of land treatment during the interim status period because this is a disposal option that presents high potential risks in the absence of certain operational controls. These risks arise from the fact that land treatment involves the direct application of hazardous wastes to the land surface. Typically this occurs in the absence of the type of liner systems associated with landfills or surface impoundments. Unless the practice is carefully defined and regulated, irresponsible parties may try to characterize indiscriminate dumping of waste as land treatment. In addition, land treatment facilities may be used to grow food-chain crops. The Agency is concerned about the potential for hazardous waste constituents to enter the human food chain as a result of this practice. Since under certain conditions crops may be grown on such sites during interim status, it is important to address this concern during the interim status period.

Monitoring requirements have also been included in the interim status standards because the Agency believes monitoring is such an essential first step in the regulation of hazardous waste disposal. Such monitoring will also be a part of any final Phase II regulations. Owners and operators of land treatment facilities, however, must begin to install unsaturated zone monitoring systems and begin to establish background levels of various parameters now so that they will be in a position to meet the treatment, ground-water, and food-chain crop protection standards.

1. *Purpose of Treatment.* In § 260.10 of the regulations issued today a land treatment facility is defined as "that part of a facility at which hazardous waste is applied onto or incorporated into the soil surface." Operators of land treatment facilities generally apply the waste in thin layers and use common farm practices such as tilling, contouring, and erosion control techniques. They may also add nitrogen and phosporus fertilizers to enhance microbial degradation of the waste. The general objective of land treatment is the microbial degradation of organic waste constituents. Compared to the more conventional methods of disposing of waste in landfills and surface impoundments this practice is relatively new. It is used primarily to treat oily wastes, but may be feasible for other types of wastes.

While EPA does not wish to rule out the legitimate use of this waste management option, there are certain inherent risks with this practice which make careful regulation necessary. One of the key elements in these regulations that will minimize such risks is a clear specification of the purpose of land treatment. In doing this, the Agency hopes to prevent the situation where irresponsible parties may claim that their indiscriminate dumping of waste is land treatment. EPA believes that the only legitimate purpose for the land treatment of hazardous wastes is to treat the waste to reduce its hazardous properties. This reduction occurs through biological degradation or chemical reactions in the soil that alter the chemical state of the waste.

The Agency acknowledges that soil has the capacity to effectively filter and dilute waste. However, these physical mechanisms provide little or no net reduction in hazard if they do not alter the chemical state of the waste. Consequently, the use of the soil solely as a filtration or dilution medium is not considered appropriate for land treatment. In addition, any benefit derived from land treating hazardous waste, beyond that of the treatment itself, is considered to be incidental, and not an appropriate justification for permitting the practice. Consequently, land treatment of hazardous waste merely for the purpose of providing

nutrients to crops is not considered an acceptable practice under these regulations.

Based on the Agency's interpretation of the purpose of land treatment, the regulation specifies that hazardous wastes must not be placed in or on land treatment facilities unless the owner or operator can demonstrate that biological degradation or chemical reactions in the soil will make the waste less hazardous or non-hazardous. The monitoring requirements specified in the regulation will assist the owner or operator in confirming that determination. The owner or operator must be able to demonstrate that the treatment requirement is being met at the facility. Continued land treatment without the ability to make that demonstration is a violation of these regulations.

2. *Surface Water Run-On and Contaminated Run-Off.* The Agency has decided that the term "run-off", as used in the proposed regulation concerning the construction of "diversion structures to divert all surface water run-off from the active portions of a facility," was confusing. Therefore the term "run-on" has replaced the term "run-off" in these situations. That is, as used in these regulations, run-on is water which runs onto the active portions of a land treatment facility or landfill from other portions of the facility or from outside of the facility. Run-off is now defined as rainwater, leachate, or other liquid which flows from the active portions of a disposal facility.

Requirements for control of surface water run-off and run-on were not included in the proposed interim status standards for land treatment facilities. However, those requirements were specified in the proposed general standards in § 250.43(b) and (c). Those regulations required the owner or operator to construct diversion structures capable of preventing run-on from entering a land treatment facility. A variance to this requirement was allowed where an owner or operator could demonstrate to the Regional Administrator that run-on would not enter the site and come in contact with the hazardous waste. The proposed regulations also required the owner or operator to collect and confine run-off from active portions of the facility to a point source before discharge or treatment.

In these interim status regulations land treatment facilities will be subject to the same requirements as landfills regarding surface run-on and run-off. Run-on must be diverted away from the active portions of the land treatment facility. Run-off from the active portions must be collected. If the collected run-off is a hazardous waste it must be managed as a hazardous waste. If it is not a hazardous waste it may still need to be analyzed, treated, or otherwise managed to comply with Subtitle D of RCRA or the Clean Water Act. For a more specific description of these requirements see the "Landfill" portion of this Preamble.

The Agency acknowledges that the surface area of the active portions of a land treatment facility will generally be larger than the surface area of the active portions of a landfill. This will necessitate more extensive run-on diversion structures and run-off collection systems for land treatment facilities. EPA believes, however, that such controls are necessary at land treatment facilities because this disposal option involves the placement of hazardous waste on, or barely under, the surface of the land. Such a technique presents a substantial risk that hazardous waste or hazardous waste constituents will be carried off the site by surface water run-off. A 12 month delay for run-on and run-off control compliance is allowed in these regulations. See further discussion under "Landfills."

3. *Recordkeeping.* Under the interim status regulations owners and operators of land treatment facilities must ensure that the application dates, the application rates, the quantities, the results of waste analyses, and the location of each hazardous waste placed in the facility is in the operating record required under § 265.73. Such recordkeeping is needed to allow the owner or operator and the Regional Administrator to evaluate the facility's compliance with the other requirements of this Subpart. For example, the waste analyses, the application rates, and quantities of hazardous wastes placed in the facility will assist, through the use of a mass-balance analysis, in determining whether the treatment objective of the facility is being met. Information on application dates and locations will assist in determining whether the unsaturated zone monitoring system is properly designed to detect migration of hazardous waste and hazardous waste constituents.

4. *Waste Analysis.* The proposed regulations contained general waste analysis requirements which applied to all facilities. The general waste analysis regulations in these final interim status regulations require waste analysis as is necessasry to comply with the regulations, including the land treatment standards. Owners or operators of land treatment facilities must further analyze waste for the hazardous waste constituents which caused the waste to be listed, if it is listed, and the constituents which exceed the levels specified in Table 1 of § 261.24 of this Chapter. Such information will be essential to a demonstration that the waste is being made less hazardous at the facility and will be relevant to both the ground-water and food-chain-crop protection goals of this Subpart.

If food-chain crops are grown, the waste must be analyzed for arsenic, cadmium, lead, and mercury. The owner or operator need not test for each of these elements if he has written information to indicate that the constituent is not in the waste.

5. *Monitoring.* The proposed regulation required semi-annual soil monitoring of the treated area of a land treatment facility. This was to be accomplished by taking one soil core per acre to a depth of three times the zone of incorporation (i.e., three times the depth to which the waste was tilled into the soil). If migration was detected, as indicated by an increase in waste constituents over background levels in the bottom one-third of the core, the owner or operator was to notify the Regional Administrator and cease operation in the affected area until corrective actions could be taken. In contrast with landfills and surface impoundments, the proposed regulations did not specify ground-water monitoring for land treatment facilities. The environmental performance of a land treatment facility was to be evaluated solely on the basis of soil monitoring. Because of this difference, the Agency solicited information on the desirability of ground-water monitoring at land treatment facilities. The Agency suggested that soil monitoring would detect migration of waste constituents long before ground-water monitoring would.

EPA received several comments suggesting that ground-water monitoring in addition to soil monitoring was unnecessary. Other commenters, however, expressed the opinion that ground-water monitoring was also necessary. These commenters claimed that soil monitoring has certain limitations such as its lack of reliability for detecting highly mobile contaminants. They argued that soil monitoring "should not be solely relied upon to provide protection of our ground-water resources."

Commenters also were specifically concerned about the sampling procedures, the standard for when the treatment system had failed, and the corrective action that was to follow detection of a failure. The requirement to analyze each soil core for those

constituents in the waste which made it hazardous was considered extreme and impractical. Commenters suggested that indicator substances be analyzed instead. Commenters also challenged the "three-times the zone of incorporation" test for determining whether the treatment system was successful, arguing that such a distance did not relate to the ground-water contamination threat; rather, other factors, such as thickness and permeability of the unsaturated zone, determine the potential for contaminating ground water. Using a similar argument, commenters argued that corrective action should not be triggered simply by the appearance of contamination at a depth of three times the zone of incorporation.

After examining these comments EPA had decided to focus the interim status regulations on the establishment of the basic monitoring systems needed to accurately determine whether the complex processes involved in land treatment are, in fact, occurring, and whether contaminants are migrating to ground water. The development of the standard by which success or failure is judged will be part of the Phase II regulations. Regardless of what that standard is, the facility will be required to install a system of unsaturated zone and ground-water monitoring to determine the success of the treatment process and impacts on ground water. Unsaturated zone monitoring includes both soil-pore water and soil core monitoring.

While unsaturated zone monitoring is useful in assessing the likelihood of ground-water contamination at new facilities and in indicating any migration occurring with each new waste application at existing facilities, ground-water monitoring is the only mechanism that can accurately detect the presence and degree of ground-water contamination. Therefore, ground-water monitoring is required at land treatment facilities. Owners and operators of existing land treatment facilities must be able to determine the actual effect of their facilities on ground water in order to comply with the Phase II requirements.

In addition, the environmentally sensitive nature of land treatment requires the owner or operator to have an accurate picture of the treatment process at work in the soil. EPA has decided that such an objective requires installation of both soil core monitoring and soil-pore water monitoring. Soil core monitoring is useful in determining the extent to which the hazardous wastes are being attenuated and broken down in the soil. Soil-pore water monitoring is a necessary complementary or back-up system to assure that the absence of a hazardous waste constituent in the soil core sample indicates a breakdown of the waste rather than merely the rapid migration of the waste material through the soil matrix. Several comments and the results of an EPA-sponsored study indicate that the latter phenomenon can occur for some organic compounds found in hazardous wastes. A combination of soil core and soil-pore water monitoring provides the basis for a mass balance analysis of the unsaturated zone to determine whether the treatment process is meeting the treatment objective. Using the monitoring data as feedback on the performance of a site, an owner or operator can more effectively manipulate operating variables in order to optimize the performance of the site (e.g., waste application rates and pH controls).

Careful analysis of the upper soil layers is also needed because of another change that has been made in the regulation. The Agency has decided that growth of food-chain crops need not be banned at hazardous waste land treatment facilities but rather should be carefully regulated. Information about the presence of contaminants in the upper layers of the soil is, therefore, necessary to assess the risk of significant plant uptake of toxic constituents.

Soil-pore water monitoring is more easily achieved at land treatment sites than at landfills or surface impoundments. Lysimeters or similar devices which measure soil-pore water contamination can be installed at land treatment facilities in the area where waste has been applied. The relatively shallow depth of waste application at land treatment facilities allows lysimeters to be replaced, at both existing and new facilities, when they become clogged or otherwise nonfunctional. Furthermore, land treatment facilities typically do not have liners which would interfere with the placement of lysimeters.

In response to the specific comments on soil monitoring, the Agency has decided not to specify particular procedures or protocols for conducting unsaturated zone monitoring during interim status. Owners and operators will be given the flexibility to develop reasonable monitoring plans that meet the general objectives specified for such plans. Once established, these plans must be followed, and an owner or operator's failure to follow his own plan constitutes a separate violation of these regulations.

In considering the constituents to be monitored and analyzed for in the unsaturated zone, EPA considered the use of indicators. That approach was rejected, however, because the Agency has not yet been able to devise a set of indicators that reflect the success of waste treatment in the soil. EPA is requiring that the owner or operator monitor and analyze for those hazardous waste constituents contained in the wastes applied at the facility that caused those wastes to be listed as hazardous, if they were listed, and those that exceed the maximum contaminant limits in Table 1 of § 261.24 of this Chapter. These constituents, at a minimum, are the ones which have the potential to create environmental hazards if these wastes are mismanaged. Such constituents must, therefore, be included in any monitoring system designed to determine the effectiveness of a land treatment system in reducing the hazardousness of the waste. The Agency believes that the constituents to be monitored are sufficiently few as not to cause an undue burden.

In response to the challenge to the "three-times the zone of incorporation" test to determine success of treatment, the Agency is exploring whether other simpler tests can be developed. Until the time that such a test is developed, owners and operators will have to provide waste-specific, constituent-specific, and site-specific evidence that the treatment objective is being met.

The final interim status regulations require owners and operators of land treatment facilities to develop and implement unsaturated zone monitoring plans. These plans must be designed to determine the concentrations and migrations of hazardous waste constituents in the soil. The plan must also describe how the owner or operator will establish background concentrations of those constituents through testing of similar untreated soil. The monitoring program for the unsaturated zone must include soil core and soil-pore water monitoring (ground-water monitoring is required separately under Subpart F of these regulations). The unsaturated zone monitoring plan must specify the owner's or operator's rationale for such key elements as the depth of monitoring, the number of samples, the frequency of sampling, and the timing of sampling. These decisions must reflect a consideration of the variability of the waste and the waste/soil mixture, proximity to ground water,

the manner of waste application, and soil permeability.

6. *Food-Chain Crops.* The proposed regulation prohibited growing food-chain crops on active portions (treated areas) of hazardous waste treatment facilities. The purpose of this regulation was to protect humans from consuming toxic materials that might be present in or on crops grown on land to which hazardous waste has been applied. At the time, the Agency considered a ban as the only means of achieving this objective.

Commenters objected to this ban, suggesting that some crops could be grown on treated soil without endangering human health. Instead of a ban, commenters suggested alternatives such as specifying "safe" application rates to the soil, and monitoring crops for their uptake of hazardous constituents. The Agency also received comments suggesting that the ban was inconsistent with the regulatory approach taken to protect food-chain crops under Subtitle D of RCRA. Those regulations were finalized as the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (The Criteria, 40 CFR 257) on September 13, 1979. The Criteria prescribed annual application rates and limits on cumulative loadings for cadmium based on the specific health risk, and treatment requirements for wastes containing PCB's or pathogens. Commenters argued that the application of some hazardous wastes to food-chain crops presents no greater risk than such practice with some nonhazardous waste.

It is the Agency's firm belief that growth of food-chain crops on land to which hazardous waste has been applied is an issue which should be dealt with cautiously, and should be allowed only where there is convincing evidence that the practice is safe. EPA believes there is little real need to grow food-chain crops at land treatment facilities. The small amount of land used for land treatment represents a negligible portion of the total productive land available for crop growth in this country. Furthermore, there are other productive uses of the land, such as for ornamental horticulture and growth of fiber crops or other non-food crops.

On the other hand, the Agency feels that where there is convincing evidence that such crop growth is safe, it would be unjustified to prohibit it. It is conceivable that constituents in a particular hazardous waste may not be taken up by certain food-chain crops, or after a period of treatment, the constituents may have degraded into products non-hazardous to humans.

The Agency carefully examined the suggestion made by commenters of specifying "safe" application rates. At this time, however, the existing data base on rates of crop uptake of hazardous substances are not comprehensive enough to permit the Agency to specify safe application rates. Regulation by crop monitoring is limited by the fact that safe levels of most hazardous substances in crops have not been determined by the Food and Drug Administration, the Department of Agriculture, or the Environmental Protection Agency.

The Agency also examined the approach used in the Criteria and concluded that the limits developed in those regulations for cadmium should be incorporated into this regulation. Thus the cadmium limits present in that regulation will be applicable to hazardous waste land treatment facilities.

The Criteria include two approaches for the land application of wastes containing cadmium. The first approach incorporates four site management controls: Control of the pH of the waste and soil mixture; annual cadmium application limits that are reduced over time; cumulative cadmium application limits based on soil cation exchange capacity (CEC) (specified in units of milliequivalents of exchangeable cations in soil per gram of soil); and a restriction of the cadmium concentration in waste applied to facilities where tobacco, leafy vegetables and root crops are grown.

The second approach allows unlimited application of cadmium provided four specific control measures are taken. First, the crop grown can only be used as animal feed. Second, the pH of the soil must be maintained at 6.5 or above for as long as food-chain crops are grown. Third, a facility operating plan must describe how the animal feed will be distributed to prevent human ingestion. Fourth, future owners are provided notice (through provisions in land records or property deed) that there are high levels of cadmium in the soil and that food-chain crops should not be grown.

The Agency does not believe, however, that the Criteria sufficiently address the broad range of constituents present in hazardous waste. Therefore, EPA has decided to set additional requirements that relate to hazardous constituents in waste applied as well as other substances of concern (i.e., arsenic, lead, and mercury) because of their effect on food-chain crops. These additional substances have been identified because of their relatively high toxicity to humans and evidence that they can be taken up by crops. Mercury can enter plants through the roots and be readily translocated throughout the plant. Arsenic tends to accumulate in the roots of most crops, which is a concern when root crops such as radishes, carrots, etc., are grown. When in high concentrations in the soil, lead has been shown to translocate to crops.

The Agency is concerned that there are other hazardous substances in the waste, including toxic organics, that may be taken up by plants. Because most plant up-take studies have addressed only inorganics, there is a paucity of data on the up-take of toxic organics by crops. The Agency is aware, however, that data may exist that could identify other hazardous substances of concern. Therefore, EPA is seeking information on other hazardous substances that could be taken up by crops.

Where the Agency does not yet have a clear specification of the "safe" level of contaminants in food crops, it will assume that the level of such contaminants presently in food crops not grown on waste-amended soils is acceptable. As further research refines the Agency's thinking, it may be that health tolerances in food crops should be higher or lower than the average levels otherwise present in such crops.

Based on that assumption, EPA has devised a two-part test to determine whether food-chain crop growth on land treatment facilities is acceptable. Prior to growing a crop for market on soils that have received hazardous wastes, the owner or operator must document that the hazardous waste constituents in the waste, as well as any arsenic, lead, and mercury, will not (1) be transferred to the edible portion of the crop by plant up-take or direct contact, or be transferred to food-chain animals; or if it does, that it will not (2) occur in greater concentrations in the crop than in crops grown in the same region on similar soils which have not had wastes applied.

An owner or operator must use actual field studies of the crop for comparative purposes. Also, the conditions under which the comparable crops are grown must be similar to the conditions found at the facility. For example, soil type, soil moisture, soil pH, and soil nutrients, must be similar at both the facility and the control sites. The owner or operator must also document the sample selection criteria, sample size determination, analytical methods, and statistical procedures used to make the demonstration. In order to determine compliance prior to waste application the owner or operator must pre-test a sample crop using the type of waste and

application rate that will be used at the facility.

Finally, EPA has added a provison to these regulations that requires owners or operators of land treatment facilities on which food-chain crops have been grown, or are being grown, to notify the Regional Administrator within 60 days after the effective date of these regulations if they intend to again grow food-chain crops during the interim status period. In addition, a comment in the regulation apprises an owner or operator, who has not accordingly notified the Regional Administrator and who proposes to grow food-chain crops during the interim status period, that this is a change in process and he must notify the Administrator under Section 122.23(c)(3) of the consolidated permit regulations. These notification procedures are designed to give the Regional Administrator notice of those facilities that are engaging in the environmentally sensitive activity of growing food-chain crops at land treatment facilities. This will assist the Regional Administrator in the establishment of priorities for permitting.

7. *Closure.* The proposed regulations provided two basic options for closure of a land treatment facility. One option was to return the soil in the treated area to its pre-existing condition, as determined by background soil analysis or analysis of similar local soils. The other option was to remove the contaminated soil from the facility if that soil met the characteristics of a hazardous waste. (If it did not have any of the characteristics of a hazardous waste, no further action was required.) However, a variance to the second option allowed closure of a facility as a landfill if the owner or operator could demonstrate that the design or location of the site provided long term integrity and environmental protection equivalent to a landfill, as specified in the proposed regulations.

Many commenters argued that the requirement to return the soil to its pre-existing condition was impractical and would make land treatment infeasible. They also objected to the provision which required that the soil be removed at closure. On the other hand, the EPA extraction procedure (EP) was criticized as being an inappropriate mechanism for determining whether the soil in the treated area was hazardous. The EP was said to be too limited in applicability, because it does not address most organics and some metals. Some commenters suggested alternative closure procedures which allow tailoring the closure procedures to the site.

After examining these comments, the Agency has concluded that greater flexibility should be given in the regulation to allow the owner or operator to develop a plan that considers certain key factors and that meets general human health and environmental objectives. Under the final interim status regulations the owner or operator of a land treatment facility must develop and implement a facility closure plan. The terms of that plan are enforceable against the owner or operator.

The plan must address four objectives: (1) Controlling the migration of hazardous waste and hazardous waste constituents into ground water; (2) controlling the release of contaminated run-off to surface water; (3) controlling the release of airborne particulate contaminants: and (4) compliance with the standards established for food-chain crops. The owner or operator must consider a range of factors affecting the facility's ability to meet the objectives. These factors include the waste, the climate, the site location, the soil, and the depth of contaminant migration. The owner or operator must also consider the applicability of various closure methods including removal of the soil, run-off collection and treatment, use of cover materials, diversion structures, and additional monitoring.

The owner or operator must also develop a post-closure care plan. The terms of this plan are also enforceable against the owner or operator. Under these interim status regulations the post-closure care plan must provide for maintenance of monitoring systems, restriction of access as appropriate for post-closure use, and control of the growth of food-chain crops to the same degree as required for an active facility.

The requirements for the closure and post-closure plans for land treatment facilities and landfills are similar in terms of objectives but differ slightly in the mechanisms by which these objectives are to be achieved. The landfill post-closure plan requires the owner or operator to address the following: (1) Maintenance and monitoring of leachate collection systems (if present), (2) Maintenance and monitoring of gas control systems (if present), and (3) Final cover. For land treatment facilities, however, the first two items are not required because the Agency is not aware of any leachate collection systems and these facilities are rarely plagued by gas problems. This results because cover material is not laid down after the waste is applied so that gases are not confined, and decomposition of the waste occurs predominantly in an aerobic state so that methane, carbon monoxide, and hydrogen sulfide are not produced. Although final cover is addressed in both the land treatment and landfill closure requirements, it is mandatory only for landfills. Final cover must be considered, but is not mandatory, for a land treatment facility where the waste has been rendered non-hazardous. Where wastes have been rendered less hazardous, the determination of whether final cover is needed, in part, will be dependent on the degree of risk to human health and the environment presented by the hazardous waste constituents remaining in the soil.

8. *Ignitable, Reactive, or Incompatible Wastes.* The proposed regulations prohibited placing ignitable, reactive, volatile, or incompatible wastes in a land treatment facility, but allowed a variance if the owner or operator could demonstrate that airborne contaminants would not exceed a specified concentration, and that the attenuation capacity of the soil would not be adversely affected through heat generation, fires, or explosions.

The primary criticism of the proposed regulation, other than the restriction on airborne contaminants, was that the prohibition was inappropriate because many wastes classified as ignitable, reactive, or incompatible might lose these properties when land treated. The Agency agrees and has modified the regulation. The final standard requires the owner or operator to incorporate ignitable or reactive wastes into the soil in such a manner that the resulting waste, mixture, or dissolution of material no longer exhibits ingitable or reactive characteristics, and complies with § 265.17(b). Ignitable or reactive wastes may also be placed in a land treatment facility if they are rendered non-ignitable or non-reactive before land treatment. Incompatible wastes may not be placed in the same land treatment area unless the land treatment process complies with § 265.17(b). For a description of the general requirements applicable to the disposal of ignitable, reactive, or incompatible wastes see the "General Facility Standards" portion of this Preamble.

M. Subpart N—Landfills

Landfilling has historically been the preferred means of disposing of hazardous waste. Until the last decade, some people acted as though, once buried, hazardous wastes would cause no more difficulties. Past practices often focused only on burying the waste to get it out of sight and on control of surface problems such as blowing litter or

vectors. Recent experiences at Love Canal in New York and other burial operations have demonstrated the potential for severe human health and environmental impacts from improper landfilling.

Many argue that, since many of these wastes remain hazardous for very long periods, they should not be landfilled. EPA agrees in principle that it is better to destroy or recycle hazardous wastes than to landfill them, but the fact remains that, for the foreseeable future, land disposal will be necessary because it is technically infeasible at present to recycle, treat, or destroy all hazardous waste.

Over the past decade, research and investigations of good and bad practices, including documented damage cases, have advanced the state-of the-art of landfilling significantly. Landfilling is much more than just burial of wastes, particularly for hazardous wastes. Landfills must provide long-term protection of ground water, surface water, air, and human health. Although the state-of-the-art is still developing, a number of techniques are now available for effectively reducing the adverse health and environmental effects from landfills.

The problems which hazardous waste landfills have presented can be divided into two broad classes, which these regulations attempt to address. The first class includes fires, explosions, production of toxic fumes, and similar problems resulting from the improper management of ignitable, reactive, and incompatible wastes. The Agency believes that methods for dealing with these problems are generally available today, and that they can begin to be implemented in these interim status standards without substantial capital expenditures, the need for case-by-case determinations by EPA permitting officials, or substantial lead times. These methods include the analysis of wastes to provide enough information for their proper managment; the controlled mixing of incompatible wastes or their segregation in separate landfill cells; and the landfilling of ignitable and reactive wastes only when they are rendered not ignitable or reactive.

The second class of problems, contamination of surface and ground waters, presents substantially more difficulty. Several approaches to environmental protection, including proper siting, lining, and leachate collection, do not meet EPA's general internal guidelines for those standards it will impose during interim status. Such standards might involve too great a pre-permit investment, or might be so site- or waste-specific that they would require case-by-case determinations by the Regional Administrator. Such standards could also require automatic closure or relocation of some facilities, or substantial retrofitting. Other measures, however, are available which will help reduce the formation of leachate in currently operating landfills. The measures incorporated in these interim status regulations are diversion of "run-on" (water flowing over the ground onto active portions of the facility) away from the active face of the landfill; treatment of any liquid wastes or semi-solid wastes so that they do not contain free liquids; proper closure (including a cover) and post-closure care to control erosion and the infiltration of rainfall; and crushing or shredding most landfilled containers so that they cannot later collapse and lead to subsidence and cracking of the cover. In addition, these regulations require ground-water monitoring to detect contamination of ground water, and collection of rainwater and other run-off from the active face of the landfill to control surface water pollution. As discussed previously under "General Requirements for Ignitable, Reactive, or Incompatible Wastes," the Agency is also considering requiring the segregation of wastes, such as acids, which would mobilize, solubilize, or dissolve other wastes or waste constituents, such as heavy metals. These regulations represent an important step toward safer disposal of hazardous wastes in landfills.

Regulations similar to those appearing in the present sections on "General Operating Requirements" and "Special Requirements for Ignitable or Reactive Wastes" were proposed for inclusion in the general standards. They are being promulgated here interim final only to the extent that the Agency will accept comments on whether they are appropriate for inclusion in the interim status standards. Regulations on closure and post-closure, special requirements for liquid waste, and special requirements for containers are being promulgated interim final and are further discussed below.

1. *Landfill Cells.* These regulations incorporate the concept of landfill cells. Such cells can be used to separate incompatible wastes.

As suggested by the comments, the proposed definition of a cell as "a portion of a waste in a landfill" has been replaced by "a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes." This makes the cell a discrete part of the disposal facility rather than a portion of waste as in the proposed definition. This arrangement, together with the flexibility of closure regulations, and the concept of partial closure, permits different cells to have different closure requirements and may permit different financial arrangements in appropriate circumstances. Cells may be physically separate areas of a landfill, or trenches or parts of trenches, or separate pits. The determining condition is that the cell be a discrete volume separated by a liner or cover from adjacent cells or other wastes in the facility.

2. *Surface Water Run-on.* A requirement for control of surface water run-on was not included in the proposed interim status standards. This requirement was specified, however, in the proposed general standards in §§ 250.43(b) and 250.45–2(b)(7). The purpose of this standard was to minimize the amount of surface water entering the landfill facility. Run-on controls prevent (1) erosion, which may damage the physical structure of the landfill, (2) the surface discharge of wastes in solution or suspension, and (3) the downward percolation of run-on through wastes, creating leachate. Control is accomplished by constructing diversion structures to prevent surface water run-on from entering the active portion of the landfill facility. A note in the proposed regulation provided that no diversion structures were required where it could be demonstrated to the Regional Administrator that local topography would prevent surface water run-on from entering the facility.

Comment was received that the proposed regulation implied that all run-on would have to be diverted from the landfill, and that the regulations should specify the capacity of the diversion structure in terms of the useful life of the landfill.

The Agency believes that the main area of concern for protection of human health and the environment is the active portion of the landfill, not the landfill facility as a whole (as may have been suggested by the language of the proposed regulation). It is at active portions that run-on is most likely (1) to seep into the exposed waste, contributing to the formation of leachate, or (2) to erode wastes, or constituents of them, and carry them away in run-off. The Agency requires in these regulations that all surface water run-on be diverted from active portions. Diversion of run-on may be accomplished by locating the active portion in areas where the topography naturally prevents run-on, by sloping or contouring the land, or by constructing

ditches, culverts, or dikes. The capacity of diversion structures should be determined by the owner or operator considering site topography, size of drainage area, and size of the active portions.

Comments were received suggesting that the proposed standards be modified to allow the owner or operator the flexibility to either divert surface water run-on or collect and treat all of the surface run-off, as long as Clean Water Act effluent limitations were complied with. The Agency disagrees. EPA believes that such a standard allows the unnecessary infiltration of water into the landfill.

The Agency has determined that diversion of run-on is appropriate for inclusion in the interim status standards. Run-on control is for active portions only. The Agency expects that run-on diversion structures, where needed because of topography, will most likely be earthen dikes or berms, or ditches, which can be erected with earth moving equipment commonly found at landfills. These structures can be temporary, and can move with the active portions as material is added to the landfill. Such structures can be designed and maintained adequately during interim status without case-by-case review by permitting officials.

A 12 month delay is allowed for compliance with this requirement so that operators will have adequate time to make any necessary topographic and hydrologic determinations and complete construction.

3. *Contaminated Surface Water Run-Off.* Requirements for collecting and managing contaminated surface water run-off were not included in the proposed interim status standards, but were proposed in the general standards in §§ 250.43(c) and 250.45–2(b)(8). Their objective was to reduce the potential for off-site migration of contaminated run-off to land or to waters of the United States. There have been a number of damage incidents caused by mismanaged or uncontrolled contaminated run-off from landfills. Ten of these incidents are briefly described and referenced in the landfill background document. These damage cases demonstrate that run-off from active portions of hazardous waste landfills can cause serious adverse impacts to land and surface waters. In contaminating streams, run-off from landfills frequently results in fishkills and destruction of other aquatic life. During the period 1963–1974, forty-seven separate fishkills caused by run-off from waste disposal were recorded by EPA. Based on this evidence, EPA believes that it is imperative that run-off from active portions of hazardous waste landfills be controlled during the interim status period.

Furthermore, control of run-off from active portions of hazardous waste landfills is presently a widely accepted and relatively simple practice. As of January 1979, all but two States specifically require in their solid or hazardous waste regulations control of run-off from at least the active portions of all off-site landfills.

Run-off control is accomplished by (1) minimizing run-off and (2) collecting and managing run-off from active portions. Run-off is minimized by (1) preventing run-on, (2) minimizing the size of the active portion, and (3) preventing disposal of liquid wastes in the landfill.

There are two basic types of landfill operations: trench method and area fill method. By design, almost all trenches, and area fills using depressions or pits, control most run-off because of surface contours (i.e., liquids that come into contact with the waste generally infiltrate rather than run-off). Area fills which do not use depressions can be operated by building a berm or dike on the low elevation side to contain any run-off. However, when landfills using either the trench or area methods become large and substantially above grade, both run-off and leachate seeps, which often occur on the outer slopes of the fill, need to be collected. Run-off which does emerge from active portions may be collected by ditches, berms, dikes, and culverts which direct it (sometimes by sump pump) to surface impoundments, basins, tanks, or treatment facilities. These collection devices may consist of temporary structures around active portions. Since run-off usually has been in contact with waste or leachate seeps from active portions, and since run-off sometimes if collected via a leachate collection system, it is usually contaminated. Thus, it is usually impossible to differentiate between rainwater run-off and leachate run-off at the active portion of a landfill. Because of this, the proposed definition of "run-off", which was "that portion of precipitation that drains over land . . .", has been revised to "any rainwater, leachate, or other liquid that drains over land . . .". This change indicates that more than just precipitation must be collected.

Once collected, a number of options exist for treating and disposing of run-off. These are the same options which exist for managing liquid wastes and leachate and include deep well injection, land treatment, treatment in surface impoundments (evaporation, aeration, chemical treatment, etc.), dewatering or mixing with an absorbent material and disposal in the landfill, percolation through a filtering or attenuation medium (e.g., charcoal, clay, soil, sand), or discharge to a sewer or other treatment facility.

The proposed landfill standards required that if surface water came into contact with the active portions of a facility, it was to be collected and managed as a hazardous waste unless it was analyzed and found not to be hazardous.

The Agency received essentially no objections to the proposed requirement that landfill run-off be collected and treated in some fashion. Most of the comments on the proposed standards concerned the capacity of the treatment systems or the final disposition of the run-off. These comments are discussed in the background document. The current regulation does not limit the method of treatment of run-off.

The regulation requires run-off from active portions to be collected. The collected run-off is a solid waste from an industrial activity (the operation of the landfill) and the owner or operator must determine whether it is a hazardous waste in accordance with Section 262.11 of this Chapter. If the collected run-off is a hazardous waste it must be managed as a hazardous waste. Even if it is not a hazardous waste, good management practices may still require some degree of treatment or use of other techniques as previously discussed, although such practices are not required by these regulations. A 12 month delay for compliance with these regulations is given so that existing facilities may construct new run-off control systems or upgrade existing systems, including those for run-off treatment and disposal. If collected run-off is discharged to waters of the United States, owners or operators of facilities must have or apply for an NPDES permit under the Clean Water Act.

4. *Wind Dispersal.* Dispersal of landfilled hazardous wastes by wind is not often a problem. The Agency's major concern in requiring the control of wind dispersal is large waste piles which constitute disposal and thus come under the landfill regulations. The Agency is aware of at least one case in which wind dispersal from a pile of asbestos wastes created a health risk. It therefore seems prudent to require that, where landfilled hazardous waste is subject to wind dispersal, the landfill be managed so that wind dispersal is controlled. Appropriate methods may vary from waste to waste, and the Agency believes that the owner or operator of the facility is best able to develop an adequate, cost-effective technique to meet this requirement.

This requirement was not proposed for inclusion in either the interim or general standards. Comments and meetings following publication of the proposed regulations brought to light the fact that piles are sometimes used for storing and disposing of wastes, some of which may be hazardous. Subpart L (Waste Piles) grew out of these comments, and also includes a requirement for controlling wind dispersal. The Agency believes that this requirement should typically not require major capital expenditures, does not require case-by-case determinations by the Regional Administrator, and can be accomplished within six months. It is therefore appropriate for inclusion in the interim status standards. Since it was not proposed, it is being promulgated interim final, and the Agency solicits comments on it.

5. *Surveying and Recordkeeping.* Recording the location of each hazardous waste type within a landfill cell will help ensure that this information is available for proper landfill operation, closure, and damage assessment, when necessary. For example, this information is useful in managing potentially incompatible wastes and materials, and will help deal with emergencies, such as fires and help in locating sources of contamination. Methods of correction and potential for further damage may also be more readily identified.

The major issue raised in the comments was an objection to the proposed requirement that exact locations of waste within each cell be recorded. The Agency agrees that this requirement may have been overly restrictive as applied to all wastes. The regulation now only requires recording the waste's approximate location within a cell. However, the owner or operator must record the location of each waste type with sufficient accuracy to enable proper management of incompatible wastes, and later treatment, excavation, or other remedial action, if necessary. For example, with an extremely mobile waste this may mean recording its exact location; for a landfill or landfill cell which receives only a few types of wastes, it may mean merely recording the approximate location of the demarcations between wastes. EPA suggests the use of a three-dimensional grid system, referencing waste type location on a map which is keyed to permanently surveyed benchmarks. The size of the units in the grid should be a function of the number of waste types, their amounts and the number of locations of each type.

6. *Landfill Closure.* At least 180 days before landfill closure during the interim status period, the owner or operator must submit to the Regional Administrator, for his approval, modification, or disapproval, a detailed plan describing the manner in which the landfill will be closed and maintained during the post-closure period. (See the previous preamble discussion on Closure and Post-Closure Care).

A final cover must be placed over the landfill at closure. The closure plan must address the functions and specify the design of the final cover. It is necessary to place appropriate cover on a landfill in order to control the infiltration of moisture that could increase leaching, and to prevent erosion or escape of wastes, waste constitutents, or contaminated soil.

The proposed standards included specific requirements regarding the type, depth, permeability, and number of soil layers required for the final cover. They also included specific quantitative limits on grade (slope) and terracing of the cover to prevent erosion.

EPA received numerous comments objecting to these specific requirements. Commenters suggested that different combinations of cover materials, thicknesses, and permeabilities could achieve equivalent results, and that greater flexibility was needed to address site-specific situations. Numerous commenters suggested that the proposed 6-inch clay cover was inadequate. Similar objections were raised regarding the final grade and terracing requirements.

The proposed regulation included a variance that allowed alternate cover designs to be substituted as long as they provided equivalent performance, and thus there was some flexibility. However, the proposed variances would not have addressed concerns over the basic level of control specified, for example, a 6-inch clay cover.

The Agency believes that the commenters have made valid points. The specific limits proposed are not appropriate for all situations. The conditions at each site should weigh more heavily than perhaps the proposed regulation would allow in determining an appropriate cover requirement. The final regulations provide this flexibility by requiring that certain objectives be addressed in developing a closure plan and designing a final cover. The specified objectives are: (1) control of pollutant migration from the facility via ground water, surface water, and air, (2) control of surface water infiltration, including prevention of pooling, and (3) prevention of erosion.

The regulation also lists a minimum set of technical factors which the owner or operator must consider in addressing the control objectives. With regard to cover design characteristics, these factors include cover materials, final surface contours, porosity and permeability, thickness, slope and length of run of slope, and type of vegetation. The cover design should take into account the number of layers, and the indigenous vegetation. It should avoid or make allowances for deep-rooted vegetation, and prevent water from pooling. The design will depend on the availability and characteristics of on-site or nearby soils, and a number of other site-specific factors. The final cover design could simply be the placement, compaction, grading, sloping, and vegetation of on-site soils, or could be a complex design such as a combination of compacted clay or membrane liner placed over a graded and sloped base and covered by topsoil and vegetation.

The final regulation requires (in Subpart G) the approval, disapproval or modification of the closure plan by the Regional Administrator, after opportunity for public comment. This process is necessary to assure that closure plans will achieve the objectives specified with an adequate degree of confidence.

Because it has been modified substantially, the regulation on landfill closure is being promulgated interim final and the Agency will consider additional comments on it. Many comments on the proposed regulation severely criticized it for being too inflexible. The Agency believes that the present regulation responds to these comments by creating an extremely flexible system under which all pertinent characteristics of an individual facility can be considered in determining how it should be closed. Since the system leaves so much latitude for the creation of individual closure plans, those plans will need to be reviewed on a case-by-case basis by Regional Administrator to assure that the objectives of the regulations are achieved.

The Agency believes that the importance of proper closure justifies this interaction with the Regional Administrator during the interim status period. The closure and post-closure requirements are essential for protection of human health and the environment in the long-term (after post-closure care period). Unless certain precautions, such as a stable and properly designed cover and future site use controls, are taken, there is a high likelihood of future

ground water, surface water, or air contamination or direct exposure of the public to hazardous waste. Operating existing leachate collection systems, gas control systems and ground-water monitoring systems throughout the post-closure care period are essential to eliminating future environmental problems and determining when post-closure care can be terminated.

7. *Post-Closure Care.* In order for the final cover to satisfy the specified objectives, it must be properly maintained following closure. This is also true of certain monitoring and control measures, such as ground-water monitoring systems.

EPA received few comments on the proposed post-closure care requirements. Nonetheless, some modifications have been made to accommodate changes made in other sections of the regulations. Post-closure maintenance of a leachate monitoring system (unsaturated zone monitoring) is not required for all facilities because such monitoring systems are no longer required. (See the discussion on Subpart G requirements.) A requirement that existing leachate collection and removal systems be maintained, however, has been substituted. Hazardous leachate may continue to be generated within the landfill long after the site is closed, even with a relatively impermeable cover. The Agency believes that, in order for an installed leachate collection system to achieve its purpose, leachate must be removed as it is generated, even after closure.

The one post-closure requirement which did generate a number of comments was the restriction against constructing buildings on closed landfills where radioactive wastes were disposed of. The Agency agrees with commenters to the extent that concern about radiation (uranium and phosphate wastes) was the basis for this regulation and that such building restrictions should be placed in regulations dealing specifically with those wastes. EPA expects to promulgate requirements for such wastes in its Phase II regulations.

Other commenters suggested that all construction or other activities which would damage the final cover should be prohibited. The Agency concurs, in general, and has added a requirement in § 265.117(c) that activities which could disturb the integrity of the final cover or any liners or the function of the monitoring systems, are not allowed without the Regional Administrator's approval under specified criteria.

While the post-closure care regulation has not changed radically from the proposed regulation, it is being promulgated interim final along with the closure regulation because the two form an integrated package. Comments will be considered on the post-closure care regulation along with the closure requirements.

8. *Ignitable or Reactive Waste.* The proposed regulations prohibited disposing of ignitable or reactive waste in a hazardous waste landfill unless certain conditions were met: airborne contaminants could not exceed a specified concentration and there could be no damage to the structural integrity of the facility.

Several commenters claimed that this provision "banned" landfilling of ignitable or reactive waste. The commenters suggested that these wastes can be placed in a landfill in a way, such as by blending with soil or other materials, that eliminates or minimizes the danger of fires or explosions.

The final regulation now requires that ignitable or reactive wastes be treated or mixed before or immediately after being landfilled so that they are no longer ignitable or reactive. Mixing the waste with soil or other material before, during, or immediately after the waste is placed in the landfill is allowed if the resulting mixture is neither ignitable nor reactive. This treatment must meet the general requirements for handling ignitable, reactive, or incompatible wastes in § 265.17(b). As explained previously, the provision in the proposed regulation concerning volatility has been deferred.

9. *Incompatible Wastes.* Incompatible wastes or materials can react when they come in contact with each other, resulting in the substances or reactions listed in Appendix V, such as fires, explosions, or formation of toxic gas. Such contact can be prevented by placing incompatible wastes in separate landfill cells, as proposed in the landfill regulations.

Commenters supported this concept: some suggested specific degrees of separation, e.g., certain soil thickness, or separation based on waste properties. The Agency found no basis for any specific waste separation requirement because so many site-specific variables are pertinent, such as characteristics of the liner or separation material, (e.g., permeability and thickness), special relationship of cells (e.g., above or on the side of the other), cover material, and waste characteristics. Therefore, no specific separation requirement is included in the final regulation.

Comments received on other sections of the proposed regulations indicated that potentially incompatible wastes can be premixed or treated before or during disposal so that they are no longer incompatible. Therefore, the final regulation has been revised to allow the placement of incompatible wastes in the same cell, if they will meet the general requirements for incompatible wastes in § 265.17(b).

10. *Bulk Liquid Waste.* The disposal of liquid hazardous waste, both bulk and containerized, was the most controversial area of the proposed landfill regulations. The proposed regulation specified that bulk liquid, semi-solid, and sludge wastes must not be disposed of in a landfill, unless they were pretreated or treated in the landfill "so that a non-flowing consistency is achieved to eliminate the presence of free liquids prior to final disposal in a landfill." The purpose of this proposed regulation was to reduce the presence of liquid wastes and free liquids in a landfill.

Liquid wastes and free liquids can migrate through a landfill, dissolving or mobilizing toxic substances in the process. In other words, liquid in a landfill usually becomes a transport and leaching medium. The resultant leachate produces a hydraulic head greater than that resulting from precipitation alone. The additional liquids, leaching, and head can increase the amount and rate of movement of hazardous contaminants from the landfill to ground water.

Comments on the proposed regulation ranged from suggestions that liquid wastes should be categorically banned from landfills to suggestions that there should be no restrictions placed on landfilling of liquid wastes. There were also comments that the regulations should allow absorption of liquid wastes by municipal refuse and allow in-situ absorption via a well or pit in the landfill.

The Agency believes that there are controlled conditions under which liquids in landfills can be tolerated. For example, with a secure liner (chemically and physically resistant to the liquids and of low permeability) and a leachate collection and removal system, leachate can be removed from above the liner continuously to prevent build-up of a hydraulic head. The low permeability of the liner should result in no migration or a very slow rate of migration through it. The collected leachate can then be either treated and disposed of in the facility, or otherwise disposed of. Thus, if a landfill has a leachate collection system, in-situ absorption can be environmentally acceptable. The final regulation therefore allows in-situ absorption of bulk liquid wastes provided the landfill has a chemically and physically resistant liner and a functioning leachate removal system, and provided the capacity to remove the hydraulic head is not exceeded.

Where a landfill does not have a leachate collection and removal system, however, liquids in the landfill will eventually migrate and will usually carry pollutants out of the landfill and into ground water. The many incidents of ground-water contamination from poorly operated hazardous waste landfills testify that this is a common problem. In addition, when liquid wastes are disposed of directly into a landfill without assuring absorption, there is no way of knowing whether they are largely being absorbed and held by solids in the landfill, or are passing through relatively quickly. Liquid migration can, however, be greatly reduced if liquid wastes and wastes containing free liquids are treated before being landfilled, as by mixing with absorbent materials, so that free liquids are no longer present. The regulations require such treatment in landfills that do not have appropriate leachate collection and removal systems. Treating the liquid waste before it is landfilled gives visual control of the liquid to absorbent ratio, allows testing to confirm absorbent capacity, and assures slow release; these are not possible when in-situ absorption is practiced. Examples of absorbent materials which may be acceptable include soil, fly ash, and cement kiln dust. EPA discourages the use of biodegradable municipal waste as an absorbent until studies prove its long-term effectiveness.

A number of commenters asked for definitions of the terms "non-flowing", "semi-solid", "sludge", or "free liquids", which were used to describe hazardous wastes in the proposed regulations. A number of suggestions were given as to how or how not to define these terms. After review of these comments, EPA has decided to use the term "free liquids", defined as "liquids which readily separate from the solid portion of a waste under ambient temperature and pressure." This term and meaning best reflect the use to which this term is put, which is to distinguish when a waste contains liquids which will readily flow from the waste in a landfill to produce leachate. For sludges or semi-solids which are not obviously liquids, the following test may be used to determine if they contain "free liquids." Place a one to five kilogram (2.2 to 11.0 lbs) sample of waste on a level or slightly sloping plate of glass or other similarly flat and smooth solid material for at least five minutes. If a liquid phase separation is observed, the waste contains "free liquids." EPA feels this test provides a practical way to test sludges and semi-solids and helps clarify the meaning of free liquids until a more rigorous test is devised.

The test is intended to simulate, in a simple way, the behavior of semi-solid wastes placed on the surface of a landfill. If liquids can be observed as a separate phase draining over an impermeable substrate from the base of a small sample of the waste, such liquids can also be expected to drain from the waste itself when it is placed on the surface of the landfill, and will be free to migrate into the landfill much as liquid wastes would. The fact that liquids cannot be observed to migrate from a small sample after a few minutes does not, of course, assure that they will not migrate from a larger sample, or after a longer period of time, or when the waste is compressed by wastes placed over it. This test thus represents a rough minimum for the containment of free liquids. The Agency expects to study the problem of free liquids further and to attempt to devise tests which more accurately reflect the conditions of waste within a landfill. The Agency specifically solicits further comments on (1) difficulties that may be expected in applying the test, and (2) suggestions for other tests or improvements to this test which will better test for the presence of liquids which can relatively easily migrate from wastes.

Alternatives to direct disposal of liquid wastes in landfills include mixing the wastes with an absorbent material prior to landfilling, as described previously, chemically fixing or solidifying the wastes before landfilling, dewatering before landfilling, treating the wastes to render them non-hazardous, well injection, incineration, resource recovery, and storage in containers, tanks, and surface impoundments. These options may be impossible for some wastes. Taken separately, facility capacities for these options may be limited in the region of waste generation, or may require a long lead time to develop; nationally, no single option can handle all the hazardous liquid and semi-solid wastes. Taken together, however, EPA believes these options can provide the required storage, treatment, and disposal capacity to offset the amounts of liquid wastes currently disposed of by practices prohibited by this regulation. Indeed, this kind of prohibition is already being implemented in some States. At least 19 States already prohibit or restrict the disposal of bulk liquid wastes in landfills.

Although these provisions for bulk liquid wastes were included in the proposed general standards, they were not included in the interim status standards. The Agency believes that while treating liquid wastes will increase operating costs, it will not entail great capital expenditures for equipment or facilities. In addition, methods implemented during the interim status period to comply with the regulation will not require case-by-case determinations by Agency officials. However, the Agency believes that generators, and owners and operators of facilities may need more than six months to identify and develop alternatives to landfilling bulk liquid wastes. The Agency has, therefore, delayed the date for compliance with this regulation for 12 months past the effective date of the regulations.

While this regulation has not changed substantially from the one proposed for the general standards for landfills, it is being promulgated interim final primarily because it generated so much comment but so little data when proposed. Some of the comments requested clarification of the terms "semi-solid," "non-flowing," "sludge," and "free liquids." The Agency believes that its definition and test for free liquids adequately respond to these comments.

Other comments fell in a spectrum from contentions that liquids should be banned from landfills to contentions that liquids in landfills should not be restricted at all. Few of these comments, however, provided any data or much argument explaining why they adopted a particular position. The Agency solicits comments on the regulation and is particularly interested in comments on (1) what data, if any, is available to show that landfilled liquids can confidently be expected to be absorbed and immobilized by other waste in the landfill; (2) the nature and extent of treatment that commenters would expect to conduct at landfills in compliance with the regulation; (3) alternatives to landfilling liquids and wastes containing free liquids that commenters would expect to pursue as a result of the regulation; and (4) the nature of the additional hazards, if any, that commenters expect to be created by this regulation, and how they may compare to the ground water pollution hazards that the regulation attempts to alleviate.

11. *Containerized Liquid Waste.* The proposed regulation required that each container of liquid hazardous waste be surrounded by a sufficient amount of inert sorbent material to absorb all the liquid contents of the container. Since containers are known to eventually decay in a landfill environment, this requirement was intended to prevent

migration of liquid waste by providing an absorbent medium.

Commenters expressed diverse opinions on the proposed regulation, ranging from suggestions that containerized liquid wastes be banned totally, to suggestions that their placement in landfills not be restricted at all. Alternatives schemes were suggested for providing absorption capacity within a landfill, such as placing absorbent material inside a container, or surrounding a group of containers (rather than single containers) with absorbent material. The requirement that the absorbent be "inert" was also challenged.

Based on further Agency analysis, the final regulation generally prohibits disposal of containerized liquid wastes or wastes containing free liquid in landfills. Drums eventually degrade, allowing liquids to escape. When drums collapse and create voids, they can cause slumping and subsidence of the cover. This may increase the infiltration of precipitation and can also result in the escape of wastes through cracks or fissures in the final cover. Furthermore, there is no assurance that the liquid waste will be fully absorbed in surrounding material. It is difficult to predict the absorbent capacity of a material buried in a landfill. For example, the absorbent material itself may have decayed by the time a drummed liquid is released or may have already been saturated with moisture from another source (such as infiltration or moisture from the decay of organic wastes). Liquid wastes released from a drum also will most likely form channels from the point of leakage rather than be evenly absorbed. In addition, it is impossible to predict when drums will fail in a landfill environment. This is a particularly critical uncertainty in that failure could occur after the post-closure care period when facility maintenance and ground-water monitoring are no longer performed. Conversely, it would be impossible to establish a rational termination of the post-closure care and financial responsibility period if the stability of the cover and liquid waste release were so uncertain. In contrast, if drummed liquids are mixed with absorbent materials, as bulk liquid wastes must be, a history of trouble-free operation and post-closure monitoring is a much surer indicator that the landfill will continue to be free from ground-water contamination after post-closure care and monitoring cease.

For these reasons, EPA believes that a prohibition on placing containerized liquid waste, or waste containing free liquids in landfills will provide more effective control than the proposed operating restrictions. At least 11 States already prohibit or restrict disposal of containerized liquid wastes at landfills.

The alternatives to landfilling containerized liquid wastes are essentially the same as those for bulk liquid wastes, except that storage of the containers probably will be simpler than finding storage for bulk liquid wastes. Thus, the same reasons exist for providing a 12 month delay in the date for compliance with this regulation.

The Agency believes that some containerized liquid wastes will be emptied and treated before being placed in a landfill. Removing liquid wastes from drums may increase the likelihood of waste spills and will most likely result in increased air emissions from volatile waste. Although these interim status regulations do not currently address volatile waste, the Agency expects to do so in the Phase II and Phase III regulations as information becomes available, and may amend these interim status regulations where appropriate. Additionally, the Agency believes that until the problem of volatile emissions can be dealt with in a more satisfactory manner, volatile hazardous waste should generally not be placed in any disposal facility. Opening drums containing liquid hazardous waste, particularly volatile waste, requires special safety precautions, such as ventilation or use of respiratory equipment. However, adequate handling methods are currently used at some facilities to safely dispose of bulk liquid wastes, and to empty containers holding waste with free liquids. These methods can generally be employed at other landfills as well.

The prohibition on landfilling containers (empty or full) applies to 55-gallon drums and other similar containers, but does not apply to devices which function as a container for hazardous waste during their useful life, such as batteries or capacitors or to very small containers such as ampules. These types of containers are not likely to contribute substantial volumes of liquid to most landfills, and the difficulty of opening and emptying them appears to outweigh the small benefit gained.

Since this regulation has been modified substantially from the one proposed for interim status, it is being promulgated interim final. Comments are solicited on the regulation and especially on the four points listed previously under "Bulk Liquid Wastes."

12. *Empty Containers.* The Agency also is concerned that empty containers buried in a landfill can collapse and disrupt the final cover. Therefore, the landfilling of empty containers is also prohibited. Each empty container must be crushed flat, shredded, or in some other manner reduced in volume, before being incorporated into the landfill. EPA assumes that most empty containers will be crushed by landfill equipment prior to or during disposal in the landfill. Current procedures in at least six States already call for empty drums to be crushed before disposal in a landfill.

Since the proposed regulations did not contain a requirement for the disposal of empty containers, the Agency is promulgating this regulation interim final. The Agency solicits comments on this regulation, especially (1) on the nature and extent of activities which commenters expect to conduct in compliance with the regulations, and (2) how these activities relate to the management of emissions during the disposal of volatile hazardous waste.

N. Subpart O—Incinerators

Incineration is a relatively well-developed and well-understood technology. Properly executed, it can accomplish safe destruction of primarily organic hazardous waste, permanently reducing large volumes of waste materials to non-toxic gaseous emissions and small amounts of ash and other residues. Incineration can often provide an optimum, permanent solution to hazardous waste management with minimal long-term ecological burden.

The proposed § 250.45–1 technical performance and design requirements for incineration cannot be implemented during interim status. The time and costs of upgrading most existing facilities to comply with these standards would be considerable, and the designs would require EPA approval during the permitting process. As a result, the Agency has developed a few general operation requirements for incineration which can be implemented during the interim status period. These standards will improve operating procedures by eliminating some practices which have resulted in problems in the past.

Technical criteria for issuing permits will be promulgated during Phase II of the RCRA regulatory program. These will be accompanied by a design and operation guidance manual which will assist permitting officials and the regulated community in evaluating the adequacy of specific incinerators. Most of the specific, quantitative design, operation, and performance requirements will be issued when adequate technical support for these standards can be firmly established.

The Phase I regulations apply to incinerators which burn hazardous waste regardless of their size, capacity,

physical or mechanical type, or geographical location. The incineration of gaseous, liquid, semi-solid, and solid hazardous waste, and blends thereof, is subject to these regulations. The incineration of combustible wastes of varying heating values, as well as aqueous and other wastes which may require co-incineration with auxiliary fuels, is also subject to the Subpart O standards. Boilers which burn waste primarily to recover energy are not now covered by Subtitle C of RCRA.

These standards were not proposed to be effective during the interim status period. However, as comments suggested, the Agency believes that several of the proposed "good operating practice" regulations can beneficially be instituted during interim status to reduce hazards associated with poor operating procedures. The incineration standards for the interim status period are being promulgated interim final, and the Agency will accept comments on them. To some extent, these standards are derived from parts of the proposed regulations. An analysis of the major comments received on these parts of the proposed § 250.45–1 standards follows.

Several commenters felt that RCRA was not intended to regulate incineration, contending instead that the Clean Air Act is the appropriate vehicle for regulating incinerators. To support their argument, these commenters claimed that Section 1004(3) of RCRA (which defines "disposal") spoke in terms of land disposal situations involving primarily water and soils, and was not relevant to incineration.

The Agency disagrees with this argument. Incineration is in fact a treatment process. It meets the definition of "treatment" in Section 1004(34) of RCRA:

> * * * 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 non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume * * *

The objective of incinerating hazardous waste is normally to change the physical form or chemical composition of the waste so as to render it less hazardous. Incineration may also render the waste "safer for transport, amenable for recovery, amenable for storage, or reduced in volume." Therefore, incineration is a treatment process within the meaning of RCRA, and the Agency has a mandate to produce operation, location, design, and construction regulations for the incineration of hazardous waste adequate to protect human health and the environment. The interaction of RCRA and the Clean Air Act is discussed above.

1. *General Operating Requirements.* Some commenters requested that a specific period of time during start-up and shutdown be designated, during which the proposed performance standards (for combustion and destruction efficiency) would not apply. These commenters claimed that during these periods, temperature and other combustion conditions are subject to wide fluctuations, and thus, obtaining the required destruction efficiencies during these times would be difficult. The Agency agrees that these fluctuations can occur during start-up periods, and believes that this undoubtedly results in hazardous emissions. To counter this problem, the final rules require that incinerators achieve normal steady state combustion conditions, using auxiliary fuel, before wastes are introduced.

2. *Monitoring and Inspections.* A number of comments were received on the proposed monitoring and facility inspection requirements. Commenters raised questions about the expense and reliability of the required gaseous monitoring equipment, the frequency of inspection, and the specification of monitoring points. Detailed monitoring requirements and the comments on these requirements will be addressed in the Phase II and Phase III regulations. In these Phase I rules, the Agency has specified a minimum schedule for monitoring and inspecting the operation of incinerators. Combustion and emission control equipment must be monitored, and operating corrections made when necessary, at least every 15 minutes, to ensure that critical conditions are not allowed to vary in an uncontrolled manner. In addition, inspection points, such as visible stack emissions and critical pumps, are also required to be inspected in accordance with both the minimum frequencies specified in the Subpart O standards, and in the facility inspection Schedule (see preamble discussion on "Inspections").

3. *Waste Analysis.* The requirements for waste analysis were contained in the General Facility Standards section of the proposed regulations. As explained earlier in the preamble discussion entitled "Waste Analysis", each technical section of the final rules contains waste analysis requirements specific to the management method regulated in that section. Accordingly, the final Subpart O standards include waste analysis requirements which specify the parameters and constituents for which each type of waste must be analyzed. This analysis will enable the operator to determine the type of pollutants which might be emitted from the incinerator and to estimate the necessary combustion conditions. In addition, the final general waste analysis rules require that each shipment be inspected and, if necessary, analyzed to verify that the waste actually received at the facility is the same as that which was expected. The waste analysis standards specified in Subpart O are minimum procedures necessary to adequately operate an incinerator. Most reputable hazardous waste incineration operators currently obtain considerably more detailed information on a new waste before incinerating it than these standards require. All testing required in Subpart O is to be included in the waste analysis plan discussed above.

4. *Energy Recovery.* Some commenters claimed that many waste oils and solvents are usable as fuels and are hazardous only because of their ignitability, and that too great an economic burden would result from subjecting these relatively easily combusted materials to the detailed combustion, monitoring, and other requirements specified in the proposed rules. The Agency has decided that the burning of hazardous waste for energy recovery will not now be covered under the hazardous waste provisions of RCRA. (However, storage or transportation of listed hazardous waste prior to energy recovery is covered by these regulations.) Accordingly, if waste oils and solvents are burned as a fuel in a boiler primarily to produce steam or usable energy, this action is not now covered by these regulations.

Facilities in which hazardous wastes are burned, and in which energy recovery is only incidental or minimal, are subject to the Subpart O incinerator standards. Examples of activities covered by these regulations include (1) coincinerating wastes with high thermal value to help offset the lack of thermal value in other waste, and (2) destroying wastes in an incinerator to which a waste heat recovery boiler has been added. The decision as to whether a facility is subject to the Subpart O standards depends on the primary purpose of the unit in which the waste is destroyed. If the primary purpose is to provide steam, such as in a power boiler, the operation is not covered. If the primary purpose is to treat wastes, then the unit is subject to the Subpart O standards.

5. *Closure.* At closure, all hazardous waste and hazardous waste residues

(including ash, scrubber waters, and scrubber sludges) must be removed from the incinerator.

Commenters noted that the proposed rules did not specifically address residues from incinerators. Pursuant to § 261.3(e), residues removed from hazardous waste incinerators are considered to be hazardous wastes, and they must be managed as hazardous wastes in accordance with all applicable requirements of Parts 262, 263, and 265, unless the owner or operator can demonstrate that the residue is not a hazardous waste. The incinerator operator is a "generator" with regard to such wastes, unless they are exempted. A comment to this effect has been added to the final rules.

O. Subpart P—Thermal Treatment

Because incineration is the most prevalent method currently used to thermally treat hazardous waste, both the proposed and final rules contain a separate section specific to this waste management technique. However, incineration is only one type of management process that can be used to thermally treat hazardous waste. There are several less conventional methods that are being developed as an alternative to classic incineration. For example, an EPA research and development program is exploring the performance characteristics of a microwave discharge system for destruction of toxic compounds in gaseous, liquid, and solid forms. Currently, the system has been found successful, with some inherent limitations, for treating certain toxic organic compounds.

Several commenters were concerned that, because the proposed rules contained no requirements applicable to methods other than incineration to thermally degrade hazardous waste, the proposed rules might discourage the development and utilization of alternative thermal treatment processes.

The Agency intends to encourage the development and use of these emerging technologies. Therefore, the final rules contain a separate Subpart specific to thermal treatment processes other than incineration. In addition, a definition of "thermal treatment" has been added to the final rules to more explicitly define the relationship between incinerators and other thermal treatment devices. Thermal treatment is defined as:

"the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incinerators, molten salt pyrolysis, calcination, wet air oxidation, and microwave discharge."

Incinerators are a subset of the thermal treatment class; thus, most of the Phase I Subpart P standards for thermal treatment facilities are similar to the Phase I Subpart O incinerator standards. This section of the preamble only discusses those aspects which differ.

The interim status standards require that thermal treatment processes achieve steady state (normal) conditions of operation before introducing hazardous waste. The rationale for this requirement is the same as for incinerators. The steady state requirement for thermal treatment has been modified because some acceptable thermal treatment processes may not operate in a steady state manner (e.g., batch-wise or non-continuous processes in which waste is introduced to the treatment chamber prior to the application of heat).

Although not proposed as an interim status standard, a ban on open burning of hazardous wastes was contained in the General Facility Standards section of the proposed regulations. This requirement has been incorporated into the interim status standards for thermal treatment because the potential human health hazards associated with the practice dictate that open burning be ended now. Comments received on the proposed standard centered around the military's need to dispose of explosives in the open. The Agency agrees that open burning and open detonation are currently the only alternatives for disposal of most munitions, and thus a modified and more detailed version of the proposed variance for waste explosives has been retained in the final rules.

Waste explosives and bulk propellants are inherently dangerous to cut or disassemble to make them amenable to present thermal treatment technologies. This hazard is demonstrated by the number of damage incidents that have occurred during cutting and handling processes at explosives manufacturing facilities. Open burning and open detonation of known types and amounts of bulk propellants and explosives can be conducted safely without harm to human health and the environment.

The Agency has decided to allow open burning and open detonation of waste explosives during the interim status period, provided that it is conducted at minimum distances from the property of others. These minimum separation distances were developed and published by the Department of Defense. The interim status standards for open burning allow small amounts of explosives (up to 100 pounds) to be open burned or open detonated at a minimum of 204 meters (670 feet) from locations where there may be persons in the open (e.g., the property of others), and succeedingly greater distances for greater amounts of explosives. These limits were developed by DOD as minimum safe distances for the protection of persons in the open from fragmentation, flying debris, or the effects of overpressure. Since DOD does not provide safe distances for protection from fragmentation for amounts of explosive waste larger than 30,000 pounds, the Agency has limited the amount of explosive waste that can be open burned at any one time to 30,000 pounds.

Technical performance and design requirements for thermal treatment processes are being developed. These technical criteria will be addressed during Phases II and III of the RCRA regulatory program. These standards will be accompanied by a design and operation guidance manual, which will assist permitting officials, the regulated community, and the public in evaluating the adequacy of specific types of thermal treatment processes.

P. Subpart Q—Chemical, Physical, and Biological Treatment

The proposed regulations covered the treatment of hazardous waste primarily by setting standards for treatment in basins (now tanks), surface impoundments, land treatment facilities, and incinerators. While these are the primary kinds of equipment or facilities used to treat hazardous waste, chemical, physical, and biological treatment of hazardous waste can also be conducted in other types of equipment by processes such as distillation, centrifugation, reverse osmosis, ion exchange, and filtration. The proposed regulations contained a section designed to regulate such chemical, physical, and biological treatment. Because there are many different types of possible processes, and because the processes are frequently waste-specific, EPA has not attempted to develop detailed regulations for any particular type of process or equipment.

The Agency's primary concerns in developing these regulations has been, as it has been for other types of facilities and equipment, the safe containment of hazardous waste, hazardous waste constituents, and treatment byproducts through waste analysis, inspections, special attention to the handling of ignitable, reactive, or incompatible wastes, and proper closure. In these

respects, most chemical, physical, and biological treatment operations present essentially the same problems and require essentially the same solutions as the treatment of hazardous wastes in tanks. The equipment is typically stationary and fairly large, and the materials used and the problems encountered in that part of the equipment which contains the waste are not dissimilar from the materials used and the problems encountered in constructing tanks.

In addition, as discussed above in Subpart J, the Agency has reoriented its tank regulations to cover treatment in tanks as well as storage, and many of the current tank regulations have been drawn from the proposed regulations for chemical, physical, and biological treatment. For these reasons, the present regulations for chemical, physical, and biological treatment and for tanks have both been derived from a merging of the proposed regulations for these types of equipment, for basins (which are now treated as tanks), and for storage and treatment generally. The tank regulations and the chemical, physical, and biological treatment regulations are now essentially identical, and the rationale for the regulations on chemical, physical, and biological treatment is therefore presented above with the rationale for the regulations on tanks.

The Agency expects to develop somewhat more specific standards for chemical, physical, and biological treatment facilities in the Phase II and Phase III regulations, and for this reason these regulations have been incorporated in a separate Subpart.

The regulations for chemical, physical, and biological treatment (Subpart Q) differ from those for tanks (in Subpart J) in one respect. Subpart Q contains no requirement for maintaining a freeboard or inspecting to ensure that the freeboard is maintained because, to the Agency's knowledge, the treatment processes regulated under Subpart Q are conducted in covered containment devices, and a freeboard is unnecessary.

EPA received a number of comments on its proposed Section 3004 regulations requesting the Agency to clarify whether pipes and other types of totally enclosed facilities in which hazardous waste may be treated would be considered hazardous waste treatment facilities and would be required to meet Section 3004 standards and obtain a permit. Commenters pointed out that in some production processes, wastes (particularly acid and alkaline solutions) are treated in-pipe, often resulting in a non-hazardous discharge.

EPA agrees that to classify "totally enclosed treatment systems," such as pipes, as hazardous waste treatment facilities and to require them to meet Section 3004 standards and obtain a permit would not make a great deal of sense. These facilities by definition do not release wastes or waste constituents into the environment, and therefore stringent controls are not "necessary to protect human health and the environment." Such controls might also discourage the use of such facilities, which in many ways represent the optimum in good waste management practices. It may also be very difficult as a practical matter to permit or otherwise regulate these types of facilities—many are indoors, are part of complicated plumbing systems which do not fall within RCRA's jurisdiction, and do not have clearly defined starting and end points. Accordingly, EPA has excluded these facilities from regulation under this Part.

Persons who handle hazardous waste in what they believe to be a "totally enclosed treatment facility" should carefully read the definition of that term in § 260.10 of this Chapter. The key characteristic of such a facility is that it does not release any hazardous waste or constituent of hazardous waste into the environment during treatment. Thus, if a facility leaks, spills, or discharges waste or waste constituents, or emits wastes or waste constituents into the air during treatment, it is not a "totally enclosed treatment facility" within the meaning of these regulations.

Another important characteristic of a totally enclosed treatment facility is that it must be directly connected to an industrial production process. Thus, such a facility located at an off-site hazardous waste management facility does not qualify for exclusion from these regulations.

After treatment in a totally enclosed treatment facility, the resulting discharge, treatment residue, etc., may be a hazardous waste and subject to regulation under this Part. Owners and operators of such facilities should consult § 261.3 of this Chapter to determine whether that is the case.

Q. Subpart R—Underground Injection

Under § 250.40(e)(6) of the proposed regulation, the disposal of hazardous wastes via underground injection, pursuant to the Safe Drinking Water Act (SDWA) regulations, was not subject to regulation under the RCRA Subtitle C program. That exclusion was based on Section 1006 of RCRA which requires the Administrator to integrate RCRA regulations with programs under the Agency's other statutory authorities, including the Safe Drinking Water Act. Commenters were generaly supportive of EPA's efforts to coordinate its programs, but some expressed concern that exclusive reliance on the Underground Injection Control program under the SDWA in addressing the environmental problems presented by underground injection of hazardous wastes would not fully satisfy the key health and environmental concerns embodied in RCRA.

Based on a review of the comments and further analysis of this issue, EPA has concluded that underground injection of hazardous wastes must be regulated under RCRA during the interim status period. Thus the Agency has developed Subpart R in Part 265 which specifies the particular standards applicable to disposal of hazardous waste by underground injection. In addition, owners and operators of hazardous waste injection wells will be subject to the general requirements (other than Subparts G and H) applicable to all hazardous waste treatment, storage, and disposal facilities. The Agency recognizes that some of these general requirements may not apply directly to all underground injection of hazardous waste, in the same sense that some may not apply directly to all other types of hazardous waste facilities. The requirements, however, are written with sufficient flexibility and variances to accommodate the differences among facilities, including the somewhat different aspects of underground injection.

Underground injection of hazardous waste constitutes "disposal" as that term is defined in Section 1004(3) of RCRA. The definition specifically includes "*injection* . . . of any solid waste or hazardous waste into or on any land or water." Moreover there is no specific language in the Act indicating that injection activities that may be subject to the SDWA are necessarily beyond RCRA jurisdiction. RCRA was enacted after the SDWA. The Congress, therefore, had an opportunity to impose any specific limits on RCRA jurisdiction that it deemed appropriate. It is significant that the Congress did place limits on RCRA jurisdiction to coordinate RCRA programs with the Clean Water Act. For example, the definition of "solid waste" under RCRA excludes "solid or dissolved materials in . . . industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act." No such statutory exclusion exists for

underground injection of hazardous wastes.

Section 1006 does require the Administrator to integrate the provisions of RCRA with appropriate provisions of various statutes (including the SDWA) which EPA administers. Such integration is only required, however, "to the extent that it can be done in a manner consistent with the goals and policies expressed" in RCRA and the other statutes.

When EPA's statutory authorities provide overlapping jurisdiction over certain activities it is within the discretion of the Administrator to decide which program will be used to regulate the activity. In order to implement the goals and policies of each law, the Administrator will incorporate the key elements of each statute into its regulatory program. Section 1006 of RCRA provides statutory recognition that such coordinated regulatory programs are appropriate.

In evaluating the proposed regulation, EPA decided that complete reliance on the UIC program to handle underground injection of hazardous waste during the interim status period could not adequately address three key RCRA concerns. First, RCRA is aimed at protection of a broad range of environmental media, including ground-water, surface water, air, and land. The UIC program is directed at the protection of underground sources of drinking water. Second, Section 3004 of RCRA requires the Administrator to establish standards "to protect human health and the environment." This language indicates that RCRA regulations were to address a broader range of environmental problems than the UIC program. Third, the UIC program does not have the equivalent of an interim status period when owners or operators who dispose of hazardous waste by underground injection are subject to Federally enforceable standards. Enforcement of environmental controls under the UIC program must await: the identification of States needing a program; the development of State programs for primary enforcement responsibility; the approval or disapproval of those programs by EPA; and the development of UIC programs by EPA in States which fail to develop and implement adequate programs for primary enforcement responsibility. EPA does not believe that UIC primary enforcement programs will be in place in all States on the effective date of these interim status regulations. Therefore, in order to provide control over underground injection of hazardous waste during the interim status period, as contemplated by RCRA, it is necessary to regulate underground injection under these regulations.

Section 1006 directs the Administrator, in the coordination of EPA's other statutes with RCRA, to avoid duplication and to structure RCRA regulations so that they will not be inconsistent with the requirements of other statutes (such as the SDWA). EPA is mindful of that requirement and intends to coordinate the later stages of the RCRA and UIC programs so that the key elements of the statutory scheme in the SDWA will be preserved. EPA does not believe, however, that the regulation of underground injection of hazardous wastes in these interim status regulations is inconsistent with the SDWA. As mentioned earlier the UIC program does not have the equivalent of an interim status period. Thus there can be no conflict with SDWA provisions.

The regulation of underground injection during interim status was not a part of the proposed regulation, but the decision to do so was partially based on factors raised in public comments. Moreover, the Agency does not expect that the application of some of the general requirements, otherwise required at all facilities, to underground injection raises substantially different issues than those raised and addressed in the development of the interim status regulations. Therefore, the inclusion of underground injection in these regulations and the application of certain general requirements to injection wells are being issued as "interim final." This approach provides for prompt implementation of regulations concerning these practices, in keeping with RCRA goals and policies, while allowing an opportunity of public comment to reveal any unique problems that may arise in applying the general requirements of the interim status regulations to underground injection.

Underground injection will not, however, be subject to Subpart G and H of the interim status regulations which address closure and post-closure care as well as the financial requirements necessary to ensure implementation of closure and post-closure care requirements. Requirements for closure and post-closure care need to be coordinated with the more specific technical requirements applicable to underground injection. EPA has decided, therefore, to address closure and post-closure as part of the proposed regulation described below.

Subpart R of these regulations indicates those parts of the regulation which are not applicable to underground injection. In addition it should be recognized that the ground-water monitoring requirements of Subpart F have not been applied to underground injection at this time. Subpart R also indicates that it applies to Class I and Class IV wells as those term are defined under § 122.32 of the consolidated permitting regulations.

This provision is designed to show that these regulations cover, at a minimum, those underground injection facilities that will be subject to control under the UIC program.

The Agency is proposing regulations that provide more specific requirements to deal with the particular environmental problems presented by underground injection. These proposed regulations will amend Subpart R and will address issues relating to direct injection of hazardous waste, general operating requirements, waste analysis, monitoring, closure and post-closure care, recordkeeping and reporting, and special requirements for ignitable, reactive or incompatible wastes.

VI. OMB Review

The sections of the regulations issued under Section 3004 of RCRA pertaining to recordkeeping and reporting have been submitted to the Office of Management and Budget for review in light of the requirements of the Federal Reports Act, 44 U.S.C. § 3501 *et seq.* Time has not permitted completion of this review.

VII. Supporting Documents

The Agency has developed or will prepare two sets of documents in conjunction with the Section 3004 rules. This section of the preamble describes these documents.

A. Background Documents

Eighteen background documents have been developed to explain and respond to comments on the Phase I rules. Additional documents will accompany the Phase II and Phase III regulations as they are published. These background documents basically correspond to each Section or Subpart of the final rules. Each contains an explanation of the data and reasoning which led the Agency to propose each regulation, an in-depth review of the comments received on the regulation, an analysis of the comments, and the Agency's rationale for accepting or rejecting these comments.

Copies of these documents will be available for review in the EPA regional office libraries and at the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. EPA will publish a notice in the **Federal Register** when these documents have all been

reproduced and distributed to these libraries. They will be available from Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268, within six months after these regulations are promulgated.

A list of these background documents is as follows:

1. Purpose, Scope, and Applicability (including general issues concerning Interim Status Standards)
2. General Waste Analysis Requirements
3. Security
4. General Inspection Requirements
5. Personnel Training
6. Preparedness and Prevention, Contingency Plans, and Emergency Procedures
7. Manifest System, Recordkeeping, and Reporting
8. Interim Status Standards for Ground-Water Monitoring
9. Interim Status Standards for Closure and Post-Closure Care
10. Interim Status Financial Requirements
11. Interim Status Standards for Containers and Piles
12. Interim Status Standards for Tanks
13. Interim Status Standards for Surface Impoundments
14. Interim Status Standards for Land Treatment
15. Interim Status Standards for Landfills
16. Interim Status Standards for Incinerators
17. Interim Status Standards for Thermal Treatment
18. Interim Status Standards for Chemical, Physical, and Biological Treatment.

B. Reference Manuals

These regulations, and those yet to be promulgated in Phases II and III, will constitute the full set of requirements for managing hazardous waste. However, their reliance on performance standards and the incorporation of variance procedures provide considerable flexibility to accommodate new technologies, special needs of specific locations, and variations in waste characteristics.

To assist both owners and operators of facilities and regulatory officials, EPA will prepare a series of design and operation manuals. These will not have the effect of regulations, but will provide guidance on how facilities may be designed and operated to meet the standards. The manuals will also provide guidance on what modifications and variations are likely to be effective under the variance procedures. They will be organized to correspond closely to the regulations and will be based on the collective knowledge of the Agency, the literature, and experts throughout the world. Manuals will also be prepared for testing, training, and monitoring.

EPA expects to prepare the following manuals:

1. Training
2. Ground-Water Monitoring
3. Air Monitoring
4. Financial Responsibility
5. Containers
6. Tanks
7. Surface Impoundments
8. Waste Piles
9. Land Treatment
10. Landfilling
11. Incineration
12. Thermal Treatment
13. Chemical, Physical, and Biological Treatment

The Agency expects to issue these manuals before the effective date (i.e., six months after promulgation) of the Phase II technical regulations. They will be revised from time to time as more information becomes available, and as the final Phase III regulations are developed. The documents will be available for review in the EPA regional office libraries and the EPA headquarters library, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. Later the Agency will publish the documents for distribution through Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268.

Dated: May 2, 1980.

Douglas Costle,

Administrator.

Title 40 is amended by adding new Parts 264 and 265 as set forth below.

The following sections are being promulgated on an interim final basis (See Preamble Section IIB3 for discussion):

PART 264

Sec.

264.12 Required Notices.

PART 265

Subpart B—General Facility Standards

265.12 Required notices.
265.17 General requirements for ignitable, reactive, or incompatible wastes.

Subpart F—Ground-Water Monitoring

265.90 Applicability.
265.91 Ground-water monitoring system.
265.92 Sampling and analysis.
265.93 Preparation, evaluation, and response.
265.94 Recordkeeping and reporting.

Subpart G—Closure and Post-closure

Sec.
265.111 Closure performance standard.
265.112 Closure plan; amendment of plan.
265.113 Time allowed for closure.
265.117 Post-closure care and use of property; period of care.
265.118 Post-closure plan; amendment of plan.

Subpart I—Use and Management of Containers

265.176 Special requirements for ignitable or reactive waste.

Subpart J—Tanks

265.198 Special requirements for ignitable or reactive waste.

Subpart K—Surface Impoundments

265.228 Closure and post-closure.

Subpart L—Waste Piles

265.251 Protection from wind.
265.252 Waste analysis.
265.253 Containment.
265.256 Special requirements for ignitable or reactive waste.
265.257 Special requirements for incompatible wastes.

Subpart M—Land Treatment

265.272 General operating requirements.
265.273 Waste analysis.
265.276 Food chain crops.
265.278 Unsaturated zone (zone of aeration) monitoring.
265.280 Closure and post-closure.

Subpart N—Landfills

265.310 Closure and post-closure.
265.314 Special requirements for liquid waste.
265.315 Special requirements for containers.

Subpart O—Incinerators

265.343 General operating requirements.
265.345 Waste analysis.
265.347 Monitoring and inspections.
265.351 Closure.

Subpart P—Thermal Treatment

265.373 General operating requirements.
265.375 Waste analysis.
265.377 Monitoring and inspections.
265.381 Closure.
265.382 Open burning; waste explosives.

Subpart Q—Chemical, Physical, and Biological Treatment

265.405 Special requirements for ignitable or reactive waste.

Subpart R—Underground Injection

265.430 Applicability

EPA will also accept comments on the propriety of including the following sections as interim status standards (See Preamble Section IIB3 for discussion):

PART 265

Subpart B—General Facility Standards

Sec.
265.13 General waste analysis.

Subpart J—Tanks

Sec.
265.192 General operating requirements.
265.193 Waste analysis and trial tests.

Subpart K—Surface Impoundments

265.222 General operating requirements.
265.223 Containment system.
265.225 Waste analysis and trial tests.
265.229 Special requirements for ignitable or reactive waste.
265.230 Special requirements for incompatible wastes.

Subpart M—Land Treatment

265.281 Special requirements for ignitable or reactive waste.
265.282 Special requirements for incompatible wastes.

Subpart N—Landfills

265.302 General operating requirements.
265.312 Special requirements for ignitable or reactive waste.

Subpart Q—Chemical, Physical, and Biological Treatment

265.401 General operating requirements.
265.402 Waste analysis and trial tests.

Comments should be forwarded to: RCRA Docket Clerk, Room 2711, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subpart A—General

Sec.
264.1 Purpose, scope and applicability.
264.2 [Reserved]
264.3 Relationship to interim status standards.
264.4 Imminent hazard action.
264.5–264.9 [Reserved]

Subpart B—General Facility Standards

264.10 Applicability.
264.11 Identification number.
264.12 Required notices.
264.13 General waste analysis.
264.14 Security.
264.15 General inspection requirements.
264.16 Personnel training.
264.17–264.29 [Reserved]

Subpart C—Preparedness and Prevention

264.30 Applicability.
264.31 Design and operation of facility.
264.32 Required equipment.
264.33 Testing and maintenance of equipment.
264.34 Access to communications or alarm system.
264.35 Required aisle space.
264.36 Special handling for ignitable or reactive waste.
264.37 Arrangements with local authorities.
264.38–264.49 [Reserved]

Subpart D—Contingency Plan and Emergency Procedures

Sec.
264.51 Purpose and implementation of contingency plan.
264.52 Content of contingency plan.
264.53 Copies of contingency plan.
264.54 Amendment of contingency plan.
264.55 Emergency coordinator.
264.56 Emergency procedures.
264.57–264.69 [Reserved]

Subpart E—Manifest System, Recordkeeping, and Reporting

264.70 Applicability.
264.71 Use of manifest system.
264.72 Manifest discrepancies
264.73 Operating record.
264.74 Availability, retention, and disposition of records.
264.75 Annual report.
264.76 Unmanifested waste report.
264.77 Additional reports.
264.78–264.999 [Reserved]
Appendix I—Recordkeeping instructions.
Appendix II—EPA report form and instructions.

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

Subpart A—General

§ 264.1 Purpose, scope and applicability.

(a) The purpose of this Part is to establish minimum national standards which define the acceptable management of hazardous waste.

(b) The standards in this Part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this Part or Part 261 of this Chapter.

(c) The requirements of this Part apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act only to the extent they are included in a RCRA permit by rule granted to such a person under Part 122 of this Chapter.

[*Comment:* These Part 264 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.]

(d) The requirements of this Part apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by § 122.45 of this Chapter.

[*Comment:* These Part 264 regulations do apply to the above-ground treatment or storage of hazardous waste before it is injected underground.]

(e) The requirements of this Part apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under Part 122 of this Chapter.

(f) The requirements of this Part do not apply to a person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A and B of Part 123 of this Chapter or with a RCRA Phase II hazardous waste program authorized under Subpart F of Part 123 of this Chapter, except that the requirements of this Part will continue to apply as stated in paragraph (d) of this Section, if the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection.

(g) The requirements of this Part do not apply to:

(1) The owner or operator of a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this Part by § 261.5 of this Chapter;

(2) The owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in § 261.6(a) of this Chapter, except to the extent that § 261.6(b) of this Chapter provides otherwise;

(3) A generator accumulating waste on-site in compliance with § 262.34 of this Chapter;

(4) A farmer disposing of waste pesticides from his own use in compliance with § 262.51 of this Chapter; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in § 260.10.

§ 264.2 [Reserved]

§ 264.3 Relationship to interim status standards.

A facility owner or operator who has fully complied with the requirements for interim status—as defined in Section 3005(e) of RCRA and regulations under § 122.23 of this Chapter—must comply with the regulations specified in Part 265 of this Chapter in lieu of the regulations in this Part, until final administrative disposition of his permit application is made.

[*Comment:* As stated in Section 3005(a) of RCRA, after the effective date of regulations under that Section, i.e., Parts 122 and 124 of this Chapter, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit. Section

3005(e) of RCRA provides for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner's or operator's permit application is made.]

§ 264.4 Imminent hazard action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought purusant to Section 7003 of RCRA.

§§ 264.5–264.9 [Reserved]

Subpart B—General Facility Standards

§ 264.10 Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as § 264.1 provides otherwise.

§ 264.11 Identification number.

Every facility owner or operator must apply to EPA for an EPA identification number in accordance with the EPA notification procedures (45 FR 12746).

§ 264.12 Required notices.

(a) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and Part 122 of this Chapter.

[*Comment:* An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.]

§ 264.13 General waste analysis.

(a) (1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this Part or with the conditions of a permit issued under Part 122, Subparts A and B, and Part 124 of this Chapter.

(2) The analysis may include data developed under Part 261 of this Chapter, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

[*Comment:* For example, the facility's records of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this Section. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by paragraph (a)(1) of this Section. If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.]

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and

(ii) For off-site facilities, when the results of the inspection required in paragraph (a)(4) of this Section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with paragraph (a) of this Section. He must keep this plan at the facility. At a minimum, the plan must specify:

(1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this Section);

(2) The test methods which will be used to test for these parameters;

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in Appendix I of Part 261 of this Chapter; or

(ii) An equivalent sampling method.

[*Comment:* See § 261.20(c) of this Chapter for related discussion.]

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

(c) For off-site facilities, the waste analysis plan required in paragraph (b) of this Section must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

[*Comment:* Part 122, Subpart B, of this Chapter requires that the waste analysis plan be submitted with Part B of the permit application.]

§ 264.14 Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, *unless* he can demonstrate to the Regional Administrator that:

(1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or

livestock onto the active portion of a facility, will not cause a violation of the requirements of this Part.

[*Comment:* Part 122, Subpart B, of this Chapter requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.]

(b) Unless the owner or operator has made a successful demonstration under paragraphs (a)(1) and (a)(2) of this Section, a facility must have:

(1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2) (i) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

[*Comment:* The requirements of paragraph (b) of this Section are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of paragraph (b)(1) or (b)(2) of this Section.]

(c) Unless the owner or operator has made a successful demonstration under paragraphs (a)(1) and (a)(2) of this Section, a sign with the legend, "Danger—Unauthorized Personnel Keep Out", must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility (e.g., facilities in counties bordering the Canadian province of Quebec must post signs in French; facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

§ 264.15 General inspection requirements.

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to—(1) release of hazardous waste constituents to the environment or (2) a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator must develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) He must keep this schedule at the facility.

(3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use.

[*Comment:* Part 122, Subpart B, of this Chapter requires the inspection schedule to be submitted with Part B of the permit application. EPA will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, EPA may modify or amend the schedule as may be necessary.]

(c) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

§ 264.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this Section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems;

(iv) Response to fires or explosions;

(v) Response to ground-water contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this Section within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this Section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this Section.

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar

positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position; (3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this Section;

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this Section has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

§§ 264.17—264.29 [Reserved]

Subpart C—Preparedness and Prevention

§ 264.30 Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as § 264.1 provides otherwise.

§ 264.31 Design and operation of facility.

Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

§ 264.32 Required equipment.

All facilities must be equipped with the following, *unless* it can be demonstrated to the Regional Administrator that none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

[*Comment:* Part 122, Subpart B, of this Chapter requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.]

§ 264.33 Testing and maintenance of equipment.

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

§ 264.34 Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* the Regional Administrator has ruled that such a device is not required under § 264.32.

(b) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* the Regional Administrator has ruled that such a device is not required under § 264.32.

§ 264.35 Required aisle space.

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, *unless* it can be demonstrated to the Regional Administrator that aisle space is not needed for any of these purposes.

[*Comment:* Part 122, Subpart B, of this Chapter requires that an owner or operator who wishes to make the demonstration referred to above must do so with Part B of the permit application.]

§ 264.36 Special handling for ignitable or reactive waste.

The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

§ 264.37 Arrangements with local authorities.

(a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;

(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

§§ 264.38—264.49 [Reserved]

Subpart D—Contingency Plan and Emergency Procedures

§ 264.50 Applicability.

The regulations in this Subpart apply to owners and operators of all

hazardous waste facilities, except as § 264.1 provides otherwise.

§ 264.51 Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

§ 264.52 Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with §§ 264.51 and 264.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112 or Part 151 of this Chapter, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part.

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 264.37.

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. *For new facilities,* this information must be supplied to the Regional Administrator at the time of certification, rather than at the time of permit application.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

§ 264.53 Copies of contingency plan.

A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the facility; and

(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

[*Comment:* The contingency plan must be submitted to the Regional Administrator with Part B of the permit application under Part 122, Subparts A and B, of this Chapter and, after modification or approval, will become a condition of any permit issued.]

§ 264.54 Amendment of contingency plan.

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) The facility permit is revised;

(b) The plan fails in an emergency;

(c) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

[*Comment:* A change in the lists of facility emergency coordinators or equipment in the contingency plan constitutes a minor modification to the facility permit to which the plan is a condition.]

§ 264.55 Emergency coordinator.

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

[*Comment:* The emergency coordinator's responsibilities are more fully spelled out in § 264.56. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.]

§ 264.56 Emergency Procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under Part 1510 of this Title) or the National

Response Center (using their 24-hour toll free number 800/424–8802). The report must include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

[*Comment:* Unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this Chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 264 of this Chapter.]

(h) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this Section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident (e.g., fire, explosion);

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

§§ 264.57–264.69 [Reserved]

Subpart E—Manifest System, Recordkeeping, and Reporting

§ 264.70 Applicability.

The regulations in this Subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

§ 264.71 Use of manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in § 264.72(a)) on each copy of the manifest;

[*Comment:* The Agency does not intend that the owner or operator of a facility whose procedures under § 264.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the shipping paper to certify that the hazardous waste covered by the shipping paper was received;

(2) Note any significant discrepancies in the shipping paper (as defined in § 264.72(a)) on each copy of the shipping paper;

[*Comment:* The Agency does not intend that the owner or operator of a facility whose procedures under § 264.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the shipping paper;

(4) Within 30 days after the delivery, send a copy of the shipping paper to the generator; however, if the manifest is received within 30 days after the delivery, the owner or operator, or his agent, must sign and date the manifest and return it to the generator in lieu of the shipping paper; and

[*Comment:* Section 262.23(c) of this chapter requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).]

(5) Retain at the facility a copy of each shipping paper and manifest for at least three years from the date of delivery.

§ 264.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) For bulk waste, variations greater than 10 percent in weight, and (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter

(e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

§ 264.73 Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(3) Records and results of waste analyses performed as specified in § 264.13;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 264.56(j);

(5) Records and results of inspections as required by § 264.15(d) (except these data need be kept only three years); and

(6) For off-site facilities, notices to generators as specified in § 264.12(b).

§ 264.74 Availability, retention, and disposition of records.

(a) All records, including plans, required under this Part must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the Administrator.

(b) The retention period for all records required under this Part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

(c) A copy of records of waste disposal locations and quantities under § 264.73(b)(2) must be submitted to the Regional Administrator and local land authority upon closure of the facility.

§ 264.75 Annual report.

The owner or operator must prepare and submit a single copy of an annual report to the Regional Administrator by March 1 of each year. The report form and instructions in Appendix II must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste; and

(f) The certification signed by the owner or operator of the facility or his authorized representative.

§ 264.76 Unmanifested waste report.

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) of this Chapter, and if the waste is not excluded from the manifest requirement by § 261.5 of this Chapter, then the owner or operator must prepare and submit a single copy of a report to the Regional Administrator within 15 days after receiving the waste. The report form and instructions in Appendix II must be used for this report. The report must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The EPA identification number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste and facility received;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The certification signed by the owner or operator of the facility or his authorized representative; and

(g) A brief explanation of why the waste was unmanifested, if known.

[*Comment:* Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the Agency suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the Agency suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.]

§ 264.77 Additional reports.

In addition to submitting the annual report and unmanifested waste reports described in §§ 264.75 and 264.76, the owner or operator must also report to the Regional Administrator releases, fires, and explosions as specified in § 264.56(j).

§§ 264.78–264.999 [Reserved].

Appendix I.— Recordkeeping Instructions

The recordkeeping provisions of § 264.73 specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping *portions* of the operating record. See § 264.73(b) for additional recordkeeping requirements.

The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner:

Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

(1) A description by its common name and the EPA Hazardous Waste Number(s) from Part 261 of this Chapter which apply to the waste. The waste description also must include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Part 261, Subpart D, of this Chapter, the description also must include the process that produced it (for example, solid filter cake from production of ——, EPA Hazardous Waste Number W051).

Each hazardous waste listed in Part 261, Subpart D, of this Chapter, and each hazardous waste characteristic defined in Part 261, Subpart C, of this Chapter, has a four-digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA Hazardous Waste Numbers.

(2) The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1;

(3) The method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal.

Table 1

Unit of measure	Symbol	Density
Pounds	P	
Short tons (2000 lbs)	T	
Gallons (U.S.)	G	P/G
Cubic yards	Y	T/Y
Kilograms	K	
Tonnes (1000 kg)	M	
Liters	L	K/L
Cubic meters	C	M/C

[1] Single digit symbols are used here for data processing purposes.

Table 2.—Handling Codes for Treatment, Storage, and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage
   - S01 Container (barrel, drum, etc.)
   - S02 Tank
   - S03 Waste pile
   - S04 Surface impoundment
   - S05 Other (specify)
2. Treatment
   - (a) Thermal Treatment
   - T06 Liquid injection incinerator
   - T07 Rotary kiln incinerator
   - T08 Fluidized bed incinerator
   - T09 Multiple hearth incinerator
   - T10 Infrared furnace incinerator
   - T11 Molten salt destructor
   - T12 Pyrolysis
   - T13 Wet Air oxidation
   - T14 Calcination
   - T15 Microwave discharge
   - T16 Cement kiln
   - T17 Lime kiln
   - T18 Other (specify)
   - (b) Chemical Treatment
   - T19 Absorption mound
   - T20 Absorption field
   - T21 Chemical fixation
   - T22 Chemical oxidation
   - T23 Chemical precipitation
   - T24 Chemical reduction
   - T25 Chlorination
   - T26 Chlorinolysis
   - T27 Cyanide destruction
   - T28 Degradation
   - T29 Detoxification
   - T30 Ion exchange
   - T31 Neutralization
   - T32 Ozonation
   - T33 Photolysis
   - T34 Other (specify)
   - (c) Physical Treatment
   - (1) Separation of components
   - T35 Centrifugation
   - T36 Clarification
   - T37 Coagulation
   - T38 Decanting
   - T39 Encapsulation
   - T40 Filtration
   - T41 Flocculation
   - T42 Flotation
   - T43 Foaming
   - T44 Sedimentation
   - T45 Thickening
   - T46 Ultrafiltration
   - T47 Other (specify)
   - (2) Removal of Specific Components
   - T48 Absorption-molecular sieve
   - T49 Activated carbon
   - T50 Blending
   - T51 Catalysis
   - T52 Crystallization
   - T53 Dialysis
   - T54 Distillation
   - T55 Electrodialysis
   - T56 Electrolysis
   - T57 Evaporation
   - T58 High gradient magnetic separation
   - T59 Leaching
   - T60 Liquid ion exchange
   - T61 Liquid-liquid extraction
   - T62 Reverse osmosis
   - T63 Solvent recovery
   - T64 Stripping
   - T65 Sand filter
   - T66 Other (specify)
   - (d) Biological Treatment
   - T67 Activated sludge
   - T68 Aerobic lagoon
   - T69 Aerobic tank
   - T70 Anaerobic lagoon
   - T71 Composting
   - T72 Septic tank
   - T73 Spray irrigation
   - T74 Thickening filter
   - T75 Tricking filter
   - T76 Waste stabilization pond
   - T77 Other (specify)
   - T78–79 [Reserved]
3. Disposal
   - D80 Underground injection
   - D81 Landfill
   - D82 Land treatment
   - D83 Ocean disposal
   - D84 Surface impoundment (to be closed as a landfill)
   - D85 Other (specify)

Appendix II.—EPA Report Form and Instructions

BILLING CODE 6560-01-M

Please print or type with ELITE type *(12 characters per inch)*.

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

EPA U.S. ENVIRONMENTAL PROTECTION AGENCY
HAZARDOUS WASTE REPORT

PLEASE PLACE LABEL IN THIS SPACE

I. TYPE OF HAZARDOUS WASTE REPORT

PART A: GENERATOR ANNUAL REPORT
THIS REPORT IS FOR THE YEAR ENDING DEC. 31, 19__

PART B: FACILITY ANNUAL REPORT
THIS REPORT FOR YEAR ENDING DEC. 31, 19__

PART C: UNMANIFESTED WASTE REPORT
THIS REPORT IS FOR A WASTE RECEIVED *(day, mo., & yr.)* __ __ – __ __ – 19__

INSTRUCTIONS: You may have received a preprinted label attached to the front of this pamphlet; affix it in the designated space above—left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Sections II, III, and IV below blank. If you did not receive a preprinted label, complete all sections. "Installation" means a single site where hazardous waste is generated, treated, stored, or disposed of. Please refer to the specific instructions for generators or facilities before completing this form. The information requested herein is required by law *(Section 3002/3004 of the Resource Conservation and Recovery Act)*.

II. INSTALLATION'S EPA I.D. NUMBER

F | 1 | 2 – 13 | 14 V/A | 15 C 1

III. NAME OF INSTALLATION

26 – 47

IV. INSTALLATION MAILING ADDRESS

STREET OR P.O. BOX
C 3 | 15 | 16 – 45

CITY OR TOWN | ST. | ZIP CODE
C 4 | 15 | 16 – 40 | 41 42 | 47 – 51

V. LOCATION OF INSTALLATION

STREET OR ROUTE NUMBER
C 5 | 15 | 16 – 45

CITY OR TOWN | ST. | ZIP CODE
C 6 | 15 | 16 – 40 | 41 42 | 47 – 51

VI. INSTALLATION CONTACT

NAME *(last and first)* | PHONE NO. *(area code & no.)*
C 2 | 15 | 16 – 45 | 46 – 55

VII. TRANSPORTATION SERVICES USED *(for Part A reports only)*

List the EPA Identification Numbers for those transporters whose services were used during the reporting year represented by this report.

VIII. COST ESTIMATES FOR FACILITIES *(for Part B reports only)*

A. COST ESTIMATE FOR FACILITY CLOSURE	B. COST ESTIMATE FOR POST CLOSURE MONITORING AND MAINTENANCE *(disposal facilities only)*
$, ,	$, ,

IX. 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. PRINT OR TYPE NAME _____ B. SIGNATURE _____ C. DATE SIGNED _____

EPA Form 8700-13 (4-80)

Please print or type with ELITE type *(12 characters/inch).*

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
FACILITY REPORT – PARTS B & C
(Collected under the authority of Section 3004 of RCRA.)

FOR OFFICIAL USE ONLY *(Items 1 & 2)*
1. DATE RECEIVED
2. RECEIVED BY

XVI. TYPE OF REPORT *(enter an "X")*
☐ PART B ☐ PART C

XVII. FACILITY'S EPA I.D. NO.
G

XVIII. GENERATOR'S EPA I.D. NO.

XIX. GENERATOR NAME *(specify)*

XX. GENERATOR ADDRESS *(street or P.O. box, city, state, & zip code)*

XXI. WASTE IDENTIFICATION

LINE NUMBER	A. DESCRIPTION OF WASTE	B. EPA HAZARDOUS WASTE NUMBER *(see instructions)*	C. HANDLING METHOD *(enter code)*	D. AMOUNT OF WASTE	UNIT OF MEASURE *(enter code)*
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

XXII. COMMENTS *(enter information by line number — see instructions)*

EPA Form 8700-13B (5-80)
BILLING CODE 6560-01-C

PAGE ____ OF ____

General Instructions Hazardous Waste Report (EPA Form 8700–13)

Important: Read all instructions before completing this form.

Section I.—Type of Hazardous Waste Report

Part A—Generator Annual Report

For generators who ship their waste off-site to facilities which they do not own or operate; fill in the reporting year for this report (e.g., 1982).

Note.—Generators who ship hazardous waste off-site to a facility which they own or operate must complete the facility (Part B) report instead of the Part A report.

Part B—Facility Annual Report

For owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste; fill in the reporting year for this report (e.g., 1982).

Part C—Unmanifested Waste Report

For facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest; fill in the date the waste was received at the facility (e.g. 04–12–1982).

Section II. thru Section IV.—Installation I.D. Number, Name of Installation, and Installation Mailing Address

If you received a preprinted lable from EPA, attach it in the space provided and leave Sections II through IV blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete Section II through Section IV.

Section V.—Location of Installation

If your installation location address is different than the mailing address, enter the location address of your installation.

Section VI.—Installation Contact

Enter the name (last and first) and telephone number of the person whom may be contacted regarding information contained in this report.

Section VII.—Transportation Services Used (For Part A reports ONLY)

List the EPA Identification Number for each transporter whose services you used during the reporting year.

Section VIII.—Cost Estimates for Facilities (For Part B reports ONLY)

A. Enter the most recent cost estimate for facility closure in dollars. See subpart H of 40 CFR part 264 or 265 for more detail.

B. For disposal facilities only, enter the most recent cost estimate for post closure monitoring and maintenance. See Subpart H of 40 CFR Part 264 or 265 for more detail.

Section IX.—Certification

The generator or his authorized representative (Part A reports) or the owner or operator of the facility or his authorized representative (Parts B and C reports) must sign and date the certification where indicated. The printed or typed name of the person signing the report must also be included where indicated.

Note.—Since more than one page is required for each report, enter the page number of each sheet in the lower right corner as well as the total number of pages.

Facility Annual Report Part B Instructions (EPA Form 8700–13B)

Facility Annual Report for owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste.

Note.—Generators who ship hazardous waste off-site to a facility they own or operate must complete this Part B report instead of the Generator (Part A) Annual Report.

Important: Read All Instructions Before Completing This Form

Section XVI.—Type of Report

Put an "X" in the box marked Part B.

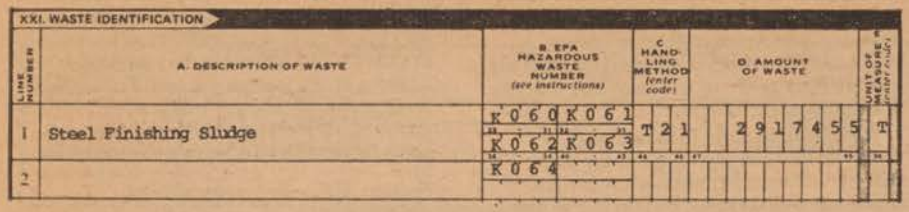
Section XVII.—Facility's EPA Identification Number

Enter the EPA identification number for your facility.

Example:

| XVII. FACILITY'S EPA I.D. NO. | | |

Example:



For unlisted hazardous wastes, enter the EPA Hazardous Waste Numbers from 40 CFR Part 261, Subpart C, applicable to the waste. If more than four spaces are required, follow the procedure described above.

Section XXI–C.—Handling Code

Enter one EPA handling code for each waste line entry. Where several handling steps have occurred during the year, report only the handling code representing the waste's status at the end of the reporting year or its final disposition. EPA handling codes are given in Appendix I of this Part.

Section XXI–D.—Amount of Waste

Enter the total amount of waste described on this line which you received during this reporting year.

Section XXI–E.—Unit of Measure

Enter the unit of measure code for the quantity of waste described on this line. Units of measure which must be used in this report and the appropriate codes are:

Units of measure	Code
Pounds	P
Short tons (2000 lbs)	T
Kilograms	K
Tonnes (1000 kg)	M

Units of volume may not be used for reporting but must be converted into one of the above units of weight, taking into account the appropriate density or specific gravity of the waste.

Section XXII.—Comments

This space may be used to explain or clarify any entry. If used, enter a cross-reference to the appropriate Section number.

Note.—Since more than one page is required for each report, enter the page number of each sheet in the lower right hand corner as well as the total number of pages.

Where required by 40 CFR 264 or 265, subparts F *or* R, attach ground-water monitoring data to this report.

Unmanifested Waste Report Part C Instructions (EPA Form 8700–13B)

Unmanifested Waste Report for facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest.

Important: Read All Instructions Before Completing This Form

For the Unmanifested Waste Report, EPA Forms 8700–13 and 8700–13B must be filled out according to the directions for the Part-B Facility Annual Report except that: (1) blocks for which information is not available to the owner or operator of the reporting facility may be marked "UNKNOWN," and (2) the following special instructions apply:

Section VIII.—Cost Estimates for Facilities

Do not enter closure or post-closure cost estimates.

Section XVI.—Type of Report

Put an "X" in the box marked Part C.

Section XXI–A.—Description of Waste

Use as many line numbers as are needed to describe the waste.

Section XXI–C.—Handling Code

Enter the handling code which describes the status of the waste on the date the report is filed.

Section XXI–D.—Amount of Waste

Enter the amount of waste received, rather than a total annual aggregate.

Section XXII.—Comments

a. Enter the EPA Identification number, name, and address of the transporter, if known. If the transporter is not known to you, enter the name and chauffeur license number of the driver and the State and license number of the transporting vehicle which presented the waste to your facility, if known.

b. Enter an explanation of how the waste movement was presented to your facility; why you believe the waste is hazardous; and how your facility plans to manage the wastes. Continue on a separate blank sheet of paper if additional space is needed.

Monitoring Data

Do not attach monitoring data.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subpart A—General

Sec.

265.1 Purpose, scope, and applicability.
265.2–265.3 [Reserved]
265.4 Imminent hazard action.
265.5–265.9 [Reserved]

Subpart B—General Facility Standards

265.10 Applicability.
265.11 Idenitification number.
265.12 Required notices.
265.13 General waste analysis.
265.14 Security.
265.15 General inspection requirements.
265.16 Personnel training.
265.17 General requirements for ignitable, reactive, or incompatible wastes.
265.18–265.29 [Reserved]

Subpart C—Preparedness and Prevention

265.30 Applicability.
265.31 Maintenance and operation of facility.
265.32 Required equipment.
265.33 Testing and maintenance of equipment.
265.34 Access to communications or alarm system.
265.35 Required aisle space.
265.36 [Reserved]
265.37 Arrangements with local authorities.
265.38–265.49 [Reserved]

Subpart D—Contingency Plan and Emergency Procedures

265.50 Applicability.
265.51 Purpose and implementation of contingency plan.
265.52 Content of contingency plan.
265.53 Copies of contingency plan.
265.54 Amendment of contingency plan.
265.55 Emergency coordinator.
265.56 Emergency procedures.
265.57–265.69 [Reserved]

Subpart E—Manifest System, Recordkeeping, and Reporting

265.70 Applicability.
265.71 Use of manifest system.
265.72 Manifest discrepancies.
265.73 Operating record.
265.74 Availability, retention, and disposition of records.
265.75 Annual report.
265.76 Unmanifested waste report.
265.77 Additional reports.
265.78–265.89 [Reserved]

Subpart F—Ground-Water Monitoring

265.90 Applicability.
265.91 Ground-water monitoring system.
265.92 Sampling and analysis.
265.93 Preparation, evaluation, and response.
265.94 Recordkeeping and reporting.
265.95–265.109 [Reserved]

Subpart G—Closure and Post-Closure

265.110 Applicability.
265.111 Closure performance standard.
265.112 Closure plan; amendment of plan.
265.113 Time allowed for closure.
265.114 Disposal or decontamination of equipment.
265.115 Certification of closure.
265.116 [Reserved]
265.117 Post-closure care and use of property; period of care.
265.118 Post-closure plan; amendment of plan.
265.119 Notice to local land authority.
265.120 Notice in deed to property.
265.121–265.139 [Reserved]

Subpart H—Financial Requirements

Sec.

265.140 Applicability.
265.141 [Reserved]
265.142 Cost estimate for facility closure.
265.143 [Reserved]
265.144 Cost estimate for post-closure monitoring and maintenance.
265.145–265.169 [Reserved]

Subpart I—Use and Management of Containers

265.170 Applicability.
265.171 Condition of containers.
265.172 Compatibility of waste with container.
265.173 Management of containers.
265.174 Inspections.
265.175 [Reserved]
265.176 Special requirements for ignitable or reactive waste.
265.177 Special requirements for incompatible wastes.
265.178–265.189 [Reserved]

Subpart J—Tanks

265.190 Applicability.
265.191 [Reserved]
265.192 General operating requirements.
265.193 Waste analysis and trial tests.
265.194 Inspections.
265.195–265.196 [Reserved]
265.197 Closure.
265.198 Special requirements for ignitable or reactive waste.
265.199 Special requirements for incompatible wastes.
265.200–265.219 [Reserved]

Subpart K—Surface Impoundments

265.220 Applicability.
265.221 [Reserved]
265.222 General operating requirements.
265.223 Containment system.
265.224 [Reserved]
265.225 Waste analysis and trial tests.
265.226 Inspections.
265.227 [Reserved]
265.228 Closure and post-closure.
265.229 Special requirements for ignitable or reactive waste.
265.230 Special requirements for incompatible wastes.
265.231–265.249 [Reserved]

Subpart L—Waste Piles

265.250 Applicability.
265.251 Protection from wind.
265.252 Waste analysis.
265.253 Containment.
265.254–265.255 [Reserved]
265.256 Special requirements for ignitable or reactive waste.
265.257 Special requirements for incompatible wastes.
265.258–265.269 [Reserved]

Subpart M—Land Treatment

265.270 Applicability.
265.271 [Reserved]
265.272 General operating requirements.
265.273 Waste analysis.
265.274–265.275 [Reserved]
265.276 Food chain crops.
265.277 [Reserved]
265.278 Unsaturated zone (zone of aeration) monitoring.

Sec.

265.279 Recordkeeping.
265.280 Closure and post-closure.
265.281 Special requirements for ignitable or reactive waste.
265.282 Special requirements for incompatible wastes.
265.283–265.299 [Reserved]

Subpart N—Landfills

265.300 Applicability.
265.301 [Reserved]
265.302 General operating requirements.
265.303–265.308 [Reserved]
265.309 Surveying and recordkeeping.
265.310 Closure and post-closure.
265.311 [Reserved]
265.312 Special requirements for ignitable or reactive waste.
265.313 Special requirements for incompatible wastes.
265.314 Special requirements for liquid waste.
265.315 Special requirements for containers.
265.316–265.339 [Reserved]

Subpart O—Incinerators

265.340 Applicability.
265.341–265.342 [Reserved]
265.343 General operating requirements.
265.344 [Reserved]
265.345 Waste analysis.
265.346 [Reserved]
265.347 Monitoring and inspections.
265.348–265.350 [Reserved]
265.351 Closure.
265.352–265.369 [Reserved]

Subpart P—Thermal Treatment

265.370 Applicability.
265.371–265.372 [Reserved]
265.373 General operating requirements.
265.374 [Reserved]
265.375 Waste analysis.
265.376 [Reserved]
265.377 Monitoring and inspections.
265.378–265.380 [Reserved]
265.381 Closure.
265.382 Open burning; waste explosives.
265.383–265.399 [Reserved]

Subpart Q—Chemical, Physical, and Biological Treatment

265.400 Applicability.
265.401 General operating requirements.
265.402 Waste analysis and trial tests.
265.403 Inspections.
265.404 Closure.
265.405 Special requirements for ignitable or reactive waste.
265.406 Special requirements for incompatible wastes.
265.407–265.429 [Reserved]

Subpart R—Underground Injection

265.430 Applicability.
265.431–265.999 [Reserved]
Appendix I—Recordkeeping instructions.
Appendix II—EPA report form and instructions.
Appendix III—EPA interim primary drinking water standards.
Appendix IV—Tests for significance.
Appendix V—Examples of potentially incompatible waste.

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

Subpart A—General

§ 265.1 Purpose, scope, and applicability.

(a) The purpose of this Part is to establish minimum national standards which define the acceptable management of hazardous waste during the period of interim status.

(b) The standards in this Part apply to owners and operators of facilities which treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 3005(e) of RCRA and § 122.22 of this Chapter, until final administrative disposition of their permit application is made. These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this Part or Part 261 of this Chapter.

[*Comment:* As stated in Section 3005(a) of RCRA, after the effective date of regulations under that Section, i.e., Parts 122 and 124 of this Chapter, the treatment, storage, or disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility which meets certain conditions until final administrative disposition of the owner's and operator's permit application is made.]

(c) The requirements of this Part do not apply to:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

[*Comment:* These Part 265 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in paragraph (b) of this Section.]

(2) A person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act;

[*Comment:* These Part 265 regulations do apply to the aboveground treatment or storage of hazardous waste before it is injected underground. These Part 265 regulations also apply to the disposal of hazardous waste by means of underground injection, as provided in paragraph (b) of this Section, until final administrative disposition of a person's permit application is made under RCRA

or under an approved or promulgated UIC program.]

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

[*Comment:* The owner or operator of a facility under paragraphs (c)(1) through (c)(3) of this Section is subject to the requirements of Part 264 of this Chapter to the extent they are included in a permit by rule granted to such a person under Part 122 of this Chapter, or are required by § 122.45 of this Chapter.]

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A and B, or Subpart F, of Part 123 of this Chapter, except that the requirements of this Part will continue to apply as stated in paragraph (c)(2) of this Section, if the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection;

(5) The owner or operator of a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this Part by § 261.5 of this Chapter;

(6) The owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in § 261.6(a) of this Chapter, except to the extent that § 261.6(b) of this Chapter provides otherwise;

(7) A generator accumulating waste on-site in compliance with § 262.34 of this Chapter, except to the extent the requirements are included in § 262.34 of this Chapter;

(8) A farmer disposing of waste pesticides from his own use in compliance with § 262.51 of this Chapter; or

(9) The owner or operator of a totally enclosed treatment facility, as defined in § 260.10.

§§ 265.2–265.3 [Reserved]

§ 265.4 Imminent hazard action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Section 7003 of RCRA.

§§ 265.5–265.9 [Reserved]

Subpart B—General Facility Standards

§ 265.10 Applicability

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.11 Identification number.

Every facility owner or operator must apply to EPA for an EPA identification number in accordance with the EPA notification procedures (45 FR 12746).

§ 265.12 Required notices.

(a) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date of the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of this Part and Part 122 of this Chapter. (Also see § 122.23(c) of this Chapter.)

[*Comment:* An owner's or operator's failure to notify the new owner or operator of the requirements of this Part in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.]

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this Part.

(2) The analysis may include data developed under Part 261 of this Chapter, and existing published or documented data on the hazardous waste or on waste generated from similar processes.

[*Comment:* For example, the facility's record of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with paragraph (a)(1) of this Section. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by paragraph (a)(1) of this Section. If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with this Section.]

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous waste has changed; and

(ii) For off-site facilities, when the results of the inspection required in paragraph (a)(4) of this Section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with paragraph (a) of this Section. He must keep this plan at the facility. At a minimum, the plan must specify:

(1) The parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this Section);

(2) The test methods which will be used to test for these parameters;

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in Appendix I of Part 261 of this Chapter; or

(ii) An equivalent sampling method.

[*Comment:* See § 260.20(c) of this Chapter for related discussion.]

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date;

(5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply; and

(6) Where applicable, the methods which will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.345, 265.375, and 265.402.

(c) For off-site facilities, the waste analysis plan required in paragraph (b) of this Section must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

§ 265.14 Security.

(a) The owner or operator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, *unless:*

(1) Physical contact with the waste, structures, or equipment with the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility, and

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of this Part.

(b) Unless exempt under paragraphs (a)(1) and (a)(2) of this Section, a facility must have:

(1) A 24-hour surveillance system (e.g., television monitoring or surveillance by guards of facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(ii) A means to control entry, at all times, through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

[*Comment:* The requirements of paragraph (b) of this Section are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of paragraph (b)(1) or (b)(2) of this Section.]

(c) Unless exempt under paragraphs (a)(1) and (a)(2) of this Section, a sign with the legend, "Danger—Unauthorized Personnel Keep Out," must be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility (e.g., facilities in counties bordering the Canadian province of Quebec must post signs in French; facilities in counties bordering Mexico must post signs in Spanish), and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger—Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

[*Comment:* See § 265.117(b) for discussion of security requirements at disposal facilities during the post-closure care period.]

§ 265.15 General inspection requirements.

(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to—(1) release of hazardous waste constituents to the environment or (2) a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) He must keep this schedule at the facility.

(3) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.194, 265.226, 265.347, 265.377, and 265.403.

(c) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

§ 265.16 Personnel training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this Part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this Section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems;

(iv) Response to fires or explosions;

(v) Response to ground-water contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel must successfuly complete the program required in paragraph (a) of this Section

within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this Section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this Section.

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this Section;

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this Section has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training racords may accompany personnel transferred within the same company.

§ 265.17 General requirements for ignitable, reactive, or incompatible wastes.

(a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other Sections of this Part, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:

(1) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility containing the waste; or

(5) Through other like means threaten human health or the environment.

§§ 265.18–265.29 [Reserved]

Subpart C—Preparedness and Prevention

§ 265.30 Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.31 Maintenance and operation of facility.

Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

§ 265.32 Required equipment.

All facilities must be equipped with the following, *unless* none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

§ 265.33 Testing and maintenance of equipment.

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

§ 265.34 Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under § 265.32.

(b) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under § 265.32.

§ 265.35 Required aisle space.

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, *unless* aisle space is not needed for any of these purposes.

§ 265.36 [Reserved]

§ 265.37 Arrangements with local authorities.

(a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(2) Where more than one police and fire department might respond to an emergency, agreements designating

primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

§ 265.38–265.49 [Reserved]

Subpart D—Contingency Plan and Emergency Procedures

§ 265.50 Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities, except as § 265.1 provides otherwise.

§ 265.51 Purpose and implementation of contingency plan.

(a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

§ 265.52 Content of contingency plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with §§ 265.51 and 265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112 or Part 151 of this Chapter, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part.

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 265.37.

(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

§ 265.53 Copies of contingency plan.

A copy of the contingency plan and all revisions to the plan must be:

(a) Maintained at the facility; and

(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

§ 265.54 Amendment of contingency plan.

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

§ 265.55 Emergency coordinator.

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

[*Comment:* The emergency coordinator's responsibilities are more fully spelled out in § 265.56. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.]

§ 265.56 Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area (in the applicable regional contingency plan under Part 1510 of this Title), or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident (e.g., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

[*Comment:* Unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this Chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

(h) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The owner or operator must notify the Regional Administrator, and appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this Section before operations are resumed in the affected area(s) of the facility.

(j) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident (e.g., fire, explosion);

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

§§ 265.57-265.69 [Reserved]

Subpart E—Manifest System, Recordkeeping, and Reporting

§ 265.70 Applicability.

The regulations in this Subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

§ 265.71 Use of manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in § 265.72(a)) on each copy of the manifest;

[*Comment:* The Agency does not intend that the owner or operator of a facility whose procedures under § 265.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 265.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the shipping paper to certify that the hazardous waste covered by the shipping paper was received;

(2) Note any significant discrepancies in the shipping paper (as defined in § 265.72(a)) on each copy of the shipping paper;

[*Comment:* The Agency does not intend that the owner or operator of a facility whose procedures under § 265.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 265.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the shipping paper;

(4) Within 30 days after the delivery, send a copy of the shipping paper to the generator; however, if the manifest is received within 30 days after the delivery, the owner or operator, or his agent, must sign and date the manifest and return it to the generator in lieu of the shipping paper; and

[*Comment:* Section 262.23(c) of this Chapter requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).]

(5) Retain at the facility a copy of each shipping paper and manifest for at least three years from the date of delivery.

§ 265.72 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) for bulk waste, variations greater than 10

percent in weight, and (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

§ 265.73 Operating record.

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

[*Comment:* See §§ 265.119, 265.279, and 265.309 for related requirements.]

(3) Records and results of waste analyses and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.345, 265.375, and 265.402;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in § 265.56(j);

(5) Records and results of inspections as required by § 265.15(d) (except these data need be kept only three years);

(6) Monitoring, testing, or analytical data where required by §§ 265.90, 265.94, 265.276, 265.278, 265.280(d)(1), 265.347, and 265.377; and,

[*Comment:* As required by § 265.94, monitoring data at disposal facilities must be kept throughout the post-closure period.]

(7) All closure cost estimates under § 265.142 and, for disposal facilities, all post-closure cost estimates under § 265.144.

§ 265.74 Availability, retention, and disposition of records.

(a) All records, including plans, required under this Part must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the Administrator.

(b) The retention period for all records required under this Part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

(c) A copy of records of waste disposal locations and quantities under § 265.73(b)(2) must be submitted to the Regional Administrator and local land authority upon closure of the facility (see § 265.119).

§ 265.75 Annual report.

The owner or operator must prepare and submit a single copy of an annual report to the Regional Administrator by March 1 of each year. The report form and instructions in Appendix II must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2), where required;

(g) The most recent closure cost estimate under § 265.142, and, for disposal facilities, the most recent post-closure cost estimate under § 265.144; and

(h) The certification signed by the owner or operator of the facility or his authorized representative.

§ 265.76 Unmanifested waste report.

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in § 263.20(e)(2) of this Chapter, and if the waste is not excluded from the manifest requirement by § 261.5 of this Chapter, then the owner or operator must prepare and submit a single copy of a report to the Regional Administrator within 15 days after receiving the waste. The report form and instructions in Appendix II must be used for this report. The report must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The EPA identification number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste the facility received;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The certification signed by the owner or operator of the facility or his authorized representative; and

(g) A brief explanation of why the waste was unmanifested, if known.

[*Comment:* Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the Agency suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the Agency suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.]

§ 265.77 Additional reports.

In addition to submitting the annual report and unmanifested waste reports described in §§ 265.75 and 265.76, the owner or operator must also report to the Regional Administrator:

(a) Releases, fires, and explosions as specified in § 265.56(j);

(b) Ground-water contamination and monitoring data as specified in §§ 265.93 and 265.94; and

(c) Facility closure as specified in § 265.115.

§§ 265.78–265.89 [Reserved]

Subpart F—Ground-Water Monitoring

§ 265.90 Applicability.

(a) Within one year after the effective date of these regulations, the owner or

operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a ground-water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility, except as § 265.1 and paragraph (c) of this Section provide otherwise.

(b) Except as paragraphs (c) and (d) of this Section provide otherwise, the owner or operator must install, operate, and maintain a ground-water monitoring system which meets the requirements of § 265.91, and must comply with §§ 265.92–265.94. This ground-water monitoring program must be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

(c) All or part of the ground-water monitoring requirements of this Subpart may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing, and must be kept at the facility. This demonstration must be certified by a qualified geologist or geotechnical engineer and must establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(i) A water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(ii) Unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

(2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(i) Saturated zone characteristics (i.e., geologic materials, physical properties, and rate of ground-water flow); and

(ii) The proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§265.91 and 265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under § 265.93(b), he may, install, operate, and maintain an alternate ground-water monitoring system (other than the one described in §§ 265.91 and 265.92). If the owner or operator decides to use an alternate ground-water monitoring system he must:

(1) Within one year after the effective date of these regulations, submit to the Regional Administrator a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system;

(2) Not later than one year after the effective date of these regulations, initiate the determinations specified in § 265.93(d)(4);

(3) Prepare and submit a written report in accordance with § 265.93(d)(5);

(4) Continue to make the determinations specified in § 265.93(d)(4) on a quarterly basis until final closure of the facility; and

(5) Comply with the recordkeeping and reporting requirements in § 265.94(b).

§ 265.91 Ground-water monitoring system.

(a) A ground-water monitoring system must be capable of yielding ground-water samples for analysis and must consist of:

(1) Monitoring wells (at least one) installed hydraulically upgradient (i.e., in the direction of increasing static head) from the limit of the waste management area. Their number, locations, and depths must be sufficient to yield ground-water samples that are:

(i) Representative of background ground-water quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility; and

(2) Monitoring wells (at least three) installed hydraulically downgradient (i.e., in the direction of decreasing static head) at the limit of the waste management area. Their number, locations, and depths must ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(b) Separate monitoring systems for each waste management component of a facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary (perimeter).

(2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(c) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed with a suitable material (e.g., cement grout or bentonite slurry) to prevent contamination of samples and the ground water.

§ 265.92 Sampling and analysis.

(a) The owner or operator must obtain and analyze samples from the installed ground-water monitoring system. The owner or operator must develop and follow a ground-water sampling and analysis plan. He must keep this plan at the facility. The plan must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

[*Comment:* See "Procedures Manual For Ground-water Monitoring At Solid Waste Disposal Facilities," EPA–530/SW–611, August 1977 and "Methods for Chemical Analysis of Water and Wastes," EPA–600/4–79–020, March 1979 for discussions of sampling and analysis procedures.]

(b) The owner or operator must determine the concentration or value of the following parameters in ground-water samples in accordance with paragraphs (c) and (d) of this section:

(1) Parameters characterizing the suitability of the ground water as a drinking water supply, as specified in Appendix III.

(2) Parameters establishing ground-water quality:

(i) Chloride

(ii) Iron

(iii) Manganese

(iv) Phenols

(v) Sodium

(vi) Sulfate

[*Comment:* These parameters are to be used as a basis for comparison in the event a ground-water quality assessment is required under § 265.93(d).]

(3) Parameters used as indicators of ground-water contamination:

(i) pH

(ii) Specific Conductance

(iii) Total Organic Carbon

(iv) Total Organic Halogen

(c)(1) For all monitoring wells, the owner or operator must establish initial

background concentrations or values of all parameters specified in paragraph (b) of this Section. He must do this quarterly for one year.

(2) For each of the indicator parameters specified in paragraph (b)(3) of this Section, at least four replicate measurements must be obtained for each sample and the initial background arithmetic mean and variance must be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(d) After the first year, all monitoring wells must be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish ground-water quality must be obtained and analyzed for the parameters specified in paragraph (b)(2) of this Section at least annually.

(2) Samples collected to indicate ground-water contamination must be obtained and analyzed for the parameters specified in paragraph (b)(3) of this Section at least semi-annually.

(e) Elevation of the ground-water surface at each monitoring well must be determined each time a sample is obtained.

§ 265.93 Preparation, evaluation, and response.

(a) Within one year after the effective date of these regulations, the owner or operator must prepare an *outline* of a ground-water quality assessment program. The outline must describe a more comprehensive ground-water monitoring program (than that described in §§ 265.91 and 265.92) capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the ground water;

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the ground water; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the ground water.

(b) For each indicator parameter specified in § 265.92(b)(3), the owner or operator must calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with § 265.92(d)(2), and compare these results with its initial background arithmetic mean. The comparison must consider individually each of the wells in the monitoring system, and must use the Student's t-test at the 0.01 level of significance (see Appendix IV) to determine statistically significant increases (and decreases, in the case of pH) over initial background.

(c)(1) If the comparisons for the *upgradient* wells made under paragraph (b) of this Section show a significant increase (or pH decrease), the owner or operator must submit this information in accordance with § 265.94(a)(2)(ii).

(2) If the comparisons for *downgradient* wells made under paragraph (b) of this Section show a significant increase (or pH decrease), the owner or operator must then immediately obtain additional ground-water samples from those downgradient wells where a significant difference was detected, split the samples in two, and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under paragraph (c)(2) of this Section confirm the significant increase (or pH decrease), the owner or operator must provide written notice to the Regional Administrator—within seven days of the date of such confirmation—that the facility may be affecting ground-water quality.

(2) Within 15 days after the notification under paragraph (d)(1) of this Section, the owner or operator must develop and submit to the Regional Administrator a specific plan, based on the outline required under paragraph (a) of this Section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment program at the facility.

(3) The plan to be submitted under § 265.90(d)(1) or paragraph (d)(2) of this Section must specify:

(i) The number, location, and depth of wells;

(ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

(iii) Evaluation procedures, including any use of previously-gathered ground-water quality information; and

(iv) A schedule of implementation.

(4) The owner or operator must implement the ground-water quality assessment plan which satisfies the requirements of paragraph (d)(3) of this Section, and, at a minimum, determine:

(i) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the ground water; and

(ii) The concentrations of the hazardous waste or hazardous waste constituents in the ground water.

(5) The owner or operator must make his first determination under paragraph (d)(4) of this Section as soon as technically feasible, and, within 15 days after that determination, submit to the Regional Administrator a written report containing an assessment of the ground-water quality.

(6) If the owners or operator determines, based on the results of the first determination under paragraph (d)(4) of this Section, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator evaluation program described in § 265.92 and paragraph (b) of this Section. If the owner or operator reinstates the indicator evaluation program, he must so notify the Regional Administrator in the report submitted under paragraph (d)(5) of this Section.

(7) If the owner or operator determines, based on the first determination under paragraph (d)(4) of this Section, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(i) Must continue to make the determinations required under paragraph (d)(4) of this Section on a quarterly basis until final closure of the facility, if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under paragraph (d)(4) of this Section, if the ground-water quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of this Subpart, any ground-water quality assessment to satisfy the requirements of § 265.93(d)(4) which is initiated prior to final closure of the facility must be completed and reported in accordance with § 265.93(d)(5).

(f) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(4), at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under § 265.92(e) to determine whether the requirements under § 265.91(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that § 265.91(a) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the ground-water monitoring system into compliance with this requirement.

§ 265.94 Recordkeeping and reporting.

(a) Unless the ground water is monitored to satisfy the requirements of § 265.93(d)(4), the owner or operator must:

(1) Keep records of the analyses required in § 265.92(c) and (d), the associated ground-water surface elevations required in § 265.92(e), and

the evaluations required in § 265.93(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following ground-water monitoring information to the Regional Administrator:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in § 265.92(b)(1) for each ground-water monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III.

(ii) Annually: concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1). During the active life of the facility, this information must be submitted as part of the annual report required under § 265.75.

(iii) As a part of the annual report required under § 265.75: results of the evaluation of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) If the ground water is monitored to satisfy the requirements of § 265.93(d)(4), the owner or operator must:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of § 265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Regional Administrator a report containing the results of his ground-water quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This report must be submitted as part of the annual report required under § 265.75.

§§ 265.95–265.109 [Reserved]

Subpart G—Closure and Post-Closure

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111–265.115 (which concern closure) apply to the owners and operators of all hazardous waste facilities; and

(b) Sections 265.117–265.120 (which concern post-closure care) apply to the owners and operators of all disposal facilities.

§ 265.111 Closure performance standard.

The owner or operator must close his facility in a manner that: (a) minimizes the need for further maintenance, and (b) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the ground water, or surface waters, or to the atmosphere.

§ 265.112 Closure plan; amendment of plan.

(a) On the effective date of these regulations, the owner or operator must have a written closure plan. He must keep this plan at the facility. This plan must identify the steps necessary to completely close the facility at any point during its intended life and at the end of its intended life. The closure plan must include, at least:

(1) A description of how and when the facility will be partially closed, if applicable, and ultimately closed. The description must identify the maximum extent of the operation which will be be unclosed during the life of the facility, and how the requirements of § 265.111 and the applicable closure requirements of §§ 265.197, 265.228, 265.280, 265.310, 265.351, 265.381, and 265.404 will be met;

(2) An estimate of the maximum inventory of wastes in storage or in treatment at any given time during the life of the facility;

(3) A description of the steps needed to decontaminate facility equipment during closure; and

(4) A schedule for final closure which must include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure. (For example, the expected date for completing treatment or disposal of waste inventory must be included, as must the planned date for removing any residual wastes from storage facilities and treatment processes.)

(b) The owner or operator may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) The owner or operator must amend his plan any time changes in operating plans or facility design affect the closure plan.

(c) The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The Regional Administrator will modify, approve, or disapprove the plan within 90 days of receipt and after providing the owner or operator and the affected public (through a newspaper notice) the opportunity to submit written comments. If an owner or operator plans to begin closure within 180 days after the effective date of these regulations, he must submit the necessary plans on the effective date of these regulations.

§ 265.113 Time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, the owner or operator must treat all hazardous wastes in storage or in treatment, or remove them from the site, or dispose of them on-site, in accordance with the approved closure plan.

(b) The owner or operator must complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The Regional Administrator may approve a longer closure period under § 265.112(c) if the owner or operator can demonstrate that: (1) the required or planned closure activities will, of necessity, take him longer than six months to complete, and (2) that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

§ 265.114 Disposal or decontamination of equipment.

When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues.

§ 265.115 Certification of closure.

When closure is completed, the owner or operator must submit to the Regional Administrator certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the

specifications in the approved closure plan.

§ 265.116 [Reserved]

§ 265.117 Post-closure care and use of property; period of care.

(a) Post-closure care must consist of at least:

(1) Ground-water monitoring and reporting in accordance with the requirements of Subpart F; and

(2) Maintenance of monitoring and waste containment systems as specified in §§ 265.91, 265.223, 265.228, 265.280, and 265.310, where applicable.

(b) The Regional Administrator may require maintenance of any or all of the security requirements of § 265.14 during the post-closure period, when:

(1) Wastes may remain exposed after completion of closure; or

(2) Short term, incidental access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous waste remains after closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the Regional Administrator, either in the post-closure plan or by petition, that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) The owner or operator of a disposal facility must provide post-closure care in accordance with the approved post-closure plan for at least 30 years after the date of completing closure. *However,* the owner or operator may petition the Regional Administrator to allow some or all of the requirements for post-closure care to be discontinued or altered before the end of the 30-year period. The petition must include evidence demonstrating the secure nature of the facility that makes continuing the specified post-closure requirement(s) unnecessary—e.g., no detected leaks and none likely to occur, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques. Alternately, the Regional Administrator may require the owner or operator to continue one or more of the post-closure care and maintenance requirements contained in the facility's post-closure plan for a specified period of time. The Regional Administrator may do this if he finds there has been noncompliance with any applicable standards or requirements, or that such continuation is necessary to protect human health or the environment. At the end of the specified period of time, the Regional Administrator will determine whether to continue or terminate post-closure care and maintenance at the facility. Anyone (a member of the public as well as the owner or operator) may petition the Regional Administrator for an extension or reduction of the post-closure care period based on cause. These petitions will be considered by the Regional Administrator at the time the post-closure plan is submitted and at five-year intervals after the completion of closure.

§ 265.118 Post-closure plan; amendment of plan.

(a) On the effective date of these regulations, the owner or operator of a disposal facility must have a written post-closure plan. He must keep this plan at the facility. This plan must identify the activities which will be carried on after final closure and the frequency of those activities. The post-closure plan must include at least:

(1) Ground-water monitoring activities and frequencies as specified in Subpart F for the post-closure period; and

(2) Maintenance activities and frequencies to ensure: (1) the integrity of the cap and final cover or other containment structures as specified in §§ 265.223, 265.228, 265.280, and 265.310, where applicable, and (2) the function of the facility's monitoring equipment as specified in § 265.91.

(b) The owner or operator may amend his post-closure plan at any time during the active life of the disposal facility or during the post-closure care period. The owner or operator must amend his plan any time changes in operating plans or facilities design affect his post-closure plan.

(c) The owner or operator of a disposal facility must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The Regional Administrator will modify or approve the plan within 90 days of receipt and after providing the owner or operator and the affected public (through a newspaper notice) the opportunity to submit written comments. The plan may be modified to include security equipment maintenance under § 265.117(b). If an owner or operator of a disposal facility plans to begin closure within 180 days after the effective date of these regulations, he must submit the necessary plans on the effective date of these regulations. Any amendments to the plan under paragraph (b) of this Section which occur after approval of the plan must also be approved by the Regional Administrator before they may be implemented.

§ 265.119 Notice to local land authority.

Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the local land authority and to the Regional Administrator a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local land authority must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in § 265.117(c). In addition, the owner or operator must submit to the Regional Administrator and to the local land authority a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location, and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept.

§ 265.120 Notice in deed to property.

The owner of the property on which a disposal facility is located must record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that: (1) the land has been used to manage hazardous waste, and (2) its use is restricted under § 265.117(c).

§§ 265.121–265.139 [Reserved]

Subpart H—Financial Requirements

§ 265.140 Applicability.

(a) Section 265.142 applies to owners and operators of all hazardous waste facilities, except as this Section or § 265.1 provide otherwise.

(b) Section 265.144 applies only to owners and operators of disposal facilities.

(c) States and the Federal government are exempt from the requirements of this Subpart.

§ 265.141 [Reserved]

§ 265.142 Cost estimate for facility closure.

(a) On the effective date of these regulations, each facility owner or

operator must have a written estimate of the cost of closing the facility in accordance with the requirements in §§ 265.111–265.115 and applicable closure requirements in §§265.197, 265.228, 265.280, 265.310, 265.351, 265.381, and 265.404. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 265.112(a)).

[*Comment:* For example, the closure cost estimate for a particular landfill may be for the cost of closure when its active disposal operations extend over 20 acres, if at all other times these operations extend over less than 20 acres. The estimate would not include costs of partial closures that the closure plan schedules before or after the time of maximum closure cost.]

(b) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.

(c) On each anniversary of the effective date of these regulations, the owner or operator must adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its *Survey of Current Business*. The inflation factor must be calculated by dividing the latest published annual Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted closure cost estimate must equal the latest closure cost estimate (see paragraph (b) of this Section) times the inflation factor.

[*Comment:* The following is a sample calculation of the adjusted closure cost estimate: Assume that the latest closure cost estimate for a facility is $50,000, the latest published annual Deflator is 152.05, and the annual Deflator for the previous year is 141.70. The Deflators may be rounded to the nearest whole number. Dividing 152 by 142 gives the inflation factor, 1.07. Multiply $50,000 by 1.07 for a product of $53,500—the adjusted closure cost estimate.]

§ 265.143 [Reserved]

§ 265.144 Cost estimate for post-closure monitoring and maintenance.

(a) On the effective date of these regulations, the owner or operator of a disposal facility must have a written estimate of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§265.117–265.120, 265.228, 265.280, and 265.310. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility.

(b) The owner or operator must prepare a new annual post-closure cost estimate whenever a change in the post-closure plan affects the cost of post-closure care (see § 265.118(b)). The latest post-closure cost estimate is calculated by multiplying the latest annual post-closure cost estimate by 30.

(c) On each anniversary of the effective date of these regulations, during the operating life of the facility, the owner or operator must adjust the latest post-closure cost estimate using the inflation factor calculated in accordance with § 265.142(c). The adjusted post-closure cost estimate must equal the latest post-closure cost estimate (see paragraph (b) of this Section) times the inflation factor.

§§ 265.145–265.169 [Reserved]

Subpart I—Use and Management of Containers

§ 265.170 Applicability.

The regulations in this Subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as § 265.1 provides otherwise.

§ 265.171 Condition of containers.

If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this Part.

§ 265.172 Compatibility of waste with container.

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

§ 265.173 Management of containers.

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

[*Comment:* A container that is a hazardous waste listed in § 261.33 of this Chapter must be managed in compliance with the regulations of this Part. Re-use of containers in transportation is governed by U.S. Department of Transportation regulations, including those set forth in 49 CFR 173.28.]

§ 265.174 Inspections.

The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

[*Comment:* See § 265.171 for remedial action required if deterioration or leaks are detected.]

§ 265.175 [Reserved]

§ 265.176 Special requirements for ignitable or reactive waste.

Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

[*Comment:* See § 265.17(a) for additional requirements.]

§ 265.177 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same container, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Appendix V for examples), unless § 265.17(b) is complied with.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

[*Comment:* The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constitutuents which could result from the mixing of incompatible wastes or materials if containers break or leak.]

§ 265.178–265.189 [Reserved]

Subpart J—Tanks

§ 265.190 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that use tanks to treat or store hazardous waste, except as § 265.1 provides otherwise.

§ 265.191 [Reserved]

§ 265.192 General operating requirements.

(a) Treatment or storage of hazardous waste in tanks must comply with § 265.17(b).

(b) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, *unless* the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(d) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., a waste feed cutoff system or by-pass system to a stand-by tank).

[*Comment:* These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.).]

§ 265.193 Waste analysis and trial tests.

(a) In addition to the waste analysis required by § 265.13, whenever a tank is to be used to:

(1) Chemically treat or store a hazardous waste which is substantially different from waste previously treated or stored in that tank; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that tank; the owner or operator must, before treating or storing the different waste or using the different process:

(i) Conduct waste analyses and trial treatment or storage tests (e.g., bench scale or pilot plant scale tests); or

(ii) Obtain written, documented information on similar storage or treatment of similar waste under similar operating conditions;

to show that this proposed treatment or storage will meet all applicable requirements of § 265.192(a) and (b).

[*Comment:* As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.198 and 265.199. As required by § 265.73, the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.]

§ 265.194 Inspections.

(a) The owner or operator of a tank must inspect, where present:

(1) Discharge control equipment (e.g., waste feed cut-off systems, by-pass systems, and drainage systems), at least once each operating day, to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges), at least once each operating day, to ensure that the tank is being operated according to its design;

(3) The level of waste in the tank, at least once each operating day, to ensure compliance with § 265.192(c);

(4) The construction materials of the tank, at least weekly, to detect corrosion or leaking of fixtures or seams; and

(5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes), at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

[*Comment:* As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.]

§§ 265.195–265.196 [Reserved]

§ 265.197 Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge confinement structures.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this Chapter, that any solid waste removed from his tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

§ 265.198 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive waste must not be placed in a tank, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank so that (i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and (ii) § 265.17(b) is complied with; or

(2) The waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

(3) The tank is used solely for emergencies.

(b) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks, contained in Tables 2–1 through 2–6 of the "Flammable and Combustible Code—1977".

[*Comment:* See § 265.17(a) for additional requirements.]

§ 265.199 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same tank, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

§§ 265.200–265.219 [Reserved]

Subpart K—Surface Impoundments

§ 265.220 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as § 265.1 provides otherwise.

§ 265.221 [Reserved]

§ 265.222 General operating requirements.

A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There must be at least 60 centimeters (2 feet) of freeboard.

[*Comment:* Any point source discharge from a surface impoundment to waters of the United States is subject to the requirements of Section 402 of the Clean Water Act, as amended. Spills may be subject to Section 311 of that Act.]

§ 265.223 Containment system.

All earthen dikes must have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

§ 265.224 [Reserved]

§ 265.225 Waste analysis and trial tests.

(a) In addition to the waste analyses required by § 265.13, whenever a surface impoundment is to be used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator must, before treating the different waste or using the different process:

(i) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with § 265.17(b).

[*Comment:* As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.229 and 265.230. As required by § 265.73, the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.]

§ 265.226 Inspections.

(a) The owner or operator must inspect:

(1) The freeboard level at least once each operating day to ensure compliance with § 265.222, and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

[*Comment:* As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.]

§ 265.227 [Reserved]

§ 265.228 Closure and post-closure.

(a) At closure, the owner or operator may elect to remove from the impoundment:

(1) Standing liquids;

(2) Waste and waste residues;

(3) The liner, if any; and

(4) Underlying and surrounding contaminated soil.

(b) If the owner or operator removes all the impoundment materials in paragraph (a) of this Section, or can demonstrate under § 261.3(c) and (d) of this Chapter that none of the materials listed in paragraph (a) of this Section remaining at any stage of removal are hazardous wastes, the impoundment is not further subject to the requirements of this Part.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3 (c) or (d) of this Chapter, that any solid waste removed from the surface impoundment is not a hazardous waste, he becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter. The surface impoundment may be subject to Part 257 of this Chapter even if it is not subject to this Part.]

(c) If the owner or operator does not remove all the impoundment materials in paragraph (a) of this Section, or does not make the demonstration in paragraph (b) of this Section, he must close the impoundment and provide post-closure care as for a landfill under Subpart G and § 265.310. If necessary to support the final cover specified in the approved closure plan, the owner or operator must treat remaining liquids, residues, and soils by removal of liquids, drying, or other means.

[*Comment:* The closure requirements under § 265.310 will vary with the amount and nature of the residue remaining, if any, and the degree of contamination of the underlying and surrounding soil. Section 265.117(d) allows the Regional Administrator to vary post-closure care requirements.]

§ 265.229 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive waste must not be placed in a surface impoundment, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that (i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and (ii) § 265.17(b) is complied with; or

(2) The surface impoundment is used solely for emergencies.

§ 265.230 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same surface impoundment, unless § 265.17(b) is complied with.

§§ 265.231–265.249 [Reserved]

Subpart L—Waste Piles

§ 265.250 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that treat or store hazardous waste in piles, except as § 265.1 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under Subpart N.

§ 265.251 Protection from wind.

The owner or operator of a pile containing hazardous waste which could be subject to dispersal by wind must cover or otherwise manage the pile so that wind dispersal is controlled.

§ 265.252 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile, *unless* (1) the only wastes the facility receives which are amenable to piling are compatible with each other, or (2) the waste received is compatible with the waste in the pile to which it is to be added. The analysis conducted must be capable of differentiating between the types of hazardous waste the owner or operator places in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis must include a visual comparison of color and texture.

[*Comment:* As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.256 and 265.257. As required by § 265.73, the owner or operator must place the results of this analysis in the operating record of the facility.]

§ 265.253 Containment.

If leachate or run-off from a pile is a hazardous waste, then either:

(a) The pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage, run-on must be diverted away from the pile, and any leachate and run-off from the pile must be collected and managed as a hazardous waste; or

(b)(1) The pile must be protected from precipitation and run-on by some other means; and

(2) No liquids or wastes containing free liquids may be placed in the pile.

[*Comment:* If collected leachate or run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

(c) The date for compliance with paragraphs (a) and (b)(1) of this Section is 12 months after the effective date of this Part.

§§ 265.254–265.255 [Reserved]

§ 265.256 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive wastes must not be placed in a pile, *unless:*

(1) Addition of the waste to an existing pile (i) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste under

§§ 261.21 or 261.23 of this Chapter, and (ii) complies with § 265.17(b); or

(2) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

§ 265.257 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same pile, unless § 265.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

[*Comment:* The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the contact or mixing of incompatible wastes or materials.]

(c) Hazardous waste must not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with § 265.17(b).

§§ 265.258–265.269 [Reserved]

Subpart M—Land Treatment

§ 265.270 Applicability.

The regulations in this Subpart apply to owners and operators of hazardous waste land treatment facilities, except as § 265.1 provides otherwise.

§ 265.271 [Reserved]

§ 265.272 General operating requirements.

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or non-hazardous by biological degradation or chemical reactions occurring in or on the soil.

(b) Run-on must be diverted away from the active portions of a land treatment facility.

(c) Run-off from active portions of a land treatment facility must be collected.

[*Comment:* If the collected run-off is a hazardous waste under Part 261 of this Chapter, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter. If the collected run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

(d) The date for compliance with paragraphs (b) and (c) of this Section is 12 months after the effective date of this Part.

§ 265.273 Waste analysis.

In addition to the waste analyses required by § 265.13, before placing a hazardous waste in or on a land treatment facility, the owner or operator must:

(a) Determine the concentrations in the waste of any substances which exceed the maximum concentrations contained in Table I of § 261.24 of this Chapter that cause a waste to exhibit the EP toxicity characteristic;

(b) For any waste listed in Part 261, Subpart D, of this Chapter, determine the concentrations of any substances which caused the waste to be listed as a hazardous waste; and

(c) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, *unless* the owner or operator has written, documented data that show that the constituent is not present.

[*Comment:* Part 261 of this Chapter specifies the substances for which a waste is listed as a hazardous waste. As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.281 and 265.282. As required by § 265.73, the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.]

§§ 265.274–265.275 [Reserved]

§ 265.276 Food chain crops.

(a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must notify the Regional Administrator within 60 days after the effective date of this Part.

[*Comment:* The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under § 122.23(c)(3) of this Chapter. Owners or operators of such land treatment facilities who propose to grow food chain crops after the effective date of this Part must comply with § 122.23(c)(3) of this Chapter.]

(b)(1) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury, or other constituents identified under § 265.273(b):

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by paragraph (b)(1) of this Section must be kept at the facility and must, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods, and statistical procedures.

(c) Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of paragraph (c)(1)(i) through (iii) of this Section or all requirements of paragraph (c)(2)(i) through (iv) of this Section are met.

(1) (i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

(ii) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

Time period	Annual Cd application rate (kg/ha)
Present to June 30, 1984	2.0
July 1, 1984 to Dec. 31, 1986	1.25
Beginning Jan. 1, 1987	0.5

(iii) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (c)(1)(iii)(A) of this Section or paragraph (c)(1)(iii)(B) of this Section.

(A)

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)	
	Background soil pH less than 6.5	Background soil pH greater than 6.5
Less than 5	5	5
5–15	5	10
Greater than 15	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: *Provided,* that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)
Less than 5	5
5–15	10
Greater than 15	20

(2)(i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops should not be grown, due to a possible health hazard.

[*Comment:* As required by § 265.73, if an owner or operator grows food chain crops on his land treatment facility, he must place the information developed in this Section in the operating record of the facility.]

§ 265.277 [Reserved]

§ 265.278 Unsaturated zone (zone of aeration) monitoring.

(a) The owner or operator must have in writing, and must implement, an unsaturated zone monitoring plan which is designed to:

(1) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility, and

(2) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring must be conducted before or in conjunction with the monitoring required under paragraph (a)(1) of this Section.

(b) The unsaturated zone monitoring plan must include, at a minimum:

(1) Soil monitoring using soil cores, and

(2) Soil-pore water monitoring using devices such as lysimeters.

(c) To comply with paragraph (a)(1) of this Section, the owner or operator must demonstrate in his unsaturated zone monitoring plan that:

(1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

(2) The number of soil and soil-pore water samples to be taken is based on the variability of:

(i) The hazardous waste constituents (as identified in § 265.273(a) and (b)) in the waste and in the soil; and

(ii) The soil type(s); and

(3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

(d) The owner or operator must keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator must analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under § 265.273 (a) and (b).

[*Comment:* As required by § 265.73, all data and information developed by the owner or operator under this Section must be placed in the operating record of the facility.]

§ 265.279 Recordkeeping.

The owner or operator of a land treatment facility must keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility, in the operating record required in § 265.73.

§ 265.280 Closure and post-closure.

(a) In the closure plan under § 265.112 and the post-closure plan under § 265.118, the owner or operator must address the following objectives and indicate how they will be achieved:

(1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the ground water;

(2) Control of the release of contaminated run-off from the facility into surface water;

(3) Control of the release of airborne particulate contaminants caused by wind erosion; and

(4) Compliance with § 265.276 concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of paragraph (a) of this Section:

(1) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water and drinking water sources);

(4) Climate, including amount, frequency, and pH of precipitation;

(5) Geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) Unsaturated zone monitoring information obtained under § 265.278; and

(7) Type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of paragraph (a) of this Section:

(1) Removal of contaminated soils;

(2) Placement of a final cover, considering: (i) Functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control), and (ii) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;

(3) Collection and treatment of run-off;

(4) Diversion structures to prevent surface water run-on from entering the treated area; and

(5) Monitoring of soil, soil-pore water, and ground water.

(d) In addition to the requirements of § 265.117, during the post-closure care period, the owner or operator of a land treatment facility must:

(1) Maintain any unsaturated zone monitoring system, and collect and analyze samples from this system in a

manner and frequency specified in the post-closure plan;

(2) Restrict access to the facility as appropriate for its post-closure use; and

(3) Assure that growth of food chain crops complies with § 265.276.

§ 265.281 Special requirements for ignitable or reactive waste.

Ignitable or reactive wastes must not be land treated, unless the waste is immediately incorporated into the soil so that (1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and (2) § 265.17(b) is complied with.

§ 265.282 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials (see Appendix V for examples), must not be placed in the same land treatment area, unless § 265.17(b) is complied with.

§§ 265.283–265.299 [Reserved]

Subpart N—Landfills

§ 265.300 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as § 265.1 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this Subpart.

§ 265.301 [Reserved]

§ 265.302 General operating requirements.

(a) Run-on must be diverted away from the active portions of a landfill.

(b) Run-off from active portions of a landfill must be collected.

[*Comment:* If the collected run-off is a hazardous waste under Part 261 of this Chapter, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter. If the collected run-off is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

(c) The date for compliance with paragraphs (a) and (b) of this Section is 12 months after the effective date of this Part.

(d) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

[*Comment:* As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.312 and 265.313. As required by § 265.73, the owner or operator must place the results of these analyses in the operating record of the facility.]

§§ 265.303–265.308 [Reserved]

§ 265.309 Surveying and recordkeeping.

The owner or operator of a landfill must maintain the following items in the operating record required in § 265.73:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

§ 265.310 Closure and post-closure.

(a) The owner or operator must place a final cover over the landfill, and the closure plan under § 265.112 must specify the function and design of the cover. In the post-closure plan under § 265.118, the owner or operator must include the post-closure care requirements of paragraph (d) of this Section.

(b) In the closure and post-closure plans, the owner or operator must address the following objectives and indicate how they will be achieved:

(1) Control of pollutant migration from the facility via ground water, surface water, and air;

(2) Control of surface water infiltration, including prevention of pooling; and

(3) Prevention of erosion.

(c) The owner or operator must consider at least the following factors in addressing the closure and post-closure care objectives of paragraph (b) of this Section:

(1) Type and amount of hazardous waste and hazardous waste constituents in the landfill;

(2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water, and drinking water sources);

(4) Climate, including amount, frequency, and pH of precipitation;

(5) Characteristics of the cover including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

(6) Geological and soil profiles and surface and subsurface hydrology of the site.

(b) In addition to the requirements of § 265.117, during the post-closure care period, the owner or operator of a hazardous waste landfill must:

(1) Maintain the function and integrity of the final cover as specified in the approved closure plan;

(2) Maintain and monitor the leachate collection, removal, and treatment system (if there is one present in the landfill) to prevent excess accumulation of leachate in the system;

[*Comment:* If the collected leachate is a hazardous waste under Part 261 of this Chapter, it must be managed as a hazardous waste in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter. If the collected leachate is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended.]

(3) Maintain and monitor the gas collection and control system (if there is one present in the landfill) to control the vertical and horizontal escape of gases;

(4) Protect and maintain surveyed benchmarks; and

(5) Restrict access to the landfill as appropriate for its post-closure use.

§ 265.311 [Reserved]

§ 265.312 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before or immediately after placement in the landfill so that (1) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and (2) § 265.17(b) is complied with.

§ 265.313 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same landfill cell, unless § 265.17(b) is complied with.

§ 265.314 Special requirements for liquid waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids must not be placed in a landfill, unless:

(1) The landfill has a liner which is chemically and physically resistant to the added liquid, and a functioning leachate collection and removal system with a capacity sufficient to remove all leachate produced; or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with an absorbent solid),

so that free liquids are no longer present.

(b) A container holding liquid waste or waste containing free liquids must not be placed in a landfill, unless:

(1) The container is designed to hold liquids or free liquids for a use other than storage, such as a battery or capacitor; or

(2) The container is very small, such as an ampule.

(c) The date for compliance with this Section is 12 months after the effective date of this Part.

§ 265.315 Special requirements for containers.

(a) An empty container must be crushed flat, shredded, or similarly reduced in volume before it is buried beneath the surface of a landfill.

(b) The date for compliance with this Section is 12 months after the effective date of this Part.

§§ 265.316–265.339 [Reserved]

Subpart O—Incinerators

§ 265.340 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that treat hazardous waste in incinerators, except as § 265.1 provides otherwise.

§§ 265.341–265.342 [Reserved]

§ 265.343 General operating requirements.

Before adding hazardous waste, the owner or operator must bring his incinerator to steady state (normal) conditions of operation—including steady state operating temperature and air flow—using auxiliary fuel or other means.

§ 265.344 [Reserved]

§ 265.345 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, *unless* the owner or operator has written, documented data that show that the element is not present.

[*Comment:* As required by § 265.73, the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.]

§ 265.346 [Reserved]

§ 265.347 Monitoring and inspections.

(a) The owner or operator must conduct, as a minimum, the following monotoring and inspections when incinerating hazardous wastes:

(1) Existing instruments which relate to combustion and emission control must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions must be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(2) The stack plume (emissions) must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return visible emissions to their normal appearance.

(3) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

§§ 265.348–265.350 [Reserved]

§ 265.351 Closure.

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this Chapter, that any solid waste removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

§§ 265.352–265.369 [Reserved]

Subpart P—Thermal Treatment

§ 265.370 Applicability.

The regulations in this Subpart apply to owners and operators of facilities that thermally treat hazardous waste in devices other than incinerators, except as § 265.1 provides otherwise. Thermal treatment in incinerators is subject to the requirements of Subpart O.

§§ 265.371–265.372 [Reserved]

§ 265.373 General operating requirements.

Before adding hazardous waste, the owner or operator must bring his thermal treatment process to steady state (normal) conditions of operation—including steady state operating temperature—using auxiliary fuel or other means, unless the process is a non-continuous (batch) thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

§ 265.374 [Reserved]

§ 265.375 Waste analysis.

In addition to the waste analyses required by § 265.13, the owner or operator must sufficiently analyze any waste which he has not previously treated in his thermal process to enable him to establish steady state (normal) or other appropriate (for a non-continuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, *unless* the owner or operator has written, documented data that show that the element is not present.

[*Comment:* As required by § 265.73, the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.]

§ 265.376 [Reserved]

§ 265.377 Monitoring and inspections.

(a) The owner or operator must conduct, as a minimum, the following monitoring and inspections when thermally treating hazardous waste:

(1) Existing instruments which relate to temperature and emission control (if an emission control device is present) must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions must be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(2) The stack plume (emissions), where present, must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(3) The complete thermal treatment process and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

§§ 265.378–265.380 [Reserved]

§ 265.381 Closure.

At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash) from the thermal treatment process or equipment.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3(c) or (d) of this Chapter, that any solid waste removed from his thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

§ 265.382 Open burning; waste explosives.

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with the following table and in a manner that does not threaten human health or the environment.

Pounds of waste explosives or propellants	Minimum distance from open burning or detonation to the property of others
0 to 100	204 meters (670 feet).
101 to 1,000	380 meters (1,250 feet).
1,001 to 10,000	530 meters (1,730 feet).
10,001 to 30,000	690 meters (2,260 feet).

§§ 265.383–265.399 [Reserved]

Subpart Q—Chemical, Physical, and Biological Treatment

§ 265.400 Applicability.

The regulations in this Subpart apply to owners and operators of facilities which treat hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as § 265.1 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments, and land treatment facilities must be conducted in accordance with Subparts J, K, and M, respectively.

§ 265.401 General operating requirements.

(a) Chemical, physical, or biological treatment of hazardous waste must comply with § 265.17(b).

(b) Hazardous wastes or treatment reagents must not be placed in the treatment process or equipment if they could cause the treatment process or equipment to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment must be equipped with a means to stop this inflow (e.g., a waste feed cut-off system or by-pass system to a standby containment device).

[*Comment:* These systems are intended to be used in the event of a malfunction in the treatment process or equipment.]

§ 265.402 Waste analysis and trial tests.

(a) In addition to the waste analysis required by § 265.13, whenever:

(1) A hazardous waste which is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or

(2) A substantially different process than any previously used at the facility is to be used to chemically treat hazardous waste;

the owner or operator must, before treating the different waste or using the different process or equipment:

(i) Conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions;

to show that this proposed treatment will meet all applicable requirements of § 265.401 (a) and (b).

[*Comment:* As required by § 265.13, the waste analysis plan must include analyses needed to comply with §§ 265.405 and 265.406. As required by § 265.73, the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.]

§ 265.403 Inspections.

(a) The owner or operator of a treatment facility must inspect, where present:

(1) Discharge control and safety equipment (e.g., waste feed cut-off systems, by-pass systems, drainage systems, and pressure relief systems) at least once each operating day, to ensure that it is in good working order;

(2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges), at least once each operating day, to ensure that the treatment process or equipment is being operated according to its design;

(3) The construction materials of the treatment process or equipment, at least weekly, to detect corrosion or leaking of fixtures or seams; and

(4) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes), at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

[*Comment:* As required by § 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds.]

§ 265.404 Closure.

At closure, all hazardous waste and hazardous waste residues must be removed from treatment processes or equipment, discharge control equipment, and discharge confinement structures.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3 (c) or (d) of this Chapter, that any solid waste removed from his treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

§ 265.405 Special requirements for ignitable or reactive waste.

(a) Ignitable or reactive waste must not be placed in a treatment process or equipment unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that (i) the resulting waste, mixture, or dissolution of material no

longer meets the definition of ignitable or reactive waste under § 261.21 or 261.23 or this Chapter, and (ii) § 265.17(b) is complied with; or (2) The waste is treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

§ 265.406 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V for examples) must not be placed in the same treatment process or equipment, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in unwashed treatment equipment which previously held an incompatible waste or material, unless § 265.17(b) is complied with.

§§ 265.407–265.429 [Reserved]

Subpart R—Underground Injection

§ 265.430 Applicability.

Except as § 265.1 provides otherwise:

(a) The owner or operator of a facility which disposes of hazardous waste by underground injection is excluded from the requirements of Subparts G and H of this Part.

(b) The requirements of this Subpart apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I under § 122.32(a) of this Chapter and which are classified as Class IV under § 122.32(d) of this Chapter.

[*Comment:* In addition to the requirements of Subparts A through E of this Part, the owner or operator of a facility which disposes of hazardous waste by underground injection ultimately must comply with the requirements of §§ 265.431–265.437. These Sections are reserved at this time. The Agency will propose regulations that would establish those requirements.]

§ 265.431–265.999 [Reserved]

Appendix I—Recordkeeping Instructions

The recordkeeping provisions of § 265.73 specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping *portions* of the operating record. See § 265.73(b) for additional recordkeeping requirements.

The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner:

Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

(1) A description by its common name and the EPA Hazardous Waste Number(s) from Part 261 of this Chapter which apply to the waste. The waste description also must include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Part 261, Subpart D, of this Chapter, the description also must include the process that produced it (for example, solid filter cake from production of ———, EPA Hazardous Waste Number W051).

Each hazardous waste listed in Part 261, Subpart D, of this Chapter, and each hazardous waste characteristic defined in Part 261, Subpart C, of this Chapter, has a four-digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA Hazardous Waste Numbers.

(2) The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1; and

(3) The method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal.

Table 1

Unit of measure	Symbol[1]	Density
Pounds	P	
Short tons (2000 lbs)	T	
Gallons (U.S.)	G	P/G
Cubic yards	Y	T/Y
Kilograms	K	
Tonnes (1000 kg)	M	
Liters	L	K/L
Cubic meters	C	M/C

[1] Single digit symbols are used here for data processing purposes.

Table 2—Handling Codes for Treatment, Storage, amd Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage

S01 Container (barrel, drum, etc.)
S02 Tank
S03 Waste pile
S04 Surface impoundment
S05 Other (specify)

2. Treatment

(a) Thermal Treatment

T06 Liquid injection incinerator
T07 Rotary kiln incinerator
T08 Fluidized bed incinerator
T09 Multiple hearth incinerator
T10 Infrared furnace incinerator
T11 Molten salt destructor
T12 Pyrolysis
T13 Wet air oxidation
T14 Calcination
T15 Microwave discharge
T16 Cement kiln
T17 Lime kiln
T18 Other (specify)

(b) Chemical Treatment

T19 Absorption mound
T20 Absorption field
T21 Chemical fixation
T22 Chemical oxidation
T23 Chemical precipitation
T24 Chemical reduction
T25 Chlorination
T26 Chlorinolysis
T27 Cyanide destruction
T28 Degradation
T29 Detoxification
T30 Ion exchange
T31 Neutralization
T32 Ozonation
T33 Photolysis
T34 Other (specify)

(c) Physical Treatment:

(1) Separation of components

T35 Centrifugation
T36 Clarification
T37 Coagulation
T38 Decanting
T39 Encapsulation
T40 Filtration
T41 Flocculation
T42 Flotation
T43 Foaming
T44 Sedimentation
T45 Thickening
T46 Ultrafiltration
T47 Other (specify)

(2) Removal of Specific Components

T48 Absorption-molecular sieve
T49 Activated carbon
T50 Blending
T51 Catalysis
T52 Crystallization
T53 Dialysis
T54 Distillation
T55 Electrodialysis
T56 Electrolysis
T57 Evaporation
T58 High gradient magnetic separation
T59 Leaching
T60 Liquid ion exchange
T61 Liquid-liquid extraction
T62 Reverse osmosis
T63 Solvent recovery
T64 Stripping
T65 Sand filter
T66 Other (specify)

(d) Biological Treatment

T67 Activated sludge
T68 Aerobic lagoon
T69 Aerobic tank
T70 Anaerobic lagoon
T71 Composting
T72 Septic tank
T73 Spray irrigation
T74 Thickening filter
T75 Tricking filter
T76 Waste stabilization pond
T77 Other (specify)
T78–79 [Reserved]

3. Disposal

D80 Underground injection
D81 Landfill
D82 Land treatment
D83 Ocean disposal
D84 Surface impoundment (to be closed as a landfill)
D85 Other (specify)

APPENDIX II—EPA REPORT FORM AND INSTRUCTIONS

BILLING CODE 6560-01-M

Please print or type with ELITE type *(12 characters per inch)*.

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

EPA U.S. ENVIRONMENTAL PROTECTION AGENCY
HAZARDOUS WASTE REPORT

PLEASE PLACE LABEL IN THIS SPACE

I. TYPE OF HAZARDOUS WASTE REPORT

PART A: GENERATOR ANNUAL REPORT
THIS REPORT IS FOR THE YEAR ENDING DEC. 31, 19__

PART B: FACILITY ANNUAL REPORT
THIS REPORT FOR YEAR ENDING DEC. 31, 19__

PART C: UNMANIFESTED WASTE REPORT
THIS REPORT IS FOR A WASTE RECEIVED *(day, mo., & yr.)* __ - __ - 19__

INSTRUCTIONS: You may have received a preprinted label attached to the front of this pamphlet; affix it in the designated space above—left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Sections II, III, and IV below blank. If you did not receive a preprinted label, complete all sections. "Installation" means a single site where hazardous waste is generated, treated, stored, or disposed of. Please refer to the specific instructions for generators or facilities before completing this form. The information requested herein is required by law *(Section 3002/3004 of the Resource Conservation and Recovery Act)*.

II. INSTALLATION'S EPA I.D. NUMBER

F

III. NAME OF INSTALLATION

IV. INSTALLATION MAILING ADDRESS

STREET OR P.O. BOX

CITY OR TOWN | ST. | ZIP CODE

V. LOCATION OF INSTALLATION

STREET OR ROUTE NUMBER

CITY OR TOWN | ST. | ZIP CODE

VI. INSTALLATION CONTACT

NAME *(last and first)* | PHONE NO. *(area code & no.)*

VII. TRANSPORTATION SERVICES USED *(for Part A reports only)*

List the EPA Identification Numbers for those transporters whose services were used during the reporting year represented by this report.

VIII. COST ESTIMATES FOR FACILITIES *(for Part B reports only)*

A. COST ESTIMATE FOR FACILITY CLOSURE	B. COST ESTIMATE FOR POST CLOSURE MONITORING AND MAINTENANCE *(disposal facilities only)*
$	$

IX. 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. PRINT OR TYPE NAME | B. SIGNATURE | C. DATE SIGNED

EPA Form 8700-13 (4-80)

Please print or type with ELITE type (12 characters/inch).

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY
FACILITY REPORT – PARTS B & C
(Collected under the authority of Section 3004 of RCRA.)

FOR OFFICIAL USE ONLY (Items 1 & 2)

1. DATE RECEIVED
2. RECEIVED BY

XVI. TYPE OF REPORT (enter an "X")
☐ PART B ☐ PART C

XVII. FACILITY'S EPA I.D. NO.

XVIII. GENERATOR'S EPA I.D. NO.

XIX. GENERATOR NAME (specify)

XX. GENERATOR ADDRESS (street or P.O. box, city, state, & zip code)

XXI. WASTE IDENTIFICATION

LINE NUMBER	A. DESCRIPTION OF WASTE	B. EPA HAZARDOUS WASTE NUMBER (see instructions)	C. HANDLING METHOD (enter code)	D. AMOUNT OF WASTE	UNIT OF MEASURE (enter code)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

XXII. COMMENTS (enter information by line number — see instructions)

EPA Form 8700-13B (5-80)

BILLING CODE 6560-01-C

PAGE ____ OF ____

GENERAL INSTRUCTIONS; HAZARDOUS WASTE REPORT (EPA FORM 8700–13)

Important: Read all instructions before completing this form.

Section I—Type of Hazardous Waste Report

Part A: Generator Annual Report

For generators who ship their waste off-site to facilities which they do not own or operate; fill in the reporting year for this report (e.g., 1982).

Note.—Generators who ship hazardous waste off-site to a facility which they own or operate must complete the facility (Part B) report instead of the Part A report.

Part B: Facility Annual Report

For owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste; fill in the reporting year for this report (e.g., 1982).

Part C: Unmanifested Waste Report

For facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest; fill in the date the waste was received at the facility (e.g., April 12, 1982).

Section II Through Section IV—Installation I.D. Number, Name of Installation, and Installation Mailing Address

If you received a preprinted label from EPA, attach it in the space provided and leave Sections II through IV blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete Section II through Section IV.

Section V—Location of Installation

If your installation location address is different than the mailing address, enter the location address of your installation.

Section VI—Installation Contact

Enter the name (last and first) and telephone number of the person whom may be contacted regarding information contained in this report.

Section VII—Transportation Services Used (for Part A Reports Only)

List the EPA Identification Number for each transporter whose services you used during the reporting year.

Section VIII—Cost Estimates for Facilities (for Part B Reports Only)

A. Enter the most recent cost estimate for facility closure in dollars. See Subpart H of 40 CFR parts 264 or 265 for more detail.

B. For disposal facilities only, enter the most recent cost estimate for post closure monitoring and maintenance. See Subpart H of 40 CFR Parts 264 or 265 for more detail.

Section IX—Certification

The generarator or his authorized representative (Part A reports) or the owner or operator of the facility or his authorized representative (Parts B and C reports) must sign and date the certification where indicated. The printed or typed name of the person signing the report must also be included where indicated.

Note.—Since more than one page is required for each report, enter the page number of each sheet in the lower right corner as well as the total number of pages.

Facility Annual Report—Part B Instructions (EPA Form 8700–13B)

Facility Annual Report for owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste.

Note.—Generators who ship hazardous waste off-site to a facility they own or operate must complete this Part B report instead of the Generator (Part A) Annual Report.

Important: Read all instructions before completing this form.

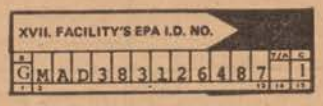
Section XVI—Type of Report

Put an "X" in the box marked Part B.

Section XVII—Facility's EPA Identification Number

Enter the EPA identification number for your facility.

Example:



GENERATOR'S EPA IDENTIFICATION NUMBER

Section XVIII—Generator's EPA Identification Number

Enter the EPA identification number of the generator of the waste described under Section XXI which was received by your facility during the reporting year. A separate sheet must be used for each generator. If the waste came from a foreign generator, enter the EPA identification number of the importer in this section and enter the name and address of the foreign generator in Section XXII, Comments. If the waste was generated and treated, stored, or disposed of at the same installation, leave this section blank.

Section XIX—Generator's Name

Enter the name of the generator corresponding to the generator's EPA identification number in Seciton XVIII.

If the waste was generated and treated, stored, or disposed of at the same installation, enter "ON-SITE".

If the waste came from a foreign generator, enter the name of the importer corresponding to the EPA identification number in Section XVIII.

Section XX—Generator's Address

Enter the address of the generator corresponding to the generator's EPA identification number in Section XVIII. If the waste was generated and treated, stored, or disposed of at the same installation, leave this section blank. If the waste came from a foreign generator, enter the address of the importer corresponding to the EPA identification number in Section XVIII.

Section XXI—Waste Identification

All information in this section must be entered by line number. A separate line entry is required for each different waste or mixture of wastes that your facility received during the reporting year. The handling code applicable to that waste at the end of the reporting year should be reported. If a different handling code applies to portions of the same waste, (e.g., part of the waste is stored while the remainder was "chemically fixed" during the year), use a separate line entry for each portion.

Example:

XXI. WASTE IDENTIFICATION

LINE NUMBER	A. DESCRIPTION OF WASTE	B. EPA HAZARDOUS WASTE NUMBER (see instructions)	C. HANDLING METHOD (enter code)	D. AMOUNT OF WASTE	UNIT OF MEASURE (enter code)
1	Steel Finishing Sludge	K 0 6 0 K 0 6 1	S 0 2	2 5 0 0 0	T
2	Steel Finishing Sludge	K 0 6 0 K 0 6 1	T 2 1	1 5 7 2 4 5	T

Section XXI–A—Description of Waste

For hazardous wastes that are listed under 40 CFR Part 261, Subpart D, enter the EPA listed name, abbreviated if necessary. Where mixtures of listed wastes were received, enter the description which you believe best describes the waste.

For unlisted hazardous waste identified under 40 CFR Part 261, Subpart C, enter the description which you believe best describes the waste. Include the specific manufacturing or other process generating the waste (e.g., green sludge from widget manufacturing) and if known, the chemical or generic chemical name of the waste.

Section XXI–B—EPA Hazardous Waste Number

For listed waste, enter the four digit EPA Hazardous Waste Number from 40 CFR Part 261, Subpart D, which identifies the waste.

For a mixture of more than one listed waste, enter each of the applicable EPA Hazardous Waste Numbers.

Four spaces are provided. If more space is needed, continue on the next line(s) and leave all other information on that line blank.

Example:

XXI. WASTE IDENTIFICATION

LINE NUMBER	A. DESCRIPTION OF WASTE	B. EPA HAZARDOUS WASTE NUMBER (see instructions)	C. HANDLING METHOD (enter code)	D. AMOUNT OF WASTE	UNIT OF MEASURE (enter code)
1	Steel Finishing Sludge	K060 K061 K062 K063	T21	291745	T
2		K064			

For unlisted hazardous wastes, enter the EPA Hazardous Waste Numbers from 40 CFR Part 261, Subpart C, applicable to the waste. If more than four spaces are required, follow the procedure described above.

Section XXI–C—Handling Code

Enter one EPA handling code for each waste line entry. Where several handling steps have occurred during the year, report only the handling code representing the waste's status at the end of the reporting year or its final disposition. EPA handling codes are given in Appendix I of this Part.

Section XXI–D—Amount of Waste

Enter the total amount of waste described on this line which you received during this reporting year.

Section XXI–E—Unit of Measure

Enter the unit of measure code for the quantity of waste described on this line. Units of measure which must be used in this report and the appropriate codes are:

Units of measure	Code
Pounds	P
Short tons (2,000 lbs)	T
Kilograms	K
Tonnes (1,000 kg)	M

Units of volume may not be used for reporting but must be converted into one of the above units of weight, taking into account the appropriate density or specify gravity of the waste.

Section XXII—Comments

This space may be used to explain or clarify any entry. If used, enter a cross-reference to the appropriate Section number.

Note.—Since more than one page is required for each report, enter the page number of each sheet in the lower right hand corner as well as the total number of pages.

Where required by 40 CFR 264 or 265, Subparts F or R, attach ground-water monitoring data to this report.

Unmanifested Waste Report—Part C Instructions (EPA Form 8700–13B)

Unmanifested Waste Report for facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest.

Important: Read all instructions before completing this form.

For the Unmanifested Waste Report, EPA Forms 8700–13 and 8700–13B must be filled out according to the directions for the Part B Facility Annual Report except that: (1) blocks for which information is not available to the owner or operator of the reporting facility may be marked "UNKNOWN," and (2) the following special instructions apply:

Section VIII—Cost Estimates for Facilities

Do not enter closure or post-closure cost estimates.

Section XVI—Type of Report

Put an "X" in the box marked Part C.

Section XXI–A—Description of Waste

Use as many line numbers as are needed to describe the waste.

Section XXI–C—Handling Code

Enter the handling code which describes the status of the waste on the date the report is filed.

Section XXI–D—Amount of Waste

Enter the amount of waste received, rather than a total annual aggregate.

Section XXII—Comments

a. Enter the EPA Identification number, name, and address of the transporter, if known. If the transporter is not known to you, enter the name and chauffeur license number of the driver and the State and license number of the transporting vehicle which presented the waste to your facility, if known.

b. Enter an explanation of how the waste movement was presented to your facility; why you believe the waste is hazardous; and how your facility plans to manage the waste. Continue on a separate blank sheet of paper if additional space is needed.

Monitoring data

Do not attach monitoring data.

Appendix III.—*EPA interim primary drinking water standards*

Parameter	Maximum level (mg/1)
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Fluoride	1.4–2.4
Lead	0.05
Mercury	0.002
Nitrate (as N)	10
Selenium	0.01
Silver	0.05
Endrin	0.0002
Lindane	0.004
Methoxychlor	0.1
Toxaphene	0.005
2,4-D	0.1
2,4,5-TP Silver	0.01
Radium	5 pCi/1
Gross Alpha	15 pCi/1
Gross Beta	4 millirem/yr
Turbidity	1/TU
Coliform Bacteria	1/100 ml

[*Comment:* Turbidity is applicable only to surface water supplies.]

Appendix IV—Tests for Significance

As required in § 265.93(b) the owner or operator must use the Student's t-test to determine statistically significant changes in the concentration or value of an indicator parameter in periodic ground-water samples when compared to the initial background concentration or value of that indicator parameter. The comparison must consider individually each of the wells in the monitoring system. For three of the indicator parameters (specific conductance, total organic carbon, and total organic halogen) a single-tailed Student's t-test must be used to test at the 0.01 level of significance for significant increases over background. The difference test for pH must be a two-tailed Student's t-test at the overall 0.01 level of significance.

The student's t-test involves calculation of the value of a t-statistic for each comparison of the mean (average) concentration or value (based on a minimum of four replicate measurements) of an indicator parameter with its initial background concentration or value. The calculated value of the t-statistic must then be compared to the value of the t-statistic found in a table for t-test of significance at the specified level of significance. A calculated value of t which exceeds the value of t found in the table indicates a statistically significant change in the concentration or value of the indicator parameter.

Formulae for calculation of the t-statistic and tables for t-test of significance can be found in most introductory statistics texts.

Appendix V—Examples of Potentially Incompatible Waste

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of treatment, storage, and disposal facilities, and to enforcement and permit granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

This list is not intended to be exhaustive. An owner or operator must, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank

equipped so that ignition cannot occur, and burning the gases in an incinerator).

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Group 1–A	Group 1–B
Acetylene sludge	Acid sludge
Akaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners
Alkaline corrosive battery fluid	Electrolyte, acid
Caustic wastewater	Etching acid liquid or solvent
Lime sludge and other corrosive alkalies	Pickling liquor and other corrosive acids
Lime wastewater	Spent acid
Lime and water	Spent mixed acid
Spent caustic	Spent sulfuric acid

Potential consequences: Heat generation; violent reaction.

Group 2–A	Group 2–B
Aluminum	Any waste in Group 1–A or 1–B
Beryllium	
Calcium	
Lithium	
Magnesium	
Potassium	
Sodium	
Zinc powder	
Other reactive metals and metal hydrides	

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3–A	Group 3–B
Alcohols	Any concentrated waste in Groups 1–A or 1–B
Water	Calcium
	Lithium
	Metal hydrides
	Potassium
	SO_3Cl_2, $SOCl_2$, PCl_3, CH_3SiCl_3
	Other water-reactive waste

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 4–A	Group 4–B
Alcohols	Concentrated Group 1–A or 1–B wastes
Aldehydes	Group 2–A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents	

Potential consequences: Fire, explosion, or violent reaction.

Group 5–A	Group 5–B
Spent cyanide and sulfide solutions	Group 1–B wastes

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 6–A	Group 6–B
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acides
Chlorites	Group 2–A wastes
Chromic acid	Group 4–A wastes
Hyphochlorites	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

Potential consequences: Fire, explosion, or violent reaction.

Source: "Law, Regulations, and Guidelines for Handling of Hazardous Waste."

California Department of Health, February 1975.

[FR Doc. 80–14309 Filed 5–16–80; 8:45 am]

BILLING CODE 6560–01–M

federal register

Monday
May 19, 1980

Part VIII

Environmental Protection Agency

Hazardous Waste Management System

Proposal To Modify 40 CFR Part 265—Subpart H—Financial Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL 1459-7]

Financial Requirements for Owners and Operators of Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Revision of Proposed Rule.

SUMMARY: This proposal is a revision of regulations proposed on December 18, 1978 (43 FR 58995, 59006–7). Under the revised proposal, as in the original, an owner or operator of each hazardous waste management facility would have to provide assurance that funds will be available when needed for properly closing the facility and, in the case of a disposal facility, for maintaining and monitoring it after closure. The revised proposal, however, allows a number of options in providing such assurances, while the original proposal had only one option, trust funds. The revised provisions for financial assurance are proposed for inclusion both in the general standards to be used in permitting (Part 264) and in standards for facilities in interim status (Part 265).

The revised proposal also includes a new requirement for liability insurance for facilities in interim status. The liability requirements in the original proposal were only for inclusion in the general standards. These general standards have not been revised, but the comment period for them is reopened.

EPA is reproposing this rule because of the many new and revised provisions which have not been subjected to public review. The changes have resulted from reanalyses by the Agency in response to public comment on the original proposal.

DATES: Comments are due on or before July 18, 1980. A public hearing will be held July 1, 1980 from 9 a.m. to 5 p.m.

ADDRESSES: Comments should be addressed to Deborah Villari, Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755–9173. Comments should identify the regulatory docket as follows: "Section 3004, Financial Requirements."

The official record for this rulemaking is available at: Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

A public hearing will be held at the HEW North Building Auditorium, 330 Independence Avenue SW., Washington, D.C., on July 1, 1980, from 9 a.m. to 5 p.m., with registration from 8:30 to 9 a.m. Anyone wishing to make a statement at the hearing should notify, in writing: Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH–562), U.S. E.P.A., 401 M Street SW., Washington, D.C. 20460.

Oral and written comments may be submitted at the public hearing. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

FOR FURTHER INFORMATION CONTACT: George A. Garland, Chief, Economic and Policy Analysis Branch, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 755–9190.

For information about the liability requirements, contact Hugh Holman, Economic Analysis Division, Office of Planning and Evaluation (PM–220), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755–2677.

SUPPLEMENTARY INFORMATION:

Authority

This regulation is proposed under the authority of Section 1006, 2002(a), and 3004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC §§ 6905, 6912(a), and 6924.

Background

Section 3004(6) of the Resource Conservation and Recovery Act of 1976 specifically requires EPA to establish financial responsibility standards applicable to owners and operators of hazardous waste management facilities as such standards may be necessary or desirable to protect human health and the environment. EPA proposed, on December 18, 1978 (43 FR 58995, 59006–7), financial requirements intended to provide: (1) assurance that funds will be available when needed to close hazardous waste management facilities properly and to monitor and maintain hazardous waste disposal facilities after closure; and (2) liability coverage for injuries to people and property which result from the operation of hazardous waste management facilities.

The need for requirements for financial assurance of closure and post-closure care is indicated by the numerous instances of environmental damage resulting from abandonment of facilities and other failure to provide for closure and post-closure care in a timely manner. (Several such cases are described in the Background Document for the financial requirements.) The likelihood of failure to provide adequately for closure and post-closure care is increased by the fact that the costs occur when the economic value of the facility is diminished or nonexistent. For some disposal facilities, post-closure care must extend for decades beyond the operating life of the facility. EPA believes that significant numbers of owners and operators may lack the ability to provide effectively for closure and post-closure costs unless they make provision for them during the active operating life of the facility.

The Agency believes liability requirements are necessary because of the potential for damage to people and property from hazardous waste management operations, as indicated by actual damage cases and the essential nature of hazardous wastes. If the facility owner or operator has insufficient financial resources to pay for damages, private parties or government may be forced to bear the costs.

The basic purposes of the financial requirements have not changed since the original proposal, but the provisions for achieving these purposes have been expanded and altered as a result of reanalyses following public comment on the original proposal. As explained in greater detail below, the revised proposal would allow owners and operators to choose from a number of mechanisms in providing financial assurance for closure and post-closure care, including trust funds, surety bonds, letters of credit, guaranties, a financial test, and a revenue test for municipalities. The provisions for the one option that was available in the original proposal, the trust fund, have been restructured to be less burdensome to owners and operators. Standard forms for the financial instruments have been added to the proposal.

The revised requirements for financial assurance for closure and post-closure care are proposed for inclusion in both the general standards to be used in the permitting of hazardous waste management facilities (40 CFR Part 264) and the interim status standards (Part 265). The headings and citations are numbered for inclusion in Part 265 since the regulations on closure, post-closure care, cost-estimating, and applicability to which the proposed regulations must refer have been promulgated only for Part 265 (and appear in today's **Federal Register**). For inclusion in Part 264, these citations would be changed and other

minor modifications would be made, e.g., the requirement that the assurance mechanisms be established by the effective date of the regulations would be dropped since the general standards must be applicable to new facilities seeking a permit after the effective date.

The revised proposal also adds a liability insurance requirement for facilities in interim status. The insurance would cover damage claims resulting from sudden accidents. The general status liability requirements in the original proposal, covering both sudden and nonsudden events, are not part of the reproposal, but the public comment period for them is reopened, to run concurrently with the comment period for the reproposal.

Other portions of the original proposal not included in the reproposal are: (1) the requirements for estimating the costs of closure and post-closure care, which, with an "Applicability" section, are promulgated in today's **Federal Register**; (2) the transfer of ownership provisions, which are dropped from these requirements since this topic is more appropriately covered by the Consolidated Permit Regulations, 40 CFR Part 122, Subparts A and B, which are promulgated today; and (3) the access and default provisions, which are dropped since Sections 3007 and 3008 of RCRA contain access and enforcement provisions that apply to all regulations under Subtitle C of RCRA, and the Agency has decided that special provisions for financial responsibility requirements would be inappropriate.

Applicability

The applicability of the financial requirements for hazardous waste facility owners and operators is set forth in 40 CFR 265.140, which is promulgated today. The proposed regulation, as revised, includes amendments to § 265.140 to cover applicability of the proposed financial requirements. Essentially, the financial requirements for closure and the liability requirements would apply to owners and operators of all hazardous waste facilities, and the requirements for post-closure care would apply only to owners and operators of disposal facilities. States and the Federal government are exempt from the financial requirements.

Financial Assurance for Closure

Under Subpart G of the Part 265 regulations promulgated today, an owner or operator of each hazardous waste facility must prepare a closure plan for the facility. The owner or operator must also prepare a cost estimate for closure of his facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan; he must adjust the estimate for inflation annually and prepare a new estimate whenever a change in the closure plan affects the cost of closure (see § 265.142).

The originally proposed interim status standard for financial assurance for closure required that the owner or operator make a cash deposit for the entire amount of the closure cost estimate into a closure trust fund on the effective date of the regulations; the general standard required an owner or operator to make a cash deposit equal to the cost estimate for closure, multiplied by the appropriate "present value factor," into a closure trust fund as a condition of receiving a permit. The present value factor accounted for growth of the fund over operating life at a 2 percent per annum real interest rate (interest minus inflation). A number of commenters said that owners and operators of many facilities could not afford to comply with these requirements. They suggested that many facilities would have to close, exacerbating the expected shortfall in hazardous waste management capacity. The Agency believes that depositing the full amount of the closure cost in the trust at the beginning may cause insolvency in a few cases representing a relatively small percentage of capacity. However, not being willing to risk aggravating a possible capacity shortfall, EPA proposes to allow the closure trust fund to build up over the expected life of the site or 20 years, whichever period is shorter. The revised proposed requirements for the trust fund include provisions for adjusting the annual payments in response to inflation, changes in the closure cost estimate, and changes in the value of securities in the fund.

As noted above, the originally proposed general standard for the trust fund allowed adjustment of the lump-sum amount to be deposited on the basis that the fund would earn a real interest rate of 2 percent. Some commenters felt that this rate was too low, while others felt it was too high. EPA agrees that a 2 percent real interest rate is too high. Provisions of the revised proposal are based on a zero real interest rate to adequately account for the effects of long-term inflation and trustee fees. Based on long-term data, the Agency believes that over an extended period, the purchasing power of the deposited funds is likely to be static, i.e., the nominal interest realized will be cancelled out by inflation and by trustee fees.

The original proposal did not allow reimbursement of the owner or operator for closure expenses from the trust fund until closure was completed to the satisfaction of the Regional Administrator. Commenters stated that this provision imposed hardship on owners and operators since they would have to pay out twice for closure before being reimbursed. The Agency agrees that it would be preferable to reimburse owners and operators as closure is accomplished. Under the revised proposal the owner or operator would be reimbursed for closure bills submitted before closure was completed if the Regional Administrator found them to be in accordance with the closure plan and if the amount remaining in the trust fund after such payment would be at least 20 percent of the amount in the fund when closure began. The 20 percent remaining would provide reasonable financial assurance for closure activities that may be found to be necessary after the owner or operator and an independent registered professional engineer have certified that closure was completed in accordance with the closure plan. The Regional Administrator must release all funds within 30 days of receiving such certifications unless he has reason to believe closure was not done according to the closure plan.

EPA received numerous comments, especially from industry, suggesting that other financial assurance mechanisms in addition to the trust should be allowed. Commenters stated that allowing only trust funds is unnecessary and financially burdensome. The Agency now proposes to allow a number of mechanisms including surety bonds, letters of credit, guaranties, and tests of financial strength, as well as trust funds.

EPA's major concern with respect to surety bonds has been that they could be quickly cancelled and thus did not assure coverage of closure. As the Agency has gone through the process of revising its proposed regulations, however, it has learned that cancellation provisions that assure coverage of closure may be obtainable by the regulated community. The surety bond provisions in the reproposal include two cancellation clauses. First, the owner or operator and EPA must receive 90 days' notice of cancellation from the surety company; during this time, if the owner or operator is unable to establish other financial assurance, the Agency may order closure. A second clause requires that the bond must remain in effect until completion of closure once closure begins or is ordered to begin by the Regional Administrator.

EPA believes that these provisions would make the surety bond an acceptable alternative mechanism.

A bank letter of credit assures that a bank will make available a specific sum of money over a specific time period on behalf of its customer to the party (beneficiary) in whose favor the letter is written. The beneficiary can draw on the credit by presenting documents specified in the letter. Under the proposed regulation, a letter of credit, payable to the Regional Administrator, would be obtained by a facility owner or operator in the amount of the closure cost estimate. The letter of credit would contain an automatic one-year extension clause; if the bank decides not to renew the credit, it must give 60 days' notice to the Regional Administrator and the owner or operator. If the owner or operator fails to establish other financial assurance during this period, or if the owner or operator fails to carry out closure in accordance with the closure plan, the Regional Administrator could draw on the credit; the funds would go into an escrow account from which closure bills would be paid.

The revised proposal includes a financial test consisting of criteria for net worth, net working capital, and level of indebtedness. By meeting these criteria, firms could satisfy the requirement for financial assurance for closure. The purpose of the test is not to predict whether a firm will go bankrupt but rather to indicate whether it will have adequate funds to establish a trust fund or other allowable instrument to provide financial assurance for closure if its financial position deteriorates beyond the acceptable levels.

Under the proposed regulation an entity meeting the financial test may guarantee another entity's compliance with the closure regulations, and this guarantee would qualify as financial assurance for closure.

For reasons explained in the preamble to 40 CFR Parts 264 and 265, facilities owned or operated by States or the Federal government are exempt from financial requirements under § 265.140(c). Since local governments can, and sometimes do, become insolvent, however, the Agency has included a simple revenue test for municipalities in the reproposed regulation.

For added flexibility, the revised proposal explicitly allows an owner or operator to combine instruments (e.g., coverage of half the closure cost estimate by a trust fund, half by a letter of credit), cover more than one facility with a single mechanism, or cover both closure and post-closure care with a single mechanism.

Under the originally proposed interim status standards, the Regional Administrator could allow partial compliance with the financial assurance requirements if full compliance would render the owner or operator insolvent. This provision is not included in the revised proposal since it could work against the main function of the requirements as minimum standards for financial responsibility on the part of owners and operators. It would also impose a severe administrative burden on the Agency, since the financial status of owners and operators applying for such relief would have to be evaluated. Furthermore, EPA believes that by changing the trust fund to make it a less costly mechanism, and by providing for other financial mechanisms which, for many owners and operators, may be considerably cheaper to use than the trust fund, any need for such a provision is substantially reduced.

Financial Assurance for Post-Closure Care

Subpart G of the Part 265 regulations promulgated today requires that an owner or operator of each hazardous waste disposal facility prepare a plan for 30 years of post-closure care. The owner or operator must prepare, and keep current, a cost estimate for 30 years of post-closure care of the facility (see § 265.144).

The original proposed regulation for financial assurance for post-closure care required establishment of a trust fund built up over the life of the facility. Assurance of post-closure care for 20 years was required since the basic period of post-closure care under the proposed post-closure regulations was 20 years. Again, a 2 percent real interest rate was assumed in directing the calculation of the amount to be paid in. The issues and comments received on the post-closure trust fund requirements were very similar to those received on the closure trust requirements. The Agency's response in the revised proposal is very much the same, and thus the post-closure trust provisions are quite similar to those of the closure trust provisions as revised. The owner or operator would be reimbursed for post-closure costs if they are in accordance with the post-closure plan. At the end of 30 years of post-closure care (or earlier if the Regional Administrator reduces the post-closure care period required of the facility), any funds remaining in the trust would be returned to the owner or operator.

In the revised proposal surety bonds and letters of credit have been added as acceptable financial instruments for assuring post-closure care. These may be written so that they assure lump-sum post-closure funds at closure, or they may assure that the funds will be available at any point during the post-closure period should the owner or operator default. A financial test, guaranty, and a revenue test for municipalities are also being allowed as means of assuring post-closure care.

Mechanisms for Financial Assurance Suggested But Not Included

All the basic methods for providing financial assurance that have been added since the original proposal were among those suggested by commenters on the original proposal. There were a number of other mechanisms suggested that are not in the reproposal, however.

The escrow account has been considered by the Agency, but was not included in the reproposal because it would require the Regional Administrator to become a signatory to the agreement and might present other administrative burdens without offering significant advantage over the other instruments allowed. The escrow account is used in the reproposed regulations as a means of holding funds following a default, since this use of escrows does not involve the Regional Administrator as a signatory.

A national fund based on assessments on owners and operators and used to cover defaults was suggested by several commenters. Use of such a method would clearly require special legislation. EPA is considering proposal of legislation for a national fund that may include coverage of defaults in providing post-closure care, as well as coverage of post-closure liability.

Other mechanisms suggested included pledges of securities, liens against land and real improvements, interest-bearing accounts in financial institutions, and sinking funds. These were not included because the Agency concluded that they suffered from one or more of the following shortcomings: their status is uncertain in the event of financial failure; they would impose unreasonable administrative burdens on the Agency; they could be cancelled quickly, providing no long-term guarantee of financial assurance; or they depend on long-term solvency of the owner or operator.

Liability Requirements

The reproposal includes an interim status requirement for liability insurance during operating life. Under this requirement an owner or operator of each hazardous waste treatment, storage, or disposal facility must show evidence of a minimum of $1 million of liability insurance per occurrence per

firm with a $2 million annual aggregate, for sudden and accidental occurrences (exclusive of legal defense costs).

EPA today also reopens the comment period on the general standards for liability coverage proposed December 18, 1978 (43 FR 59007). The proposed general standards differ from the interim status requirement proposed today, for reasons discussed below. the final general standards and interim status standards will be revised in promulgation to make them consistent as far as insurance for sudden accidents is concerned.

The general standards proposed in December 1978 required each owner or operator to maintain liability insurance for both sudden and accidental occurrences and for nonsudden and accidental occurrences. The interim status regulations proposed at that time did not include any insurance requirement. Though cognizant of the need for financial responsiblity for third-party claims during interim status, EPA was concerned that liability insurance would not be made available to facilities managing hazardous waste until they could show compliance with permit requirements. Analysis performed since the December 1978 proposal suggests that many firms following good business management practices already possess liability insurance covering sudden accidents. Other firms that follow good management practices should easily be able to increase their coverage to the requisite amount or to obtain coverage in the event that they do not currently carry such insurance.

Sudden accidents that cause damage to third parties are clearly a possibility during the operation of a hazardous waste management facility. An analysis of the 90 incidents of damage occurring on hazardous waste management sites in the EPA damage report files showed that damage occurred from sudden events in 15 of the incidents. Facilities involved in sudden accidents were both "on-site" (adjacent to manufacturing facilities) and off-site, and were owned by small, independent operators as well as by large corporations.

The analysis of liability coverage has confirmed that coverage for nonsudden occurrences may not be available at this time to all firms prior to compliance with permit requirements. Most insurance companies do not currently provide coverage of nonsudden occurrences; most that do provide coverage restrict it to their clients who are large and well-managed. Consequently, for the interim status period, the Agency has decided to propose that insurance coverage be required, but only for damages from sudden and accidental incidents.

The analysis suggests that the required insurance can be obtained at a reasonable cost. The cost of liability insurance varies considerably with the inherent risk of the activity insured, the management practices of the firm, and the past accident record of the firm. The cost of annual coverage for sudden accidents is likely to range from $10–20,000 for a small "average risk" waste disposal firm (with annual revenues of $1 million or less) and would increase, though at a decreasing rate, for larger sized firms. This cost of coverage is estimated to be 1–3 percent of annual revenues for small firms. If a small firm is deemed to pose greater risks, however, it could end up paying 5–10 percent of its revenues for insurance. A large high-risk waste disposal firm is likely to pay less than 1 percent of its revenues for insurance coverage. Additionally, the cost of coverage for a firm that only stores waste should be less than the cost of coverage for waste disposal firms. The Agency believes that the firms that do not currently have this coverage or do not have it in the requisite amount should be able to secure it at reasonable cost.

In addition to not requiring coverage for nonsudden events, the liability insurance requirement for the interim status period proposed here differs from the previously proposed general standards in several respects:

The amount of insurance coverage required for sudden incidents is $1 million per incident instead of the $5 million per incident specified in the proposed general standard. Many commenters on the proposed general standard argued that $5 million was too high, and that there have been no representative settlements in this amount. In response to these comments, EPA has reconsidered the required level of coverage. An extensive analysis of the Agency's damage report files identified only one incident where damage caused by a sudden occurrence was estimated. The damages in this incident were $216,500 (1979 dollars). Insurance industry representatives informed EPA that small firms might typically maintain coverage for sudden events in an amount ranging from $300,000 to $1 million. Finally, EPA contacted four States (Washington, Oregon, Oklahoma, and Kansas) known to require insurance for hazardous waste management facilities, and found that the amount of insurance required by these States ranges from $300,000 to $1.2 million. On the basis of these findings, EPA is proposing to require $1 million of liability insurance per incident.

Many commenters on the proposed general regulations argued that EPA should not specify *any* one amount of required insurance coverage, that the amount should be decided on a case-by-case basis after a review of the degree of risk posed by the operations of a hazardous waste management facility. EPA agrees that the degree of risk is of signal importance in setting an appropriate level of insurance coverage. EPA believes that $1 million is a reasonable minimum level of coverage for sudden and accidental occurrences for all firms managing hazardous wastes, and that many firms will choose to obtain coverage in greater amounts based on the risks inherent in their operations. EPA also believes that the premiums paid by facility owners and operators for a given level of coverage will reflect the degree of risk posed by the operations of the facility.

Under today's proposal, liability insurance is to be maintained on a per firm basis rather than a per site basis, accompanied by an annual aggregate liability limit. Many commenters on the proposed general standards requested clarification on this point. Liability insurance is required on a per firm basis rather than a per site basis because insurance companies generally provide coverage to all facilities owned or operated by a firm under a single policy. The insurance industry provides coverage in this manner because through the use of an annual aggregate they are able to take into account the risk of multiple accidents occurring at a firm which owns one or more facilities. Having reviewed prior damage incident histories, the Agency believes that an annual aggregate twice that of the liability limit per occurrence will provide adequate coverage for sudden accidents.

The amount of liability insurance carried must exclude legal defense costs. Legal defense costs are excluded from the liability limits because the costs of legal defense could be considerable and, if included in the limits, could consume the major portion of insurance coverage and leave little coverage for actual damages. The exclusion of legal defense costs is also consistent with standard comprehensive general liability policies.

An added requirement is that the deductible in the insurance policy must not exceed 5 percent of the per incident limit of liability of the policy. A maximum limit has been placed on the deductible in order to prevent firms from carrying a policy with a deductible so high as to render any insurance

coverage ineffective, due to the underlying inability of the firm to meet its obligations under the deductible.

Finally, self-insurance is not permitted as an alternative to liability insurance during interim status. Self-insurance, as proposed in the December 1978 general standards, was defined as the absence of insurance and the sufficiency of equity to cover potential claims. The Agency believes that most if not all firms currently carry or can obtain comprehensive general liability policies and hence sees no need to allow self-insurance for the interim status period.

Use of State-Authorized Mechanisms

In the original proposal the Agency did not address the problem of differences between State and Federal financial requirements which potentially might cause problems to owners or operators. No such problem would develop in States that receive authorization to operate a hazardous waste regulatory program in lieu of the Federal program, since only the State's requirements would apply. Some States, however, may not seek or obtain Federal authorization, and, for others, authorization may be delayed. In such States the owners and operators would be subject to Federal hazardous waste regulations and also to any State hazardous waste regulations that are in effect. To avoid causing unnecessary burdens on owners and operators, the Agency has included provisions in the revised proposal that would allow owners or operators to use State-authorized mechanisms to meet the Federal financial requirements if such mechanisms provide assurances that are substantially equivalent to that of mechanisms specified in the Federal requirements.

Also, to the extent that a State assumes legal or financial responsibility for closure, post-closure care, or liability coverage for a facility, the owner and operator would be exempt from the respective Federal financial requirements.

Comments Requested on Financial Assurance for Closure and Post-Closure Care

In response to many comments on the original proposed regulation on financial assurance for closure and post-closure care, the Agency is proposing a greatly expanded regulation. The main objective has been to allow means in addition to trust funds which would be effective in assuring availability of needed funds. EPA has limited experience regarding financial mechanisms, however. The Agency wishes to receive, and expects to benefit greatly from, public review of this entire revised proposal. Furthermore, the Agency requests comments on the following specific matters:

- The revised proposal allows the closure trust fund to be built up in annual payments over the life of the facility, or 20 years, whichever period is shorter. Does the benefit of lowering the cost of compliance with the financial requirement outweigh any reduction in financial assurance caused by the lengthy pay-in period?
- What kinds of owners or operators of hazardous waste facilities are likely to be able to obtain letters of credit and surety bonds? Can the requirements for these instruments be altered in a way that will increase their availability without reducing their effectiveness?
- What has been the experience of other governmental entities with collecting on surety bonds and letters of credit in the event of a default? Has experience led any governmental body to prefer one type of financial instrument over another in terms of reliability and ease of administration? What kinds of arrangements do banks and other financial institutions usually make to hold funds pending the outcome of legal determinations of default?
- Are the proposed financial test, revenue test, and guaranty effective means of financial assurance? Are the criteria accurate measures of financial health? Are there relatively simple alternatives or substitutes for the criteria which promise greater accuracy or reliability? Is there empirical evidence available which would justify making the proposed financial tests more or less stringent? Should private bond-rating services be considered as an alternative to the revenue test for municipalities or added as an element of the test?
- The Agency has considered escrow accounts as mechanisms for financial assurance and has tentatively decided that they are likely to present undue administrative burdens to the Agency without offering significant advantages over the other instruments allowed in the regulations. Comments are nonetheless invited on the idea of adding escrow accounts to the list of allowed instruments.
- The revised proposal allows for use of a single financial mechanism to provide financial assurance for closure and/or post-closure care of multiple facilities. How useful is this provision to the regulated community? Will it pose administrative problems to the Regional Offices in cases where facilities in more than one Region are covered by a single financial instrument?
- Suggestions and information on other possible mechanisms, or on different versions of the instruments already allowed, will be welcomed. The utility of such suggestions will be maximized by providing concrete examples of the form and operation of the instruments as well as an argument as to how they will succeed in meeting the problems of providing financial assurance for closure and/or post-closure care at a hazardous waste facility.
- EPA has been considering proposing legislation for a national fund that would provide financial assurance for post-closure care. Under such an approach, owners or operators of hazardous waste disposal facilities would pay into a national fund which would then be used to pay for post-closure care at bankrupt facilities. Comments are invited on whether this approach might be less costly than the proposed requirements for financial assurance for post-closure care.
- Forms for the trust instruments, surety bonds, letters of credit, and guarantees allowed in this revised proposal are included in these regulations in Appendices II–VIII. The Agency would prefer to require the use of such forms in order to simplify review of the instruments and administration of the regulations. Are there errors of commission or omission in the language of the specific forms which may impede or prevent them from accomplishing the goals intended? Would changes in the language or requirements of the specific forms increase their availability to the regulated community without reducing their reliability? How can the costs of the instruments be minimized further?

Comments Requested on Liability Requirements

EPA also invites comments on several issues pertaining to the interim status liability requirement proposed today, and reopens the comment period on the general standard for liability coverage proposed December 18, 1978 (43 FR 59007).

EPA invites comment on the following specific issues, as well as on any other issues raised by the proposed liability requirements:

- Should the Agency require insurance coverage for nonsudden and accidental occurrences during the interim status period?
- Will the insurance industry provide such coverage?
- Will such coverage be available on a continuing basis, or may the insurance industry withdraw such coverage in the event of large damage suits?

• Is it desirable to allow the use of financial responsibility mechanisms such as indemnity funds as alternatives to liability insurance for either sudden or nonsudden occurrences? How would such alternatives work?

• Is the amount of coverage specified in the regulations appropriate?

• Can we tailor the amount of required insurance to reflect better the degrees of risk posed by the operations of particular sites? How can this be done?

• What will the likely annual cost of insurance be for nonsudden incidents?

• Will all firms be able to afford insurance for nonsudden incidents?

• Can a useful self-insurance alternative be specified which will ensure financial responsibility? What criteria should be used in qualifying self-insurers? What should be the allowable level(s) of self-insurance?

• EPA has obtained information on the above issues relating to liability requirements since the original proposal and has included the information as an appendix to the Background Document for the financial requirements. The Agency requests comments on this information as well as on the rest of the Background Document.

Background Document

Copies of the Background Document prepared in support of this revised proposed rule are available for review in all EPA Regional Office libraries and in the EPA headquarters library (Public Information Reference Unit) Room 2404, Waterside Mall, 401 M Street, SW, Washington, D.C.

Economic, Environmental, and Regulatory Impacts

In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–107, EPA policy as stipulated in 39 FR 37419, October 21, 1974, and Executive Order 12044, respectively, analyses of the economic, environmental, and regulatory impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management. Copies of the draft documents covering the proposed requirements for financial assurance of closure and post-closure care are available for review in the EPA libraries noted above. The impacts of the liability requirement in this reproposal are not covered in the present drafts but will be covered in subsequent drafts.

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 265 by revising § 265.140(a) and (b), and adding §§ 265.141, 265.143, 265.145, 265.146, 265.147, and Appendices I–VIII. It is also proposed that the same provisions, with changes in section numbers and other minor modifications, will be included in Part 264.

Subpart H—Financial Requirements

§ 265.140 Applicability.

(a) The requirements of §§ 265.142, 265.143, 265.146, 265.147, and 265.149 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

(b) The requirements of §§ 265.144 and 265.145 apply only to owners and operators of disposal facilities.

* * * * *

§ 265.141 Definitions.

When used in Part 265, the following terms have the meanings given below:

(a) "Assets" means debit balances carried forward upon a closing of books of account representing property values or rights acquired that are recognized and measured in conformity with generally accepted accounting principles.

(b) "Current assets" means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of a business or within one year, if the operating cycle is shorter than one year.

(c) "Current liabilities" means liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet or the creation of other current liabilities; or those expected to be satisfied within a relatively short period of time, usually one year.

(d) "Liabilities" means obligations carried forward upon a closing of books of account that are recognized and measured in conformity with generally accepted accounting principles.

(e) "Marketable securities" means securities that are traded on recognized established securities markets where there are independent bona fide offers to buy and sell and where payment will be received in settlement of a sale within a relatively short time conforming to trade custom.

(f) "Net working capital" means the excess of current assets over current liabilities.

(g) "Net worth" means the excess of total assets over total liabilities and is equivalent to owner's equity.

(h) "Standby letter of credit" means an irrevocable engagement by an issuing bank, at the request of an owner or operator, that it will honor demands for payment made by the U.S. Environmental Protection Agency for the period of the letter of credit and under terms specified for letters of credit in these regulations.

(i) "Surety bond" means a contract by which a surety company engages to be answerable for the default or debts by an owner or operator on responsibilities relating to closure or post-closure care, and agrees to satisfy these responsibilities if the owner or operator does not, in accordance with the terms specified for surety bonds in these regulations.

(j) "Total-liabilities-to-net-worth ratio" means the value of total liabilities, which includes the sum of short-term and long-term obligations, divided by the value of net worth.

(k) "Trust fund" means a fund established by an owner or operator and held by a financial institution as the trustee with a fiduciary responsibility to carry out the terms of the trust as specified in these regulations for the benefit of the U.S. Environmental Protection Agency.

* * * * *

§ 265.143 Financial assurance for facility closure.

By the effective date of these regulations, an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from among the following options:

(a) *Closure trust fund.*

(1) The owner or operator may establish a closure trust fund. The trustee must be a bank or other financial institution. The beneficiary of the trust fund must be the U.S. Environmental Protection Agency.

(2) The trust agreement must be executed on EPA Form 8700–15 (see Appendix II). The owner or operator must send the properly executed trust agreement to the Regional Administrator by certified mail within 10 days after the effective date of the agreement.

(3) Replacement of a trust fund with another form or forms of financial assurance allowed in this section must be preceded by the written consent of the Regional Administrator. The owner or operator must report any change of trustee to the Regional Administrator within 10 days after such a change becomes effective.

(4) Payments to the trust fund must be in cash or marketable securities. The value of each security must be determined in accordance with the Internal Revenue Service method for valuing securities for estate tax purposes (26 CFR 20.2031–2). In all valuations of the trust fund for purposes

of these regulations, securities must be valued by this IRS method.

(5) Payments to the closure trust fund must be made annually over the operating life of the facility as estimated in the closure plan (§ 265.112(a)) or 20 years, whichever period is shorter; this period is hereafter referred to as the "pay-in" period. The first payment must be equal to the adjusted closure cost estimate (see § 265.142) divided by the pay-in period in years. The first payment must be made by the effective date of these regulations. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The trust agreement must require the trustee to notify the Regional Administrator by certified mail within 5 days after the end of the 30-day period if he does not receive payment within such period. Upon receiving such notification, the Regional Administrator may order the facility to begin closure unless the owner or operator has established other financial assurance as allowed in this section.

(6) The owner or operator must adjust the amount of each annual payment after the first one by multiplying the amount of the previous year's payment by the inflation factor calculated in accordance with § 265.142(c).

(7) If a new closure cost estimate is prepared in accordance with § 265.142(b), the next annual payment must be calculated as follows:

Step 1—Divide the adjusted closure cost estimate by the number of years in the pay-in period as of the effective date of these regulations.

Step 2—Multiply the result by the number of payments made to the fund.

Step 3—From the result of step 2 subtract the current value of the fund. The result is the amount which needs to be distributed over the remaining pay-in period.

Step 4—Divide the result of step 3 by the remaining years in the pay-in period.

Step 5—Add the result of step 4 to the result of step 1 to obtain the new payment.

(For an example of this calculation, see Appendix I.)

(8) The owner or operator must determine the value of the trust fund each year within 30 days prior to the date each annual payment is due to be made. If the total value of the fund has decreased since the previous year's valuation, the next payment must be calculated using the steps in paragraph (a)(7) of this section. The owner or operator may also use the calculation in paragraph (a)(7) to determine his next payment if the value of the fund has increased. If the value of the fund exceeds the *total* amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted closure cost estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(9) An owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the closure cost estimate at the time the fund is established, but the trust fund must be valued annually and its value must be maintained at no less than the value that the fund would have had if annual payments had been made as specified in paragraphs (a)(5)–(8) of this section.

(10) If an owner or operator establishes a closure trust fund after the effective date of these regulations, having initially used one of the other mechanisms specified in this section, his first payment must be in the amount that the trust fund would have contained if it had been established on the effective date of these regulations in accordance with the requirements of this section.

(11) If the operating life of a facility extends beyond the maximum 20-year pay-in period, the owner or operator must determine the value of the trust fund every year after the 20th year until closure begins. Whenever the closure cost estimate changes during this period in accordance with § 265.142 (b) or (c), the owner or operator must compare the new estimate with the latest annual value of the fund. If the value of the fund is less than the amount of the adjusted closure cost estimate, the owner or operator must deposit cash or marketable securities into the fund so that its value equals the amount of the estimate. Such payment must be made within 60 days of the change in the closure cost estimate. If the value of the fund is greater than the total amount of the adjusted closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of funds in excess of the estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(12) Within 30 days after receiving a request from the owner or operator for release of excess funds as specified in paragraphs (a) (8) and (11), the Regional Administrator must direct the trustee in writing to release such excess funds to the owner or operator unless the Regional Administrator finds that the closure cost estimate was not prepared and adjusted in accordance with § 265.142.

(13) An owner or operator may request reimbursement for closure expenditures by submitting itemized bills to the Regional Administrator. Within 30 days after receiving bills for closure activities, the Regional Administrator must direct the trustee in writing to pay those bills which the Regional Administrator determines to be in accordance with the closure plan or are otherwise justified. Such payments must be made so long as the value of the fund after payment is at least 20 percent of the value that the fund had before any closure bills were paid.

(14) If an owner or operator substitutes another form or forms of financial assurance specified in this section for all or part of the trust fund, he may apply to the Regional Administrator for release of funds from the trust fund. Within 30 days after receiving such request, the Regional Administrator must direct the trustee in writing to release the excess funds to the owner or operator.

(15) The terms of the trust must require the trustee to make disbursements as specified in this paragraph. The trustee will disburse monies from the trust fund to parties designated by the Regional Administrator upon written notification from the Regional Administrator that:

(i) The value of the trust fund exceeds the amount of the adjusted closure cost estimate; or

(ii) The itemized bills are in accordance with the approved closure plan or are otherwise justified, and they must be paid if the value of the trust fund after such payment is at least 20 percent of the value that the fund had before any closure bills were paid; or

(iii) The owner or operator has established other financial assurance for closure as allowed in this section for part or all of the trust fund; or

(iv) There has been a legal determination, a copy of which is attached to this notification, of a violation of the closure requirements of these regulations rendered in a proceeding brought pursuant to Section 3008 of RCRA.

(16) The trust agreement must require the trustee to release all funds remaining in the trust fund to the owner or operator upon receipt from him of the original or an authenticated copy of the Regional Administrator's letter, specified in paragraph (h) of this section, notifying the owner or operator that he is no longer required to comply with the requirements of this section for financially assuring closure of the facility.

(b) *Surety bond guaranteeing performance of closure.* (1) An owner or

operator may meet the requirements of this section by obtaining a surety bond guaranteeing performance of closure. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700–16 (see Appendix III). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) The surety bond must guarantee that the owner or operator will perform facility closure in accordance with the closure plan. The surety bond must be written in an amount equal to or greater than the adjusted closure cost estimate (see § 265.142). The surety bond must be written so that whenever closure activities begin or are ordered to begin by the Regional Administrator during the term of the bond, the bond coverage includes completion of closure in accordance with the closure plan.

(4) If the closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) The terms of the surety bond must provide that the surety company may cancel the bond by sending notice to the owner or operator and to the Regional Administrator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving a notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of cancellation from the surety the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) A surety becomes liable on a bond obligation only when a proceeding brought pursuant to the provisions of Section 3008 of RCRA has determined that the owner or operator has violated the closure requirements of these regulations. The terms of the bond must require that, following such a determination, the surety must:

(i) Complete closure of the facility in accordance with the closure plan; or

(ii) Pay the amount of the penal sum into an escrow account as directed by the Regional Administrator.

(8) The Regional Administrator must direct the depositary of an escrow account established under paragraph (b)(7)(ii) of this section to disburse funds to designated parties for the purpose of completing closure.

(c) *Standby letter of credit assuring funds for closure.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700–17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for at least the amount of the adjusted closure cost estimate (see § 265.142).

(4) If the closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the amount of the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the closure cost estimate decreases, the credit may be reduced to the amount of the adjusted closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the issuing bank of any reduction in the required credit within 30 days after receiving the request.

(5) The letter of credit must contain a clause providing for automatic annual extensions of the credit, subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of nonrenewal from the bank the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has received evidence that the owner or operator has established other financial assurance as specified in this section. If the Regional Administrator draws upon the letter of credit following a notice of nonrenewal, the issuing bank must, under the terms of the letter, deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)–(16) of this section.

(7) If the closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(8) The Regional Administrator may otherwise draw upon the letter of credit only upon a legal determination of a violation of the closure requirements of these regulations rendered in a proceeding brought pursuant to the provisions of Section 3008 of RCRA. The terms of the letter must provide that, if the Regional Administrator draws upon the letter of credit following such a determination, the issuing bank will immediately and directly deposit the amount of the draft into an interest-bearing escrow account. The letter must require the escrow depositary to disburse monies from the escrow account to persons designated by the Regional Administrator to complete closure of the facility.

(d) *Use of more than one type of financial instrument.* An owner or operator may meet the requirements of

this section by establishing more than one type of financial instrument. These instruments are limited to a trust fund, surety bond, or letter of credit as specified in paragraphs (a), (b), and (c), respectively, of this section (e.g., a letter of credit may assure half the closure cost and a trust fund the remaining half).

(e) *Financial test and guaranty for closure.* (1) An owner or operator may meet the requirements of this section by having all of the following financial characteristics:

(i) At least $10 million in net worth in the United States.

(ii) A total-liabilities-to-net-worth ratio of not more than three.

(iii) Net working capital in the United States of at least twice the adjusted closure cost estimate (see § 265.142).

(2) These characteristics must be demonstrated in a financial statement which has been audited by an independent certified public accountant and which contains unconsolidated balance sheets dated no more than 140 days prior to the current date. The owner or operator who intends to use a financial test to meet both closure and post-closure requirements for a single facility or to meet closure and/or post-closure requirements for more than one facility must indicate in the statement which requirements for which facilities are to be met through the financial test and must demonstrate that his net working capital in the United States is at least twice the sum of all the adjusted estimates of closure and post-closure costs to be covered by the financial test. The owner or operator must have the financial statement available at the facility and must provide data from the statement if requested as part of annual reports to the Regional Administrator under § 265.75.

(3) If at any time during the operating life of the facility the owner or operator fails to meet the requirements of paragraph (e)(1) of this section, he must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. Evidence of other financial assurance as specified in this section must be sent to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the requirements; otherwise the Regional Administrator may order him to begin closure.

(4) An owner or operator may meet the requirements of this section by obtaining another entity's written guaranty providing financial assurance, in an amount equal to the adjusted closure cost estimate, for the owner's or operator's compliance with the closure requirements of these regulations. The guarantor must meet the requirements for owners or operators in paragraphs (e) (1) and (2) of this section.

(5) The guaranty must be executed on EPA Form 8700–18 (see Appendix V). The owner or operator must send the properly executed guaranty to the Regional Administrator by certified mail within 10 days after the effective date of the guaranty.

(6) Under the terms of the guaranty, the guarantor must notify the Regional Administrator and the owner or operator by certified mail if he at any time fails to meet the requirements of paragraph (e)(1) of this section. The guarantor must send such notice within 5 days after learning of failure to meet the requirements.

(7) The owner or operator must, within 30 days of receiving such notification, establish other financial assurance as specified in this section and provide evidence of such assurance to the Regional Administrator. If he fails to do so, the Regional Administrator may order him to begin closure.

(8) The guarantor may cancel the guaranty with 90 days' notice to the Regional Administrator and the owner or operator by certified mail, except that the guaranty must remain in effect if closure begins or is ordered to begin by the Regional Administrator before the end of the 90 days. Evidence of other financial assurance as specified in this section must be provided to the Regional Administrator within 30 days after a notice of cancellation is received by the Regional Administrator; otherwise, he may order the owner or operator to begin closure.

(9) The guaranty may be cancelled at any time following the mutual written consent of the owner or operator, the Regional Administrator, and the guarantor.

(10) Under the terms of the guaranty, in the event of a legal determination of a violation of the closure requirements rendered in a proceeding brought pursuant to Section 3008 of RCRA, the guarantor must pay parties designated by the Regional Administrator to complete closure in accordance with the closure plan.

(f) *Revenue test for municipalities.* (1) If the owner or operator is a municipality (as defined by RCRA), it may meet the requirements of this section by having annual revenues from property, sales, and/or income taxes equal to 10 times the adjusted closure cost estimate (see § 265.142). To be acceptable, these tax revenues must be legally available to cover closure responsibilities, i.e., they must not be dedicated to other purposes or otherwise precluded from use in meeting closure responsibilities.

(2) The owner or operator must send a letter signed by the chief financial officer of the municipality to the Regional Administrator stating that the municipality meets the requirements of paragraph (f)(1) of this section. The letter must be sent by certified mail within 10 days after the owner or operator begins use of the revenue test to meet the requirements of this section.

(3) If at any time during the operating life of the facility the annual tax revenues fail to meet the minimum multiple specified in paragraph (f)(1), the owner or operator must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirement. The owner or operator must send evidence of other financial assurance as specified in this section to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the minimum multiple; otherwise the Regional Administrator may order the owner or operator to begin closure.

(g) *Use of a single financial mechanism for multiple facilities.* An owner or operator may use a single financial mechanism, as specified in paragraphs (a) through (f) of this section, to meet the requirements of this section for more than one facility of which he is the owner or operator. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for each facility.

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days of receiving certifications from the owner or operator and an independent registered professional engineer that closure has been accomplished in accordance with the closure plan (see § 265.115), the Regional Administrator must, unless he has reason to believe that closure has not been in accordance with the closure plan, send a letter to the owner or operator notifying him that he no longer has to comply with the requirements of this section for the facility in question.

[Comment: It should be noted that this letter from the Regional Administrator to the owner or operator releases him only from requirements for financial assurance for closure of the facility; it does not release him from legal responsibility for meeting the closure standards.]

* * * * *

§ 265.145 Financial assurance for post-closure monitoring and maintenance.

By the effective date of these regulations, an owner or operator of each disposal facility must establish financial assurance for 30 years of post-closure care of the facility. He must choose from among the following options:

(a) *Post-closure trust fund.* (1) The owner or operator may establish a post-closure trust fund. The trustee must be a bank or other financial institution. The beneficiary of the trust fund must be the U.S. Environmental Protection Agency.

(2) The trust agreement must be executed on EPA Form 8700–19 (see Appendix VI). The owner or operator must send the properly executed trust agreement to the Regional Administrator by certified mail within 10 days after the effective date of the agreement.

(3) Replacement of a trust fund with another form or forms of financial assurance allowed in this section must be preceded by written consent of the Regional Administrator. The owner or operator must report any change of trustee to the Regional Administrator within 10 days after such a change becomes effective.

(4) Payments to the trust fund must be in cash or marketable securities. The value of each security must be determined in accordance with the Internal Revenue Service method for valuing securities for estate tax purposes (26 CFR 20.2031–2). In all valuations of the trust fund for purposes of these regulations, securities must be valued by this IRS method.

(5) Payments to the post-closure trust fund must be made annually over the operating life of the facility as estimated in the closure plan (§ 265.112(a)) or 20 years, whichever period is shorter; this period is hereafter referred to as the "pay-in" period. The first payment must be equal to the adjusted post-closure cost estimate (see § 265.144) divided by the pay-in period in years. The first payment must be made by the effective date of these regulations. Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The trust agreement must require the trustee to notify the Regional Administrator by certified mail within 5 days after the 30-day period if he does not receive payment within such period. Upon receiving such notification, the Regional Administrator may order the facility to begin closure unless the owner or operator has established other financial assurance as allowed in this section.

(6) The owner or operator must adjust the amount of each annual payment after the first one by multiplying the amount of the previous year's payment by the inflation factor calculated in accordance with § 265.142(c).

(7) If a new post-closure cost estimate is prepared in accordance with § 265.144(b), the next annual payment must be calculated as follows:

Step 1—Divide the adjusted post-closure cost estimate by the number of years in the pay-in period as of the effective date of these regulations.

Step 2—Multiply the result by the number of payments made to the fund.

Step 3—From the result of step 2 subtract the current value of the fund. The result is the amount which needs to be distributed over the remaining pay-in period.

Step 4—Divide the result of step 3 by the remaining years in the pay-in period.

Step 5—Add the result of step 4 to the result of step 1 to obtain the new payment.

(Appendix I provides an example of a calculation of a new closure trust fund payment using these same steps.)

(8) The owner or operator must determine the value of the trust fund each year during the operating life of the facility within 30 days prior to the date each annual payment is due to be made. If the total value of the fund has decreased since the previous year's valuation, the next payment must be calculated using the steps in paragraph (a)(7) of this section. The owner or operator may also use the calculation in paragraph (a)(7) to determine his next payment if the value of the fund has increased. If the value of the fund exceeds the *total* amount of the adjusted post-closure cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the adjusted post-closure cost estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(9) An owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the post-closure cost estimate at the time the fund is established, but the trust fund must be valued annually and its value must be maintained at no less than the value that the fund would have had if payments and valuations had been made as specified in paragraphs (a)(5)–(8) of this section.

(10) If an owner or operator establishes a post-closure trust fund after the effective date of these regulations, having initially used one of the other mechanisms specified in this section, his first payment must be in the amount that the trust fund would have contained if it had been established on the effective date of these regulations in accordance with the requirements of this section.

(11) If the operating life of a facility extends beyond the maximum 20-year pay-in period, the owner or operator must determine the value of the trust fund every year after the 20th year until closure begins. Whenever the post-closure cost estimate changes during this period in accordance with § 265.144 (b) or (c), the owner or operator must compare the new estimate with the latest annual value of the fund. If the value of the fund is less than the amount of the adjusted post-closure cost estimate, the owner or operator must deposit cash or marketable securities into the fund so that its value equals the amount of the estimate. Such payment must be made within 60 days of the change in the post-closure cost estimate. If the value of the fund is greater than the total amount of the adjusted post-closure estimate, the owner or operator may submit a written request to the Regional Administrator for release of funds in excess of the estimate. This request must be accompanied by a written statement from the trustee confirming the value of the fund.

(12) Within 30 days after receiving a request from the owner or operator for release of excess funds as specified in paragraphs (a)(8) and (11), the Regional Administrator must direct the trustee in writing to release such excess funds to the owner or operator unless the Regional Administrator finds that the post-closure cost estimate was not prepared and adjusted in accordance with § 265.144.

(13) An owner or operator may request reimbursement for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 30 days after receiving the bills for post-closure activities, the Regional Administrator must direct the trustee in writing to pay those bills which the Regional Administrator determines to be in accordance with the post-closure plan or are otherwise justified.

(14) If an owner or operator substitutes another form of financial assurance specified in this section for all or part of the trust fund, he may apply to the Regional Administrator for release of funds from the trust fund. Within 30 days after receiving such a request, the Regional Administrator must direct the trustee in writing to release the excess funds to the owner or operator.

(15) Reversion of excess funds after closure.

(i) If, under the provisions of § 265.117(d), the Regional Administrator follows termination or reduction of some or all of the requirements of a post-

closure plan before the end of the 30-year period, the excess portion of the trust fund must be released by the Regional Administrator.

(ii) At the end of the post-closure care period or the end of 30 years of post-closure care, whichever comes earlier, the Regional Administrator must direct the trustee to release any funds remaining in the trust to the owner or operator.

(16) The terms of the trust must require the trustee to make disbursements as specified in this paragraph. The trustee will disburse monies from the trust fund to parties designated by the Regional Administrator upon written notification from the Regional Administrator that:

(i) The value of the trust fund during the operating life of the facility exceeds the amount of the adjusted post-closure cost estimate; or

(ii) The itemized bills are in accordance with the approved post-closure plan or are otherwise justified; or

(iii) The owner or operator has established other financial assurance for post-closure care as allowed in this section for part or all of the trust fund; or

(iv) There has been a legal determination, a copy of which is attached to this notification, of a violation of the post-closure requirements of these regulations rendered in a proceeding brought pursuant to Section 3008 of RCRA; or

(v) The post-closure care period has ended or the requirements for post-closure care have been reduced.

(b) *Surety bond guaranteeing a lump-sum payment for post-closure care.* (1) An owner or operator may meet the requirements of this section by obtaining a surety bond guaranteeing a lump-sum payment into a post-closure trust fund. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700–20 (see Appendix VII). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) Such surety bond must guarantee that the owner or operator will, within 30 days after the beginning of closure of the facility, pay a lump sum equal to the final post-closure cost estimate prepared in accordance with § 265.144 into a trust fund that complies with the provisions of paragraph (a) of this section. The surety bond must be written so that whenever closure activities begin or are ordered to begin by the Regional Administrator during the term of the bond, the bond coverage includes completion of the payment obligation guaranteed by the bond.

(4) If the post-closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) The terms of the surety bond must provide that the surety company may cancel the bond by sending notice to the owner or operator and to the Regional Administrator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving a notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of cancellation from the surety, the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) A surety becomes liable on a bond obligation only when the owner or operator fails to perform as guaranteed by the bond and fails to provide other financial assurance of post-closure care as specified in this section.

(8) The Regional Administrator must notify the surety in writing within 60 days after the beginning of closure that the owner or operator has:

(i) Established financial assurance for post-closure care that satisfies the requirements of this section; or

(ii) Failed to fulfill the payment obligation guaranteed by the bond. The Regional Administrator will then direct the surety in the placement of funds in a trust fund meeting the specifications of paragraph (a) of this section.

(c) *Standby letter of credit assuring a lump-sum payment at the time of closure for post-closure care.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit assuring a lump-sum payment at the time of closure to provide for post-closure care. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700–17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for an amount equal to the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the credit may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the issuing bank of any reduction in the required credit within 30 days after receiving the request.

(5) The letter of credit must contain a clause providing for automatic annual extensions of the credit subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving a notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received

evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a notice of nonrenewal from the bank, the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has evidence that the owner or operator has established other financial assurance as specified in this section. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following a notice of nonrenewal the issuing bank will deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)–(16) of this section.

(7) If the post-closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(8) The Regional Administrator may otherwise draw on the credit only if the owner or operator fails to establish, within 30 days after the beginning of closure, other financial assurance for post-closure care as specified in this section. The issuing bank must, under the terms of the letter, deposit the amount of such a draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(13)–(16) of this section.

(d) *Surety bond guaranteeing performance of post-closure duties.* (1) An owner or operator may meet the requirements of this section by obtaining a surety bond guaranteeing performance of post-closure care. A surety company issuing a bond in accordance with these regulations must, at a minimum, be authorized to do business in the United States and be certified by the U.S. Treasury Department, in Circular 570, to write bonds in the penal sum of the bond to be issued. The obligee of the bond must be the U.S. Environmental Protection Agency.

(2) The bond must be executed on EPA Form 8700–21 (see Appendix VIII). The terms of the bond must provide that the surety will send the properly executed bond to the Regional Administrator by certified mail within 10 days after the effective date of the bond.

(3) The surety bond must guarantee that the owner or operator will satisfy the post-closure care requirements of these regulations for 30 years or for the post-closure care period, whichever period is shorter. The surety bond must be written in the amount of the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the penal sum of the bond, the owner or operator must, within 30 days of such increase in the estimate, cause the penal sum of the bond to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the penal sum of the bond may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(5) Under the terms of the bond, the surety company may cancel the bond during the operating life of the facility by sending notice to the Regional Administrator and to the owner or operator by certified mail. Cancellation must not be effective for at least 90 days after the Regional Administrator receives the notice. The owner or operator, within 5 days of receiving notice of cancellation from the surety, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the bond at any time by providing 30 days' notice to the surety company if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(6) Thirty days after receiving a cancellation notice from the surety, the Regional Administrator may order the owner or operator to begin closure unless the Regional Administrator has received evidence of other financial assurance as specified in this section.

(7) The surety bond must be written so that whenever closure activities begin or the Regional Administrator orders them to begin during the term of the bond, the bond coverage extends to the end of 30 years of post-closure care or to the end of the post-closure care period, whichever is shorter. The owner or operator, as the principal of the bond, must notify the surety of the date on which post-closure care begins in accordance with the post-closure plan for the facility.

(8) As post-closure obligations are completed, the penal sum of the bond may be reduced commensurately, so that the balance of the penal sum of the bond will equal the remaining cost obligations of the owner or operator for post-closure care. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required penal sum within 30 days after receiving the request.

(9) A surety becomes liable on a bond obligation only when a proceeding brought pursuant to the provisions of Section 3008 of RCRA has determined that the owner or operator has violated the post-closure requirements of these regulations. Following such a determination the surety must:

(i) Complete post-closure care of the facility in accordance with the post-closure plan; or

(ii) Pay the amount of the penal sum of the bond into a trust fund meeting the specifications of paragraph (a) of this section as directed by the Regional Administrator.

(e) *Standby letter of credit assuring funds during the post-closure period.* (1) An owner or operator may meet the requirements of this section by obtaining an irrevocable standby letter of credit assuring availability of funds during the post-closure period. The letter must be written in favor of the Regional Administrator of the U.S. Environmental Protection Agency and must be for a period of at least one year. The letter of credit may be issued by any bank which is a member of the Federal Reserve System.

(2) The letter of credit must be executed on EPA Form 8700–17 (see Appendix IV). The terms of the letter must provide that the issuing bank will send the properly executed letter of credit to the Regional Administrator by certified mail within 10 days after the effective date of the letter.

(3) The credit must be issued for the amount of the adjusted post-closure cost estimate (see § 265.144).

(4) If the post-closure cost estimate increases beyond the amount of the credit, the owner or operator must, within 30 days of such increase in the estimate, cause the amount of the credit to be increased or obtain other financial assurance, as specified in this section, to cover the increase. If the post-closure cost estimate decreases, the amount of the credit may be reduced to the amount of the adjusted post-closure cost estimate. At the request of the owner or operator, the Regional Administrator must send written notice to the surety of any reduction in the required credit

within 30 days after receiving the request.

(5) As post-closure obligations are completed, the credit guarantee may be reduced commensurately, so that the remaining credit will equal the remaining cost obligations of the owner or operator for post-closure care. At the request of the owner or operator, the Regional Administrator must send written notice to the bank of any reduction in the required credit guarantee within 30 days after receiving the request.

(6) The letter of credit must contain a clause providing for automatic annual extensions of the credit subject to 60 days' written notice by the issuing bank to both the owner or operator and the Regional Administrator, by certified mail, of the bank's intention not to renew the credit. The owner or operator, within 5 days of receiving a notice of nonrenewal from the bank, must notify the Regional Administrator by certified mail that he has received such a notice. The owner or operator may cancel the letter of credit by providing 30 days' notice to the issuing bank if the Regional Administrator has given prior written consent based on his having received evidence of other financial assurance as specified in this section.

(7) Thirty days after receiving a notice of nonrenewal from the bank, the Regional Administrator may draw upon the credit up to the full amount of the credit unless he has received evidence that the owner or operator has established other financial assurance as specified in this section. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following a notice of nonrenewal, the issuing bank will deposit the amount of the draft immediately and directly into an interest-bearing escrow account. Disbursements from the escrow account must be made in the same manner as specified for trust funds in paragraphs (a)(12)–(16) of this section.

(8) If the escrow account specified in paragraph (e)(7) of this section is established during operating life, and if the post-closure cost estimate increases beyond the amount of the funds in the escrow account, the owner or operator must, within 30 days of such increase, add to the account or establish other financial assurance as specified in this section to cover the increase. If the owner or operator fails to do so, the Regional Administrator may order him to begin closure.

(9) The Regional Administrator may otherwise draw upon the letter of credit only upon a legal determination of a violation of the post-closure requirements of these regulations rendered in a proceeding brought pursuant to the provisions of Section 3008 of RCRA. The terms of the letter must provide that if the Regional Administrator draws upon the letter of credit following such a determination, the issuing bank will immediately and directly deposit the amount of the draft into an interest-bearing escrow account. The letter of credit must require the escrow depositary to disburse monies from the escrow account to persons designated by the Regional Administrator to carry out post-closure care of the facility.

(f) *Use of more than one type of financial instrument.* An owner or operator may meet the requirements of this section by establishing more than one type of financial instrument. These instruments are limited to a trust fund, surety bonds, or letters of credit as specified in paragraphs (a) through (e) of this section (e.g., a letter of credit may assure half the post-closure cost and a trust fund the remaining half).

(g) *Financial test and guaranty for post-closure care.* (1) An owner or operator may meet the requirements of this section by having all of the following financial characteristics:

(i) At least $10 million in net worth in the United States.

(ii) A total-liabilities-to-net-worth ratio of not more than three.

(iii) Net working capital in the United States of at least twice the adjusted post-closure cost estimate (see § 265.144).

(2) These characteristics must be demonstrated in a financial statement which has been audited by an independent certified public accountant and which contains unconsolidated balance sheets dated no more than 140 days prior to the current date. The owner or operator who intends to use a financial test to meet both closure and post-closure requirements for a single facility or to meet closure and/or post-closure requirements for more than one facility must indicate in the statement which requirements are to be met for which facilities through the financial test and must demonstrate that his net working capital in the United States is at least twice the sum of all the adjusted estimates of closure and post-closure costs to be covered by the financial test. The owner or operator must have the financial statement available at the facility and must provide data from the statement if requested as part of annual reports to the Regional Administrator under § 265.75.

(3) If the owner or operator fails to meet the requirements of paragraph (g)(1) of this section at any time before the end of the post-closure care period or 30 years of post-closure care, whichever comes earlier, he must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. Evidence of other financial assurance as specified in this section must be sent to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the requirements of paragraph (g)(1). If he does not establish other financial assurance, and this lapse in financial assurance occurs during operating life, the Regional Administrator may order the owner or operator to begin closure.

(4) An owner or operator may meet the requirements of this section by obtaining another entity's written guaranty providing financial assurance, in an amount equal to the adjusted post-closure cost estimate, for compliance by the owner or operator with the post-closure requirements of these regulations. The guarantor must meet the requirements for owners or operators in paragraphs (g) (1) and (2) of this section.

(5) The guaranty must be executed on EPA Form 8700–18 (see Appendix V). The owner or operator must send the properly executed guaranty to the Regional Administrator by certified mail within 10 days after the effective date of the guaranty.

(6) Under the terms of the guaranty, the guarantor must notify the Regional Administrator and the owner or operator by certified mail if he fails to meet the requirements of paragraph (g)(1) of this section at any time before the end of the post-closure period or the end of 30 years of post-closure care, whichever comes earlier. The guarantor must send such notice within 5 days after learning of failure to meet the requirements.

(7) The owner or operator must, within 30 days of such notification, establish other financial assurance as specified in this section and provide evidence of such assurance to the Regional Administrator. If he fails to do so, and such failure occurs during operating life, the Regional Administrator may order him to begin closure.

(8) The guarantor may cancel the guaranty during the operating life of the facility with 90 days' notice to the Regional Administrator and the owner or operator by certified mail, except that the guaranty must remain in effect if closure begins or is ordered to begin by the Regional Administrator before the end of the 90 days. Evidence of other financial assurance as specified in this

section must be provided to the Regional Administrator within 30 days after a notice of cancellation is received by the Regional Administrator; otherwise, he may order the owner or operator to begin closure.

(9) The guaranty may be cancelled at any time following the mutual written consent of the owner or operator, the Regional Administrator, and the guarantor.

(10) Under the guaranty, in the event of a legal determination of a violation of the post-closure requirements rendered in a proceeding brought pursuant to Section 3008 of RCRA, the guarantor must pay parties designated by the Regional Administrator to complete post-closure care for 30 years or the post-closure care period, whichever period is shorter.

(h) *Revenue test for municipalities.* (1) If the owner or operator is a municipality (as defined by RCRA), it may meet the requirements of this section by having annual revenues from property, sales, and/or income taxes equal to 10 times the adjusted post-closure cost estimate (see § 265.144). To be acceptable, these tax revenues must be legally available to cover post-closure responsibilities, i.e., they must not be dedicated to other purposes or otherwise precluded from use for post-closure care.

(2) The owner or operator must send a letter signed by the chief financial officer of the municipality to the Regional Administrator stating that the municipality meets the requirements of paragraph (h)(1) of this section. The letter must be sent by certified mail within 10 days after the owner or operator begins use of the revenue test to meet the requirements of this section.

(3) If the annual tax revenues fail to meet the minimum multiple specified in paragraph (h)(1) at any time before the end of the post-closure care period or 30 years of post-closure care, whichever comes earlier, the owner or operator must notify the Regional Administrator by certified mail within 5 days of learning of failure to meet the requirements. The owner or operator must send evidence of other financial assurance as specified in this section to the Regional Administrator by certified mail within 30 days from the time that the owner or operator learns of failure to meet the minimum multiple. If he does not establish other financial assurance, and this lapse in financial assurance occurs during operating life, the Regional Administrator may order the owner or operator to begin closure.

(i) *Use of a single financial mechanism for multiple facilities.* An owner or operator may use a single financial mechanism, as specified in paragraphs (a) through (h) of this section, to meet the requirements of this section for more than one facility of which he is the owner or operator. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for each facility.

§ 265.146 Use of a single mechanism for financial assurance of both closure and post-closure care.

An owner or operator may use a single mechanism to provide financial assurance for both closure and post-closure care of one or more facilities of which he is the owner or operator. Such a mechanism must be one of the following:

(a) A trust fund that meets the specifications of both § 265.143(a) and § 265.145(a).

(b) A surety bond that meets the specifications of both § 265.143(b) and § 265.145 (b) or (d).

(c) A letter of credit that meets the specifications of both § 265.143(c) and § 265.145 (c) or (e).

(d) A guaranty that meets the specifications of both § 265.143(e) and § 265.145(g).

(e) The financial test as specified under both § 265.143(e) and § 265.145(g).

(f) The revenue test as specified under both § 265.143(f) and § 265.145(h).

The amount of funds available under the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established for financial assurance of closure and of post-closure care of each facility.

§ 265.147 Liability requirement.

An owner or operator of a hazardous waste treatment, storage, or disposal facility or group of facilities must have and maintain liability insurance from an insurer licensed or eligible to insure facilities in the jurisdiction where any one facility is located, for sudden and accidental occurrences in the amount of $1 million per occurrence with an annual aggregate per firm of $2 million, exclusive of legal defense costs, for claims arising out of injury to persons or property from the operations of each such hazardous waste facility or group of facilities. The deductible written into the insurance policy must not exceed 5 percent of the per incident limit of liability of the policy.

§ 265.148 [Reserved]

§ 265.149 Applicability of State financial requirements.

(a) A facility may be located in a State in which existing hazardous waste regulations include liability requirements and requirements for financial assurance for closure and post-closure care. If so, the owner or operator may use existing State-authorized financial mechanisms in meeting the requirements of §§ 265.143, 265.145, and 265.147 provided that:

(1) The State-authorized mechanism is a mechanism allowed in §§ 265.143, 265.145, or 265.147; or

(2) The State mechanism provides substantially equivalent assurance (e.g., escrow account) or liability coverage as the mechanisms of §§ 265.143, 265.145, and 265.147.

The owner or operator must obtain an additional financial assurance mechanism for closure or for post-closure care, chosen from § 265.143 for closure and from § 265.145 for post-closure care, or additional liability insurance as specified in § 265.147, if the amount of funds available from the State mechanisms is less than that required by this Subpart. The total amount of funds available through the combination of the State and Federal mechanisms must equal at least the amount required in §§ 265.143, 265.145, and 265.147.

(b) If a State assumes legal responsibility for an owner's or operator's compliance with the closure or post-closure requirements or liability requirements of these regulations *or* assures that funds will be available from State sources to cover such requirements, the owner or operator will be in compliance with such requirements of this Subpart to the extent the State's assurances are substantially equivalent to meeting the requirements of this Subpart. The owner or operator must send a letter to the Regional Administrator describing the nature of the State's responsibility regarding his facility's closure, post-closure care, and/or his liability, and citing the State regulation providing for such assumption of responsibility. The letter must be sent by certified mail within 10 days after the effective date of these EPA regulations or the date on which State assumption of responsibility for the facility becomes effective. A copy of the letter must be sent to the responsible State agency(ies).

Appendix I to Part 265

The following is an example of the calculation in § 265.143(a)(7) using these assumptions: The closure cost estimate at the time the closure trust fund was established

was $70,000. Five annual payments have been made. The current value of the fund is $25,000 (including earnings of the fund and yearly increases in the payments as a result of the adjustment for inflation required by paragraph (a)(6)). The total pay-in period is 20 years. Now the owner or operator has changed the estimate to $120,000 because of a change in the closure plan and therefore needs to recalculate his next payment.

Step 1—The adjusted estimate, $120,000, divided by the pay-in period, 20 years, is $6,000.

Step 2—$6,000 multiplied by the number of payments made, 5, is $30,000.

Step 3—$30,000 minus the current value of the fund, $25,000, is $5,000.

Step 4—$5,000 divided by the remaining years in the pay-in period, 15, is $333.

Step 5—Adding $333 to the $6,000 from Step 1 gives the new payment, $6,333.

Appendix II to Part 265

EPA Form 8700–15

U.S. Environmental Protection Agency

Closure Trust Agreement

As provided for in 40 CFR 265.143(a) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted closure cost estimate, in accordance with 40 CFR 265.142: $ ————

On this —— day of ————, 19——, I (owner or operator) ————, am placing property described below in trust for the U.S. Environmental Protection Agency (EPA) to be held by (name of financial institution) ———— as trustee under the terms set forth below. The trust shall be named the "Closure Trust" for the following hazardous waste management facilities:

(name and address of facility, or write in "see attached Schedule A"[1] if more than one facility).

1. Purpose Clause

Pursuant to the financial assurance requirements of 40 CFR 265.143, the purpose of this trust is to pay for the costs of closing the above-named facility(ies) in accordance with the closure requirements of 40 CFR Part 265.

2. Property Clause

It is agreed to by (owner or operator) ———— as grantor of this trust that the trust will be funded in accordance with the requirements of § 265.143(a) of the regulations. The initial transfer of property to the trust shall consist of the property listed in Schedule B, attached hereto.[2]

3. Period Clause

This trust shall continue until terminated upon the happening of one of the following conditions:

(a) When (owner or operator) ———— presents to the trustee the original or an authenticated copy of the letter(s) signed by the EPA Regional Administrator(s) stating that he is no longer required to provide financial assurance for closure of the above-named facility(ies). In such an event, all remaining trust property, less final trust administration expenses, shall be delivered to (owner or operator) ————.

(b) By the mutual written consent of the grantor of this trust, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, the trustee of this trust at any time.

4. Operation of the Trust, Duties of the Trustee

(name of financial institution acting as trustee) ———— acknowledges below its receipt of the trust property listed in Schedule B and its acceptance of the obligations and duties of the trustee as defined below.

(a) The trustee agrees to notify the EPA Regional Administrator(s) by certified mail within five days following the expiration of the thirty-day period after the anniversary of the establishment of the trust, as specified in § 265.143(a)(5).

(b) The trustee may resign from its obligations as trustee by submitting a written notice of its intent to the grantor and to the EPA Regional Administrator(s).

(c) The trustee is to make payments out of the trust only under the conditions specified in 40 CFR 265.143(a)(15).

(date) (signature of grantor)

(address of grantor) ————
(authorized signature for trustee) ————
(name of trustee) ————
(address of trustee) ————
(signature of notary) ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix III to Part 265

EPA Form 8700–16

U.S. Environmental Protection Agency

Closure Performance Bond

As provided for in 40 CFR 265.143(b) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted closure cost estimate, in accordance with 40 CFR 265.142: $ ————

Know all men by these presents, that we, (owner of operator) ———— of (address) ————, as Principal and (name of surety company) ————, a company created and existing under the laws of (State) ————, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of ———— U.S. dollars ($————) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste management facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.143, that the owner or operator of each such facility must establish financial assurance that the applicable closure requirements of Part 265 will be met, and

Whereas, this bond is written to assure compliance with the closure requirements of Part 265 for the following hazardous waste management facilities: (name and address of facility or write in "see attached Schedule A"[1] if more than one facility) ————, and shall inure to the benefit of EPA in accordance with Part 265,

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully fulfill the closure requirements of 40 CFR Part 265 at each of the facilities guaranteed by this bond, pursuant to all applicable statutes, rules and regulations, and shall close each such facility in accordance with the closure plan required by the said Part 265, then, and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only upon legal determination rendered in a proceeding brought pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, that the Principal has violated the closure requirements of 40 CFR Part 265. Following such a determination, the Surety must either complete closure of the facility in accordance with the approved closure plan for the facility or pay the amount of the penal sum into an escrow account as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by the Surety under this bond.

This bond is effective the ———— day of ————, 19——, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail

[1] If closure of more than one facility is covered by the trust, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this agreement. Show total of cost estimates.

[2] List property included in initial transfer on separate sheet, clearly label this list "Schedule B," and attach it to this agreement.

[1] If closure of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

to the Principal and to the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of said notice by EPA; provided, however, no such termination shall become effective with respect to any facility closure guaranteed by this bond if closure of said facility has begun or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the ———— day of ————, 19——.

(Seal) ————————————
(Surety)
(Seal) ————————————
(Principal)
(Seal) ————————————
(attorney-in-fact) (address of Principal) ————————————

Surety Bond No. ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix IV to Part 265

EPA Form 8700–17

U.S. Environmental Protection Agency

Standby Letter of Credit

As provided for in 40 CFR 265.143(c), 265.145(c), and 265.145(e) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1]EPA Facility Identification No. ————
Adjusted cost estimate(s) for the facility, for closure and/or post-closure care to be covered by this Letter of Credit, in accordance with 40 CFR 265.142 and 265.144: $———— (closure) $———— (post-closure)

Administrator(s) for Region(s)————
U.S. Environmental Protection Agency
Address(es) ————
(Address to EPA Regional Administrator(s) of Region(s) in which the facility(ies) is (are) located.)

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ————, in favor of the Regional Administrator(s) for Region(s) —— of the U.S. Environmental Protection Agency for the account of (owner or operator) ———— up to the aggregate amount of ———— U.S. dollars ($ ——) available by your drafts as specified below.

This Letter of Credit is effective as of today's date and will expire on the ———— day of ———— 19——, subject to the operation of the renewal clause below.

The purpose of this Letter of Credit is to provide financial assurance to the U.S. Environmental Protection Agency of compliance with the ("closure," "post-closure," or "closure and post-closure") ———— requirements of 40 CFR Part 265 as they apply to (name and address of facility, or write in "see attached Schedule A" [1] if more than one facility) ————. Such assurance is required for closure by 40 CFR 265.143 and for post-closure care by 40 CFR 265.145. This Letter of Credit provides assurance for (check those that apply):

—Closure in accordance with the letter-of-credit specifications of 40 CFR 265.143(c)

—A lump-sum payment at closure for the purpose of assuring post-closure care in accordance with letter-of-credit specifications of 40 CFR 265.145(c)

—Funds for the performance of post-closure care in accordance with letter-of-credit specifications of 40 CFR 265.145(e)

All drafts on this Letter of Credit submitted in writing and accompanied by your signature will be promptly paid and deposited in an interest-bearing escrow account in this Bank. If a draft on the escrow account is accompanied by a copy of an order from a Federal Administrative Law Judge or a Federal District Court Judge setting forth a determination of a violation of the above-mentioned closure and/or post-closure requirements, we will pay the party or parties designated by the court or the EPA Regional Administrator(s).

Alternatively, payments may be made out of any amount in escrow following a draft upon this Letter of Credit by the mutual written consent of (owner or operator) ———— and the EPA Regional Administrator(s), pursuant to 40 CFR 265.143(c)(6), 265.145(c)(6) and (8), or 265.145(e)(7), as applicable.

It is a condition of this Letter of Credit that it will be automatically extended for one-year periods from the expiration date set forth above, unless sixty (60) days before that date we notify you by certified mail of our intent not to renew the credit. In that case, for the remainder of the period of the Letter of Credit, you may draw upon the credit up to the aggregate amount of the credit remaining, such draft to be deposited in escrow as described above. This Letter of Credit may be terminated by (owner or operator) ———— by sending written notice to this Bank, such termination to become effective thirty (30) days after receipt of such notice by this Bank; provided, however, that such notice is accompanied by your written authorization for termination of the Letter of Credit.

This Letter of Credit is subject to Article Five of the Uniform Commercial Code and the "Uniform Customs and Practices for Documentary Credits" (1974 Revision) described in International Chamber of Commerce Brochure No. 290.

All communications concerning this Letter of Credit are to be addressed to: (name and address of responsible officer of the issuing bank) ————.

(date) (authorized signature)
(print or type name of person signing) ————
(title of person signing) ————
(name of bank)————
Mail to the EPA Regional Administrator(s) within 10 days of the effective date by certified mail.

Appendix V to Part 265

EPA Form 8700–18

U.S. Environmental Protection Agency

Guaranty

As provided for in 40 CFR 265.143(e) and 265.145(g), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1]EPA Facility Identification No.———— — Adjusted cost estimates(s) for the facility, for closure and/or post-closure care to be covered by this guaranty, in accordance with 40 CFR 265.142 and 265.144: $———— (closure) $———— (post-closure)

Guaranty made this ———— day of ————, 19——, by (name of guaranteeing entity) ————, a business entity organized under the laws of the State of ————, with its principal office at ————, herein referred to as guarantor, to the U.S. Environmental Protection Agency (EPA) as obligee on behalf of (owner or operator) ———— of (business address) ————.

Recitals

1. Guarantor meets or exceeds the financial test requirements of 40 CFR 265.143(e) and/or 265.145(g). Guarantor agrees to notify the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) listed below is (are) located and (owner or operator) ———— within five days after the guarantor learns of its failure to meet any of the test requirements at any time during the life of this guaranty.

2. (Owner or operator) ———— operates or owns a hazardous waste facility at (address of facility, or write in "see attached Schedule A" [1] if more than one facility is covered) ————.

Statement of Guaranty

For value received from (owner or operator) ————, the guarantor guarantees to the U.S. Environmental Protection Agency (EPA) that in the event that (owner or operator) ————, fails to comply with the ("closure," "post-closure," or "closure and post-closure") ———— requirements of 40 CFR part 265 applicable to (name and address of facility or write in "see attached Schedule A") ————, the

[1]If more than one facility is covered by this Letter of Credit, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted closure and/or post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this Letter of Credit. Show total(s) of cost estimates.

[1]If more than one facility is covered by this guaranty, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and the adjusted closure and/or post-closure estimates for all the facilities, clearly label this list "Schedule A," and attach it to this guaranty. Show total(s) of cost estimates.

guarantor agrees to pay the persons(s) designated by EPA or to pay EPA itself, following a legal determination of a violation of the regulations, an amount sufficient to bring the above-mentioned facility(ies) into compliance with the applicable regulations, but not to exceed the adjusted cost estimate(s) as prepared in accordance with 40 CFR 265.142 and 265.144.

This guaranty is good for so long as (owner or operator) ———— must comply with the applicable financial assurance requirements of 40 CFR 265.143 and 265.145 for the above-named facility(ies).

The guarantor may terminate this guaranty by sending notice by certified mail to the EPA Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to (owner or operator) ————, such termination to become effective ninety (90) days after actual receipt of the notice by EPA; provided, however, that no such termination shall become effective if closure begins or is ordered to begin by an EPA Regional Administrator before the end of the 90 days. Furthermore, if compliance with post-closure requirements is guaranteed, no such termination may become effective if closure has taken place.

This guaranty may be terminated at any time subject to the mutual, prior written consent of the guarantor, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, and (owner or operator) ————.

(effective date)————(name of guarantor)

(authorized signature for guarantor) ————
(print or type name of person signing) ————
(title of person signing) ————
(signature of witness or notary) ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix VI to Part 265

EPA Form 8700–19

U.S. Environmental Protection Agency

Post-Closure Trust Agreement

As provided for in 40 CFR 265.145(a), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: $ ————

On this —— day of ————, 19 ——, I (owner or operator) ————, am placing property described below in trust for the U.S. Environmental Protection Agency (EPA) to be held by (name of financial institution) ———— as trustee under the terms set forth below. The trust shall be named the "Post-Closure Trust" for the following hazardous waste management facility(ies):

(name and address of facility, or write in "see attached Schedule A"[1] if more than one facility).

1. Purpose Clause

Pursuant to the financial assurance requirements of 40 CFR 265.145, the purpose of this trust is to pay for the costs of post-closure care of the above-named facility(ies) in accordance with the post-closure requirements of 40 CFR Part 265.

2. Property Clause

It is agreed to by (owner or operator) ———— as grantor of this trust that the trust will be funded in accordance with the requirements of § 265.145(a) of the regulations. The initial transfer of property to the trust shall consist of the property listed in Schedule B, attached hereto.[2]

3. Period Clause

This trust shall continue until terminated upon the happening of one of the following conditions:

(a) Upon written notice(s) from the EPA Regional Administrator(s) that (owner or operator) ———— is no longer required to maintain financial assurance for post-closure care of the above-named facility(ies). In such an event, all remaining trust property, less final trust administration expenses, shall be delivered to (owner or operator) ————.

(b) By the mutual written consent of the grantor of this trust, the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, the trustee of this trust at any time.

4. Operation of the Trust, Duties of the Trustee

(name of financial institution acting as trustee) ———— acknowledges below its receipt of the trust property listed in Schedule B and its acceptance of the obligations and duties of the trustee as defined below.

(a) The trustee agrees to notify the EPA Regional Administrator(s) by certified mail within five days following the expiration of the thirty-day period after the anniversary of the establishment of the trust, as specified in § 265.145(a)(5).

(b) The trustee may resign from its obligations as trustee by submitting written notice of its intent to the grantor and to the EPA Regional Administrator(s).

(c) The trustee is to make payments out of the trust only under the conditions specified in 40 CFR 265.145(a)(16).

(date) (signature of grantor)

(address of grantor) ————
(authorized signature for trustee) ————
(name of trustee) ————
(address of trustee) ————
(signature of notary) ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more then one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix VII to Part 265

EPA Form 8700–20

U.S. Environmental Protection Agency

Bond for Payment to Post-Closure Care Trust Fund

As provided for in 40 CFR 265.145(b) under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: $ ————

Know all men by these presents, that we, (owner of operator) ———— of (address) ————, as Principal and (name of surety company) ————, a company created and existing under the laws of (State) ————, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of ———— U.S. dollars ($————) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste disposal facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.145, that the owner or operator of each such facility must establish financial assurance that the applicable requirements of Part 265 for post-closure care will be met, and

Whereas, this bond is written to assure that the Principal will establish a trust fund in accordance with § 265.145 for the purpose of providing for post-closure care of the following hazardous waste disposal facilities: (name and address of facility or write in "see attached Schedule A"[1] if more than one facility) ————, and shall inure to the benefit of EPA in accordance with said Part 265,

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully, for each of the facilities guaranteed by this bond, within 30 days after beginning closure, make full payment in the amount of the final adjusted post-closure cost estimate calculated in accordance with § 265.144 into a trust fund meeting the requirements of § 265.145(a) to assure the costs of 30 years of post-closure care, pursuant to all applicable statutes, rules and regulations, then and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal fails

[1] If post-closure care of more than one facility is covered by the trust, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted post-closure cost estimates for the facilities, clearly label this list "Schedule A," and attach it to this agreement. Show total of cost estimates.

[2] List property included in initial transfer on separate sheet, clearly label this list "Schedule B," and attach it to this agreement.

[1] If provision for post-closure care of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, addresses, and adjusted post-closure cost estimates for all the facilities, clearly lable this list "Schedule A," and attach it to this bond. Show total of cost estimates.

to make payment in accordance with § 265.145(b)(3). Upon notification by an EPA Regional Administrator that the Principal has failed to fulfill the payment obligation, the Surety will place funds in the amount of the payment obligation into a trust fund as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by the Surety under this bond.

This bond is effective the ———— day of ————, 19——, at the address of the Principal as stated herein and shall continue in force for each facility guaranteed by this bond until ninety (90) days following the beginning of closure of that facility or until receipt of written notice sent by EPA to the Surety of satisfactory completion of the financial assurance obligation of the Principal with regard to post-closure care of that facility, the sooner, or until otherwise terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of said notice by EPA; provided, however, that no such termination shall become effective if closure of said facility has begun, or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the ———— day of ————, 19——.

(Seal) ————————
(Surety)
(Seal) ————————
(Principal)
(Seal) ————————
(attorney-in-fact) (address of Principal) ————————

Surety Bond No. ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in more than one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

Appendix VIII to Part 265

EPA Form 8700–21

U.S. Environmental Protection Agency

Post-Closure Performance Bond

As provided for in 40 CFR 265.145(d), under authority of the Resource Conservation and Recovery Act of 1976, as amended (42 USC 6901)

[1] EPA Facility Identification No. ————
Adjusted post-closure cost estimate, in accordance with 40 CFR 265.144: $ ————

Know all men by these presents, that we, (owner or operator) ———— of (address) ————, as Principal and (name of surety company) ————, a company created and existing under the laws of (State) ————, as Surety, are held and firmly bound unto the U.S. Environmental Protection Agency (EPA) in the penal sum of ———— U.S. dollars ($——) for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

Whereas, the Principal intends to obtain interim status, as defined by Section 3005 of the Resource Conservation and Recovery Act of 1976, as amended, for one or more hazardous waste disposal facilities, and such status depends upon compliance with the standards of 40 CFR Part 265, which includes the requirement, specified in § 265.145, that the owner or operator of each such facility must establish financial assurance that the applicable requirements of Part 265 for post-closure care will be met, and

Whereas, this bond is written to assure compliance with the post-closure requirements of 40 CFR Part 265 for the following hazardous waste disposal facilities: (name and address of facility or write in "see attached Schedule A" [1] if more than one facility) ————, and shall inure to the benefit of EPA in accordance with said Part 265,

Now, therefore, the condition of this obligation is such that, if the Principal shall faithfully fulfill the applicable post-closure requirements set forth in 40 CFR Part 265 for each of the facilities guaranteed by this bond, pursuant to all applicable statutes, rules and regulations, and shall carry out the post-closure plan required by Part 265, then, and only then, the above obligation shall be void; otherwise to be and to remain in full force and effect.

The Surety shall become liable on this bond obligation only upon a legal determination rendered in a proceeding pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, that the Principal has violated the post-closure requirements of 40 CFR Part 265. Following such a determination, the Surety must either complete post-closure care of the facility in accordance with the approved post-closure plan for the facility or pay the amount of the penal sum into a trust fund as directed by an EPA Regional Administrator.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penal sum. The insolvency or bankruptcy of the Principal shall not constitute a defense to the Surety with regard to claims of liability on the bond obligations, and in the event of said insolvency or bankruptcy, the Surety must pay any unsatisfied final judgments obtained on such claims. The Surety agrees to furnish written notice forthwith to the Regional Administrator(s) of the EPA Region(s) in which the facility(ies) is (are) located of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the ———— day of ————, 19——, at the address of the Principal as stated herein and shall continue in force until the end of 30 years of post-closure care unless prior notice is received by the Surety from EPA, or until terminated as hereinafter provided. The Surety may terminate this bond by written notice sent by certified mail to the Principal and to the EPA Regional Administrator(s) of the Region(s) in which the facility(ies) is (are) located, such termination to become effective ninety (90) days after actual receipt of such notice by the Agency; provided, however, that no such termination shall become effective if closure of any said facility has taken place, has begun, or has been ordered to begin by an EPA Regional Administrator. The Principal may terminate this bond by sending written notice to the Surety, such termination to become effective thirty (30) days after receipt of such notice by the Surety; provided, however, that such notice is accompanied by written authorization for termination of the bond by the Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of the sureties.

In witness whereof, the Principal and Surety have executed this instrument on the ———— day of ————, 19——.

(Seal) ————————
(Surety)
(Seal) ————————
(Principal)
————————
(attorney-in-fact) (address of Principal) ————————

Surety Bond No. ————

Mail original to the EPA Regional Administrator within 10 days of the effective date by certified mail. If more than one facility is covered and the facilities are in

[1] If post-closure care of more than one facility is covered by the bond, list on a separate sheet the EPA Facility Identification Numbers, names, and addresses, and adjusted post-closure cost estimates for all the facilities, clearly label this list "Schedule A," and attach it to this bond. Show total of cost estimates.

more then one Region, send original to Regional Administrator of Region in which the largest number of facilities are located and copies to the other Regional Administrator(s), by certified mail.

[FR Doc. 80-14310 Filed 5-16-80; 8:45 am]
BILLING CODE 6560-01-M

federal register

Monday
May 19, 1980

Part IX

Environmental Protection Agency

Hazardous Waste Management System

Proposal To Modify 40 CFR Part 265—Subpart R—Underground Injections

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[FRL 1447-1]

Hazardous Waste Managment: Interim Status Requirements for Underground Injection

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing specific requirements for disposal of hazardous waste by undeground injection under § 3004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended. These proposed requirements would amend Subpart R of the interim status regulations applicable to hazardous waste treatment, storage and disposal facilities. The proposed amendment includes requirements concerning general operating practices, waste analysis, monitoring and response, closure and post-closure care, financial responsibility and special handling of ignitable, reactive or incompatible waste. A public hearing will be held to receive public comment on the amendment as well as on issues raised in the Preamble to the regulations issued under Part 122 of this Chapter concerning regulation of Class IV wells.

DATES: EPA will accept written comments on the proposed amendment until on or before July 18, 1980.

A public hearing will be held from 9 a.m. to 5:00 p.m. on July 8, 1980.

ADDRESSES: Comments should be addressed to Docket Clerk, Office of Solid Waste [WH-562], U.S. Environmental Protection Agency. Communications should identify the regulatory docket number "Section 3004".

The hearing will be held on July 8, 1980 at the H.E.W. Auditorium at 330 Independence Avenue, S.W. Washington, D.C. from 9:00 am to 5:00 pm.

The official docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard J. Stoll, Office of Solid Waste [WH-564], U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9116.

SUPPLEMENTARY INFORMATION:

Underground injection of hazardous waste is under the jurisdiction of both the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, *et seq.*, which creates a "cradle to grave" management program for all hazardous waste, and the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f *et seq.*) which creates an Underground Injection Control (UIC) program. After examining the goals and policies of these two programs, EPA has concluded that the disposal of hazardous waste by underground injection in each State will be regulated under RCRA until a UIC program has been established in that State.

The hazardous waste management program, under Subtitle C of RCRA, provides a system for tracking and managing those solid wastes which are deemed "hazardous" according to the criteria established under Section 3001 of RCRA. A manifest system is employed to assure that hazardous waste is properly transported from its point of generation to facilities that store, treat or dispose of the waste.

Under Section 3004 of RCRA, EPA is to establish standards, applicable to owners and operators of hazardous waste treatment, storage or disposal facilities which protect human health and the environment. Eventually all such facilities will be subject to permits, issued pursuant to Section 3005 of RCRA, which implement the Section 3004 standards and other appropriate requirements. Under Section 3005, all treatment, storage or disposal of hazardous waste is prohibited, except in accordance with a permit under that section, six months after the promulgation of the Section 3004 standards.

The Congress recognized that it would not be possible for EPA to issue all permits within six months of the promulgation of Section 3004 standards. Therefore it created an "interim status" period during which existing facilities which have applied for a permit may be treated as having been issued a permit while the Agency reviews and processes the facility's permit application. In keeping with the philosophy that facilities are to be treated as having been issued a permit during the interim status period, EPA believes it is appropriate to impose certain basic requirements on those facilities during the interim status period. The Agency has promulgated such interim status regulations for hazardous waste treatment, storage and disposal in a separate section of today's **Federal Register.**

Part C of the SDWA creates a program for the protection of underground sources of drinking water. As part of that program, EPA is to establish regulations containing minimum requirements for effective State underground injection control (UIC) programs and the Administrator is to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary to assure that underground injection will not endanger drinking water sources. The Administrator has listed a total of 57 States, territories and the District of Columbia as needing a UIC program. Once EPA has established the minimum requirements, each listed State shall apply for and may receive approval for primary enforcement responsibility over underground injection in their State. If the State does not seek such responsibility, or if EPA determines that State authority is inadequate to implement the minimum requirements, EPA shall establish a UIC program for the State.

Thus the UIC program does not have an equivalent of the "interim status" period under RCRA. To accommodate the RCRA goal that disposal of hazardous waste (including underground injection) be subject to control during that period, EPA has decided to regulate underground injection under the RCRA interim status regulations. Accordingly, owners and operators of underground injection wells used to dispose of hazardous waste will be subject to the same general requirements applicable to all treatment, storage and disposal facilities. These are set forth in Subparts A–E of Part 265, which is published in today's **Federal Register.** In addition the interim status regulations of Part 265 include a Subpart R, which will contain specific requirements applicable to underground injection.

The proposed hazardous waste management regulations of December 18, 1978 (43 Fed Reg 58946) did not specifically address underground injection. The Agency has decided to propose the specific requirements applicable to underground injection to gain the benefit of public comment.

Rulemaking Strategy

EPA recognizes that the regulation of underground injection under RCRA must be coordinated with the UIC program. EPA anticipates that when State UIC programs become effective, underground injection of hazardous waste which falls under the jurisdiction of the UIC program will be regulated under that program. Thus the RCRA and UIC programs must be structured to allow for such a shift without unnecessary confusion.

EPA plans to develop this portion of the RCRA regulations in tandem with the UIC program. Certain portions of the UIC program regarding Class IV wells are being re-proposed today. For a discussion of those re-proposed elements commenters should see the Preamble to Subpart C of the Part 122 regulations published in today's Federal Register. The hearing dates which have been established in this proposed regulation also match those for the re-proposed elements of Part 122. EPA anticipates that commenters may want to address their written comments and any statements at the hearing to both the Part 122 proposal and this proposed amendment to Part 265.

The technological requirements specified in these proposed regulations apply to both Class I and Class IV underground injection wells, unless identified as applying only to one or the other. All Class I wells have similar characteristics so that these applications should be easily understood. In the case of Class IV wells, however, this may not be the case.

Underground injection wells for disposal of hazardous waste are classified as either Class I or Class IV. Class I wells are those which inject waste beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water. However, the Class IV wells can be subdivided into two types. The first type is those Class IV wells which discharge hazardous waste directly into underground sources of drinking water. The other type is those Class IV wells which discharge hazardous waste above underground sources of drinking water.

One of the key issues concerning underground injection is the approach that should be taken under RCRA and the SDWA toward Class IV wells that involve the direct injection of hazardous wastes into underground sources of drinking water. For a more detailed description of this issue, commenters should see the Preamble to Subpart C of Part 122, which is published in today's Federal Register.

Commenters should be aware that EPA is considering implementing some of the options discussed in Part 122 under RCRA and may incorporate one of those options in these interim status regulations. Under § 122.36 of the UIC program proposal, all injection of hazardous waste directly into an underground source of drinking water through a Class IV well would be prohibited six months after approval of a State program. EPA is considering a similar ban under RCRA. Such a ban might be instituted on the effective date of the interim status regulation implementing the ban or at some time after the effective date. Commenters should also be aware that EPA is considering incorporating such a ban into its Part 264 regulations to address direct injection while UIC programs are being developed.

The Agency has not made a decision at this time concerning whether Class IV wells discharging hazardous waste above underground sources of drinking water should be banned. However, the Agency believes that in the event it decides to allow such wells to continue to operate, that it should alert the public to the kinds of technical controls it is considering imposing so that the public can meaningfully comment on them.

Class IV wells discharge hazardous waste into or above underground sources of drinking water through a variety of underground injection devices. As already discussed in this Preamble, no technical requirements are included in these regulations for Class IV wells which discharge directly into underground sources of drinking water. Requirements are included in these regulations, however, for those Class IV wells which discharge hazardous waste above underground sources of drinking water. Because of the variety of devices classified as Class IV wells which discharge above underground sources of drinking water, the Agency recognizes that difficulties arise in developing requirements that would apply to all such injection devices.

There are essentially four groups or types of these Class IV devices. They are best described by expressing them in comparison to other devices and techniques. The first type are those normally called wells, which are similar to the usual dug or drilled well, with or without well casing or other fabricated side walls. They are always considerably deeper than they are wide. The second type is similar to the first but usually much shallower than the first. They are usually referred to as pits and are similar in most aspects to surface impoundments. They are usually open at the top and constructed to allow liquid to seep through the bottom and sides into surrounding soil. The third type is more a treatment device than an injection device. They are usually buried rigid vessels designed to contain waste for chemical, physical or biological treatment and equipped with distinct influent and effluent pipes. Septic tanks, devices which are designed to treat waste biologically under anaerobic conditions, are an example of this type. The fourth and final type are those that are designed to distribute fluids beneath the ground surface over a relatively large area and usually involve buried lateral pipes or trenches. An example of this type is a leaching field which distributes effluent from a septic tank.

As can be seen from this discussion a given requirement for one type of device may not be appropriately applied to the other three devices. For this reason the Agency has directed the requirements in these proposed regulations primarily to those Class IV underground injection devices which are normally thought of as wells.

In addition to, or instead of, the requirements specified in these proposed regulations for Class IV underground injection devices, the Agency is considering the specification of other more appropriate requirements for those Class IV underground injection devices which do not typify wells.

In particular, the Agency is considering the requirements specified in Part 265-Subpart K. Surface Impoundments, or similar requirements for application to the second type described above (i.e., pits). The requirements specified in Part 265-Subpart Q, Chemical, Physical, and Biological Treatment or similar requirements are being considered for application to the third type (e.g., septic tanks) and the requirements in Part 265-Subpart M. Land Treatment, or similar requirements for the fourth or remaining type. The Agency specifically invites comment on the appropriateness of applying these requirements to Class IV underground injection devices.

Because of the similarity between these latter three types of injection devices and those hazardous waste management techniques to be controlled by regulation in accordance with the Part 265 requirements under RCRA, the Agency is also considering regulating these injection techniques under RCRA only, now and in the future. The UIC program would still assume regulatory responsibility for those of these injection techniques which are generally considered as wells (i.e., the first type) when such programs go into effect. The Agency invites specific comments on this concept.

These proposed regulations include a limited number of definitions, used throughout the regulations. These definitions also appear in § 122.3 of the Part 122 regulations published in today's **Federal Register**. The Agency will be developing additional appropriate definitions for this proposed regulation in conjunction with the Part 146 regulations which are now under development.

The various requirements included in these proposed regulations are discussed as follows:

General Operating Requirements

These proposed regulations include specific operational requirements for Class I wells which dispose of hazardous waste beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water. Such wells typically pass through overlying aquifers which are to be protected as underground sources of drinking water. This protection involves requirements that injections only occur through properly designed and constructed wells. The injection of hazardous waste must be accomplished through tubing inside of a well casing which is cemented to the well bore. Furthermore, the annular space between the tubing and casing must be filled with a suitable fluid. As will be discussed later, the integrity of these seals is to be demonstrated by a monitoring program. A final requirement for protecting aquifers overlying the injection formation is the prohibition of injection of hazardous waste between the outermost casing and the well bore. Additional operational controls include limitations placed on injection pressure based on conditions in the injection zone. These limits are set to prevent the migration of hazardous waste, hazardous waste constituents, or formation fluids from the injection zone into underground sources of drinking water. This migration could occur either through fractures in the injection zone and the confining zone, or through improperly completed or plugged wells penetrating the injection zone. To prevent migration by the first of these pathways the pressure in the injection formation must remain below a calculated maximum known as fracture pressure. The injection pressure must at all times remain less than the fracture pressure. To prevent contamination by the second pathway, the owner or operator can either correct the problems in these wells or inject at a reduced pressure such that the injected fluids will not reach the improperly plugged or completed wells. Facilities under interim status are existing facilities for which proper injection pressures have already been determined. The regulations require that the owner or operator control and monitor his injection pressure to prevent migration of hazardous waste or hazardous waste constituents out of the injection zone by either pathway.

The above discussion applies only to Class I wells disposing of hazardous waste. The regulations do not include any general operating requirements for Class IV wells which inject above underground sources of drinking water. Since these wells are intended to introduce injection fluids above underground sources of drinking water, requirements to prevent leakage from the well are not pertinent. As will be discussed later, however, the regulations do specify ground-water monitoring requirements for these wells.

Special Handling Requirements

Facilities which dispose of hazardous waste by underground injection must comply with the § 265.13 General Waste Analysis requirements. In addition, in the case of underground injection, the owner or operator must ascertain that the waste is compatible with the components of the well and the injection formation. Trial tests are required when a well is used to inject a different hazardous waste to ensure that the new waste will not react with previously injected fluids, the injection formation or components of the well and form gases which could cause a threat to public health or the environment, or otherwise damage the well or the receiving formation. Test results must demonstrate compliance with the requirements of § 265.17(b). If the owner or operator has on hand information demonstrating the compatibility of various hazardous wastes with the well components and the injection formation the trial tests need not be performed.

In § 265.437 of the proposed regulations the underground injection of ignitable, reactive, and incompatible waste is prohibited unless such injection complies with § 265.17(b).

Monitoring and Response

As discussed earlier in the discussion of general operating requirements, for Class I wells both the mechanical integrity and the injection zone pressure are to be monitored.

Monitoring to assure the mechanical integrity of the well is to be accomplished by applying a selected pressure to the material placed in the annular space between the tubing and the well casing, and then monitoring the pressure for changes. Any abrupt change in the measured pressure indicates that the tubing is leaking into the annular space. In determining the pressure to be applied to the annular space the owner or operator must establish an allowable range based on generally accepted engineering practices. A sudden leak or fracture in the tubing or casing would cause an abrupt change in the annular pressure. If a significant change in the annular pressure is detected, the owner or operator is required to take appropriate corrective action to restore mechanical integrity. This action may include replacing or repairing tubing, casing, seals or other appurtenances.

These proposed regulations do not specify appropriate annular pressures or the means to restore mechanical integrity. The regulations do require the owner or operator to implement a monitoring program to demonstrate mechanical integrity of Class I wells based upon a plan prepared and submitted to the Regional Administrator, all on the effective date of these regulations. Continuous monitoring of annular pressure is commonly employed at Class I facilities and therefore the Agency is requiring continuous monitoring and recording. In addition to the annual report that the Agency is considering requiring notice within a specified period (e.g., 24 hours) any readings falling outside the allowable range.

Monitoring of the injection pressure is also required, for Class I wells. As discussed earlier in this document, injection at too high a pressure can cause hazardous waste, hazardous waste constituents, or formation fluids to migrate from the injection zone. To guard against this possibility, the owner or operator must measure the injection pressure to assure that it does not exceed the allowable pressure in the injection zone. Since the pressure is measured at the well head and not in the injection zone itself, he must calculate, based upon generally accepted engineering principles, the maximum allowable pressure at the well head based on the characteristics of both the fluid being injected and the injection well apparatus. If the well head pressure exceeds the allowable limit, the owner or operator must modify his injection process to restore the injection pressure to within allowable limits. For more information on this subject see "An Introduction to the Technology of Subsurface Wastewater Injection," EPA–600/2–77–240, December 1977.

As with the mechanical integrity monitoring program, the owner or operator must, on the effective date of these regulations, develop and submit to the Regional Administrator a plan for injection pressure monitoring and then implement it. This plan must include a specification of continuous monitoring and recording. The Agency is considering, in addition to the annual report, requiring periodic or episodic reporting.

The owner or operator is required to keep records of monitoring data and

evaluations throughout the active life of the facility. He must also submit to the Regional Administrator an annual report on his mechanical integrity and injection pressure monitoring programs. The report must contain a description of any corrective actions instituted during the year and the circumstances which necessitated the corrective actions.

In the case of Class IV wells used to dispose of hazardous waste by injection above an underground source of drinking water, these proposed regulations require compliance with the requirements of Part 265 Subpart F—Ground-Water Monitoring.

The Agency believes that wells injecting hazardous waste above an underground source of drinking water are very similar to surface impoundments used for the storage, treatment or disposal of hazardous waste in terms of potential ground-water contamination. This is especially true if the surface impoundment leaks. Because of this similarity, the proposed regulations specify the same ground-water monitoring requirements for these wells as those which apply to surface impoundments, including the recordkeeping and reporting requirements of Subpart F.

Subpart F requires indicator monitoring which may lead to a ground-water quality assessment program. For those facilities where no hazardous waste or hazardous waste constituents are thought to be entering the ground water, an indicator monitoring program to detect leaks is described. For those facilities where ground-water contamination by hazardous waste or hazardous waste constituents from the facility is known or assumed to exist, the Subpart F regulations describe a ground-water quality assessment program to establish the magnitude of the impact on the ground water. Since most Class IV wells may already have contributed hazardous waste or hazardous waste constituents to the ground water, the Agency anticipates that a ground-water quality assessment program will be implemented at most Class IV injection well facilities.

Closure and Post-Closure

The regulations require an owner or operator to close his injection well in such a way that migration of hazardous waste or hazardous waste constituents into or between underground sources of drinking water is prevented. Furthermore, the need for maintenance to protect human health and the environment is to be minimized. On the effective date of these regulations the owner or operator is required to have a written plan for closure of his injection well at the end of its intended life or, for that matter, at any other time that closure would be necessary. The closure plan must describe the steps which will need to be taken to close the injection well.

These proposed regulations specify requirements for closure plan amendments, plan approval, and notification which are very similar to the facility closure requirements specified in Part 265—Subpart G, Closure and Post-Closure. Commenters may wish to review these proposed requirements in consideration of Subpart G.

In the case of Class I wells, these regulations specify that closure must be accomplished by plugging. Common plugging techniques include: the Balance Method; the Dump Bailer Method; and the Two-Plug Method. Each of these techniques requires that the well be brought into a state of static equilibrium, either by circulating the mud in the well at least once or a comparable method, prior to placement of the cement plug(s). For more information see "Cementing" by Dwight K. Smith, Chapter 10, Monograph Volume 4, Henry L. Doherty Series, SPE of AIME, 1976.

In the case of Class IV wells which are used to dispose of hazardous waste by injection above underground sources of drinking water, the owner or operator must remove remaining hazardous waste from the injection well and then close the well, in accordance with the facility closure plan to satisfy § 265.435(a). One method of meeting this objective is to preclude the injection of additional fluids, even those which are not hazardous waste, which could result in mobilization of hazardous waste remaining in the aeration zone and introduction of these substances into the ground water.

A "Comment" included in the proposed regulations reminds the owner or operator that any waste removed from the injection well during closure must be managed as a hazardous waste, unless he demonstrates that the waste is not hazardous.

Following closure, the owner or operator of a Class IV well must implement his post-closure plan. These proposed regulations impose the post-closure requirements specified in Subpart G, which, in the case of underground injection, involve post-closure monitoring of the ground water in accordance with Subpart F. EPA believes that such post-closure monitoring is appropriate since hazardous waste may remain in the soil adjacent to the injection well. This monitoring will determine whether the waste migrates to ground water and, if such migration occurs, what degree of contamination occurs. The latter determination must, at a minimum, include a prediction of the rate of migration of the contaminants in the saturated zone. If the well is contaminating ground water the assessment of contamination in the ground water must continue as long as waste is being injected (i.e., until closure of the facility). This is necessary to account for differences in the waste injected (e.g., volume, constituents).

If contamination first appears during the post-closure period a single ground-water quality assessment (including a prediction of the rate of migration) should be sufficient to characterize likely future contamination. While the Agency believes that the post-closure monitoring requirements of Subpart F are applicable to Class IV wells that inject above an underground source of drinking water, the Agency does not expect that most Class IV wells will be engaging in extensive post-closure monitoring. Many Class IV wells will have triggered the ground-water quality assessment program of Subpart F during the active life of the facility. Such facilities would only monitor until final closure. Those that are using the indicator monitoring system during the post-closure period are likely to discover an impact on ground water. Under Subpart F, such facilities need only complete and report on a single ground-water quality assessment.

Financial Requirements

In imposing financial requirements on the owners or operators of underground injection facilities, these proposed regulations draw a distinction between the closure and post-closure requirements. Since closure is accomplished essentially through plugging, it is appropriate to use financial requirements similar to those in § 122.42(g), which seem appropriate for such techniques. Since the post-closure requirements of this Subpart are based on the requirements of Subpart G of this Part, it is appropriate to use financial responsibility requirements similar to those in Subpart H of this Part.

The Agency is also considering distinguishing between Class I and Class IV wells for purposes of financial responsibility. Under this alternative approach, requirements for Class I wells (which do not have post-closure requirements) would be based on those in § 122.42(g). The requirements for Class IV wells (which would include requirements during the post-closure period) would be based on Subpart H. The Agency is also considering imposing

either all of Subpart H or requirements similar to those in § 122.42(g) on all underground injection facilities disposing of hazardous waste above underground sources of drinking water.

The Agency has decided to repropose financial responsibility requirements for owners or operators of hazardous waste management facilities. To the extent appropriate, the Agency may decide to promulgate such requirements for owners or operators of wells used to dispose of hazardous waste, at the time it promulgates such requirements for other hazardous waste management facilities.

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

It is proposed to further amend Title 40 CFR, Part 265, by adding §§ 265.431—265.437 to Subpart R, which has been promulgated in today's **Federal Register** as follows:

§ 265.431 Definitions.

The following definitions promulgated in § 122.3 of this Chapter apply:

Formation means a body of rock characterized by a degree of lithologic homogeneity; which is prevailingly, but not necessarily, tabular and mappable on the earth's surface or traceable in the subsurface.

Formation fluid means "fluid" present in a " formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

Injection well means a "well" into which "fluids" are being injected.

Injection zone means a geological "formation", group of formations, or part of a formation receiving fluids through a well.

Plugging means the act or process of stopping the flow of water, oil, or gas in formations penetrated by a borehole or well.

Underground source of drinking water ("USDW") means an aquifer or its portion: (a) which supplies drinking water for human consumption; or (b) in which the ground water contains fewer than 10,000 mg/l "total dissolved solids".

§ 265.432 General operating requirements.

The owner or operator of a Class I well for disposal of hazardous waste must prevent migration of hazardous waste or hazardous waste constituents into or between underground sources of drinking water as follows:

(a) Wells must be cased and cemented between the well bore and casing;

(b) Hazardous waste must be injected through tubing, with a packer set immediately above the injection zone and with the annulus between the tubing and the long string of casings filled with fluid, or by another equally effective technique for which the owner or operator has a written demonstration, available for review by the Regional Administrator, indicating that it provides a comparable level of protection to underground sources of drinking water.

(c) Injection of hazardous waste between the outermost casing and the well bore is prohibited; and

(d) Injection pressure at the well head must not exceed a maximum pressure which must be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone or otherwise cause the migration of hazardous waste, hazardous waste constituents, or formation fluids into an underground source of drinking water.

§ 265.433 Waste analysis.

For disposal of hazardous waste by underground injection the owner or operator must, in addition to the waste analyses required by § 265.13:

(a) Conduct waste analyses and trial tests; or

(b) Present written, documented information from his or similar disposal operations to show that this disposal will comply with § 265.17(b) and for Class I wells, that the waste is compatible with fluids in the injection zone and minerals in both the injection zone and the confining zone and will not damage the mechanical integrity of the well.

§ 265.434 Monitoring and response.

(a) The owner or operator of a facility which disposes of hazardous waste by underground injection into a Class I well must:

(1) On the effective date of these regulations develop and submit to the Regional Administrator a plan for a monitoring program capable of determining compliance with § 265.432, by:

(i) Demonstrating the mechanical integrity of the injection well to satisfy § 265.432(a) and (b); and

(ii) Demonstrating that the pressure of the injected fluids remains within allowable limits to satisfy § 265.432(d).

(2) The plan to be submitted under paragraph (a) of this section must specify:

(i) For demonstrating mechanical integrity:

(A) The annual pressure range to be maintained and basis for determining it for the specific well tubing, packer and casing characteristics and for the anticipated injection fluid temperatures;

(B) The devices and procedures for continuous monitoring and recording of the annular pressure, and evaluation of that information; and

(C) Procedures for immediate response to changes in the annular pressure outside the allowable range, and for restoration of mechanical integrity;

(ii) For demonstrating that injection fluid pressure remains within allowable limits:

(A) The calculated fracture pressure and the basis for determining it for the specific formation and zone of injection;

(B) The calculated allowable injection pressure to be measured at the well head and the basis for determining it for specific injection fluid characteristics (i.e., specific gravity, viscosity and temperature);

(C) The techniques and procedures for continuous monitoring and recording of the injection pressure at the well head, for evaluation of that information; and

(D) Procedures for immediate response to an increase in the well head pressure above the allowable limit, to restore pressure to within allowable limits.

(3) On the effective date of these regulations the owner or operator must implement the monitoring plan which satisfies paragraph (a)(2) of this section and determine the mechanical integrity of the well and the injection zone pressure.

(4) The owner or operator must keep records of the monitoring data and evaluations specified in paragraphs (a)(2) (i) and (ii) of this section throughout the active life of the facility.

(5) The owner or operator must submit an annual report to the Regional Administrator which assures compliance with § 265.432. He must separately identify in the annual report those corrective actions, specified in paragraphs (a)(2)(i) (C) and (a)(2)(ii)(D) of this section which were implemented during the reporting period, and an explanation of the circumstances which required corrective action.

(b) The owner or operator of a facility which disposes of hazardous waste by underground injection into a Class IV well which discharges above an underground source of drinking water must monitor the ground water in accordance with the requirements of Subpart F of this Part.

§ 265.435 Closure and post-closure.

(a) The owner or operator must close his facility in a manner that:

(1) Will prevent the migration of hazardous waste or hazardous waste constituents into or between underground sources of drinking water via the well structure; and

(2) Will minimize the need for further maintenance to protect human health and the environment.

(b) On the effective date of these regulations, the owner or operator must have a written closure plan. He must keep this plan at the facility. This plan must identify the steps necessary to completely close the facility. The closure plan must:

(1) Identify the techniques to be used to close the well in accordance with paragraphs (c) and (d) of this Section;

(2) Describe the steps which are necessary to decontaminate facility equipment during closure; and

(3) Include a schedule for final closure which specifies the anticipated date when wastes will no longer be received, the anticipated date when final closure will be completed, and intervening milestone dates for tracking the progress of closure.

(c) The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator must amend his plan any time changes in operating plans or facility design affect the closure plan.

(d) The owner or operator must submit his closure plan to the Regional Administrator at least 180 days before the date he expects to begin closure. The Regional Administrator will modify, approve, or disapprove the plan within 90 days of receipt and after providing the owner or operator and the affected public (through a newspaper notice) the opportunity to submit written comments. If an owner or operator plans to begin closure within 180 days after the effective date of these regulations, he must submit the necessary plans on the effective date of these regulations.

(e) Within 90 days after receiving the final volume of hazardous wastes, the owner or operator must treat all hazardous wastes in storage or in treatment, or remove them from the site, or dispose of them on-site, in accordance with the approved closure plan.

(f) The owner-or operator must complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The Regional Administrator may approve a longer closure period under paragraph (d) of this section if the owner or operator can demonstrate that:

(1) The required or planned closure activities will, of necessity, take him longer than six months to complete, and

(2) That he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

(g) The owner or operator of a Class I well must close by plugging to satisfy paragraph (a) of this section.

(h) At closure, the owner or operator of a Class IV well which discharges above an underground source of drinking water must;

(1) Remove the hazardous waste remaining in the well; and

(2) Close the well in a manner which satisfies paragraph (a) of this section.

[*Comment:* At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with § 261.3 (c) or (d) of this Chapter, that any solid waste removed from the injection well is not a hazardous waste, he becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263, and 265 of this Chapter.]

(i) When closure is completed, the owner or operator must submit to the Regional Administrator certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

(j) The owner or operator of a Class IV well which discharges above an underground source of drinking water must provide post-closure care in accordance with the applicable requirements of §§ 265.117–265.120 (see Subpart G of this Part).

§ 265.436 Financial requirements.

(a) On the effective date of these regulations, the owner or operator of a facility which disposes of hazardous waste by underground injection must have a written estimate of the cost of closing the facility in accordance with the requirements in § 265.435. The owner or operator must keep this estimate, and all subsequent estimates required in this Section, at the facility.

(b) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of closure.

(c) The owner or operator must maintain financial responsibility in the form of performance bonds or other equivalent form of financial assurance to close a facility which disposes of hazardous waste by underground injection. In lieu of individual performance bonds, owners or operators may furnish a bond or other equivalent form of financial guarantee covering all facilities which dispose of hazardous waste by underground injection in any one State.

(d) On the effective date of these regulations an owner or operator of a facility which disposes of hazardous waste by underground injection in a Class IV well which discharges above underground sources of drinking water must have a written estimate of the annual cost of post-closure monitoring and maintenance in accordance with the applicable post-closure requirements in §§ 265.117–265.120. This estimate, and all subsequent estimates, must be kept at the facility.

(e) The cost estimate required in paragraph (d) of this section must be revised whenever a change in the post-closure care plan affects the cost of post-closure care (see § 265.118(b)). The latest post-closure cost estimate is calculated by multiplying the latest annual post-closure cost estimate by 30.

(f) On each anniversary of the effective date of these regulations, the owner or operator must adjust the latest post-closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its *Survey of Current Business*. The inflation factor must be calculated by dividing the latest annual published Deflator by the Deflator for the previous year. The result is the inflation factor. The adjusted post-closure cost estimate must equal the latest post-closure cost estimate times the inflation factor.

§ 265.437 Special requirements for ignitable, reactive or incompatible wastes.

Ignitable, reactive or incompatible wastes (see Appendix V for examples) must not be disposed by underground injection unless § 265.17(b) is satisfied.

[FR Doc. 80-14310 Filed 5-16-80; 8:45 am]
BILLING CODE 6560-01-M



would you like to know

if any changes have been made in certain titles of the CODE OF FEDERAL REGULATIONS without reading the Federal Register every day? If so, you may wish to subscribe to the LSA (List of CFR Sections Affected), the "Federal Register Index," or both.

LSA (List of CFR Sections Affected)
$10.00
per year

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register, and is issued monthly in cumulative form. Entries indicate the nature of the changes.

Federal Register Index $8.00
per year

Indexes covering the contents of the daily Federal Register are issued monthly, quarterly, and annually. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers: FR Indexes and the LSA (List of CFR Sections Affected) will continue to be mailed free of charge to regular FR subscribers.

Mail order form to:
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed $_____ for _____ subscription(s) to the publications checked below:

LSA (LIST OF CFR SECTIONS AFFECTED) ($10.00 a year domestic; $12.50 foreign)

FEDERAL REGISTER INDEX ($8.00 a year domestic; $10.00 foreign)

Name _____

Street Address _____

City _____ State _____ ZIP _____

Make check payable to the Superintendent of Documents

5-19-80
Vol. 45—No. 98
BOOK 3:
PAGES
33287-33588

federal register

Book 3 of 3 Books
Monday, May 19, 1980

33287 Environmental Protection Agency
Consolidated Permit Program

33290 Part X
Consolidated Permit Regulations

33516 Part XI
Consolidated Permit Application Forms

federal register

Monday
May 19, 1980

Part X

Environmental Protection Agency

Consolidated Permit Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 125

[FRL 1453-5]

Consolidated Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final 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) program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) program and State Dredge or Fill ("404") programs 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 UIC programs with those already established for the NPDES program.

(2) To establish 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, and NPDES programs.

DATES: These regulations shall become effective as follows: All regulations shall become effective as to UIC permits and programs July 18, 1980, but shall not be implemented until the effective date of 40 CFR Part 146. All regulations shall become effective as to RCRA permits and programs November 19, 1980. Part 124 shall become effective as specified in § 124.21. All other provisions of the regulations shall become effective July 18, 1980. For purposes of judicial review under the Clean Water Act, these regulations will be considered issued at 1 p.m. eastern time on June 2, 1980; see 45 FR 26894, April 22, 1980. In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before July 18, 1980. The effective date will not be delayed by consideration of such comments.

Comments on the scope and applicability of Executive Order 11990 and Executive Order 11988 to RCRA, UIC, and NPDES permits must be submitted on or before July 18, 1980.

Comments on requirements for Class IV wells must be received by July 15, 1980.

There will be a hearing on the requirements for Class IV wells on July 8, 1980, from 9 a.m. to 5 p.m.

ADDRESSES: Comments of a technical and nonsubstantive nature, as well as the comments concerning the scope and applicability of Executive Order 11990 and Executive Order 11988, should be addressed to: Edward A. Kramer, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460.

Comments on requirements for Class IV wells should be addressed to: Alan Levin, Director, State Program Division (WH-550), Office of Drinking Water, Environmental Protection Agency, Washington, D.C. 20460.

The Public Hearing on Class IV wells will be held at: HEW Auditorium, 330 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward A. Kramer, Office of Water Enforcement (EN-336), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0750.

SUPPLEMENTARY INFORMATION:

Background

These final regulations consolidate requirements and procedures for five EPA permit programs. These regulations represent the major product of the Agency's permit consolidation initiative that began in the fall of 1978. They are based on the proposed consolidated permit regulations that were published in the **Federal Register** for comment on June 14, 1979 (44 FR 32854).

EPA program requirements and State program requirements are established for three programs:

- The Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA);
- The Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA);
- The National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA); and

State program requirements only are established for:

- State section 404 "Dredge or Fill" programs under the CWA.

In addition, procedures for permit decisionmaking are established for the above four programs, and for

- The Prevention of Significant Deterioration (PSD) program under the Clean Air Act, where this program is operated by EPA or a delegated State agency under 40 CFR 52.21(v); these procedures do not apply to PSD permits issued by States to whom administration of the PSD program has been transferred. (See preamble to Part 124, Subpart C.)

These regulations are an important element of an Agency-wide effort to consolidate and unify procedures and requirements applicable to EPA and State-administered permit programs.

The Agency has also developed a single set of permit application forms for the programs covered by these regulations. These consolidated application forms are published elsewhere in today's **Federal Register**. They consist of a single general form to collect basic information from all applicants, followed by separate program-specific forms which collect additional information needed to issue permits under each program. The application forms in today's **Federal Register** include the general information form and the additional forms for certain water discharges under NPDES and for hazardous waste permits under RCRA.

When the draft consolidated application forms were published for public comment, they appeared along with a set of proposed NPDES regulations which were closely related to the contents of the application forms. Those accompanying regulations have now been integrated with the final NPDES regulations which appear as part of these consolidated permit regulations, and are summarized in the proper places in the preamble discussion. For a more thorough discussion and response to comments on those portions of the NPDES regulations, see the preamble to the consolidated application forms published elsewhere in today's **Federal Register**. Because the draft application forms and accompanying proposed NPDES regulations were originally published together, commented upon together, and are closely related, the detailed discussion of both forms and accompanying regulations has been retained in one place.

Many of the requirements in these regulations apply both to EPA programs and to State programs that receive EPA approval to operate in lieu of a Federal program in a particular State. These common requirements are intended to ensure that State permit programs satisfy minimum statutory and

environmental objectives, while at the same time recognizing that State laws, procedures, and management philosophies differ. EPA also seeks in these regulations to help States rationalize their own regulatory programs by removing or avoiding Federal obstacles to such efforts. These regulations allow greater coordination and cooperation in permit review and issuance between EPA and States with approved RCRA, UIC, NPDES, 404, or PSD programs in instances where a single facility or activity requires permits from both EPA and one or more State agencies.

Although nothing in these regulations would require a State to reorganize its permitting procedures, 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 from permits consolidation:

• Environmental Benefits: Consolidation of permit requirements and processing procedures should result in more comprehensive management and control of wastes.

• Regulatory Benefits: More uniform procedures and permit requirements among EPA permit programs should result in more consistency and predictability for the regulated community, and in many instances this should reduce the costs of compliance. Consistent program requirements and a single set of application forms for EPA-issued permits should reduce 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 regulations. This high level of coordination and awareness is expected to continue.

• Public Participation Benefits: Procedures and opportunities for public participation in permit decisions and in State program approvals are more uniform and predictable under these regulations.

• Resource Benefits: Consolidating these permit programs should reduce the resources EPA needs to administer them over the next few years, compared with what the expanding scope of EPA permit programs would otherwise require. Consistent program requirements and use of the consolidated application forms should be particularly helpful in starting up and administering the two new programs (RCRA hazardous waste and UIC) covered by these regulations. If States adopt similar approaches, resource benefits could also be realized at the State level.

Organization of Final Regulations

The final regulations replace 40 CFR Parts 122, 123, and 124, which were formerly used exclusively 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—PERMIT REQUIREMENTS.

• PART 123—STATE PROGRAM REQUIREMENTS.

• PART 124—PROCEDURES FOR DECISIONMAKING.

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 additional program-specific requirements for the individual programs.

Although the Agency has attempted to unify these regulations, statutory and programmatic considerations preclude complete uniformity. Thus, to review the regulations for a particular program, one must read both the general Subpart A plus any applicable program-specific subpart.

Summary of the Regulations

• Part 122—Establishes definitions and basic permit requirements for EPA administered RCRA, UIC, and NPDES programs. Part 122 also provides certain requirements applicable to State programs, including State 404 programs, but only to the extent Part 123 explicitly refers to Part 122 requirements. Part 122 spells out in detail who must apply for a permit; contents of the applications; what conditions must be incorporated into permits; when permits may be revised, reissued, or terminated; and other requirements.

• Part 123—Establishes the requirements for State programs operated in lieu of EPA, after a program has received the approval of the Administrator. In addition to the RCRA hazardous waste, UIC, and NPDES programs, Part 123 governs State section 404 programs for discharges of dredged or fill material into certain waters of the United States. 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 EPA approval, revision, and withdrawal of a State program.

• Part 124—Establishes the procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD, and NPDES programs. It includes procedures for public participation, for consolidated review and issuance of two or more permits to the same facility or activity, and for appealing permit decisions. Most requirements in Part 124 are only applicable where EPA is the permit-issuing authority. However, Part 123 requires States to comply with some of the Part 124 provisions, such as the basic public participation requirements of permit issuance.

Technical Requirements

Technical regulations containing requirements and criteria which apply to decisionmaking under the RCRA, UIC, NPDES, 404, and PSD programs have been developed separately from Parts 122–124. These regulations set the standards for the contents of permits issued under these programs and provide some of the technical bases for determining the adequacy of State programs and individual permit decisions.

The coverage and format of the consolidated permit regulations, and the location of the technical regulations which correspond to each program, are summarized in the following chart:

BILLING CODE 6560-01-M

TABLE I: COVERAGE AND FORMAT

Name	Abbrev.	Coverage	Consolidated in 122	123	124	Act	Technical Requirements
Hazardous Waste Management Program	HWM	generation, transportation, treatment, storage, disposal of hazardous waste	Yes	Yes	Yes	Resource Conservation & Recovery Act (RCRA) 42 USC §6901	40 CFR 260-266
Underground Injection Control Program	UIC	well injection/ protection of drinking water aquifers	Yes	Yes	Yes	Safe Drinking Water Act (SDWA) 42 USC §300f	40 CFR 146
National Pollutant Discharge Elimination System	NPDES	discharge of wastewater into waters of the U.S.	Yes	Yes	Yes	Clean Water Act (CWA) 33 USC §1251	40 CFR 125, 129, 133, & Subchapter N
Dredge or Fill Program	404	discharge of dredged or fill material into waters of U.S.	Partly	Yes	Partly	Clean Water Act (CWA) 33 USC §1251	40 CFR 230
Prevention of Significant Deterioration	PSD	emission of pollutants from sources in clean air areas	No	No	Yes	Clean Air Act (CAA) 42 USC §7401	40 CFR 52

BILLING CODE 6560-01-C

Part 122—Program Requirements

A. What Does This Part Do?

(1) *Coverage.* Subpart A of Part 122 deals with EPA administration of the RCRA hazardous waste, UIC, and NPDES programs. First, it provides definitions for terms used in these regulations. Second, Subpart A contains basic program requirements applicable to EPA administration of these three programs, such as application requirements, standard permit conditions, and grounds for modification and termination of permits. Subparts B through D of Part 122 describe additional program elements of these three programs. Subpart B is specific to RCRA hazardous waste, Subpart C to UIC, and Subpart D to NPDES. The reader must consult both the general Subpart A and the appropriate program-specific Subpart B, C, or D for a full description of any one program.

Certain of the Part 122 program requirements are applicable, as indicated in section headings and in Part 123, to State RCRA, UIC, NPDES, or 404 programs which obtain approval to operate in lieu of EPA programs (or, in the case of 404 programs, in lieu of the U.S. Army Corps of Engineers). In addition to the definitions for RCRA, UIC, and NPDES, Subpart A of Part 122 contains definitions used in Part 123 for State 404 programs, but no 404 Subpart appears in Part 122 because EPA does not issue Federal 404 permits.

(2) *Complexity.* A large number of commenters on proposed Part 122, and the consolidated permit regulations in general, stated that the regulations are difficult to use because of their complexity, length, and numerous cross-references both to other sections of these regulations and to the separate technical regulations.

EPA agrees that the consolidated regulations are complex. Much of this complexity is due to the fact that the regulations include provisions under five programs which regulate complex and differing types of activities under four different statutes. The consolidation of regulations under these five permit programs may not make the substantive requirements of the five programs easier to meet. However, we believe that these regulations are less complex than they would have been if issued in five sets of regulations developed in isolation from eachother. By developing the permit regulations as a set, contradictions, gaps, and overlaps among program requirements have been detected and more easily and completely dealt with. In addition, consolidation has avoided many differences in approach that are not direct conflicts, but which still are

unnecessary to carry out the objectives of the program. The consolidated regulations make the provisions more uniform, and therefore easier to learn and deal with conceptually, by favoring consistency among programs where differences are not required by statutory objectives. In addition, these regulations achieve some saving in total length because provisions which are applicable to all programs only have to be stated once.

While EPA has retained the idea of consolidation and the basic format of the proposed regulations, we have taken or will be taking a number of steps to try to make the regulations easier to use and less confusing.

First, EPA will conduct an extensive program for public awareness after the regulations are promulgated. One aspect of this proram will be preparing and distributing reprints of the regulations, which will contain only the parts of these consolidated regulations applicable to each program individually. This will make it possible for a reader interested in only one program to find out about it without reading about other programs. These individual program reprints may be combined with the separate "technical" regulations for a program, such as the Part 146 regulations for UIC, in order to provide a single package which contains the entire universe of regulatory requirements for one program and thereby ease the burden of pursuing cross-references.

In addition, EPA will be preparing a series of booklets on the regulations written to address the concerns of particular constituencies. For example, one such booklet will be specifically addressed to farmers, and another addressed to permit applicants in general.

Second, the consolidated regulations themselves have been redrafted with particular attention to their organization and their readability. Steps that EPA has taken in this effort include the following:

- The sequence of sections within each of the subparts of Part 122 has been rearranged for logic and consistency and to provide a discernible "map" for proceeding through the regulations. Each subpart of Part 122 includes three types of provisions: (1) *Orientation material* such as the purpose and scope of each program, prohibitions, and the classification of injection wells; (2) the ways in which activities covered by the programs are authorized, either through *application for a permit* or by permit substitutes such as interim authorization or authorization by rule; and (3) information on how *conditions* are incorporated into permits—first, the conditions that do vary from permit to permit, and then information on how to calculate or specify conditions which do vary from permit to permit. In addition, (4) Subpart A contains sections on the *effect of having a permit*, such as the extent of the protection a permit provides, how it is reviewed, and when it can be modified or terminated. The regulations have been organized to follow this sequence, and we have rewritten the section headings to clarify the relations between provisions in Subpart A and parallel provisions in the program subparts. The organization of the final regulations is displayed in Table II.

Table II.—*Organization of Part 122*

Subject	Subpart A (General)	Subpart B (RCRA)	Subpart C (UIC)	Subpart D (NPDES)
I. Orientation material:				
Purpose and scope	122.1 to 122.2	122.21	122.31	122.51.
Basic program provisions and coverage; prohibitions	122.3		122.32 to 122.36	122.52.
II. Application:				
Preapplication requirements and permit substitutes.		122.23	122.37	
Who applies for a permit;	122.4	122.22	122.38	122.53
and how?	122.5, and 122.6	122.24, and 122.25		122.54 to 122.58.
Special permits		122.26 to 122.27	122.39 to 122.40	122.59.
III. Establishing permit conditions:				
Standard permit conditions	122.7	122.28	122.41	122.60 and 122.61.
Establishing variable conditions	122.8		122.42	122.62 to 122.63
	122.9 to 122.12	122.29 to 122.30	122.43 to 122.45	122.64 to 122.66.
IV. Effect of a permit	122.13 to 122.19			

A reader might wish to determine the treatment of a particular activity under Part 122 in the following manner (referring to Table II): First, if the activity is within a State with an approved program the individual is not directly covered by Part 122, but rather by State program statutes and regulations approved under Part 123, and the reader would consult those State statutes and regulations. Because some of the programs covered by these regulations are new, and others may not be approved in a particular State, the reader might wish to consult Part 123 to determine what the minimum requirements for one of these programs would be in the State. Otherwise, the reader would first go to the "Orientation Material," which summarizes each program sufficiently to give a quick idea of whether further examination of the regulations is warranted. If the activity is covered, the reader would next turn to the "Application" provisions to see what procedures to follow in obtaining a permit or other authorization. Beyond this point an individual's requirements under these programs will be spelled out in the permit document (except where the activity is authorized by a "rule" or other permit substitute). If the reader wants to know what his or her permit requirements would be, he or she could go on to the provisions on "Establishing Permit Conditions." First, "standard conditions" that will appear in all permits can be looked up. Second, the sections on establishing variable permit conditions can be consulted; these will refer to the location of the other sections of these and other regulations that set forth the requirements for variable permit conditions and how they are derived. The specific conditions of these permits for the most part will be derived through the application of technical regulations for each of the programs which do not appear with these regulations. Finally, the provisions in Subpart A on the "Effect of a Permit" will tell the reader what it means to have a permit: the protection that it offers, and how it may be reopened or changed.

- Orientation sections have been added to the beginning of each subpart of Part 122. The first of these orientation sections briefly introduces the consolidated regulation as a whole (§ 122.1). The second sets forth the purpose and scope of Part 122 (§ 122.2). Finally, each of the program subparts of Part 122 now contains an introductory section setting out the basics of that program's permit system. These introductory sections are designed both to indicate at the beginning what activities are regulated, and to make the more detailed sections which follow easier to comprehend. Much of this material is explanatory and illustrative rather than regulatory. EPA believes that inclusion of this material will help reduce the confusion created by the complexity of the regulations. Because

the introductory sections are summaries they can not substitute for the full regulations which follow.

• Those sections of Part 122 and Part 124 which are applicable to State programs (through reference in Part 123) have been highlighted in the section (or, where necessary, paragraph) headings. Indication that a section is "applicable to State programs" does not mean that exactly the same provision will be applicable to owners or operators who receive their permits from a State. Rather, "applicability" means that a State program must have a similar provision in its own statutes and regulations in order to receive approval to operate in lieu of EPA (or the Corps of Engineers for 404). For the corresponding State provision, these statutes and regulations would have to be consulted. This subject is discussed at length in the preamble to Part 123.

• Some material has been shifted from the program-specific subparts to Subpart A when it makes sense to do so. An example is noncompliance reporting (§ 122.18): moving all the requirements into Subpart A has eliminated many sections and a large number of cross-references, as well as many needless inconsistencies.

• EPA has attempted whenever possible to indicate in italics at the beginning of subparagraphs and paragraphs when the material that follows is applicable to one program only, as occurs occasionally in the general Subpart A.

• Paragraph and subparagraph headings have been added to break up long sections or to identify the material which follows. However, it is not always possible to provide a heading for every paragraph in a section.

• A large number of cross-references between these permit regulations and the technical regulations is unavoidable. However, EPA has tried to organize both sets of regulations to place the permit material in the permit regulations and technical material in the technical regulations, to make these materials consistent, to provide cross-references when needed, and to make the cross-references understandable. We have added topical headings for many cross-references to help readers determine the nature of the requirement referred to.

• Some commenters raised concerns regarding the status of "comments" in the proposal, especially when they contain regulatory material. We have attempted to eliminate as many comments as possible by moving regulatory material into the text and purely explanatory material into the preamble or the "purpose and scope" sections. However, we have retained some comments to give examples or illuminate requirements contained in the regulations. Following standard Federal Register style, these comments have been labeled as "Notes."

B. How Does This Part Relate To The June 14, 1979 Proposal?

Subpart A—General Program Requirements

The following is a discussion of the significant comments received and of the basis for revisions made to Part 122 of the proposed regulations. Minor editorial and stylistic changes (including "technical amendments" solicited in the preamble to the June 7, 1979 final NPDES regulations) have been made in all sections and are not discussed. "Includes, but is not limited to" or "includes without limitation" have been rewritten simply as "includes" in all cases and wherever that term appears, the provisions which follow are not exclusive.

§ 122.1 What are the consolidated permit regulations?

Much of this material appeared in proposed § 122.1, "Purpose and scope," but it has been reorganized and rewritten to logically set out the coverage of the entire consolidated permit regulations. Thus, there are now separate paragraphs on (a) coverage, (b) structure, (c) relation to other regulations, (d) authority, (e) public participation, and (f) State authorities. State authorities was formerly § 122.4. Because it is generally true of these regulations, and not just true of Part 122, that they do not preempt more stringent State requirements (except as provided for RCRA in § 123.33), the proposed section was moved to § 122.1 where it applies to all of the regulations. It was reworded to clarify that these regulations do not preempt more stringent requirements whether or not those requirements are part of an approved State program.

§ 122.2 Purpose and scope of Part 122.

This section is completely new. It has been added to make Part 122 easier to read and to clarify its organization.

Many commenters noted that the applicability of Part 122 to the PSD program was unclear. The PSD program was not mentioned in proposed § 122.1, "Purpose and scope," but some of the definitions in Part 122 appeared to be applicable to PSD. EPA has decided that the best way to avoid confusion is to exclude PSD from Part 122 entirely, and this is noted in the regulations. Instead, PSD definitions appear in Part 124, Subpart C.

§ 122.3 Definitions.

A number of commenters made general suggestions to cope with the difficulty of finding the correct definition in § 122.3. The proposal organized the definitions into a paragraph containing "general definitions" followed by paragraphs containing definitions applicable to each of the programs individually. EPA has followed a suggestion that all the definitions be organized into one alphabetical list. If a term applies to fewer than all of the programs, a parenthesis is inserted after the term to indicate to which programs it applies. However, because many readers of this preamble are likely to be particularly interested in the definitions for a single program, the following response to comments will continue to follow the proposed format by discussing first the "general definitions" and then the definitions that apply to individual programs.

Frequently terms are defined in reference to other terms which are also defined. When a defined term appears in a definition, the defined term appears with quotation marks when this may be helpful. Also, technical terms are frequently used in these regulations in their acronym form, such as "BMP" for "best management practices." We have expanded the definition section to include these acronyms, which are placed in their alphabetical order among all the other definitions.

(1) *General definitions.*

Administrator. Some commenters pointed out the conflicts between the proposed definition's delegation language ("his/her designee"), and those in the definition of Regional Administrator ("delegated representative"), proposed § 122.11(e) (Director or an "authorized representative"), and proposed § 123.37 (Regional Administrator or "his designee"). For consistency, the term has been made uniformly "or an autorized representative." Elsewhere in the regulations, only Administrator, Regional Administrator, or Director is used, with the understanding that authorized representatives and designees are included in these terms unless indicated otherwise. For example, the Regional Administrator may be the authorized representative of the Administrator.

Appropriate Act and regulations. For the reasons discussed under § 122.2 above, EPA has deleted the reference to the Clean Air Act.

Aquifer and *underground source of drinking water.* Some commenters objected to the fact that the proposal in effect set forth two definitions of

"underground source of drinking water" (USDW), one for use under RCRA and one with "more latitude" for use in the UIC program. (The greater flexibility for USDWs in the UIC program resulted from the procedures for eliminating certain aquifers, now called "exempted aquifers," from the coverage of the UIC program.)

Likewise, commenters noted that the proposed definition of "aquifer" ("capable of yielding useable quantities of groundwater") contradicted the definition in proposed § 250.41(5) for RCRA ("useable quantities to wells or springs"). The final definition applicable to both RCRA and UIC which appears in the consolidated regulations is "a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring." This is slightly different than the definition which appears in Part 260 for RCRA, which is the same as proposed § 250.41(5).

In both instances EPA agrees that these definitions should be the same for both programs, and EPA will conform them. They have not been conformed in these regulations because the question of the proper definition of "aquifer" and "USDW" are closely related to the scope and form of the section 3004 standards under RCRA and to the manner in which Class IV wells will be dealt with. Both those issues are scheduled for final resolution by EPA next fall. The definitions of "aquifer" and "USDW" will be changed at the same time. The current definition of "USDW" applies to the RCRA program only insofar as injection wells are regulated under RCRA under § 122.26.

Best management practices. Several commenters noted that it was confusing to provide two separate definitions of "best management practices" (BMPs): one for NPDES and one for State 404 programs. The two definitions have been combined so that they appear in one place. The differing coverage under two programs is highlighted in the new combined definition.

For 404, several commenters objected to the requirement that BMPs "ensure compliance with water quality standards." EPA agrees that the proposed definition could be interpreted to place an unrealistic burden on individual BMPs, and therefore has changed the definition to require that BMPs facilitate compliance with applicable water quality standards. Some commenters argued that there should be no reference at all to water quality standards because CWA section 404(h)(1)(A)(i) does not mention them. The Agency disagrees, because that section refers to the environmental guidelines promulgated under CWA section 404(b)(1) (the "section 404(b)(1) guidelines," 40 CFR Part 230) which do require compliance with applicable water quality standards.

Some commenters wanted the BMP definition to require consideration of practicability, feasibility, or economics. The final regulation allows States to include such considerations in addition to the minimum environmental requirements. It should also be noted that the section 404 BMPs contained in § 123.92 are not absolute requirements; anyone objecting to any of them may apply for a permit and raise questions of practicability in that context.

Facility or activity. In response to a comment, EPA has clarified the applicability of this definition to section 404 programs by adding a reference to the 404 program. "Facility" and "activity" frequently appear in Part 123, Subpart E.

Hazardous waste. Two commenters stated that a full definition of "hazardous waste" rather than a cross-reference should be given. However, the definition in Part 261 is too complex to be set out in full. Several other commenters stated that no reference should be made to RCRA section 1004 because that definition is not self-implementing and the only hazardous wastes covered by Subtitle C of RCRA are those which are identified or listed under section 3001. EPA accepts this comment and has changed the definition of "hazardous waste" so that it reads entirely in terms of the substantive RCRA regulations.

Major facility. This is a new definition added to the final regulations. It is discussed in paragraph (2) of the preamble to § 122.18.

Owner or operator. This definition remains unchanged. Some commenters sought clarification of what happens when the owner and operator are not the same, and expressed concern that requirements of the permit program might, by virtue of this definition, be imposed on landowners who have no involvement in operation of a permitted activity. To address this concern, we have amended § 122.4, application for a permit, to provide that the operator is responsible for obtaining a permit and complying with it when ownership and operation are split. However, RCRA applications must be signed both by the owner and the operator. The requirements of a RCRA permit bind both the "owner" and the "operator" of the permitted facility, while the requirements of other permits subject to this Part bind only the permit holder.

The reasons for this approach are explained in the preamble to the regulations implementing section 3004 of RCRA. Briefly, this approach has been chosen because there is at least one provision of the 3004 regulations that only the owner can comply with—the one requiring insertion of a notation in the deed to the property in question. It also may be materially more difficult to implement and enforce the closure and financial responsibility provisions of the regulations if the owner is not bound, since in at least some of those cases the site may have been abandoned and the "operator" may be difficult to determine. Joint responsibility will also provide more incentive to comply with the requirements of the RCRA program. Finally, the legislative history suggests that both owner and operator should be bound.

To ensure that both the owner and the operator understand their joint responsibility, EPA is requiring both the owner and the operator to sign the permit application. In adopting this approach, however, EPA has no intention to require both owner and operator to take all or even most compliance actions in tandem. EPA will regard compliance by *either* owner or operator with any given obligation under the permit as sufficient for both of them. EPA anticipates that in most cases the operator will take the lead role in complying with all but the few conditions that only the owner can satisfy. The owner is free to make arrangements with the operator by contract or otherwise to assure itself that the operator will take most actions necessary for compliance activities beyond that. Nonetheless, EPA considers both parties responsible for compliance with the regulations.

Permit. EPA has changed the definition in response to comments. First, commenters found obscure and confusing the statement that "in Part 124, reference to 'permit' may include permit modification, revocation or denial." EPA agrees. Part 124 has been rewritten to specify the precise kinds of permit actions to which its provisions apply.

Second, we have clarified the scope of the definition by adding references to other types of authorization or documents, such as "general permit," "draft permit," and "permit by rule." Similarly, § 122.4, application for a permit, is now written to clarify which of the several types of permits or other authorizations under these regulations is covered by the application requirement. Finally, the procedures governing issuance, administration, or termination

of interim status, authorization by rule, permits by rule, and emergency permits are segregated within their own sections. As a result, provisions of Parts 122 and 124 (and discussions in this preamble) which are generally applicable to permits, permit applications, and permittees are not applicable to those types of authorization, but are applicable to all other permits, including area permits and general permits. The following chart may be helpful in determining which provisions of the regulations apply to which kinds of authorizations.

BILLING CODE 6560-01-M

Table III: TYPES OF PERMIT AND OTHER AUTHORIZATION

Type of Authorization	Application Required?	Part 122 Applies Generally?	Part 124 Procedures Applicable?	Permittee Issued Individual Document?
"permit"	Yes, §122.4	Yes	Yes	Yes
RCRA interim status, §122.22	Part A, see §122.22	No, only §122.22	Partly. Termination, see §122.23 (a)(3)	No
permit by rule, §122.26	No	No, only §122.26	No	No
emergency permit, §122.27	Yes	No, only §122.27	No	Sometimes
UIC authorization by rule, §122.37	No	No, only §122.37	No	No
area permit, §122.38	Yes	Yes	Yes	Yes
emergency permit, §122.39	Yes	No, only §122.39	No	Sometimes
NPDES general permit, §122.59	No	Yes	Yes	No
404 general permit, §123.95	No (Notice)	Yes	Yes	No
emergency permit, §122.59	yes	No	No	Sometimes

BILLING CODE 6560-01-C

Person. The definition has been reworded to eliminate duplication.

State. One commenter suggested that this definition be changed to include Indian tribes so that they would be able to administer programs under Part 123. EPA has not accepted this suggestion because RCRA, SDWA, and CWA all explicitly define "State" and none includes Indian tribes. Indian tribes are included within the meaning of "municipality" in these statutes.

State Director. The definition has been changed from "a State agency" to "any State agency" to reflect the fact that a State may have more than one agency administering the permit programs.

(2) *Definitions for RCRA.*

Comments were received requesting clarifications or revisions to definitions applicable to the RCRA program requirements. Many of the definitions have been clarified or revised. All RCRA definitions in these final regulations are taken from 40 CFR Part 260. Part 260 provides the definitions for terms used in 40 CFR Parts 261 through 266. Using the Part 260 definitions in these regulations will ensure uniformity in all the regulations promulgated under Subtitle C of RCRA. Comments on the RCRA definitions are addressed and responded to as part of the rulemaking on 40 CFR Part 260.

Existing HWM facility. This definition is discussed in the preamble to Part 122, Subpart B.

Major Hazardous Waste Management Facility. In the proposal EPA defined "major HWM facility" as one that handled at least 5,000 tons of waste a year. EPA received a number of comments questioning this definition. For the reasons discussed in the preamble to § 122.18, EPA has determined that major HWM facility will be defined through guidance, and consequently this definition has been deleted. EPA intends that this guidance will result in approximately 10 percent of RCRA facilities being classified as major.

(3) *Definitions for UIC.*

Well. Commenters requested that sludge drying beds and treatment lagoons which seep into groundwater should not be considered wells. EPA agrees and has added a definition of "well." Lagoons and drying beds do not meet this definition of a well. However, those facilities may be subject to regulation under RCRA.

Additional definitions. Definitions for the following UIC terms have been added to clarify their use in the consolidated permit regulations: acidizing, exempted aquifer, fluid, formation, formation fluid, and plugging.

These new terms and comments on terms which appeared in the proposal are discussed in the preamble to Part 122, Subpart C, or will be discussed in the preamble to 40 CFR Part 146.

(4) *Definitions for NPDES.*

Navigable waters and waters of the United States. Commenters noted that the definitions for "navigable waters" and "waters of the United States" were circular. EPA agrees and has eliminated the use of the term "navigable waters" in favor of using "waters of the United States" throughout these regulations and providing a single definition. "Waters of the United States" was chosen for the same reason that it is used in the Clean Water Act: the Act covers much more than waters which are traditionally "navigable."

The following changes have been made in the proposed definition of "navigable waters," which now appears as the definition of "Waters of the United States:"

(1) "Wetlands" has been given its own definition because it is sometimes used independently, and included within the scope of "waters of the United States" by cross-reference.

(2) The proposal exempted "treatment ponds or lagoons designed to meet the requirements of the CWA" from the definition of navigable waters. To clarify that the scope of this exemption is not limited to treatment ponds or lagoons, it is now written to cover "waste treatment systems including treatment ponds or lagoons . . .." Because CWA was not intended to license dischargers to freely use waters of the United States as waste treatment systems, the definition makes clear that treatment systems created in those waters or from their impoundment remain waters of the United States. Manmade waste treatment systems are not waters of the United States, however, solely because they are created by industries engaged in, or affecting, interstate or foreign commerce. Finally, as in the proposal, certain cooling ponds fall outside the exemption. EPA has referred to the definition of cooling ponds in 40 CFR § 423.11(m) to indicate the type of cooling ponds intended.

New discharger. EPA has changed this definition in two ways. First, EPA has expanded the definition to include an indirect discharger which commences discharging into waters of the United States. This does not represent a change in policy but is merely a wording change to simplify the regulatory language regarding new dischargers, former indirect dischargers, and recommencing dischargers.

Second, the definition now specifically includes a mobile point source that begins discharging at a new location for which it does not have an existing permit. This clarifies our existing interpretation that a mobile source that moves to a new location, unlike an existing source at that location, creates a new environmental insult and therefore should not be allowed to begin discharging until final Agency action granting a permit and until installation of the necessary pollution control equipment. Thus, these sources are ineligible for stays of contested permit conditions on the basis of a request for an evidentiary hearing which has been granted. These sources are governed by § 124.59(a); if the request for an evidentiary hearing is granted, "the applicant shall be without a permit pending final Agency action under § 124.91."

This change also requires, under §122.66 (proposed § 122.61(d)(4)), that a mobile point source start up control equipment before beginning discharge and meet its permit conditions within the shortest feasible time. Under § 122.10, it is ineligible for schedules of compliance, and under §122.53 it is required to submit a new permit application 180 days before recommencing discharge at the new location, unless that requirement is waived. Because a new permit is required each time the source moves, the permit can be updated to incorporate the appropriate water quality standards of the area and any other appropriate permit requirements.

Privately owned treatment works. To clarify the new provisions for treatment works other than POTWs (§ 122.62(m)) we have added a definition of "privately owned treatment works." The definition includes any treatment system which is not a POTW and whose operator is not the operator of the facility whose wastes are being treated. Thus, the typical case of a single operator of an industrial facility providing its own treatment would not be a privately owned treatment works. Although termed a "privately owned" treatment works the definition does not exclude a treatment works that is owned by a State or municipality but which meets this definition.

(4) *Definitions for 404.*

The proposal contained definitions for "plowing," "seeding," "cultivating," "minor drainage," and "harvesting." Because these terms are only used once, in the § 123.92 (proposed § 123.107) list of activities not requiring permits, EPA has moved them to that section. Responses to the many comments

received on these terms appear in the corresponding preamble.

Discharge of dredged material. One commenter questioned the distinction, in the definition of dredged material, between discharges from on-board processing (included in the definition) and on-shore processing of dredged material (not included). This distinction comes from the Corps of Engineers regulations, 33 CFR § 323.2(8). Comments to the Corps suggested that there were significant differences between the two kinds of operations, justifying the distinction. However, to clarify the distinction and to maintain consistency in eliminating the "primary purpose test" (see discussion of "fill material"), EPA has changed the definition to exclude all discharges resulting from on-shore processing of dredged material, regardless of the purpose for which the material was extracted. All such on-shore processing discharges are subject to the NPDES program. Extraction and subsequent deposit of the dredged material may still be subject to regulation by the Corps or under a State section 404 program, and are unaffected by this change.

One commenter argued that dredged material returned "unaltered" to its original borrow site should not be a discharge because there is no "addition" of a pollutant to waters of the United States. EPA disagrees; the release of dredged material into the water column may add pollutants to the water column or the downstream substrate. Also, movement of material from one part of the substrate to another may have significant environmental effects before the material is ultimately returned to its original site.

Fill material. The proposal defined fill material as material discharged for the primary purpose of replacing an aquatic area with dryland or of changing the bottom elevation of a water body, reserving to the NPDES program discharges with the same effect which are primarily for the purpose of disposing of waste. Comments were solicited on this distinction, referred to as the primary purpose test. Two comments were received, one favoring retention of the test, one opposing the test. EPA has decided to change the definition of "fill material" to eliminate the primary purpose test and to include as fill material under the 404 program all pollutants which have the effect of fill (that is, which replace part of the waters of the United States with dryland or which change the bottom elevation of a waterbody).

The Agency agreed with the commenter who said that the primary purpose test was too subjective. It has been our experience that the primary purpose test is difficult to apply, particularly where a project has two purposes, or where the purpose changes over time. In addition, the purpose of the discharge is immaterial to its effect on the waters of the United States; a landfill motivated by the need to dispose of waste and a landfill intended to create a building site both result in the loss of waters of the United States and pose a risk of contaminating the surrounding area.

Moreover, the Agency disagreed with the suggestion that all solid waste (for example, garbage, trash, and sludge) be regulated under section 402. There are several reasons why EPA believes that all discharges with the effect of fill should be handled under the 404 program instead of the 402 program. The 404 program is better suited to preventing the unnecessary destruction of valuable wetland ecosystems. For example, the section 404(b)(1) guidelines require consideration of alternative sites; the NPDES program does not provide for a comparable alternatives analysis. In addition, the section 404(b)(1) guidelines look at the ecological impact of the discharge; the NPDES program uses technology-based effluent limitations. Finally, individual section 404 permits specify sites, whereas NPDES permits are issued for point sources, such as a truck delivering trash to a wetlands. Writing an NPDES permit for a truck presents practical problems apart from the difficulty of devising technology-based limitations for discharges from trucks.

For all these reasons, EPA believes that the new definition of "fill material," eliminating the primary purpose test, better carries out the goals of the Clean Water Act.

Impoundment. A few commenters objected to the definition of "impoundment" as being too expansive, too restrictive, or not necessary. We agree that the definition is not necessary, because impoundments as such are not treated differently from other waters under these regulations. Because the definition served no purpose, EPA has deleted it to avoid confusion.

§ *122.4 Application for a permit.*

(1) Commenters suggested that the use of the term "any person" in proposed § 122.6(a) (now § 122.4(a)) might require more than one permit application for a facility, where several "persons" are making use of a facility. EPA intends the person with operational control over the facility to be the one required to submit a permit application. Accordingly, EPA has adopted a suggestion of the Utility Solid Waste Activities Group that a paragraph to this effect be added to the section. However, for RCRA facilities, both the owner and the operator must sign the application; see discussion under the definition of "owner and operator." The section has also been redrafted, in response to a comment, to reflect the three limited instances when a "permit" is required but an application is not (that is, permits by rule under RCRA, and NPDES and 404 general permits). In addition, no "permit" is required until notice is given by the Director when a facility is authorized by rule for UIC or regulated under interim status for RCRA. See preamble to "permit" under § 122.3.

(2) Proposed §122.7(c) required the permittee to reapply if it wished to continue regulated activities after expiration of the permit. This requirement has been merged with final § 122.4(a). One commenter suggested that a permittee should be able to refer to the application for its expired permit rather than submit a new one if none of the information has changed. EPA rejects this suggestion. It is essential to obtain an updated certification of the accuracy of the information before issuing a new permit. However, nothing in these regulations precludes resubmitting old information so long as the certification which accompanies it is current. Resubmittal is necessary to prevent any confusion and to ensure active awareness of the information that is being certified.

The requirement to submit a renewal application prior to the expiration date of the existing permit has been restated in the standard permit conditions (§ 122.7). In addition, the program subparts contain information on how early permittees must submit their renewal applications for EPA-issued permits: 180 days for RCRA (§ 122.23), a reasonable time before construction is expected to begin for UIC (§ 122.37), and 180 days for NPDES (§ 122.53). Because these timing requirements are not applicable to States, it was not possibile to place them in the standard permit conditions, which would have given permittees the advance warning of the duty to reapply which one commenter requested. However, these regulations do not preclude placing such a statement in permits or otherwise notifying permittees when renewal applications are due.

(3) One commenter read proposed § 122.7 ("Permit issuance," now § 122.4(c)) to mean that the permit issuance process necessarily cannot begin until all permit applications for a facility have been submitted. We have

rewritten the section to clarify that it is possible for one permit to be processed even if the Director has not yet received a completed application for another permit for the same facility. Similarly, when a facility is required to have several permits, the duty to submit a renewal application operates independently for each permit. The subject of consolidation of permit applications and permit processing is further addressed in the preamble to Part 124.

Some commenters objected to the vagueness of the term "completeness" or requested that a notification of completeness be required of the Director. Section 124.3 contains provisions for notifications of completeness for all EPA permits for RCRA, UIC and NPDES facilities; these provisions are discussed in the accompanying Part 124 preamble. A sentence has been added to § 122.4(c) to emphasize that the completeness of one permit application does not depend on the completeness of other permit applications.

(4) New paragraph (d) of § 122.4 lists the information which applicants for permits under RCRA, UIC, or NPDES must supply to the Director. A detailed description of the purpose of these permit information requirements, and responses to comments received on their proposal, are contained in the detailed discussion which appears in the preamble to the consolidated application forms, published elsewhere in today's **Federal Register**. The requirements are quite basic and generated relatively little comment. A brief description of the requirements is included here.

EPA has developed a set of consolidated application forms to be used by applicants for EPA-administered RCRA, UIC, and NPDES permits. The structure of the consolidated permit application forms is similar to that of the consolidated permit regulations: questions applicable to all programs are contained in a generally applicable Form 1, which is supplemented by additional forms containing questions for each specific program. Likewise, the information in § 122.5(d) comprises the essential information which is submitted in Form 1, while §§ 122.24 for RCRA, 122.37 for UIC, and 122.53 for NPDES list essential information which is submitted in additional forms for those specific programs.

The draft consolidated permit application forms appeared as Part III of the June 14, 1979 **Federal Register** along with certain proposed NPDES regulations which listed the information requirements contained in Form 1 and Form 2 (44 FR 34393, 34346). (The draft Form 1 was to be applicable to all programs even though its contents were listed only in the proposed NPDES regulations.) Proposed §§ 122.23 and 122.36(c) of the consolidated permit regulations also included RCRA Part A and UIC permit application information requirements similar but not identical to those in draft Form 1. However, it was clear in the draft consolidated application forms that Form 1 covered all applicants, and no confusion was apparent in comments received.

The informational requirements in paragraph (d) are also applicable to States. Applicants for State permits will use State application forms, which may be different from EPA's consolidated application form. However, to provide a minimum level of uniformity in the basic data, § 123.7 requires State forms to include at least the information listed here and in the program subparts (§§ 122.24 for RCRA, 122.37 for UIC and 122.53 for NPDES) for EPA permit applications. Because these sections are applicable to States, only essential information is listed as a permit application requirement; the information required by these sections does not include every detail which appears on the application forms for EPA-issued permits.

The applicability of these information requirements to States does not reflect a change from the proposal. The Form 1 requirements were to be made applicable to State NPDES programs through a proposed amendment to § 123.73 (see 44 FR 34116), and applicability to States of the permit application requirements for RCRA and UIC appeared in the proposed consolidated permit regulations at §§ 123.39 and 123.57 respectively.

(5) EPA has added a new paragraph (e) to § 122.4 which requires applicants to keep records for a period of three years of the data used to complete all applications. This requirement is also listed in §122.8 (standard permit conditions) requiring records of background data for monitoring and other reports required by the permit to be kept for three years. The recordkeeping requirements are necessary to support any subsequent EPA enforcement action for false reporting.

§ 122.5 Continuation of expiring permits.

(1) Some changes have been made in proposed § 122.8(c) (now § 122.5) in response to comments. Proposed § 122.8 (c)(3)(ii) (now § 122.5(c)(2)) created some confusion as to what grounds were to be considered by the Director in denying a permit renewal application when the permittee is out of compliance with the continued permit. In response to these comments, EPA has amended § 122.16, "termination of permits," to state that any grounds for terminating an existing permit is grounds for denying a permit renewal application. While termination of a permit or denial of an application is a harsh measure that will only be used in extreme instances, EPA believes that a provision for doing it is necessary and that, in some instances, such action will be appropriate. If the Director were required, as some commenters suggested, to base the decision of whether or not to issue the permit solely on the permit renewal application, he or she would be in the position of having authority to terminate the existing permit for the grounds listed in § 122.16 but then being required to renew the permit for the same facility because the application did not reflect the noncompliance. We have reworded § 124.6 to clarify that when the Director seeks to deny a renewal application, he or she must first issue a notice of intent to deny which is treated as a form of draft permit, subject to public notice and the other procedures of Part 124. A specific reference to § 124.6 is now provided in § 122.5(c)(2).

In addition, several readers interpreted this section to require the Director to either deny the renewal application or take enforcement action when a facility with a continued permit is out of compliance. Comments stated that under this reading the section seems onerous and that more normal options such as permit modifications and compliance schedules ought to be available. EPA has redrafted § 122.5(c) to clarify that issuance of a new permit with appropriate conditions remains an option available to the Regional Administrator in this situation.

(2) A large number of commenters noted the possibility under proposed § 122.7(6) that a Federally-issued permit might lapse after transfer of a program to a State and expressed concern that a permittee might be forced to close down or operate illegally without a permit through no fault of its own. Several suggested that States ought to be required to have some sort of automatic reissuance authority or a provision for extensions similar to the Federal Administrative Procedure Act, perhaps as a condition of program approval under Part 123. EPA has rewritten the section to emphasize that States may continue Federally-issued RCRA, UIC, or NPDES permits which expire while under State administration if adequate

legal authority exists to do so. EPA believes that it is inappropriate to require States to extend Federally issued permits.

In evaluating whether States should be required to have an automatic continuation mechanism like the one provided by the Federal Administrative Procedure Act, EPA applied criteria similar to those used in determining the other requirements for authorization of State programs; that is, whether the requirement is necessary to provide (1) equivalent environmental protection, (2) consistency with Federal regulations, (3) adequate enforceability, and (4) public participation. Using these criteria EPA determined that continuation of permits by States should not be required for program approval. In addition, it is questionable whether EPA could impose such a requirement in view of the fact that failure to continue permits could be considered a "more stringent" State program feature.

Of course, States receiving program authority are encouraged to coordinate transfers of permits with EPA and to expedite permit processing in situations where the permit has been extended under the Federal APA and the State has no similar administrative extension provision. It is anticipated that such situations will be rare. The more common situation covered by this provision—namely, when a permit which has not been Federally extended is transferred to a State and then expires—can only be remedied by timely processing of a renewal application by the State or existence of a State equivalent to the Federal Administrative Procedure Act.

(3) One commenter argued that automatic continuation under this section should not insulate an NPDES discharger from violation of a statutory deadline which intervenes prior to permit renewal. EPA believes it lacks legal authority to adopt this interpretation. Under section 402(k), the statutory deadlines in the Clean Water Act are not independently enforceable but must be embodied in the permit. However, under §§ 122.62 (establishing NPDES permit conditions) and 122.10 (compliance schedules), NPDES permits are required to be written to assure compliance within the CWA statutory deadlines. Consequently, any permittee whose permit is continued beyond the deadline is still subject to enforcement for noncompliance with its continued permit.

§ 122.6 Signatories to permit applications and reports

(1) Some commenters challenged EPA's legal authority to establish signatory and certification requirements at all. Clearly, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act each require programs for issuing permits and give the Administrator rulemaking authority to prescribe regulations to establish them. A mechanism requiring applications for permits has been chosen in most instances, although not always (for example, permits by rule, general permits), because in most cases applications are necessary to determine appropriate permit conditions. In addition, each of the above statutes establishes authority for requiring submission of information in applications or other reports. EPA believes that this duty runs both to the corporate or other business entity and to the individual who submits the application on its behalf. The certification ensures that the signer of the application will be aware of, and will meet, the legal standard which would be applicable to him or her and to the corporation in any event.

(2) The majority of the commenters who read proposed § 122.5 (now § 122.6) objected to the requirement that corporate vice presidents sign and certify permit applications. Commenters argued that a large corporation could require numerous permits, and that the position and responsibilities of a vice president of a large corporation may make it difficult and time consuming for such a person to "become familiar" with the information in permit applications and to personally make "inquiry of those persons immediately responsible for obtaining the information." The proposed certification required these acts.

These objections received a great deal of attention, and since the proposal EPA has attempted to devise a number of differing solutions through revisions to the signatories section. In the end these alternatives have all been found wanting, and the final section retains the principal features of the proposal, with only some minor changes.

One alternative which EPA examined was to adopt some commenters' suggestions that a corporate official immediately responsible for the preparation of the application (such as a plant manager), rather than a principal executive officer, be allowed to certify familiarity with the information contained in the application. However, EPA determined that a signature by a principal executive officer will always be necessary, both to ensure an adequate level of corporate liability and to ensure a high level of concern with and responsibility for the corporation's compliance with environmental laws. This necessity remains the same even if the contents of the certification could be changed somewhat to remove the requirement to certify "familiarity." Therefore, the alternative would have required a "dual signatory" scheme, one signature by the preparer and one by the principal executive officer. Because it would be necessary to ensure the same level of corporate liability, the certifications would be altered very little from the proposal. In addition, to avoid possibly making the requirements more onerous rather than less, the dual scheme would have to be optional. Finally, it would have been available to corporations only, and, as in the proposal, would have applied only to applications, because the proposed "authorized representative" mechanism for reports would still be available.

After drafting a signatories section which adopted this approach, EPA found that negligible improvements were made at the expense of a great deal of complexity which was not likely to be received favorably. Some other solutions which were attempted and which suffered from similar defects involved distinguishing corporations on the basis of their corporate structure, their geographic dispersion, or similar factors. Consequently, EPA has retained the requirement which appeared in the proposal for a signature and certification by one principal executive officer as the simplest requirement that is adequate.

(3) Some commenters questioned why it should be necessary to distinguish between applications and other submissions and suggested that if reports can be signed by an authorized representative, applications should be also. EPA feels that the distinction is a valid one. A permit application is needed to determine whether to issue a "permit" which establishes the privileges and duties of the permittee. In the case of a corporation or other business entity, the entity is the "person" with the privileges and duties. The permit application therefore needs to be signed by an individual with the capacity to speak for that corporation or other entity. This is also true because the application in many cases contains information which itself binds the corporation once the permit is issued, either through incorporation in the permit (as in the case of contingency, closure or post-closure plans for RCRA and for certain UIC facilities) or through establishing predicted levels of use or discharge of certain toxic pollutants (as in the case of certain NPDES facilities).

Reports on the other hand are usually required by the permit and involve monitoring requirements or reporting of instances of noncompliance. Having established the entity's responsibility for submitting these reports in the permit, it is no longer necessary to require an executive officer to sign them each time. Furthermore, the reports usually require familiarity with particular monitoring instrumentation at particular points, rather than an understanding and familiarity with the corporate enterprise as a whole. Finally, this information generally does not involve the complexity of many of the items required in applications or require a high level of corporate consultation and commitment as in the case, for example, of contingency plans or closure plans.

As in the proposal, however, EPA has made an exception for Class II wells applying for permits under the UIC program. Class II well permit applications may be signed by an authorized representative. The reason for this exception is that Class II wells are large in number yet, as a group, much less complex than, for example, hazardous waste facilities or most point source dischargers. While EPA has determined that Class II wells should be regulated under the UIC program, several attempts have been made to make sure that this regulation is no more burdensome than needed to protect the environment. For a further discussion of regulation of Class II wells, see the preambles to Subpart C and to Part 146. For the reasons discussed in those places, Class II wells have been distinguished from Class III wells or other wells, and for the same reasons the exception to the signatory requirement that applies to Class II wells has not been extended to other wells under the UIC program.

(4) EPA has made a number of changes from the proposal to make the authorized representative mechanism work better. First, the section has been reworded slightly to emphasize that delegation of the authority to sign information reports and Class II well permit applications may be to a position rather than to a specific individual. Some possible examples of positions which can be authorized are given, but any position authorized must be one having "responsibility for the overall operation of the facility." The wording clarification does not represent a change from present NPDES policy.

Second, several commenters objected to the need to submit new authorizations every time there was a change in the person who is the authorized representative for signing reports. Authorization of a position should solve this problem in many instances. In addition, the section has been rewritten to clarify its applicability and to allow a new authorization to be submitted concurrently with the next report which requires a certification, rather than immediately every time a chance has occurred. Finally, contrary to some commenters' reading, EPA does not intend to preclude authorization of more than one individual occupying different positions, so long as each position meets the requirement that the representative in each instance occupy a position of responsibility for the overall operation of the facility. EPA does not agree, however, that no authorization at all should be required. A written authorization submitted to the Director is necessary to ensure that the principal executive officer or other high level official maintains the same level of legal accountability for the accuracy of the information submitted as he or she would have had without exercising the authorization.

(5) Because EPA permit applications will now consist of a general form with a number of attachments, with only one certification, the certification statement has been amended to require examination of and familiarity with the information submitted "in this and all attached documents."

§ 122.7 Conditions applicable to all permits.

(1) *Organization.* Proposed § 122.11 (now § 122.7) sets forth "standard" or "boilerplate" conditions which are to appear in all permits. In order to make these conditions truly "standard" conditions which can be inserted without alteration in all permits for all the programs, program-specific elements which appeared in the proposal have been separated and placed in the individual program subparts. Accordingly, the RCRA, UIC, NPDES' and 404 Subparts now each have a section setting forth "additional conditions" applicable to all permits for each respective program; see §§ 122.28 (RCRA), 122.41 (UIC), 122.61 and 122.62 (NPDES), and 123.97(404). These program-specific "boilerplate" sections have been written to correspond to the organization of new § 122.7 so that they can be easily incorporated by the permit writer. See Table IV.

Table IV.—*Standard Permit Conditions*

Heading	Subpart A	Subpart B (RCRA)	Subpart B (UIC)	Subpart D (NPDES)	Part 123 Subpart E (404)
Duty to comply	122.7(a)	122.28(a)	122.41(a)	122.60(a)	123.97 (a), (b)
Duty to reapply	122.7(b)				
Duty to halt or reduce activity	122.7(c)			122.60(b)	
Duty to mitigate	122.7(d)				
Proper operation and maintenance	122.7(e)				
Permit actions	122.7(f)				
Property rights	122.7(g)				
Duty to provide information	122.7(h)				
Inspection and entry	122.7(i)				
Monitoring and records	122.7(j)	122.28(b)	122.41(b)	122.60(c)	
Signatory requirement	122.7(k)			122.60(d)	
Reporting requirements	122.7(l)	122.28 (c), (d)	122.41 (c), (d)	122.60 (e), (f) 122.61 (a), (b)	
Additional standard conditions		122.28(e)	122.41(e)	122.60(g) 122.61(h)	123.97 (c), (d)

New § 122.7 and the corresponding subpart sections referred to above set forth all conditions which do not vary from permit to permit. The mechanism for including permit conditions which do vary depending on the facility or activity in question is provided in § 122.8 (proposed § 122.13), "Establishing permit conditions." Section 122.8 refers to Subpart A sections on establishing variable permit terms (for example, establishing compliance schedules), and to the sections of the program subparts which indicate how variable terms are calculated for each program. The purpose of this organization is to provide a clear roadmap to the permit writer and is discussed more fully in Table I and accompanying text of this preamble. Because, as provided in final § 122.13, in most cases "compliance with a permit is compliance with the appropriate Act" it is important that all requirements binding upon permittees be adequately referenced in the permit document. The final regulations have been drafted to help ensure this result.

(2) *Incorporation by reference.* Several commenters stated that the standard permit conditions should not be "incorporated by reference" in a

permit. Under final § 122.7, permit conditions may still be incorporated by reference. However, EPA has provided protection to permittees by requiring that, if conditions are incorporated by reference, the reference must include a specific citation to these regulations or to the corresponding State regulations. EPA does not believe that it is possible to state all permit requirements in all permits without using references in some instances. For example, § 122.60(c)(1) requires as a standard permit condition for all NPDES permits that monitoring be conducted according to the test procedures approved under 40 CFR Part 136 unless alternative test procedures are specified in the permit. Part 136 procedures are in many instances quite detailed and requiring these procedures to be restated in the permit verbatim would not be justified in view of the increased paperwork burden it would impose on permit writers.

(3) *Duty to comply.* Section 122.7(a) is essentially a restatement of proposed § 122.11(a). The duty of an NPDES permittee to comply with newly promulgated toxic effluent standards or prohibitions under section 307(a) of CWA, which appeared in the proposal in § 122.69, has been moved to the corresponding "duty to comply" NPDES section, § 122.60(a), because it is addressed to permittees. Also, the corresponding RCRA (§ 122.28(a)) and UIC (§ 122.41(a)) provisions reflect the fact that emergency permits issued under these programs may act as a limited modification of existing permit requirements.

(4) *Duty to reapply.* EPA has added § 122.7(b) to make sure that permittees are informed of their duty to reapply for a permit. State and EPA permits may incorporate reapplication deadlines at this point if desired.

(5) *Duty to halt or reduce activities.* Proposed § 122.11(j) (now § 122.7(c)) required the permittee to "halt or reduce its business activities whenever and to the extent necessary to maintain compliance with the terms of a permit." This requirement received many adverse comments. In general, commenters argued that in many cases noncompliance with permit conditions may not be serious enough to justify halting or reducing regulated activities, and therefore that the requirement should be: deleted, discretionary, limited to imminent and substantial endangerment of the environment, deleted in favor of assessing enforcement penalties, or should allow for exemptions. Some commenters found the requirement inconsistent with the performance-based standards which are the primary mechanism for protection of the environment used by the programs in these regulations, arguing that EPA has no authority to enforce or require anything but limits "at the end of the pipe."

EPA does not intend to enforce a duty to halt or reduce regulated activities every time any permit condition is violated. Furthermore, EPA does not rule out the possibility that in some instances halting activities could cause more damage than to continue them, that it may be necessary to continue operations to locate the problem, that less drastic means for assuring permit compliance may be appropriate in some circumstances, or that for certain instances of trivial noncompliance it might be inappropriate for a permittee to halt its operations. However, EPA wishes to clearly establish for every permittee the principle that a permittee has a duty to comply with its permit, and that this duty requires reducing or halting activities if no other means of complying is possible. A permittee can not "buy" a right to damage the environment by violating the permit and being assessed civil penalties as a result.

EPA has rewritten the provision to state that "it shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit". This rewording of the duty emphasizes its relevance to enforcement actions, and eliminates the appearance of double enforcement (once for the permit violation, and again for not reducing activity or shutting down). Of course, permittees must use their judgment in determining how to respond to noncompliance. They should consider the potential seriousness of the noncompliance, and the damage it is causing. If noncompliance with the permit is serious enough to warrant enforcement action, no permittee will be allowed to argue that compliance would have been unreasonable because it would have required a halt or reduction of the regulated activity.

Several commenters noted that proposed § 122.11(j) was quite similar to proposed § 122.68(e), which applied to NPDES. The NPDES provision now appears at § 122.60(b) and is discussed in the preamble accompanying that section.

(6) *Duty to mitigate.* Section 122.7(d) restates proposed § 122.11(i). For the reasons discussed under (5) above, EPA rejects the argument that it may not require permittees to mitigate the damage caused by noncompliance with their permits. It should be noted that in some circumstances noncompliance with this permit condition may be used to establish willfulness in an enforcement action.

(7) *Proper operation and maintenance.* The first sentence of proposed § 122.11(g) (now § 122.7(e)) required the permittee to "maintain in good working order and operate efficiently all facilities and systems of treatment or control which are installed or used by the permittee to achieve compliance with the terms and conditions of the permit." The second sentence further defined "proper operation and maintenance" as including "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." We have revised the first sentence by substituting the phrase "proper operation and maintenance" for "maintain in good working order and operate efficiently" in order to parallel the second sentence, which gives examples of proper operation and maintenance.

Many commenters expressed doubt whether EPA is legally authorized to require proper operation and maintenance of facilities. This requirement is clearly authorized for NPDES permittees by section 402(a)(2) of CWA which requires the Administrator to prescribe permit conditions which will assure compliance with the requirements of CWA section 402(a)(1). EPA similarly believes that a proper operation and maintenance requirement is authorized by section 1421(b) of SDWA to assure compliance with requirements in UIC permits to protect underground sources of drinking water, and by section 3004(6) of RCRA which requires EPA to establish "maintenance" and "operation" standards.

One commentor argued that if a permittee can meet its permit requirements by operating its treatment or control systems at less that optimum efficiency, rather than at "designed facility removals," it should be allowed to do so. EPA agrees and has deleted that example from the second sentence.

Other commenters argued that the phrase "effective management" as an example of "proper operation and maintenance" was unnecessary, overbroad, and would result in an intrusion into internal plant management. Although EPA still believes effective management requirements are authorized by CWA,

EPA agrees, in part, that the term "effective management" may be overbroad as a generally applicable permit condition and has deleted it from the second sentence. In response to comments fearing that proposed § 122.11(g) would require operation of backup or auxiliary facilities and systems at all times, EPA has added a new sentence to final § 122.7(e) to clarify that this paragraph requires the operation of those facilities only when necessary to achieve compliance with the permit.

(8) *Permit actions.* Proposed § 122.11(d) stated that "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 the existing permit would allow the permittee to begin the activity described in paragraph (c) of this section." The paragraph referred to required notification of proposed activities which could constitute grounds for modification. Commenters found this provision vague and objected that it appeared to prohibit activities otherwise allowed in the permit.

EPA agrees that it can not prohibit activities which are in compliance with a permit. The intent of the provision is to inform permittees that, simply because a permit modification has been requested or because information has been reported which might require a change in the permit, the permit itself has not been changed and must be complied with. Because RCRA and UIC permits contain construction as well as operating requirements, permittees should obtain approval before physically modifying a RCRA or UIC facility; see §§ 122.28 (RCRA) and 122.41 (UIC). (Similarly, for RCRA facilities under interim status, see § 122.23.) Final § 122.7(d) clarifies the intent by stating, "The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination does not stay any permit condition."

Several commenters argued that a permittee should be able to change its conduct before approval of a permit modification. So long as the change does not violate the requirements of the permit, EPA agrees. However, a permittee runs the risk of enforcement action whenever it does not comply with its permit (see § 122.7(a)); therefore, it is in the permittee's interest to notify the Director sufficiently in advance for the permit to be modified, if necessary, to allow for anticipated changes in conduct prior to their occurrence. The notification could constitute "new information" which is cause for modifying a permit under § 122.15(a)(2).

The reporting requirements summarized in paragraph (1) of the standard conditions require advance notice of (1) planned physical alterations or additions to the permitted facility, and (2) any planned changes in the permitted facility or activity which may result in permit noncompliance. These duties are narrower than in the proposal and are discussed below. EPA recognizes that plans will not always be formulated enough in advance for the permit to be modified prior to a change. When this is the case and the change does result in noncompliance, the permittee will not be excused by the fact that notice has been submitted or that a permit modification is being processed.

Some commenters noted that proposed § 122.11(d) contradicted the proposed provisions for emergency and temporary authorizations under RCRA and UIC. Sections 122.28 and 122.41 now clarify that a permittee need not comply with the conditions of its existing permit to the extent and for the duration authorized in an emergency permit. One effect of this statement is that emergency permits are processed independently of existing permits and not as modifications of them, although the end result is similar.

(9) *Property rights.* Section 122.7(g) repeats the statement in § 122.13(b) (proposed § 122.7(b)) that a permit is not a property right. For a discussion of permit transfers, see the preamble to § 122.14.

(10) *Duty to provide information.* Final paragraph (h) states the duty of the permittee to provide information necessary in determining compliance or in processing a permit modification or termination. This roughly corresponds to proposed § 122.13(f), but has been broadened to be coextensive with the Director's general authority to require information under RCRA section 3004, SDWA section 1445, and CWA section 308.

Proposed § 122.11(c), in addition to requiring notification of any activity that might give rise to cause for modification, stated that "the Director may require a submission of a new application." This language no longer appears as a standard permit condition. EPA has amended § 124.5 to require submission of a new application whenever a permit is being revoked and reissued. This is necessary because in that case the permit is being reissued for a new term. Section 124.5 also states that an updated application may be requested by the Director in the case of a permit modification. An updated application may be necessary when, for example, a permit is being extensively rewritten or when a permit is being modified to reflect a transfer in ownership. However, it is not EPA's intent to require a complete new application when not all of the information is needed to process a permit modification. Likewise, when information is needed to determine compliance, it will be requested through the general information gathering authority and not through a requirement to submit a complete new permit application, which contains questions which often are not relevant to a determination of compliance.

(11) *Inspection and entry.* Final paragraph (i) was proposed as § 122.11(e). Proposed §122.11(e) set forth requirements for allowing representatives of the Director to enter and inspect the facility, the records that are required to be kept, and regulated substances. Many commenters were concerned that confidential information is not adequately protected when a contractor rather than an officer or employee of EPA or a State government conducts an inspection. All information disclosed during an inspection is subject to the business confidentiality provision of 40 CFR Part 2. A company may assert a claim of confidentiality and if EPA proposes to disclose any informtion covered by such a claim, the Agency gives prior notice to the submitter. The Agency's procedures for disclosure to contractors who are authorized representatives are contained in 40 CFR § 2.301(h) which is incorporated by reference in §§ 2.302(h) (CWA), 2.304(h) (UIC) and 2.305(h) (RCRA). Readers are referred to these sections for their specific provisions. In addition, 40 CFR § 2.211 provides that a contractor may only use the information as provided by the contract. Any violation of these provisions is grounds for debarment or suspension; willful violation may result in criminal prosecution. EPA believes that these provisions fully protect confidential information obtained by a contractor.

Several commenters stated that the provision should incorporate the legal principles set forth in *Marshall* v. *Barlow's Inc.*, 436 U.S. 307 (1978), relating to the necessity for presentation of a warrant under appropriate circumstances. Some commenters feared that by including entry and inspection requirements as a permit condition, EPA might be requiring permittees to waive certain rights under the Fourth Amendment to the United States Constitution. It is not EPA's intent to deprive any permittee of its Fourth Amendment rights as interpreted by

Supreme Court decisions. However, we have retained the general wording requiring "presentation of credentials and such other document as may be required by law" because of the complexity and the changing nature of this area of the law, and the possibility that any particular formulation or citation could be inaccurate or inapplicable.

Seveal commenters argued that proposed subparagraphs (e)(3), (4), and (5)—concerning entry to inspect facilities, equipment and operations, and to sample at the monitoring point substances required to be monitored—were not authorized by RCRA. EPA disagrees. Congressional intent was to allow for monitoring of areas surrounding the waste disposal sites, and EPA inspection of such sites and the substances monitored, to ensure reasonable protection of human health and the environment. See H. Rep. 94–1491, 94th Cong., 2d Sess., page 28. EPA has followed the suggestion of two commenters and combined proposed subparagraphs (e)(4) and (e)(5).

Some commenters suggested that entry under proposed § 122.11(e)(1) should also be at reasonable times, as are access to copy, to inspect, or to sample or monitor. EPA feels that such a limitation should not be inserted because it might give rise to arguments that EPA is precluded from inspecting without notice or at unusual times when in fact doing so is "reasonably" necessary to determine compliance or noncompliance.

(12) *Monitoring and records.* The requirement for permittees to conduct monitoring and keep records, contained in §122.7(j), was proposed in § 122.11(k). This standard permit condition has been revised to include requirements which appeared in the proposed section on "Recording and reporting of monitoring results" (proposed § 122.14, now § 122.11). The generally applicable requirements that monitoring be representative of the monitored activity, that certain information be recorded, and that records be retained for at least 3 years, are appropriately addressed to permittees in the permit document.

The records retention requirements have been revised slightly in response to comment. Copies of all reports required by the permit, not just the data used in monitoring reports, must now be retained for the 3 year period. In addition, the requirement to retain records for longer than 3 years during litigation will no longer apply automatically. Commenters argued that permittees must be given notice if records are to be retained for longer than 3 years. The Director will now have to make a request before longer retention of records during the course of litigation is required. This procedure will give adequate notice to the permittee during litigation to the extent preservation of material evidence is not already a requirement under common law. Likewise, the Director can require the permittee to retain records at any other time for longer than 3 years upon request, as in the proposal. EPA believes that there are many instances when it will be important for records to be retained for longer periods of time, up to the life of a facility or the postclosure period, and additional records retention requirements are set forth in corresponding paragraphs of §§ 122.28 and 122.41 for RCRA and UIC respectively. Finally, EPA has amended §122.4, as discussed in the preamble to that section, to require retention of information used in completing permit applications, and this requirement is repeated here.

(13) *Signatories.* Paragraph (k) simply restates the requirement of § 122.6 that reports to the Director be signed and certified, to make sure that the requirements of that section are permit requirement.

(14) *Reporting requirements.* Final paragraph (l) was proposed in § 122.11 (c) and (h). Many commenters expressed concern over proposed paragraph (c), which required the permittee to report any past or predicted activity which might constitute cause for modification or revocation and reissuance. The general tenor of these comments was that the provision was vague and burdensome, would lead to trivial and duplicative reporting, and might violate the Fifth Amendment. Examples were given of instances when this requirement would apply even if there were neither permit noncompliance nor alteration to the facility, for example upon promulgation of new standards or regulations. Furthermore, the provision would have required the permittee to make a determination of "cause" and might, for example, have required reporting of trivial instances of "ineffective management." Finally, it was unclear how this reporting requirement operated in relation to several other reporting requirements which also appeared in the proposed section (reporting of noncompliance, in emergencies, of monitoring) and elsewhere in the regulations (monitoring, proposed transfers, noncompliance reporting). The same event might have had to be reported two or even three times under separate proposed provisions.

Several commenters argued that mandatory reporting of noncompliance raises questions of self-incrimination under the Fifth Amendment. The privilege against compulsory self-incrimination applies only in a criminal case. Moreover, corporations do not have the privilege. *George Campbell Painting Corporation* v. *Reid*, 392 U.S. 286 (1968). Finally, "records required to be kept" by individuals are outside the scope of the privilege. *Shapiro* v. *United States*, 335 U.S. 1 (1948). The reporting requirements of § 122.7(l) fit within this "required records" exception to the scope of the Fifth Amendment privilege and, therefore, there is no Constitutional infirmity in requiring reporting of noncompliance as a condition of receiving a permit.

EPA has extensively rewritten the permittee's reporting requirements to make it as clear as possible to the permittee what reports are required, when they are to be submitted, and how they relate to eachother and to other sections of the regulations. All duties of the permittee to submit reports to the Director as part of the permit program will now be explained in the permit, and are summarized in one place, § 122.7(l), and corresponding sections of the program subparts. These reporting requirements are summarized under eight headings in § 122.7(l) and are discussed here as follows: (a) planned changes and anticipated noncompliance; (b) transfers; (c) monitoring reports; (d) compliance schedules; (e) 24-hour reporting; (f) other noncompliance; and (g) other information. See Table III. These headings have been harmonized to prevent duplicate reporting of the same event where this would serve no purpose. As noted in the table, the corresponding program sections refer to additional permit reporting requirements that are not specifically related to monitoring or compliance. These requirements must also be incorporated into fixed-term permits to be enforceable.

(a) *Planned changes and anticipated noncompliance.* Proposed paragraphs (c) and (h) combined reporting of both past and future causes for modification or noncompliance. Commenters argued that these paragraphs were confusing and overbroad. In response, EPA has separated the reporting requirements for events contemplated in the future from reporting requirements which arise after the event, and has narrowed the scope of both.

Planned changes. First, permittees must report "planned physical alterations or additions to the permitted facility" (§ 122.7(l)(1)). Except as

provided in § 122.61(a) for NPDES (expected use or manufacture of toxic pollutants), this is the only reporting duty which arises before the event as a matter of course regardless of whether the permittee believes it might give rise to a permit modification. (New RCRA and UIC facilities are also required to submit a statement before commencing operations; see §§ 122.28(c) and 122.41(d).) In the proposal, the permittee only reported changes after making a determination of cause for modification. However, EPA believes that it is unreasonable to expect permittees to distinguish those alterations to the facility which may constitute cause for permit modification from those which do not; therefore, the Director shall make this distinction. In addition, the nature of the programs covered by this provision favors the presumption that physical changes in the facility will give rise to cause for modification of the permit. For NPDES, changes to the facility include any physical changes, such as addition of a new process line, that may affect the quality of the discharge. It also includes commencing to discharge into a well, into a POTW, or by land application, and the permit may be modified or terminated accordingly under § 122.16(a)(4), using the criteria in § 122.65. When plans are known sufficiently in advance, this notice should be given in time for the Director to modify the permit prior to the occurrence of the noted event. This is necessary so that, if modification of the permit is an appropriate response to the change, the modification can be made in time to prevent noncompliance with the permit.

Anticipated noncompliance. The "planned alterations or additions to the facility" that are to be reported under § 122.7(l)(1) are limited to physical changes to the facility and exclude changes in production or other activities (except as provided in § 122.61(a) for NPDES). In the case of all other changes to the facility or activity contemplated by the permittee, advance reporting is required only where noncompliance is anticipated (§ 122.7(l)(2)). Here EPA presumes that changes are not likely to cause noncompliance except in cases where the potential violation is clear enough to allow reliance on self policing. Consequently, EPA believes that in most cases permittees may begin new activities other than physical alterations to the facility without the fear of violating their permits if they have no reason to believe that they will result in noncompliance. However, noncompliance with a permit is always grounds for enforcement, and if there is any doubt in the permittee's mind whether a contemplated change to the regulated activity may constitute noncompliance, the permittee should contact the permitting authority for further information.

Distinguishing "planned changes" from "anticipated noncompliance" reflects a compromise between two conflicting but valid considerations: the need to give the permittee the maximum achievable certainty as to what it is necessary to report, and the need to provide the Director with information in a timely manner. The final approach is significantly narrower than in the proposal. The proposal required that notice be given in advance of anything which might constitute cause for modification or revocation and reissuance as well as notice of any anticipated noncompliance. The final notice requirements (1) eliminate notification at any time based on possible cause for modification; (2) only require notice of anticipated noncompliance without the elaborate list of noncompliance information that was required in the proposal; (3) triggers advance notice only upon changes to the facility or activity; and (4) only requires advance reporting of changes in production without accompanying process changes if the permittee has reason to believe they might result in permit noncompliance. For example, if an NPDES permittee is reducing its production and consequently its discharges, and therefore does not violate the effluent limitations in the permit, such changes normally need not be reported. This prevents the permittee from feeling it must report innumerable instances of changed production just to be on the safe side. (See, however, § 122.16(a)(4), which allows an NPDES permit to be modified in this situation even if there is no permit noncompliance. This cause for modification is statutory.) Fifth, changes in the activity which are not limited in the permit would not have to be reported under this scheme. EPA believes that for NPDES the requirement to report expected use or manufacture of toxic pollutants under § 122.61(a) takes care of parameters not limited in the permit in most instances; similarly § 123.95 ensures that any change in an activity regulated by a 404 permit is noncompliance. As for RCRA and UIC, experience with these programs may be necessary before it can be determined with more precision what activities—other than changes to the physical facility or those which may result in noncompliance—need to be reported in advance.

(b) *Transfers.* The provision on transfers appeared in the proposal in § 122.8(e). These final regulations contain a separate section on transfers, § 122.14. This standard permit condition reflects the requirements of that section; see the preamble discussion thereunder.

(c) *Monitoring reports.* The new section of the permit listing reporting requirements now refers to the duty to submit monitoring reports so as to provide one list of permit reporting requirements. The frequency and content of these reports, however, will be specified elsewhere in the permit because they are variable provisions incorporated through § 122.11 and the sections which it refers to.

(d) *Compliance schedules.* The requirement for the submission of reports on compliance or noncompliance with requirements in a compliance schedule appeared in proposed § 122.12(a)(2) (now § 122.10(a)(2)). Because this requirement is binding on all permittees with compliance schedules, it is referred to also in final § 122.7(1)(4) to make sure that it will appear in the permit.

(e) *Twenty-four hour reporting.* Proposed § 122.11(h) stated that all instances of noncompliance had to be reported, that the Director "may" require such report within 24 hours "or" five days in certain instances, and that the Director "shall" require such reports within 24 hours in the case of NPDES permittees subject to CWA section 307(a) toxic standards or prohibitions. Many commenters objected that the duty to report these instances of noncompliance was vague, unreasonalbe, and duplicative. In addition, application of the five-day or 24-hour requirement was unclear.

EPA believes that in certain instances it is important to receive prompt notice of noncompliance, and the requirement for 24-hour or five-day reporting has been retained. However, several changes have been made to make this requirement clearer.

EPA has retained the general duty to report potential endangerments to health and the environment as a 24-hour reporting requirement applicable to all programs. However, the general requirement is now triggered only by noncompliance. EPA agrees that a duty to independently report information that "may" constitute an endangerment to human health or the environment that is not coupled with noncompliance should not be imposed.

Second, each of the program subparts indicates more specific instances where health and the environment reporting is likely to be applicable. While in many cases the prompt reporting of instances

of noncompliance affecting human health and the environment must depend on the permittee's good faith estimation of its importance, it should be clear, as these regulations now provide, that in the case of a release of a hazardous waste into public drinking water supplies (RCRA), endangerment of public drinking water supplies (UIC), and noncompliance involving a CWA section 311 or 307 pollutant (NPDES), the permittee must report immediately to the Director.

Third, the program subparts also indicate additional 24-hour reporting requirements which are not necessarily linked to possible endangerment to human health and the environment or to noncompliance, but which are readily identifiable by the permittee and which EPA has determined are sufficiently important to warrant immediate reporting. Thus, for NPDES, each permit will include a list of those pollutants for which the violation of a maximum daily discharge limitation must be reported within 24 hours. Similarly, for RCRA, EPA requires notification of any fire or explosion at an HWM facility, as required in each RCRA permittee's contingency plan, even though there may be no specific permit condition directly prohibiting fires or explosions so as to render the event technically a "noncompliance."

Each event reported under § 122.7(l)(6) and the corresponding program sections must be followed by a written submission within 5 days. The list of information that must be submitted in the written report speaks in terms of "noncompliance," but where a report must be submitted for an event which is technically not noncompliance, this may be read to include the other events required to be reported.

Fourth, several inconsistencies have been eliminated. The requirement for oral reporting within 24 hours is now uniform in all instances covered by new § 122.7(l)(6). The provision for RCRA has been coordinated with the language in the section 3004 regulations; see § 122.28(d) and 40 CFR § 264.56.

Fifth, the operation of the 24-hour versus 5-day requirement has been clarified. Now, in all instances, an oral report must be supplied in 24 hours, to be followed by a written report within 5 days. There is no longer a "choice" between 24 hours or 5 days that the permittee would have to be informed of somehow, and there is no possibility that a written report could be required within 24 hours. In addition, some commenters, including EPA Regional Offices, argued against the Director's proposed authority to waive a written report when the permittee has orally reported within 24 hours. EPA agrees that a written report is needed for documentation of all instances of threats to human health and the environment. However, written reports concerning other 24-hour reporting instances remain waivable if indicated in the program subparts.

(g) *Other noncompliance.* Proposed § 122.11(h) required all instances of noncompliance to be reported to the Director, but was unclear as to how this requirement related to other reporting requirements. Final § 122.7(l)(7) states that only those instances of noncompliance not otherwise reported in monitoring reports, compliance schedules, or as 24-hour and 5-day reports, must be independently reported as noncompliance. Reports of anticipated noncompliance must still be reported under this heading if the noncompliance actually occurs. Thus, if noncompliance is revealed in routine submissions of monitoring reports, it is not necessary for the permittee to automatically submit a duplicate report on the same information. For NPDES, and perhaps the other programs, reports under this heading will be rare.

The final provision also clarifies when these noncompliance reports are to be submitted—at the same time as the monitoring reports are submitted under the conditions of the permit. The proposal referred to the section on quarterly and annual noncompliance reports. This was confusing because these reports are prepared by the Director, not the permittee. The cross-reference has been eliminated.

(h) *Other information.* This heading, which was only implied in the proposal through the duty to report causes for modification, requires permittees to update information submitted in their applications or reports. If the permittee learns that incorrect information is contained in its application or reports that have been submitted, it shall correct the information "promptly."

The permittee's reporting requirements are summarized in Table V.

§ 122.8 *Establishing permit conditions.*

Final § 122.8 (proposed § 122.13) is essentially a cross-reference to other sections of these regulations and other regulations which set forth required permit conditions that vary from permit to permit and methods for setting those conditions. This section has been rewritten to provide a roadmap to all of the sections of these regulations that must be consulted by permit writers in setting these variable permit conditions (see also Table II and preamble to § 122.13). The section first refers to sections of Subpart A which set forth permit conditions required for all programs in certain instances, and then refers to corresponding sections in each of the program subparts on "establishing permit conditions" for those programs. The latter sections in turn refer to all subsequent sections of the subpart containing information on setting permit conditions, and to relevant portions of the technical regulations for the program.

Table V.—*Permittee Reporting Requirements*

Type of information	When	Additional program requirements
1. Planned changes.	In advance	§ 122.28(c) (RCRA), § 122.41(c) (UIC), § 122.60(g)(3)(i) and § 122.61(a) (NPDES).
2. Anticipated noncompliance.	In advance	
3. Planned transfers.	In advance	
4. Monitoring reports.	As specified in permit	§ 122.60(e) (NPDES).
5. Compliance schedules.	14 days of compliance date.	
6. Endangerment or other 24 hours/5 day.	24 hours/5 days	§ 122.28(d) (RCRA), § 122.41(d) (UIC), § 122.60(f) (NPDES).
7. Other noncompliance.	With monitoring reports.	
8. Other information.	Promptly	
9. Additional program requirements.	As specified	§ 122.28(e) (RCRA), § 122.41(e) (UIC), § 122.60(g), § 122.60(h), § 122.61(a), and § 122.61(b) (NPDES).

The fact that this section is the guide to all permit conditions which do not always apply in the same way, or in every instance, to every permit, and that these conditions therefore must be applied on a case-by-case basis, as appropriate, should not be taken to mean that any of them are necessarily optional. In many if not most cases, the conditions referred to in this section are mandatory if the circumstances which invoke the condition are present. In addition, this section now explicitly states the general duty of the permit writer to include conditions in the permit which are necessary to ensure compliance with the appropriate Act and regulations. It also contains guidance on when a statutory or regulatory requirement becomes effective for purposes of that duty. Some of that material originally appeared in § 122.69 of the proposal for NPDES; it is now applicable to all of the programs.

§ 122.9 *Duration of permits.*

Proposed § 122.8 (now § 122.9) provided that RCRA and UIC permits

would be issued for terms up to the life of the facility. NPDES and 404 permits would be issued for terms of up to 5 years. When a facility or activity has permits under two or more programs, proposed § 122.9 (now § 122.14) provided that a "cross-review" of each issued permit would have been conducted every time another permit for that facility or activity was issued, modified, reissued, or terminated. This review would have been conducted to determine whether the other permits should also be modified, revoked and reissued, or terminated. Proposed § 122.9 on causes for modification (now §122.15) provided that modification or revocation and reissuance of a permit could be based upon a related change to another permit issued to the same facility or activity. Also, all UIC and RCRA permits were subject to mandatory review every 5 years.

The proposal requested comments on the permit duration and review scheme, and a signficant number were received. In general, industry favored lifetime permits for RCRA and UIC, and objected that the provisions for permit review negated the advantages of lifetime permits. Many felt that normal reporting, inspection, and monitoring already provided sufficient oversight, and that reviews ought to be triggered only when such methods themselves revealed possible cause for a modification. More fundamentally, commenters cited the permittee's need to rely on the conditions of its permit, particularly for siting and construction requirements, and argued that financing could be jeopardized without this certainty. The proposal seemed to open the prospect of an endless round of reviews or "nonstop permitting" with permit conditions continually being adjusted. This fear was aggravated by the fact that just what a "review" entailed was not spelled out. Finally, many commenters feared that reviews would cause delays in processing applications and modification requests, because action would be held up while all reviews of other permits for the same facility were conducted. They especially objected to the provision for "cross-reviews" for facilities with multiple permits both for its potential for delay and for appearing to "bootstrap" the requirements of one permit onto other, related permits.

On the other hand, a number of comments were received from environmental groups and some States favoring a fixed term approach, particulary for RCRA permits. These commenters felt that regular review and updating of permits is necessary for an effective UIC or RCRA program, and that the only way to be sure that such reviews take place is to adopt a fixed-term permit approach.

In response, and as a result of the evolution of its own thinking, EPA has extensively redrafted the permit duration, permit review (proposed § 122.9, now deleted but discussed below), permit termination (proposed § 122.10, now § 122.16), effect of a permit (proposed § 122.7, now § 122.13), and consolidation of applications (proposed § 124.4, now § 124.4) sections to provide maximum certainty to permittees consistent with adequate protection of the environment and human health. The discussion of permit durations should be read along with the above sections and accompanying preamble.

With the exception of certain UIC wells, which may receive lifetime permits, the final regulations replace the mandatory 5 year reviews for RCRA and UIC permits, and in all cases replace the "cross-reviews" for facilities with more than one permit, with a fixed-term permit scheme for all of the programs. Accordingly, permit reissuance at regular five or ten year intervals, instead of permit modification at unpredictable times, will be the primary mechanism for adjusting permit requirements. In addition, EPA has narrowed the grounds upon which a permit may be modified or teminated during each permit term in order to provide a maximum amount of security to permittees. Also, a provision has been added stating that for all permits that must be issued for a fixed term, compliance with a permit constitutes compliance, for purposes of enforcement, with the appropriate Act. Finally, because of the fixed-term approach, permits for the same facility can be set to expire and be reissued at the same time. In this way all relevant aspects of a facility's operations can be reviewed together, which should result in more comprehensive and consistent requirements.

(1) Final § 122.9 now states that all HWM facilities may be issued permits which are effective for a maximum of 10 years. Wells injecting industrial or municipal wastes beneath the lowermost formation containing an underground source of drinking water and certain wells injecting hazardous wastes (Class I wells) may be issued permits for up to 10 years. Wells for enhanced recovery, hydrocarbon storage, and special process mining (Class II and III wells) will still receive permits for up to the life of the facility. A Class V well, if it is required to obtain a permit (see preamble to § 122.37)) may receive a permit for up to 10 years.

EPA agrees with those commenters who believe that permit expiration and reissuance is an important mechanism for providing regular scrutiny of permit compliance and updating of permit conditions. When permits must be reissued periodically, there is greater assurance that the existing conditions of the permit will be scrutinized to determine whether any of them must be modified or updated. In addition, a limited-term permit provides protection against human error by the permit writer. This is particularly important for facilities which undergo construction to comply with construction or performance standards contained in the permit; such facilities could comply with those standards and yet not comply with other requirements designed to protect human health and the environment. Under the proposed scheme, the facility could be subject to having its permit modified at any time. Under a fixed-term permit scheme, this situation can normally be addressed during permit reissuance (see discussion of permit modification below).

Finally, periodic reissuance builds in a mechanism for upgrading of permit requirements to reflect changing knowledge and advances in technology for permit programs which are new or undergoing rapid evolution.

Accordingly, EPA has determined that RCRA facilities and Class I wells under the UIC program will be issued permits of a fixed duration of up to 10 years. These facilities deal with hazardous and municipal wastes which in many instances have great potential for harm to human health and the environment. In both instances the Federal regulatory program covering these facilities is new, which favors a short-term permit approach, especially during the early years while technical criteria for the regulation of hazardous and municipal waste are further developed.

A 10-year term (rather than 5 years as with NPDES) was chosen for RCRA facilities because of the especially intense scrutiny such facilities frequently receive during public hearings (which are required during permit reissuance) and the local opposition which is frequently engendered. EPA determined that for this reason the entrepreneurial risk and need for the security which is afforded by a longer permit term is correspondingly greater for RCRA facilities as a class than for NPDES point sources as a class, particularly in view of widespread shortages of capacity within approvable facilities and the consequent lack of local alternatives. In addition, a term of up to

10 years may be needed for some RCRA facilities because of their experimental nature and the need for adequate time to analyze differing approaches to hazardous waste management. Finally, 10 years was chosen because it is a multiple of five, which will make it easier to coordinate the reissuance of RCRA permits with NPDES and UIC permits for the same facility. Having chosen maximum 10-year terms for RCRA facilities, EPA determined that the maximum term for Class I wells should likewise be 10 years. To provide otherwise would not comport with EPA's attempts through consolidation to achieve consistency between programs, particularly as Class I wells include those injecting hazardous wastes.

Class II and III wells under the UIC program, on the other hand, will retain the maximum lifetime permit duration which appeared in the proposal. These wells, which are used for enhanced oil and gas recovery, certain types of hydrocarbon storage, and several kinds of special processes for mining of minerals or in situ gasification of hydrocarbon resources, present less hazard to the environment, so that the increase in permit issuing resources needed for fixed-term permits would not be justified. Instead, permits for these facilities will be reviewed every 5 years, as in the proposal.

(2) Several commenters stated that UIC permits should be for the actual life of the facility rather than the "designed" life, on the grounds that for many facilities the "designed" life is hard to determine or arbitrary, and that a permit renewal application would be required if the facility happened to last longer than originally computed. The purpose of this provision was to be sure that EPA and States would have adequate oversight of the termination of facility operations, particularly the closure and financial responsibility provisions set forth in § 122.42. However, EPA agrees that setting the permit term on the basis of an estimate of the operating life of the facility is not the way to do it, particularly as the estimate could fall on either side of the actual date of closure. Rather, EPA has amended § 122.41 to require UIC permittees to give notice 180 days prior to closure so that the financial responsibility and closure provisions of the permit can be reviewed and modified if necessary, and the permitting agency can be assured of adequate opportunity to oversee the termination of operations. This change has consequently allowed EPA to amend § 122.9 so that Class II and III wells may be permitted for up to the actual operating life of the facility.

(3) Several commenters noted that both the lifetime and fixed-term permit provisions gave the Director discretion to issue permits for less than the full allowable term. EPA believes that the option of issuing permits for less than the maximum duration is necessary in both instances. For example, Class II and III UIC wells include a wide variety of operations in various locations with differing environmental concerns. More rigorous oversight through a term permit may be appropriate because of the type of the well, its past operating history, and the risks to the environment which it may present. For the fixed term permits, permits of less than 10 year durations will be a normal occurrence, both in consideration of varying environmental risks and as permit durations will be set to allow permits for the same facility to expire and be reissued at the same time (see § 124.4 and accompanying preamble). Another example of short-term permits is the "short-term permit policy" for NPDES permits (see § 122.64), coordinating permit durations so as to incorporate BAT effluent limitations mandated by the *NRDC* v. *Train* settlement agreement.

§ *122.10 Schedules of compliance.*

(1) Proposed § 122.12 (now § 122.10) solicited comments on the possible need for uniformity in two requirements for schedules of compliance: (a) the deadline for permittees to give notice of compliance or noncompliance (14 days from the compliance date for EPA programs, but 30 days for UIC programs and for all State programs); and (b) the maximum interval between compliance dates (9 months for EPA programs, 1 year for States).

In both instances, commenters heavily favored greater uniformity. Not a single State specifically commented in favor of the greater latitude for States which appeared in the proposal. As for uniformity among programs, almost all commenters stated that they favored it, and then went on to lend support to the less stringent requirements of 30 days and one year.

EPA agrees with commenters that timing requirements associated with compliance schedules is an area where one of the potential benefits of consolidation—elimination of arbitrary differences in requirements shared by several programs—can be realized.

(a) The NPDES program, which has had several years of experience in monitoring permit compliance and is the only program covered in these regulations with Federal enforcement experience, has found that the 14-day notice requirement is an important element of State and Regional oversight. In some cases delay in reporting could result in damage to the environment. Balanced against this possibility, there is little increased burden in requiring prompt notice, because notice is required in any event, and the permittee knows or should know that it is in noncompliance on the date specified for the requirement in the schedule. EPA has therefore determined that the deadline of 14 days after the compliance date for notice should be retained as a uniform requirement for all programs and, in view of comments in favor of uniformity, for States as well.

(b) Stating a maximum time between interim compliance dates limits the Director's discretion in writing permit conditions. The dates he or she sets for compliance will determine how soon information on noncompliance will be received. Timely receipt of information is particularly important for State-administered programs, where EPA will be relying on summaries of compliance schedule violations contained in quarterly or annual noncompliance reports. In the interest of uniformity, EPA has determined that a maximum one-year interval between compliance dates is practical. Because the provision sets forth the *maximum* interval between deadlines, the Director is always free to set deadlines closer together when more rigorous oversight is important. Normally "milestone" events occur at intervals shorter than one year. Under § 122.10(a)(3)(ii), Directors must require progress reports where it is impractical to specify compliance intervals of one year or less.

(2) A comment following proposed § 122.12(a) stated that NPDES new dischargers, sources which recommence discharge after terminating operations, and those sources which had been indirect dischargers which commence discharging into waters of the United States, do not qualify for compliance schedules. This comment was taken from the language of § 122.17(f) of the NPDES regulations. Final § 122.10(a) reinstates this language as part of the text of the regulation rather than as a comment to emphasize the regulatory effect of the section.

In addition, the proposed comment to § 122.12(a) failed to specify that NPDES new sources are ineligible for schedules of compliance.

The comment was thus inconsistent with § 122.17(f) of the final June 7, 1979 NPDES regulations and with section 306(e) of CWA. This omission has been corrected in the final regulations.

Some commenters questioned whether the comment to proposed § 122.12(a) (and the corresponding provision in

§ 122.81(d)(4)) could be construed to mean that dischargers subject to its provisions are never eligible for schedules of compliance, even for permits issued after the first permit. EPA did not intend this interpretation and thus has clarified the section to indicate that these dischargers will be ineligible for schedules of compliance only for the first permits issued to them.

An additional change in the text of final § 122.10(a) (and a parallel change in § 122.67(d)(4), proposed as § 122.81(d)(4)) allows new dischargers which commenced discharge before August 13, 1979 (the effective date of the June 7, 1979 NPDES regulations), to qualify for schedules of compliance. Because a number of new dischargers had begun discharge before the August date with EPA's consent pending Agency action on their permit applications, EPA believes it would be unfair to retroactively declare such dischargers ineligible for schedules of compliance.

(3) Several commenters, including the State of New Mexico, stated that they thought compliance schedules are unnecessary for the UIC program. This section will not disrupt those State-administered UIC programs which have used compliance schedules infrequently. Those States are free to continue their practice of requiring full compliance on "startup." However, the UIC program does contain requirements for which compliance schedules may be appropriate. For example, although States may, if they wish, require even existing operations to stop injection pending permit compliance, the regulations require that, if States do not choose this route, permits for existing wells are at least required to contain schedules for compliance with construction requirements; see § 122.42(a).

(4) Some commenters expressed concern about the applicability of schedules of compliance to State 404 permits. Under proposed § 122.11(a) (now § 122.10(a)), permits will specify schedules of compliance only "where appropriate." Because CWA does not establish a series of deadlines for the 404 program comparable to the "BPT" and "BAT" schedules for the NPDES program, and because 404 activities are generally not continuing ones, section 404 permits will rarely specify schedules of compliance.

(5) Several environmental groups and other commenters advocated a time limit, such as two years, for compliance with RCRA requirements. They cite the importance of bringing existing hazardous waste management facilities into full compliance with RCRA section 3004 requirements after they have obtained permits, as well as the need for an incentive for such facilities to begin upgrading during the interim period in anticipation of strict permit conditions. EPA agrees that speedy compliance by HWM facilities with § 3004 standards is important, and has amended § 122.10(a) to require compliance "as soon as possible" for all compliance schedules, not just those in NPDES permits. See also § 122.10(a)(1)(ii). However, we believe that it would be a mistake to impose a strict deadline for RCRA or other program compliance, because it would eliminate any authority to shape the duration of compliance schedules as the circumstances warrant. EPA believes that decisions as to the duration of compliance schedules should be made through the permit-issuance process, where there is full opportunity for public participation and for interaction between the Director and the applicant or permittee. A requirement for strict interim compliance deadlines coupled with the new fixed-term permit requirements of § 122.9 should help support quick upgrading of existing HWM facilities.

Likewise, a commenter suggested that it is unfair to require compliance as soon as possible, because this favors the company whose resources or wherewithal make it impossible to comply as soon as some other company with superior capabilities. It is important to write a compliance schedule with consideration for the type of requirement at issue and the seriousness to the environment of delay in meeting it. Again, the permitting process is the proper forum for consideration of these issues, rather than, for example, eliminating all distinctions by allowing all NPDES schedules to require compliance merely by the statutory deadline.

(6) Proposed § 122.12 (b) and (c) has been combined in final § 122.10(b) to provide one "alternative schedules of compliance" provision applicable to all RCRA, UIC, and NPDES situations where a facility chooses to terminate operations rather than meet permit requirements. The RCRA and UIC alternative schedules of compliance now follow the NPDES model.

A principal feature of the RCRA and UIC proposal was that permittees could switch back and forth between the schedule leading to compliance and the schedule leading to termination. That provision was subject to the very abuses which all of the alternative schedule of compliance provisions are designed to prevent: namely, when a facility chooses to terminate rather than comply with permit requirements by assuring EPA that it is going to terminate operations, but then changes its mind either in good or in bad faith, and therefore requires more time to make up what was lost while presumptively on the road to termination. To prevent this from happening, it is necessary to require the permittee to commit itself to terminating if it is to be placed on a termination schedule, as in proposed § 122.12(c) for NPDES. Similarly, the commitment has to be "a firm public commitment satisfactory to the Director." However, the requirement that a bond be posted to back up the commitment, which appeared in proposed § 122.12(c), has been eliminated. Several commenters argued that EPA lacked legal authority for such a bond under the Clean Water Act, and the need for a bond has not yet been demonstrated in the case of RCRA or UIC. An additional change from the proposal is that alternative schedules of compliance are now available to RCRA and UIC permittees in addition to applicants, as it was limited in the proposal. Alternative schedules for applicants will, as with permittees, be determined through the permit-issuance process.

The alternatives schedules of compliance provision is written to allow the final termination date in a schedule leading to termination to be somewhat later than the final compliance date in a schedule leading to compliance. However, the schedule leading to termination must still lead to "timely" cessation of activities. It is not EPA's intent for the termination route in this section to be used as a means of unduly delaying requirements that are applicable to the facility. The delay must be judged on a case-by-case basis considering the type of permit requirement and the harm or potential harm to the environment that the noncompliance or a delayed schedule will cause. In no event should the date for cessation greatly exceed what it would have been for compliance.

Nor is it EPA's intent that a schedule of compliance leading to cessation of activities relieve a permittee from applicable requirements any more than any other schedule of compliance. Obviously, if a permittee will cease activities, many permit requirements which apply only to operating facilities will not have to be complied with after cessation. Such requirements, to the extent that it would not cause harm to the environment, many also be relaxed during the period leading up to cessation when the permittee is firmly committed to the cessation course. To the extent that requirement for operating facilities

are necessary to protection of human health and the environment, compliance may not be excused. At a minimum, a RCRA (or UIC injector of hazardous waste) permittee on a closure schedule should be required to meet RCRA interim status standards, just as a facility without a permit would be.

Finally, RCRA (and certain UIC) permit requirements which pertain to closure and post-closure, including financial responsibility, are applicable to a closing facility, regardless of whether it is on a schedule leading to cessation of activities, and the schedule must ensure compliance with these requirements.

Several commenters noted that the proposal required the permittee or applicant to decide to cease conducting activities before the Director determines what the compliance schedule would be if that decision were reversed. They suggested that the Director should be required to determine the compliance schedule first to help the permittee make a decision. EPA has not accepted this comment. However, where new permits are at issue, EPA encourages permittees to contact their permitting agencies to discuss compliance schedules and work out compliance or closure alternatives. Where existing permits are concerned, the paragraph is designed to give the Director an optional mechanism for modifying permits when the permittee has made the decision to terminate. Presumably such a permittee already knows what its schedule leading to compliance looks like.

EPA has not retained the language of the proposal which coupled the cessation schedule to compliance with the closure requirements by the "predicted closure date." Instead, the final provision requires timely compliance in general, thus eliminating any implication that only the closure requirements are of concern when a facility is on a closure schedule. Also, several commenters suggested that the "predicted closure date" should be predicted by the permittee or applicant rather than the Director. As discussed above, the end date of any schedule leading to cessation is appropriately determined through the permit-issuance process.

Some comments expressed concern that the schedule leading to closure of a RCRA facility did not adequately address the requirements which pertain to closure itself and post-closure. As the provision is now written, it refers to "cessation of regulated activities." For a RCRA facility, this means ceasing to accept hazardous waste which, under 40 CFR Part 264, Subpart G, triggers the closure plan, which will contain *its* own schedule for subsequent events.

§ 122.11 Requirements for recording and reporting of monitoring results.

Several commenters noted the inaccuracy of the comment that "generally installation of monitoring equipment is not required under the UIC program" in proposed § 122.14 (now § 122.11). EPA has deleted the statement.

Several objections were received that NPDES permittees should not have to refer in their discharge monitoring reports to data on internal waste streams and data collected by third parties. The comment and the requirement have been deleted.

Several of the provisions which appeared in this section of the proposal have been relocated to follow the format of the final regulations. The requirement that monitoring data be "representative" of the monitored activity now appears in § 122.7(j); recordkeeping requirements are also in § 122.7(j). The requirement that DMRs be used for NPDES reporting now appears in § 122.60. Finally, proposed paragraph (e), which repeated requirements for compliance schedule reports, has been deleted.

One commenter expressed concern that the recordkeeping and reporting requirements for 404 permittees in proposed §§ 122.14 and 122.12 (now § 122.11) go beyond the intent of CWA, particularly section 308(c). However, under section 404(h)(1)(B) (and its NPDES counterpart, section 402(b)(2) (A) and (B)), one condition of State program approval is the State's authority to issue permits which apply, and assure compliance with, all applicable requirements of section 308. Section 308 gives the Administrator authority to require recordkeeping, monitoring, reporting, and a right of entry. These regulations comply with the statute by establishing recordkeeping and reporting requirements based on those used by the EPA and State NPDES programs. However, monitoring requirements for 404 permittees may vary in required frequency or extent as appropriate to assure compliance with 40 CFR 230. Part 230 does not contain specific monitoring requirements but will be used to determine what monitoring is appropriate.

§ 122.12 Considerations under Federal law.

Proposed § 122.83 (now deleted) directed that EPA-issued NPDES permits be consistent with the requirements of several listed Federal laws and Executive orders. Several commenters objected to this section because it was too broadly written. The section has been rewritten (as § 122.12) to eliminate reference to those Federal laws that do not require any particular action by the Regional Administrator and to explain the relevance of the remaining laws listed. The provision is no longer limited to NPDES permits because the requirements of these laws may apply to other Federally-issued permits. This section does not impose any legal requirements beyond those imposed by the terms of the laws themselves. The purpose of the section is to inform the public and permit issuers of the requirements applicable to the permit programs regulated under this Part.

EPA has under consideration inserting a provision requiring permit writers to comply with two Executive orders, Executive Order 11990 (Protection of Wetlands), and Executive Order 11988 (Preservation of Floodplains). EPA included these Executive Orders in proposed § 122.83, "Special considerations under Federal law." As proposed, the orders would only have applied to NPDES permits. A number of commenters objected to this proposal on the grounds that the Executive orders were unrelated to specific statutory requirements in the Clean Water Act.

EPA wishes to reassess the applicability of these Executive orders in the context of not only the NPDES program, but the UIC and RCRA programs as well. Consequently, EPA invites comment on the appropriate scope and applicability of the requirements of these two Executive orders as applied to NPDES permits, RCRA permits, and UIC permits. Any such comments must be submitted to the address listed below on or before July 18, 1980.

Edward A. Kramer (EN–336), Office of Water Enforcement, Environmental Protection Agency, Washington, D.C. 20460.

§ 122.13 Effect of a permit.

(1) New § 122.13(a) states, with some limitations, that "compliance with a permit during its term constitutes compliance, for purposes of enforcement, with" the appropriate Act. This "shield" provision is one of the central features of EPA's attempt to provide permittees with maximum certainty during the fixed terms of their permits. (For a discussion of permit durations, see preamble to § 122.9.) This new provision gives a permittee the security of knowing that, if it complies with its permit, it will not be enforced against for violating some requirement of the appropriate Act which was not a requirement of the permit. (Of course,

compliance with a permit is not a defense to actions brought under the emergency provisions of sections 7003 of RCRA, 504 of CWA or 1431 of SDWA.)

A similar provision already applied to NPDES permits, as explicitly required by section 402(k) of CWA, and appeared in § 122.65 of the proposal. Because the provision is now generally applicable, § 122.65 has been eliminated. For State 404 programs, new § 122.13(a) is similarly required by the explicit wording of section 404(p) of CWA. The Safe Drinking Water Act is more generally phrased, but there is nothing in it that speaks against applying the "shield" to UIC permits as well. However, the "shield" does not apply to Class II or III well UIC permits, because it is important to be able to upgrade permit requirements for permits which do not incorporate applicable requirements during periodic reissuance.

Where RCRA is concerned, authority for the "shield" is more complicated. As the preamble to the section 3004 regulations points out, RCRA requires compliance by persons subject to Subtitle C with all the requirements of that Subtitle, and authorizes enforcement of all those requirements. The requirement to obtain a permit is one of the section 3004 requirements, but nothing in the statute states that compliance with the permit is deemed compliance with other provisions of Subtitle C.

Nevertheless, EPA believes that the "shield" is beneficial to the practical working of the RCRA permit program, as it is to the other permit programs. EPA agrees that one of the most useful purposes of issuing a permit is to prescribe with specificity the requirements that a facility will have to meet, both so that the facility can plan and operate with knowledge of what rules apply, and so that the permitting authority can redirect its standard-setting efforts elsewhere. If all the section 3004 standards were fully enforceable against a permitted RCRA facility even though they were not reflected in the permit (or, perhaps, not consistent with it), facilities would be exposed to unavoidable uncertainty as to the standing of their operations under the law. In addition, such a provision would increase pressure on EPA and States to keep the permit conditions applicable to a given facility in a perpetual state of re-examination. EPA's resources will at most be barely sufficient to issue and renew RCRA permits, and review State permits, at the time of their initial issuance and periodic renewal. EPA and States are likely to make much better use of their resources if they restrict examination of permits between issuance and renewal to monitoring compliance and taking enforcement action where necessary.

Accordingly, in these regulations EPA is announcing a principle by which it will bind itself—that it will not take enforcement action against any person who has received a final RCRA permit except for noncompliance with the conditions of that permit. (For reasons set out at length in the peramble to the section 3004 regulations, this self-restriction does not apply to the interim status standards applicable to facilities which have not received a final permit.) For all programs, the shield provision applies to enforcement actions by EPA or an approved State, as well as to enforcement through citizen suits. EPA recognizes that the RCRA "citizen suit" provision allows private enforcement actions against RCRA permittees without limitation. However, because EPA plans to specify all the regulatory requirements applicable to an individual facility in the permit for that facility, as a practical matter there will be nothing beyond the permit conditions for a citizen suit to enforce. Indeed, if a plaintiff in such a suit argued that regulatory requirements outside the conditions of the permit should be applied and enforced, that would probably amount to an improper collateral attack on the conditions of the permit.

As required by CWA, the shield does not apply to section 307 toxic effluent standards or prohibitions for NPDES permits. In addition, although a permit may specify monitoring and reporting requirements, EPA believes that the "shield" does not preclude it from invoking its reporting and information gathering authority as specified in sections 3004 of RCRA, 1445 or SDWA, and 308 of CWA, which operate independently of the permit document. Under these authorities, the Director could require a report, or certain monitoring, without modifying a permit and regardless of whether the permittee were complying with the monitoring or reporting requirements of its permit. However, if the changed monitoring or reporting duties were of a continuing nature, so as in fact to amount to a modification of the duties specified in the permit, the Director would be required to modity the permit.

EPA believes this "shield" affords RCRA and UIC permittees a significant degree of added certainty. It now places the burden on permit writers rather than permittees to search through the applicable regulations and correctly apply them to the permittee through its permit. This means that a permittee may rely on its EPA-issued permit document to know the extent of its enforceable duties under the appropriate Act, or on its State issued document to the extent the State program has not adopted a more stringent approach to enforcement.

This new "shield" provision does not alter the fact that a permit may be modified, revoked and reissued, or terminated during its term for appropriate causes (see preamble to §§ 122.15 and 122.16). Most instances of modification, revocation and reissuance, or termination will be the result of noncompliance with a requirement of the permit, although some causes do not require noncompliance. However, "failure to apply any applicable requirements" (proposed § 122.9(e)(6)) is not, as it was in the proposal, grounds for modifying or revoking and reissuing a fixed-term permit. Thus, if the permit writer makes a mistake and does not include a requirement of the appropriate Act in the permit document, the permittee will neither be enforced against nor have its permit modified or revoked and reissued as a result (unless, perhaps, an endangerment to human health or the environment can be shown; see § 122.16(a)(3)). In addition, EPA has the authority in certain circumstances to "veto" a State-issued RCRA permit. This provision is discussed in the preamble to Part 123, Subpart B.

This change has necessitated a careful rewriting and reorganization of many sections of the proposal. The proposal contained language which was addressed to permit writers as well as permittees, without a coherent attempt to distinguish one from the other. Because requirements for permittees were scattered through the regulations, a conscientious permittee might have felt obliged to read through all of the regulations in order to be sure that it was aware of all of its duties. Similarly, there was no mechanism for assuring that the permit writer would pick up all of the requirements and place them in the permit. This is no longer true. Rather than stating that "the permittee shall," the regulations now in many instances state in effect that, "the permit shall be written to require that the permittee shall." Likewise, the regulations have been structured so that generally applicable permit requirements appear in all permits, and that permit requirements which vary from permit to permit can be tracked through the regulations and applied as appropriate; see Table II and accompanying preamble.

(2) Proposed § 122.7(b) (now § 122.13(b)) provided that a permit does

not "infringe" State or local law or regulations or preempt any duty to obtain State or local assent required by law. EPA recieved several comments on these proposed provisions, particularly for RCRA facilities. First, EPA has reorganized the section so that no State program will be required to ensure non-preemption as a condition of program approval by EPA. It is quite possible for a State to determine that in establishing, for example, a hazardous waste program to satisfy the requirements of the Federal Resource Conservation and Recovery Act, it is preempting any local authority to regulate hazardous waste; see *Rollins Environmental Services* v. *Iberville*, 13 ERC 1260 (S.Ct. La., 1979). The preemptive effect of State operation of any of the programs in these regulations is a matter for Federal or State law which EPA does not address one way or the other in these regulations. Applicants and permittees must find out for themselves if there are local laws with which they must comply. Second, the statement that a permit does not infringe State or local law or regulations remains applicable to EPA permits. EPA does not intend this provision to mean that non-preemption is a precondition of issuing an EPA permit. EPA's intent is that it has not made a determination through these regulations that in issuing a permit it is preempting State or local requirements.

Review of permits (proposed § 122.9). In the proposal, the provisions for permit "reviews" were of central importance, and recieved an appropriately large volume of comment, because they were a counterpart to the proposed lifetime duration of RCRA and UIC permits. Becaue of the fixed-term approach to permit duration adopted in these final regulations (see final § 122.9 and accompanying preamble), permit reviews are no longer a central feature of Part 122. Although the mandatory five-year review for Class II and III UIC permits (proposed § 122.9 (a)) remains in § 122.9(c) (duration of UIC permits), the other provisions concerning review that appeared in proposed §§ 122.9(a), (b) and (c) either have been eliminated or are adequately covered by Part 124.

First (proposed § 122.9(a)), the other five-year reviews have been eliminated because all permits other than certain UIC permits are now for a fixed term and therefore will be reviewed automatically as a part of permit reissuance.

Second (proposed §122.9(b)), EPA has eliminated mandatory "cross-reviews" for facilities with more than one permit and the corresponding provision (proposed § 122.9(e)(5)) that would have made modification of one permit grounds in itself for modifying any other permit for the facility. The "cross-review" provision is no longer necessary because of the fixed-term permit approach, and the modification provision has been eliminated both as part of EPA's attempt to narrow the causes for modification of a permit and because of commenters' objections that it involved "bootstrapping" the programs onto eachother. Section 124.10 (public notice) provides, as it did in the proposal, that mandatory notice of any permit action will be sent to any agency administering other permits under these regulations for the same facility. These agencies would then be free to take whatever permit actions would be authorized, if any, under the statutes and regulations governing the programs they administer.

Third (first clause of proposed § 122.9(c)), the provision that the Director may review a permit at any time has been eliminated. The Director always has authority to review a permit, and the statement tended merely to create confusion as to what EPA meant by "review."

Fourth (second clause of proposed § 122.9(c)), it remains true that the Director must review a permit when presented with information which, if valid, would constitute cause for a modification. However, the concept is now taken care of in final § 124.5, which EPA has broadened to state that any interested person, and not just the permittee, may request a modification, revocation and reissuance, or termination of a permit. Section 124.5(b) requires that denial of any such request must be conveyed to the requester in writing; this ensures that the "review" "shall" take place.

Commenters expressed a great deal of confusion and anxiety over what constitutes a "review." We have not provided a definition of review because EPA believes that the Director should determine the appropriate level of review. In conducting a review, the Director may obtain information in any of the ways which are authorized under the appropriate Acts anyway, such as review of the files, inspection, or information requests. Thus, the proposed review provisions added nothing to statutory information-gathering authority. "Review" describes what the Director always could have done at any time anyway. For this reason, EPA has also eliminated the list of sources of information upon which the Director could base review (proposed § 122.9(d)) as misleading and less accurate than relying on the full range of statutory authorities. Review of a permit does not mean that the permit is automatically "reopened," but only that a search is conducted to determine whether or not it should be.

Many commenters requested that information submitted by the public be subjected to some evidentiary requirement before review would be triggered. Although, as discussed above, review upon receipt of a valid public request is mandatory, the Director is free to fashion the scope his or her review according to the merits of the information submitted. Only if cause is found are permits opened, at which time the draft permit and hearing provisions of Part 124 give permittees an opportunity to provide their views on any contemplated action.

§ 122.14 Transfer of permits.

The provision on transfers appeared in the proposal in § 122.8(e). The proposal stated that permits could be transferred only if written notice were given to the Director containing a specific date for transfer of permit responsibility and if the Director failed to object within 30 days to the transfer. Tranfer of a facility was a cause for modification or termination of the permit (proposed §§ 122.9(e)(4) and 122.10(b)(4)). Many commenters objected that the grounds for disapproving a transfer and requiring a modified permit or terminating the permit were vague, that the list of grounds for modifying or terminating a permit under all circumstances ought to be sufficient, and that if there are additional grounds that arise because of permit transfers they ought to be spelled out and included with the others.

The implicit assumption of many of these commenters is that a permit is a "vested" right which should be freely and automatically transferable along with ownership of the regulated facility. EPA disagrees with this notion. It is EPA's position as a matter of law that the privileges associated with a permit attach only to the person authorized to conduct permitted activities and are not inherently assignable. Many States preclude any permit tranfers and require the new facility owner to apply for and obtain a new permit in all instances.

As a practical matter, permits in many instances contain requirements which are personal to the permittee through the explicit conditions required to be contained in the permit. This is most significantly true for RCRA facilities and UIC wells injecting hazardous wastes. Consequently, for these facilities in every case, and for other UIC facilities and NPDES facilities as appropriate, a modification of the permit is necessary

to reflect the new ownership or operational control of the facility, although EPA has attempted to draft these requirements to achieve the least possible burden on property transactions consistent with adequate transfer of permit responsibilities.

First, EPA has retained the essential features of the proposal for NPDES facilities and UIC wells not injecting hazardous waste. Permits for these facilities may be transferred automatically, without requiring any affirmative act by the Director, but only if a written agreement for transfer of permit responsibilities is sent to the Director. The agreement no longer requires specific provisions as to liability for events occurring before and after the transfer, but only an agreement as to liability between the parties. For UIC facilities, the notice to the Director must also demonstrate that the requirements for financial responsibility will be met by the new permittee. Finally, the director must have the opportunity to require that the permit be modified to reflect the change in ownership or operation. In many cases the Director may feel that it is desirable to require the prospective new permittee to submit a permit application; see preamble to § 122.15(b).

For permits that are automatically transferred under this provision, the transfer-based cause for modification or revocation and reissuance (§ 122.15(b)(2)) survives the transfer, so that the Director can later modify the permit to reflect the new realities of the operation without holding up the transfer. However, after an automatic transfer is effective the permit will not be reopened to revoke and reissue the permit unless the permittee requests or agrees. Otherwise, the new permittee would be subject to having its entire permit rewritten at any time regardless of its relevance to the change brought about by the transfer. This is contrary to the certainty which these regulations attempt to give permittees during their fixed-term permits. Of course, the transferred permit may also always be terminated for cause, such as violation of the financial responsibility requirements.

Second, for RCRA facilities and UIC wells injecting hazardous wastes, EPA has determined that in all cases it will be necessary to modify the permits upon transfer of ownership or operational control of a permitted facility or activity. This provision is also applicable to 404 permits. This is necessary because these permits, unlike NPDES permits or certain UIC permits (other than the provisions for financial responsibility), contain conditions which are personal to the permittee and which necessarily must change when the permittee changes. These include such conditions of the permit as the closure and post-closure plans, the contingency plan, and provisions for financial responsibility. In addition, because some of these conditions are incorporated in the permit on the basis of information which is submitted as part of the permit application, in most of these transfers a new permit application will be necessary as well. A new application will always be required when the permit is revoked and reissued. However, there may be some instances, such as a corporate-subsidiary transfer, where the modification would require no substantive changes in permit conditions but merely an updating to reflect the identity of the new owner or operator. In these cases, the transfer could be processed as a minor modification under § 122.17(d) if the Director receives an agreement for transfer of permit responsibilities. EPA believes that such an agreement is necessary even in these situations in order to asure adequate continuity of permit responsibilities.

This provision does not cover transfers of facilities under RCRA interim status. Provisions for such transfers may be found in § 122.23.

Because permittees need to know what provisions apply to permit transfers, final § 122.7(l)(3) now states that "this permit is not transferable to any person except after notice to the Director." The Director shall then proceed under the provisions of § 122.14.

Under this scheme, transfer in itself will no longer be a cause for termination of a permit. Rather, the permit will either be automatically transferred; transferred after a required modification or revocation and reissuance; or the permit will not be transferred but will remain with the prior owner or operator of the facility, and the new owner or operator of the facility will be subject to enforcement for operating without a permit.

EPA believes that in some instances final § 122.14 may be less burdensome than would have been possible in the proposal. For example, in the proposal an agreement for transfer of permit responsibilities was necessary in every instance of a transfer of a RCRA permit. In the final version, this is not necessary unless the transfer is to be handled as a minor modification. Also, in the proposed provision for automatic transfers, a new application was required whenever the Director objected to the transfer. Under these final regulations, a permit may be modified without requiring a new application.

§ 122.15 Modification or revocation and reissuance of permits.

EPA has rewritten the permit modification section in two ways as part of the effort (see also §§ 122.9 and 122.13 and accompanying preamble) to provide greater certainty to permittees during the period when they hold permits and thereby make it easier to make business decisions and obtain financing. First, EPA has narrowed the circumstances under which a permit may be modified during its fixed term. Second, EPA has narrowed the scope of the changes that can be made when a permit of fixed but not lifetime duration is reopened during its term.

(1) The causes for modification have been narrowed. Normally, a permit will not be modified during its term if the facility is in compliance with the conditions of the permit. The list of causes for modifying a permit is narrow; and absent cause from this list, the permit cannot be modified. (However, State programs may always be more stringent than these requirements and an approved State program could provide additional causes.) In addition, certain "minor" modifications (§ 122.17) can be made, with the consent of the permittee, absent cause from the list in § 122.15.

First (see § 122.15(a)(1), proposed § 122.9(e)(1)), a permitted facility may change its operations in ways that were not contemplated in the original permit but which require regulation. This is one instance when compliance with a permit should not insulate the permit from modification. While in many cases a change in operations will violate the permit (giving rise to cause for modification under § 122.15(b)(1)), in other cases activities not limited in the permit will arise after the permit was issued. If permits could not be modified for such reasons then permits would have to be written to prohibit all activities not specifically limited in the permit. With such a requirement permittees would never be sure what the scope of permissible activities is under their permits. (State 404 permits, however, authorize only a specific activity for what is normally a short period of time and activities not authorized in the permit are prohibited; see § 123.97(b).) For NPDES, see the related causes for modification discussed below under § 122.15(a)(5)(viii) and (ix). Permittees have a duty to report all changes in the physical facility, and all other changes that may result in noncompliance, under §122.7(l).

Second (see § 122.15(a)(2), proposed § 122.9(e)(2)), the Director may receive new information which justifies applying conditions different from those in the permit. However, except for Class II and III UIC wells, this cause is limited by requiring that the information must not have been available at the time of permit issuance. Otherwise, this cause would allow the permit writer to modify a permit because a mistake was made at the time of issuance by failing to incorporate applicable requirements into the permit. However, except for Class II and III UIC wells, EPA has rejected the idea that mistake should be a grounds for modifying a permit (see also preamble to §122.13). In addition, the cause is limited by requiring that the information would have justified the application of different permit conditions *at the time of permit issuance*. Stating the date of issuance as the reference point is necessary to prevent using this cause to modify a permit because of changed regulations or standards against the will of the permittee (prohibited by §122.15 (a)(4), discussed below) by citing information used in setting a new standard or regulation. The new information must have justified the application of permit conditions under the regulatory requirements that were applicable at the time of permit issuance. (However, new toxic standards or prohibitions under section 307 of the CWA and new conditions provided for by a reopener clause are an exception for NPDES and 404.)

A special case of "new information" is information that cumulative effects of activities authorized by a NPDES or 404 general permit or UIC area permit are unacceptable. Thus, for example, any new information indicating that the effects of a 404 general permit are more than the "minimal adverse environmental effects" allowed by CWA section 404(e)(1) would be grounds for modifying the permit.

Third (see § 122.15(a)(3), proposed § 122.12 (a), (b) and (c)), provisions for modifications of compliance schedules which formerly appeared only in the compliance schedule section are also causes for modification of a permit during its term and consequently are listed here.

Fourth (see § 122.15(a)(4), proposed § 122.9(e)(3)), standards and regulations covering the permitted activity may have changed since issuance of the permit. As part of its attempt to provide permittees with maximum certainty and protection from regulatory change during the terms of their permits, EPA has limited this cause to instances when modification is requested by the permittee. This limitation formerly applied only to NPDES permits; it is now applicable to all fixed term permits. Because Class II and Class III wells under the UIC program may be issued lifetime permits, it is necessary to retain authority to reopen them on the basis of regulatory changes during the life of the permit; therefore, the requirement for a request does not apply to these wells.

Fifth (see § 122.15(a)(5), proposed § 122.73), several causes for modification are unique to the NPDES program and formerly appeared in the NPDES subpart. They have been moved to § 122.15(a)(5) and expanded to include other causes for modification scattered throughout the proposal, to provide the reader with a complete list of all causes for modification in one place.

Two new optional causes for modification which appear in the NPDES list (§§ 122.15(a)(5)(viii) and (ix)) concern pollutants listed on the new NPDES application form. These causes are included in the final regulations as the result of a change in the Agency's approach toward controlling pollutants not limited in permits. Under proposed § 122.68(a), which appeared in Part III of the June 14, 1979 **Federal Register** (44 FR 34393), a permittee was limited to five times the levels or the detection limit of all pollutants reported in the application form but not otherwise limited in the permit. Under the proposal, the Director had the authority to modify the permit when these "application-based limits" were exceeded, because violation of a permit limitation is grounds for permit modification. In response to a large number of comments, EPA had modified the proposal by using the levels of pollutants reported in the permit application as the basis for a notification requirement only; see § 122.61(a). Therefore, the Director can no longer modify (or revoke and reissue) the permit in this case for noncompliance. Rather, the first new optional cause for modification was established under § 122.15(a)(5)(viii). This cause arises whenever the level of discharge of any pollutant not limited in the permit exceeds the level attainable by the installation of Best Available Technology (BAT) for treatment of discharges. (When the level of discharge of a pollutant exceeds five times the level reported in the application form, but does not exceed BAT-level treatment, the Director may modify the permit to establish a new "notification level" under § 122.15(a)(5)(x).) The Director is not required to modify the permit unless he or she determines that modification is necessary to control the discharges of the pollutant. A more detailed discussion of the new regulations and the comments received on the proposed application-based limit appears in the preamble to the public notice of the consolidated application forms in today's **Federal Register.**

The second new optional cause for permit modification appears in § 122.15(a)(5)(ix). It allows the Director to modify the permit when the permittee begins or expects to begin to use or manufacture any toxic pollutant (listed under section 307(a) of CWA) which it did not report using or manufacturing in its permit application. This provision supports other new regulations requiring NPDES permits to control any toxic pollutant used or manufactured by the permittee. Dischargers are required by § 122.53(d) to report these pollutants in their permit applications and by § 122.61(a)(2) to notify the Director of any new pollutants used or manufactured thereafter. The Director is not required to modify the permit unless he or she determines that modification is necessary to control the discharges of these pollutants. A more detailed discussion appears in the preamble to the public notice of the consolidated application form.

(2) To narrow the scope of changes that can be made in the permit once cause is found, the causes for modification only (final § 122.15(a), discussed in paragraph (1) above) have been distinguished (except for Class II and III UIC wells) from causes which can give rise to either a modification or a revocation and reissuance (final § 122.15(b)). When a permit is modified, only the permit conditions to be modified may be reopened (see § 124.5). When a permit is revoked and reissued, the entire permit must be reopened and the reissued permit must incorporate all currently applicable requirements (see § 122.8). ("Revocation" is used in these regulations only as part of this "revocation and reissuance." "Revocation" of a permit under section 3008 of RCRA is a form of termination in these regulations.) If the Director could use any cause for modification as an opportunity to open the entire permit to scrutiny and modification, it would defeat the purpose of fixed-term permits coupled with security during the term for permittees. It would also defeat any narrowing of the causes for modification, because a modification not otherwise authorized could be bootstrapped onto one that is.

However, a permittee is always free to request a revocation and reissuance rather than a modification. See § 124.5.

When the permittee requests, the Director is free to revoke and reissue the permit for any cause in § 122.15(a) which is otherwise limited to modification. In many instances it may be in the permittee's interest to request revocation and reissuance. For example, when the remaining term of the permit is short, the permittee may prefer the certainty of a new 5 or 10-year permit over a limited modification to a permit which may be extensively revised again soon during the permit-reissuance process.

Only two causes appear in § 122.15(b). First, when cause for termination exists the Director may determine to modify or, alternatively, revoke and reissue a permit during its term as a less drastic alternative to termination.

Second, when ownership or operational control of a facility is transferred, the permit can also either be modified, or revoked and reissued (§ 122.15(b)(2)); see preamble discussion of permit transfers under § 122.14. In many cases a modification may be adequate to reflect the name of the new permittee; for example, a transfer of control of a facility between subsidiaries of the same corporation. In other cases revocation and reissuance will be more appropriate. For example, for RCRA facilities, permittees are required to submit a contingency plan as part of their Part B applications. This plan includes such matters as a list of names, addresses and phone numbers of all persons qualified to act as facility emergency coordinators. Once the permit application is approved, this plan becomes part of the permit. There are several similar items which are submitted as part of the RCRA permit application. This information should be provided by the new applicant. As a result, a permit application followed by issuance of a new permit with a full term may be more appropriate than a simple modification of the prior permit. Similarly, a new permit application to assure an updated plugging and abandonment plan (§ 122.42(a)) may be appropriate for any UIC facility.

Likewise, existing industrial NPDES permittees are required to predict in their applications any expected levels of pollutants in their effluents which may over the next five years (the duration of the permit) exceed the levels found through the required testing, and to list any toxic pollutants which they presently use or manufacture or expect that they will during the next five years. Because these predictions should be based on knowledge of what types of operations are expected to be conducted over the next five years, it may be appropriate for the new permittee to be required to provide this information in a new permit application, and revoke and reissue the permit.

(3) In order to further narrow the scope of permissible permit modifications, part of the preamble to the proposal has been moved to the text of the permit modification section, which now states that for RCRA and UIC, "facility siting will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate an endangerment to human health or the environment which was unknown at the time of permit issuance." This statement emphasizes that siting conditions in a permit will not normally be modified as a result of permit review, and limits the circumstances where the permit termination cause of "endangerment to human health or the environment" can be used as a grounds for modifying siting conditions. However, an endangerment to human health or the environment is still cause for terminating a permit if that is the only way that the threat can be dealt with.

§ *122.16 Termination of permits.*

In general, commenters on proposed § 122.10 (now § 122.16) sought greater specificity regarding causes for termination and less breadth in their possible application, such as limiting terminations to "willfull and persistent" violations of a permit or "intentional" failure to disclose relevant facts. Many thought abuses could result from arbitrary application of the causes as proposed.

EPA believes that causes for termination must be broadly worded so that a basis for initiating permit termination proceedings is available when the need is present. Most attempts to narrowly define the boundaries of cause are inadequate because they must be invoked in a wide variety of circumstances depending on the exercise of enforcement discretion.

The proposed section neglected to state that terminations are subject to the same Part 124 (or applicable State) provisions for notice and opportunity for a hearing applicable to other permit actions. This oversight has been corrected. EPA believes that these administrative provisions and, ultimately, the possibility of judicial review, should provide the protection which commenters are seeking against arbitrary application of broadly-worded causes for termination. Thus, permittees will have an opportunity to refute claims such as that there is an endangerment to human health or the environment, or that permit violations were significant. The objective is not to try to describe precisely the circumstances which provide grounds for termination, which is impossible, but to subject such determinations to the procedural protections of Part 124 and judicial review.

Several commenters discussed the provisions of RCRA section 3008 as they relate to terminations under this section. EPA has concluded that the procedures set forth in Part 124, Subpart E, satisfy the requirements of section 3008 for a formal evidentiary hearing in cases of permit "suspension or revocation." The precedures of 40 CFR Part 22 will no longer apply to RCRA permit terminations.

As noted in the preamble to the proposal, "termination is essentially an enforcement mechanism." The Director of a permit program must carefully exercise discretion in allocating scarce "enforcement" resources. Because of these limitations on resources, it makes no sense to enforce against trivial infractions when unremedied substantial infractions exist. This alone in most cases should prevent the Director from reading the termination causes too broadly. It should also be clear that in most cases less drastic actions, such as permit modifications, are available. Proposed § 122.9 stated that for NPDES and 404 permits, causes for termination could also be causes for modification or revocation and reissuance, thereby implying that this was not so for RCRA or UIC. The wording has been changed to include RCRA and UIC. This does not mean, however, that if termination is not chosen, modification is mandatory. In some cases neither termination nor modification may be appropriate.

Some changes in the causes for termination were necessary because they also serve as causes for modifying or revoking and reissuing permits during their terms (see §122.15(b)(1)). Permits may be terminated even though, as now provided in § 122.13, "compliance with a permit is compliance with the appropriate Act." However, if noncompliance with the appropriate Act could be grounds for termination absent a permit condition which incorporates a specific requirement of the Act, the "shield" provision of § 122.13 would have limited effect. Consequently, § 122.16(a)(1) (proposed § 122.10(b)(1)) has been narrowed to exclude violations of the appropriate Act as an independent cause for termination. It now reads "noncompliance by the permittee with any condition of the permit."

Similarly, the proposal included "other good cause" as a ground for termination. Not only was this cause vague and open-ended, but it could, in serving as a cause for modification, provide a means of circumventing the limitations on opportunities for modifying permits during their terms which the changes from the proposal are intended to provide. Consequently, this cause has been eliminated. In addition, as noted in the preamble to § 122.14, transfer of ownership has been deleted as a cause for termination. The remaining causes for termination (misrepresentation and endangerment to human health or the environment) have been retained in their proposed form both because they are sufficiently serious to warrant possible permit termination and because they may warrant modifying a permit during its term.

Several commenters noted the need to clarify the effect that termination of one permit has on other related permits. As set forth in final § 124.10, termination of one permit triggers a notification to any agency administering a related permit. The related permit can then be modified, revoked and reissued, or terminated if cause exists for such action. The reference in proposed paragraph (a) to partial termination seemed to imply the existence of one "umbrella" permit. However, permits issued under these regulations are completely severable and an action on one has no automatic effects on others. The concept of partial termination has been deleted to avoid any such implication.

Finally, as noted in the discussion of final § 122.5, any cause for termination is also cause for denial of a permit renewal application, and EPA has amended the section to reflect this determination.

§ 122.17 Minor modifications of permits.

Proposed § 122.9(g) (now § 122.17) contained several provisions for minor permit modifications which could be made without the draft permit and public notice provisions applicable to all other permit modifications. This feature has been retained, with some reorganization and revisions. In addition to § 122.9(g), the proposal contained several minor modification provisions in the subparts for RCRA, UIC and NPDES. One source of confusion noted by many commenters on the RCRA provisions was that the two sections appeared to be contradictory. All program provisions have now been moved to new § 122.17 so that readers will find a complete list of provisions for minor modifications in one place.

In the proposal, a modification could not be treated as minor if it would "render the permit less stringent." We have deleted this limitation because it was vague and contradicted by other provisions in the proposal. Rather, any minor modification on the list can be made without public notice if both the Director and the permittee agree to the minor modification. If either disagrees, the permit modification is not minor and must be for cause and with public notice as required under § 122.15.

Several commenters suggested that the list of minor modifications should be examples, rather then exclusive. EPA rejects the notion that the permit modifications which can be processed without any notice to the public should be open-ended. EPA continues to believe that scrutiny by the interested public should be available in most instances, not only to lessen the possibility of objectionable changes being made without objection, but to preserve public confidence in the permit system. Several other commenters suggested that more flexibility should be available to States in the scope of permit actions which can be processed as "minor modifications." The final minor modification provisions are not applicable to States, as they were in the proposal. Of course, as with any Part 122 requirement, a State is free to have such provisions as a part of its program. However, the essential due process requirements of Part 124 that were applicable to States in the proposal are still applicable in these final regulations. This means that a State program may provide for modifications to permits without notice (i.e., as minor modifications) in any situation where to do so would be "more stringent" (as discussed in the preamble to Part 123) than the applicable requirements of Part 124. For most of the items in § 122.17, a State program could provide for more flexible minor modification provisions (if consistent with due process) because eliminating notice and comment provisions would result in greater State control.

Some commenters suggested that minor modifications should be available to decrease permit monitoring frequency, rather than only to increase frequency, as in the proposal. EPA rejects this suggestion. Any permit modification to require less frequent monitoring should be made known to the interested public for comment.

Several comments were received on the minor modification provison for permit transfers (proposed § 122.9(g)(4)). EPA has retained a provision for minor modifications to reflect changes in operational control or ownership of facilities. Transfers are discussed in the preamble to § 122.14.

The proposed regulations included special provisions on "minor modifications" of RCRA permits which would have allowed modification of a RCRA permit without notice and comment to change the types and quantities of wastes treated or to change treatment, storage, or disposal methods (proposed §§ 122.9(g)(5) and (6) and 122.24(d)).

These RCRA provisions have been deleted from the final regulations. They were so broadly phrased that they could have been used to completely change the nature of the permitted activity without putting the permitting agency and the permittee to the discipline of informing the public and considering its views.

There may well be cases where flexibility regarding these matters is desirable. In those cases, it will be perfectly possible to write the initial permit so that it covers the various courses of action that may be contemplated for the future. Where that is not done, the permit can still be modified whenever the requirements of § 122.15 are met.

However, for the present it would not be responsible for EPA to specify certain changes to the substance of RCRA permits as "minor" ones that do not require notice and comment. Because there is no experience with the RCRA permit program yet, EPA lacks the information necessary to determine which changes in methods or hazardous wastes would really be minor and which would not be minor although they might appear to be.

§ 122.18 Noncompliance and program reporting by the Director.

(1) Proposed § 122.15 (now § 122.18) has been completely reorganized to bring all of the provisions for quarterly and annual noncompliance reports together in Subpart A. Minor changes have been made to achieve this reorganization, but it was possible only because the proposed RCRA and UIC requirements were already modeled on the NPDES scheme and were virtually identical to it. The 404 noncompliance reporting requirements, because of the unique nature of that program (a large number of permits of very short duration, in most cases issued without monitoring or compliance schedule requirements) are somewhat different and have been placed in separate paragraphs ((b) and (d)).

In the proposal there was some confusion between "program reports" and noncompliance reports. Because

both reports must be prepared by permitting authorities (i.e., State Directors or Regional Administrators) it makes sense to put the provisions governing them in one place so that Directors can easily determine what reports to prepare. The only exceptions are the "progress reports" required of States with interim authorization under RCRA and of States which have been "listed" but not approved under UIC (see § 123.11). These changes have eliminated a great number of cross-references and have served to increase uniformity among programs. The coverage and organization of the section is illustrated in Table VI.

Table VI.—*Noncompliance and Program Reports*

Program	Noncompliance		Annual program
	Quarterly	Annual	
RCRA	122.18(a)	122.18(c)	122.18(c)(3)
UIC	122.18(a)	122.18(c)	122.18(c)(4)
NPDES	122.18(a)	122.18(c)	
404	122.18(b)	122.18(d)	

Several States commented that the NPDES noncompliance reports are burdensome to prepare or that similar reports will be burdensome for the other programs. Eliminating needlessly differing requirements and formats can alleviate this problem somewhat. Likewise, the Natural Resources Defense Council commented on the difficulty it experienced in attempting to work with information contained in noncompliance reports, resulting in part from a lack of uniformity as to the kinds of information included. To the extent that this problem can be addressed in these regulations, EPA has attempted to be responsive so that citizens' groups and others outside the permitting agencies can also find noncompliance reports useful.

(2) The most frequent comment received on this section was that EPA should provide a definition of major facility and minor facility. In some cases this concern stemmed from a misapprehension that the permittee's reporting burden would depend on the classification. We have changed the heading of this section to emphasize that the reports covered are written by the program Directors, not by permittees. Furthermore, although classification as major or minor may have some effect on a permittee in determining how much scrutiny it receives in noncompliance summaries, through "fact sheets" prepared under Part 124, or through provisions for permit administration (for example, EPA review of proposed State permits), such classification does not affect permit requirements. Permit conditions are determined by the permit writer according to the same regulatory requirements and under the same procedures regardless of whether a facility is major or minor. Likewise, preparation of fact sheets, EPA review of State permits, and preparation of quarterly summaries of noncomplying facilities are actions which EPA has the authority to take whether or not a facility is designated as major. They simply state how EPA will allocate its own efforts in processing or reviewing permits.

Consequently, EPA does not believe that there is any legal requirement to specify this term more precisely, although that would be desirable as a matter of policy. However, it is not possible for EPA to determine in advance precisely which facilities will be classified as major. Flexibility is needed so that the information gathered in noncompliance reports can reflect EPA's changing enforcement and review priorities and resources. It should be emphasized that the use of the categories "major" and "minor" does not imply that one category is composed of facilities which are bigger or have greater capacity than those in the other category, but only that one category is distinguished from the other for administrative purposes.

For these reasons, EPA has not attempted to precisely define which facilities will be classified as major. Instead, a definition of "major facility" has been added in § 122.3 which refers to the Director's discretion. Major HWM facilities also will be classified through guidance; and the definition of "major HWM facility" in proposed § 122.3, which received a great deal of criticism, has therefore been deleted.

(3) EPA rejects several suggestions from industry that quarterly reports be eliminated because noncompliance is already reported by permittees in a number of ways. While it is true that permittees are required to report noncompliance (§ 122.7), this has no bearing on the need for oversight agencies and the public to have summaries of information on how the programs are being enforced.

(4) Three basic informational items for quarterly noncompliance reports which appeared in the final NPDES regulations but which were inadvertently dropped from the proposed consolidated regulations have been restored for all programs. Reports will now include a description of actions taken to ensure compliance, status of the noncompliance, and any details which mitigate or explain the noncompliance.

(5) The opening paragraph of § 122.18 and § 122.18(a)(3) add a requirement for a quarterly report concerning noncompliance by RCRA hazardous waste generators and transporters and all RCRA facilities having interim status. While the proposed regulations dealt only with permittees, EPA realized it needs similar information on generators, transporters, and interim status facilities, and therefore has added the reporting requirement. The information to be provided in the report will address the kinds and numbers of compliance monitoring and enforcement activities the Director has undertaken during the reporting period and the results of such activities.

(6) The reporting year in final § 122.18(e)(2) has been changed from the fiscal year as it appeared in the proposal for NPDES (§ 122.72(f)) to the calendar year for all programs. EPA made this change to coincide with business recordkeeping practices and to coordinate reporting schedules with the requirements for generators and transporters under the RCRA program as set forth in 40 CFR Parts 262 and 263.

§ 122.19 Confidentiality of information.

Paragraph (a) of § 122.19 (proposed § 122.16) states that information claimed as confidential will be treated according to the EPA's rules contained in 40 CFR Part 2 (as amended Sept. 8, 1978; 43 FR 3999). Commenters raised several questions concerning § 2.208 of those regulations. Section 2.208 sets forth the substantive criteria for use in business confidentiality determinations.

First, commenters suggested that if under § 2.208(d) EPA determines that a statute specifically requires disclosure of information claimed as confidential, the submitter should be given notice. EPA agrees with this comment; however, no change in the regulations is necessary. Notice is already provided to the submitter under § 2.205(f).

Second, commenters argued that § 2.208(e) should be amended to specifically prohibit releasing information which would violate 18 U.S.C. § 1905. The commenters argued that 18 U.S.C. § 1905 is incorporated in the third exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(3). EPA does not agree that 18 U.S.C. § 1905 is incorporated in the third exemption to the FOIA. Rather, EPA believes that 18 U.S.C. § 1905 limits the Agency's discretion to disclose information. EPA recognizes this in its definition of "reasons of business confidentiality" in 40 CFR § 2.201(e). As a matter of policy, EPA does not disclose information covered by 5 U.S.C. § 552(b)(4) (see 40 CFR § 2.119). EPA interprets 18 U.S.C. § 1905 to be within the scope of 5 U.S.C. § 522(b)(4).

Consequently, information within 18 U.S.C. § 1905 would not be disclosed. Therefore, as a practical matter, the existing regulations adequately address this comment.

Paragraph (b) of § 122.18 lists information specifically required by statute to be disclosed even if the information would otherwise be exempt from disclosure under the FOIA. Several commenters argued that the proposed section required disclosing categories of information not specifically required to be disclosed. The information entitled to confidential treatment varies under each of the statutes covered by these consolidated regulations. Generally, information concerning trade secrets or secret processes is not to be disclosed. However, under section 402 of the Clean Water Act, NPDES permits and permit applications must be available to the public. Section 308 of the Clean Water Act provides that effluent data related to NPDES and 404 permits also are not entitled to confidential treatment. Section 1445(d)(2) of the Safe Drinking Water Act provides that information related to UIC permits which deals with the level of contaminants in drinking water must be disclosed. Paragraph (b) of § 122.18 has been rewritten to recognize these specific statutory directives. EPA has deleted the provision which would have automatically required denying claims of confidentiality for information contained in all draft permits; statements of basis; fact sheets; comments; and, in the case of all permits other than NPDES permits, permit applications and permits.

Data which are not specifically listed in paragraph (b) will be disclosed to the public under the procedures discussed in § 122.18(a). If no claim of confidentiality is asserted at the time of submission, EPA may make the information available to the public without further notice. If a claim of confidentiality is asserted, the information will be disclosed only in accordance with the procedures in 40 CFR Part 2. These procedures require that if EPA proposes to disclose any information claimed as confidential, EPA must give prior notice to the submitter. Therefore, if information is claimed as confidential in, for example, an application for a permit under RCRA and EPA proposed to include the information in a fact sheet or draft permit, EPA will give prior notice to the submitter. Because of the importance of public participation in the permitting process, EPA will make every effort to prepare draft permits and fact sheets which contain meaningful information while still preserving a submitter's valid claims of confidentiality, if any. In the case of NPDES permits, because the permit application itself can not be claimed confidential, information contained in the application may be disclosed as part of a fact sheet or draft permit, as appropriate. Moreover much of the data in the permit application is "effluent data" within the meaning of 40 CFR § 2.302(a)(2) and therefore would have to be disclosed under section 308 of CWA.

Under each of the statutes covered by these consolidated regulations, EPA may disclose confidential information when relevant in any proceeding under the particular statute. If EPA determines that it is necessary to disclose otherwise confidential business information in a permit proceeding, EPA will follow the procedures contained in 40 CFR § 2.301(g) (Clean Air Act) as incorporated by reference in §§ 2.302(g) (CWA), 2.304(g) (SDWA), and 2.305(g) (RCRA). Questions concerning the entitlement of data to confidentiality will be addressed to the maximum extent possible before initiation of the public participation procedures under Part 124.

In the case of NPDES permit applications, paragraph (c) provides that no information on the NPDES permit application forms provided by the Director may be claimed confidential. This includes information submitted in the forms themselves and in any attachments required by the forms. Under CWA section 402(j), information contained in NPDES permit applications is not entitled to confidential treatment and EPA has made class determination that any claim of confidentially for information contained in the NPDES permit application forms will be denied. Class Determination 1–78 dated March 22, 1978. Because by statute all the information contained in the NPDES permit application forms must be disclosed to the public, there is no reason to allow persons to claim the contents of the NPDES application form as confidential. Such a provision would only cause delay in the availability to the public of the NPDES permit application form in contravention of the clear purpose of section 402(j) of the CWA. Section 122.19(c) refers to the requirement in §§ 122.3 and 122.53 that the Director provide application forms. Section 122.19(c) does not apply to any information submitted to EPA which goes beyond that required under §§ 122.4 and 122.53 on the NPDES application form; claims of confidentiality may be asserted for such information and will be handled under 40 CFR Part 2. Claims of confidentiality for "effluent data" will be denied.

In the case of RCRA permit applications, paragraph (d) provides that at the time an application is submitted, the applicant must subsantiate all claims of confidentiality. This is done by answering the six questions in the instructions to the form. If an applicant asserts a claim but fails to submit any substantiation, it will be given an opportunity to correct this mistake before the Director releases the information. EPA or the State will review claims of confidentiality and deny any claim if it finds that disclosure of the relevant materials would not reveal confidential business information. Under the RCRA section 3010 procedures for the notification of hazardous waste activity, owners and operators were also required to substantiate a claim of confidentiality at the time of submitting the information. (45 *FR* 12746, February 26, 1980.)

There are several policy and administrative reasons for requiring substantiation of a claim of confidentiality at the time of submitting the information. These include the need to provide non-confidential information on the RCRA permit application to the public, to provide the Director with information necesary to make confidentiality determinations, and to inform the submitter of the criteria that the permitting authority will use in making its determination.

Under RCRA and FOIA, EPA has an affirmative duty to make non-confidential information available to the public. Given the public interest in the RCRA program, EPA expects a great number of requests for information on permit applications under RCRA. Moreover, under the permit-issuance procedures of Part 124, EPA must prepare a draft permit and a statement of basis or fact sheet. If EPA did not require substantiation at the time a RCRA permit application is submitted, EPA would have to contact the submitter to request substantiation every time a claim of confidentiality was made. This would be a significant administrative burden. Under the final procedure, however, no additional burden will be placed on permit applications because EPA would have requested substantiation of the claim in any event. In fact, applicants will now have as much as six months to prepare their substantiation, instead of the 15 business days otherwise allowed by the Agency's business confidentiality regulations.

The final approach will provide the Agency and States with all the information they need to make

confidentiality determinations upon receipt of a RCRA permit application. Thus, if the Director wishes to make a determination of confidentiality (either on its own or, for EPA, in response to an FOIA request), there will be significant savings in time. In the case of permit applications, it is especially important to settle any confidentiality issues early because permit procedures in Part 124 applicable both to States and EPA anticipate public involvement. That process can not effectively proceed until confidentiality issues, if any, are settled.

The final scheme also has the advantage of directing the submitter's attention to the type of substantiation the Director must have to grant confidentiality claims. This should reduce uncertainty for the submitter and result in defensible rather than unwarranted claims. The requirement to submit substantiation at the time of filing the permit does not change the substantive criteria for determining whether information is entitled to confidential treatment.

Subpart B—Additional Requirements for Hazardous Waste Program

§ *122.21 Purpose and scope of Subpart B.*

EPA has reorganized this section to provide an orientation to the RCRA Subpart, similar to orientation sections added to the other Subparts; to provide a clearer picture of the relationship between the consolidated regulations and the technical RCRA regulations (40 CFR Parts 260 to 266); and to provide a narrative of the basic requirements of the RCRA permit program. A chart showing the CFR number, date of **Federal Register** publication, and subject matter of each major portion of the technical RCRA regulations has also been included. Detailed elements of the permit program are specified in subsequent sections. Proposed § 122.22, (Authorization), has been incorporated into the new § 122.21(b). Section 122.21(c) provides a brief overview of the RCRA permit process. The application procedures for existing and new facilities are explained.

(1) *Inclusions and Exclusions.* Paragraph 122.21(d) (proposed § 122.21(c)) lists some activities and facilities which are included and excluded from the RCRA permit application requirement. The inclusions are not an exhaustive list, but focus attention on certain activities which may also have permits under other EPA programs. The exclusions list activities exempted by the other RCRA regulations.

A number of comments suggested excluding from the RCRA permit requirements treatment, storage and disposal facilities handling various types of wastes, such as petroleum wastes, domestic sewage sludge, industrial sewage sludges, other industrial sludges, and small quantities of wastes. They suggested that certain wastes had a low degree of hazard, that others were not covered by the RCRA definition of solid waste, that certain wastes were similar to other excluded wastes, and that there would be adverse economic impact if facilities for such wastes had to comply with the RCRA requirements. These are issues which pertain to the RCRA section 3001 regulation for the identification of hazardous wastes and the section 3004 regulation for standards for hazardous waste management facilities, and will be addressed in the rulemaking on those sections. The one exception concerns dissolved material in domestic sewages, which is discussed below.

(2) *Coverage of NPDES Surface Impoundments.* Proposed § 122.21 would have required a RCRA permit for any surface impoundment associated with a wastewater treatment plant other than a POTW that treats or stores hazardous waste. Virtually every aspect of this proposal proved controversial.

Many comments were received stating that such impoundments at facilities having NPDES permits should be excluded from the RCRA permit requirements. Some argued that there was no basis for requiring NPDES industrial surface impoundments but not surface impoundments at POTWs to obtain a RCRA permit. Others argued that NPDES surface impoundments should be issued a permit-by-rule like POTWs.

The proposed exclusion of surface impoundments at POTWs was based upon the RCRA definition of solid waste which excludes solid or dissolved material in domestic sewage.

As the preamble to the section 3001 regulations explains in detail, EPA has re-examined this question in the light of comments received.

That re-examination has led EPA to reaffirm its original conclusion that material which is (1) mixed with domestic sewage in a sewer and then (2) discharged from the sewer into a POTW, is exempted by the statute from treatment as soild waste. This conclusion is being promulgated in interim final form. Additional comments on it are invited and will be considered.

That conclusion leaves open two questions concerning the coverage of the RCRA permit requirements.

The first concerns what happens when hazardous wastes are discharged into a POTW without losing their hazardous character by being mixed with domestic sewage in a sewer.[1] For example, the hazardous wastes might be dumped into the POTW from a truck or tank car, or they might be discharged into it from a pipe which carried only industrial wastes and did not carry domestic sewage.

In these cases the basic logic of the argument for exempting "dissolved material in domestic sewage" still holds. The wastes will be placed in a facility that is subject to a pervasive set of Federal regulatory and subsidy provisions (including the pretreatment program) that should be sufficient to deal with any hazardous waste problems by themselves. Accordingly, in these cases the POTW receiving the waste will be granted a permit by rule (§ 122.26(c)). The permit by rule is necessary to ensure that any applicable manifest is returned and the formal requirements of RCRA are otherwise satisfied.

The second question is whether a hazardous waste which has come under the manifest system may be deposited into a sewer, become mixed with domestic sewage, and thereby lose its hazardous character.

The answer to this question is "No." Manifested wastes may only be delivered to an approved HWM facility, and sewer systems will not be approved for that purpose. Sewer systems are obviously not HWM facilities in any normal sense of the word, and there is no assurance that wastes deposited in them would be treated, stored or disposed of in a manner consistent with the purposes of RCRA. Such disposal would be significantly harder to regulate under existing authorities than disposal directly into the POTW. Congress when it created an exemption for dissolved material in domestic sewage had in mind avoiding disruption of the existing patterns of funding and operation of POTWs receiving waste from "indirect dischargers," not allowing additional unregulated discharges by those not currently making use of the treatment system.

Comments also stated that NPDES surface impoundments should not be required to obtain a RCRA permit because they pose no threat to human

[1] A facility which is not a POTW that received hazardous waste in any form, whether or not mixed with domestic sewage in a sewer, is subject to the full range of RCRA's regulatory requirements. However, if such a facility receives only domestic sewage it is of course exempt from RCRA requirements altogether because domestic sewage is not classified as a hazardous waste.

health and the environment or should not have to obtain a permit where the owner or operator can demonstrate that no harm to groundwater will occur. Others stated that requiring NPDES surface impoundments to obtain RCRA permits would be very costly and force major retrofitting or abandonment of such facilities. These comments address the need for and nature of the technical standards for surface impoundments and are in fact comments on the RCRA section 3004 standards for treatment, storage and disposal facilities, rather than comments on the applicability of the permit program.

As the preamble to those regulations explains, EPA has significantly amended these requirements to reduce to a minimum the need for burdensome retrofitting. However, as explained below, these facilities cannot be completely exempted from RCRA coverage because of their potential for causing air pollution or groundwater pollution which cannot be remedied under the NPDES permit.

Commenters also argued that NPDES surface impoundments were adequately controlled by various programs under the Clean Water Act such as the NPDES and BMP programs. Comments also stated that the requirement for a RCRA permit was inconsistent and duplicative of the goals and regulations of the Clean Water Act. EPA has considered all of these arguments but believes that a RCRA permit is necessary for these facilities. Limitations imposed in NPDES permits are directed toward the quality of discharges to surface waters. The technology to achieve the limitation may require construction of surface impoundments, although the objective of such construction is to assist in the ultimate prevention of pollution of surface waters. Improper containment of wastes in surface impoundments may result in pollution of groundwater and a series of other adverse human health and environmental impacts. These types of problems are not directly addressed through NPDES permits, but are directly regulated under RCRA. The CWA does not provide authority to set standards for construction of impoundments to prevent groundwater pollution but standards for such construction are specifically provided for in section 3004(4) of RCRA. Further, leaving resolution to BMPs under CWA will not solve the problem, as BMPs are directed toward controlling only designated pollutants under sections 307 or 311 of CWA and only so far as they may reach a navigable water. Therefore both NPDES and RCRA permits are necessary for such facilities, because each permit program is directed toward control of different types of pollution. Any potential inconsistency and duplication can be minimized if the permit programs are consolidated as provided for in these regulations.

Commenters suggested that coverage of surface impoundments (proposed § 122.21(c)(3)) should be clarified to state that RCRA permits should only be required for surface impoundments if the water is hazardous at the point of discharge, regardless of the condition at the point of entry to the system. The proposal stated that any surface impoundment that treats or stores hazardous waste must obtain a RCRA permit for that impoundment up to the point of discharge. The reason for requiring a RCRA permit up to the point of discharge is to adequately protect public health and the environment from hazardous waste placed in the facility. The discharge itself would be controlled under CWA. The regulations have been restructured for clarity and the proposed language "up to the point of discharge" is no longer contained in these regulations but the concept remains the same.

§ 122.22 Application for a permit.

Proposed § 122.23 described permit application requirements for existing and new HWM facilities, set forth a two part application process for existing facilities, and described the information to be included in Parts A and B of the application. The contents of Part A and Part B of the application are now described in §§ 122.24 and 122.25 respectively. The remainder of proposed § 122.23 has been moved to § 122.22 and rewritten to provide better continuity to the regulation and to provide greater information on the timing of applications and to whom they should be made, particularly in the light of the approach to interim authorization now set forth in Part 123.

The major topics covered by this section—timing and address of applications, the two part application process, the requirement for a permit prior to new facility construction, and revocation of interim status—will be addressed in turn.

(1) *Timing and Address of Applications.* For existing HWM facilities, the permit process begins with the publication of the RCRA program regulations contained elsewhere in this issue of the Federal Register. That event triggers the obligation to file 3010 notification within 90 days and to file a Part A permit application within six months.[2]

All these notifications and applications must be sent to the Regional Administrator whose Region covers the State in which the facility is located. Only States with Phase I interim authorization can receive 3010 notices and only States with Phase II interim authorization can receive and process permit applications. No State programs in these categories will have been approved by the dates set for submission of these documents. (If a State program is approved thereafter, the information in these categories will be transferred to the State.)

Starting with the promulgation of the remaining Part 264 regulations, in the fall of 1980 States with approved Phase II interim authorization or final programs, and the Regional Administrator where that approval does not exist, will be able to require submission of a Part B application and proceed to final permit action. Since the permitting authority must allow six months for preparation of the application, actual submission of the Part B application cannot be required before the spring of 1981.

For new sources, the regulations prohibit construction without a permit. For the reasons set forth later in this preamble, EPA believes such a rule is essential to carry out the purposes of RCRA. Exactly how it operates in practice, however, will be impossible to determine until Congress takes final action on the pending RCRA amendments. That issue is also discussed later in this preamble.

Finally, the regulations explain the requirements for updating permit applications. Briefly, Part A applications must be updated as needed to account for any new hazardous wastes being handled by the facility. A facility can begin to handle a new hazardous waste either because the waste was already listed as hazardous and the facility has just begun to handle it, or because the facility was already handling a waste newly listed or designated by EPA or by the State as hazardous. Both situations require revision of the Part A application or else the facility will not obtain interim status for the wastes not

[2] EPA intends to promulgate regulations in June of 1980 listing or designating additional wastes beyond those listed or designated in its initial promulgation. The wastes to be listed or designated in June are set forth in an Appendix to the initial promulgation. EPA encourages owners or operators applying for interim status before that second set of wastes is actually published to list or designate any of the wastes in that set which they are treating, storing or disposing of. That will avoid the need to update the Part A application extensively when promulgation occurs.

listed. (As noted above, EPA intends to list or designate additional wastes as hazardous in June of this year.)

A more flexible rule applies for Part B of the application. EPA will apply any new requirements that become applicable before a final permit is issued, but no set procedures or filing requirements are prescribed to be followed in such a situation. The normal notice and comment procedures, and where necessary § 124.14, provide enough flexibility to cope with any particular situations that may arise. For example, if a significant number of new wastes were listed and a facility with a permit application under consideration was treating, storing, or disposing of them, EPA could require submission of an updated permit application under § 124.14.

(2) *The Two Part Application Process.* Several commenters objected to the two part application process, some claiming that there was no authority for such a process. Others felt that the Part A application should obtain much more information such as hydrogeological, geological and climatological data or information to determine compliance with the interim status standards. Commenters also stated that the information contained in Part A was not sufficient to establish permitting priorities.

Despite these comments EPA has decided to maintain the two part application process for existing facilities. EPA believes this approach is legally justified and that the policy arguments for it are conclusive.

Nothing in RCRA requires that all the information for a final decision be submitted as part of the "application" needed to trigger interim status. In many permit proceedings significant new information is likely to come in during the public comment period or at the public hearing well after filing of the application and thereby affect the final conditions of the permit.

Indeed, the statute itself recognizes that considerable supplementing of the initial "application" may be required before a final decision when it provides for revoking interim status (which, of course, can only be granted upon the filing of an "application") for failure to "furnish [further] information reasonably required or requested in order to process the application." RCRA section 3005(d).

Beyond this, RCRA contemplates that facilities will be able to qualify for "interim status" by filing within six months of issuance of the 3001 regulations, even though affirmative EPA action on those permits may not take place for an appreciable time thereafter. EPA expects that in the light of the magnitude of the regulatory program now being started, many facilities may not receive their final permit for several years.

Accordingly, EPA has designed the application requirements to fit the overall structure of the program which they serve. The Part A application is designed to enable facilities to qualify for interim status within the six months filing deadline, and to provide EPA with information that will be useful to determine in which instances to move on to the next stage by requiring submission of a Part B. The alternative suggested by some commenters—requiring both parts to be submitted as a condition of interim status—would make it much more difficult and costly to qualify for interim status. In addition, it would require all owners and operators filing for interim status to furnish a great deal of information that EPA would lack the resources to review for several years. By the time EPA did review that information, much of it would probably have become outdated.

Part A of the permit application has not been designed to determine compliance with the interim status standards as some comments suggested. Combining compliance monitoring information and permit application information on one form would result in a complicated document that would not serve either purpose very well. Monitoring of compliance with the interim status standards will be carried out through separate information collection and facility inspection activities.

The information contained in Part A should allow EPA to establish initial priorities for permitting of facilities. The Part A applications will provide the type of data needed for setting priorities which is not presently available, such as design capacities and types and quantities of wastes handled at individual facilities as well as proximity to drinking water wells. The initial priorities can be further refined using compliance monitoring reports, annual reports and information from the Part B applications.

Comments on proposed § 122.23(a)(2) objected to waiting for a notice by the Director before submitting Part B of the permit application, stating that some facility owners or operators may desire to obtain permits as soon as possible. Nothing in the regulation prevents the submittal of Part B prior to request by the Director. Six months notice for submittal of Part B was established to allow applicants adequate time to gather any necessary information for submission of an application. Earlier submittals are always possible.

(2) *Permit Prior to Construction of New Facilities.* Many commenters objected to § 122.23(b) which would require a permit prior to construction of a new HWM facility. Many commenters argued that this provision is illegal under section 3005(a) of RCRA, stating that RCRA only requires permits for the operation of facilities and only prohibits the actual handling of hazardous waste without a permit. Commenters also stated that this provision will tie-up capital and aggravate existing and future capacity problems. Some argued that industry should be allowed to proceed at their own risk during construction and apply for a permit during or after completion of construction.

Once again, EPA believes that the proposed approach should be adopted for both legal and policy reasons.

Section 3004 of RCRA requires the Agency to promulgate regulations specifying, among other things, the *location, design and construction* of HWM facilities. Those regulations will only take full effect and have full meaning for a given facility when they are applied to and incorporated into the permit for that facility. Congress when it incorporated a permit requirement into RCRA must have meant the task of permitting to have independent regulatory significance, and EPA intends in its final Part 264 regulations to allow flexibility in adapting the requirements of those regulations to specific sites. Given the variety of different situations that these facilities may present, and the newness of the program, the opposite course—applying specific national requirements automatically to any facility whatever its circumstances—would not be rational. Many industries that commented on the proposed regulations made this point.

If facilities were free to make substantial commitments to a given facility, location, design or construction before receiving their RCRA permits, the purpose of the statute could very readily be undermined for no reason.

The overriding purpose of the section 3004 standards is to "protect human health and the environment." There is a significantly greater likelihood that permit writers will be able to set "location, design, and construction" permit terms that serve that purpose for new facilities if they make the permit decision before a substantial and irretrievable financial commitment is made to the location, design, and construction which the applicant itself has chosen. Allowing such commitments to be made before assuring that they

will be in conformity with the best application of the statute would force the permitting agency to the unjustifiable choice of either requiring a lesser degree of health and environmental protection than would otherwise have applied, or forcing the abandonment or devaluation of the premature investment.

The only significant argument made in favor of allowing construction to begin before receipt of a permit was that it would avoid delay in the construction of HWM facilities. However, EPA believes this argument is flawed even on its own terms and that it lacks persuasive force when compared with the arguments for forbidding that construction. Nothing in these regulations prevents owners or operators from applying for a permit early in their planning process. If the facility is small, the application can probably be processed quite quickly. If the facility is large, then the permit processing time will probably be a small part of the total time needed for design, financing, obtaining other approvals, and the like. There is no reason in either case for the permit itself to become a critical path item. EPA has made particular provisions in these regulations for expediting consideration of permits for new facilities.

Some commenters objected to the requirement for submitting a permit application for new facilities 180 days before physical construction is expected to commence. They argued that this was too long a period and that owners and operators would not have the information necessary to complete the permit application that far in advance. EPA believes that the 180 day period is necessary in order to provide adequate time to provide for public notice and comment, hold a public hearing if necessary and complete an evaluation of the application which in some instances may be quite lengthy and complex. If on a case-by-case basis the permitting process can be completed in less than 180 days, it will be. However, a 180 day period will be necessary for many facilities and will be used as the general rule. Facility owners and operators should have all of the necessary information to submit an application 180 days prior to physical construction because they will need that information in order to ensure that the facility is located, designed and constructed in compliance with the section 3004 standards.

(3) *Revocation of Interim Status.* The proposed regulation provided (at § 122.23) that interim status could be terminated without process for failure to submit an adequate Part B application when required. Commenters felt this provision was unduly harsh, not sufficiently defined, possibly detrimental to the environment, and in violation of section 3008 of RCRA.

Although EPA believes the question is debatable, it has accepted in these final regulations the position of commenters who claimed that "interim status" cannot be terminated without providing an opportunity for an evidentiary hearing. Part 124 has been modified accordingly.

In accordance with the plain language of section 3005(d), the only grounds for termination of interim status will be the failure to furnish information reasonably required to process a permit application. This provision of course includes failure to respond on time to a request for a Part B application, or failure to furnish either Part A or Part B in an acceptable form.[3]

Because of this limited test, in many cases the facts relevant to the decision will probably not be disputed. Therefore, EPA anticipates that termination of interim status will often be a candidate for summary disposition under § 124.75(a)(1).

When questions about the conformity of the site to the substantive standards of Part 265 are at issue, interim status will not be terminated in this manner. As the preamble to those regulations explains, they are meant to be enforceable apart from any permit mechanism. Nor will separate proceedings to revoke interim status be required when a permit applying the permanent status standards of Part 264 is being issued or denied. The mechanism provided by the statute for broader-gauged decisions like that is a final decision on the permit application as a whole. The preamble to Part 124 sets forth EPA's position on the procedures required for that.

§ *122.23 Interim status.*

RCRA states that during interim status owners and operators of existing HWM facilities shall be treated as having been issued a permit until a final decision is made on the complete permit application. Many comments were received on this provision.

(1) *Definition of Existing HWM Facility.* The proposal defined an existing HWM facility as a facility which was in operation or under construction on or before the date of promulgation of the RCRA section 3001 regulations. Some commenters stated that interim status should not apply to owners and operators of facilities under construction but only to facilities in operation. Others indicated that section 3005(e) refers to facilities in existence on the date of enactment of RCRA, not the date of the section 3001 regulations.

EPA now agrees that the language of the statute is clear and that the approach proposed is not defensible. Accordingly, it has changed the definition of "existing facility" to mean a facility that was in existence on the date of enactment of RCRA, or October 21, 1976.

EPA regards it as all but certain that Congress will act to change this definition before these regulations become effective.

Amendments to RCRA are now in conference. The House bill would change the definition of "existing facility" to mean one that is in existence on the effective date of the initial RCRA promulgation; the Senate bill would change it to cover those in existence on the date of promulgation. Indications are that the conferees are considering October 30, 1980 as the date for determining when a facility is an existing facility. Both bills would therefore provide relief from the consequence of existing law.

Accordingly, EPA encourages every facility which was built or under physical construction as of the promulgation date of these regulations to file Part A of its permit application so that it can be quickly processed for interim status when the change in the law takes effect. A "Note" to this effect has been inserted into the regulations.

Depending on what final action Congress takes, other provisions of these regulations may also require amendment. EPA will issue any necessary amendments and an explanatory preamble as soon as possible after final Congressional action.

This final regulation also interprets an existing HWM facility to mean either "A facility in operation, i.e., receiving hazardous waste for treatment, storage, or disposal," or "a facility for which construction has commenced." This definition has been adopted because EPA believes that owners and operators who have commenced facility construction in good faith prior to the statutory date should be classified as existing.

This final regulation further defines the term "commence construction" to take the meaning defined in EPA's Prevention of Significant Deterioration (PSD) regulations issued under the Clean Air Act. These regulations specify that construction has commenced before the date in question if:

[3] Failure to furnish an acceptable Part A, by contrast, means that interim status never starts.

1. The owner and operator has obtained all necessary Federal, State, and local preconstruction approvals or permits; and

2a. A continuous on-site, physical construction program has begun or

2b. The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for construction of the facility to be completed within a reasonable time.

It is intended that the continuous on-site, physical construction program include physical site preparation. Design and other non-physical and non-site specific preparatory activities alone would not constitute on-site, physical construction. Furthermore it is intended that structures or equipment constructed from a permanent part of the facility that are to be used in its own operation, and represent a substantial commitment to construction.

In general if the amount an owner or operator must pay to cancel construction agreements or stop construction exceeds 10% of the total project cost, the loss would be deemed "substantial". Options to purchase or contracts for feasibility, engineering, and design studies would not constitute contractual obligations.

EPA believes this provides an equitable and reasonable approach to facilities constructed prior to the promulgation of the RCRA regulations. A substantial commitment of resources by owners and operators in a period of uncertainty to provide for treatment, storage, and disposal of hazardous waste will not be penalized. All facility construction commenced after promulgation of the new RCRA hazardous waste regulations would be subject to the RCRA permit process.

(2) *Changes in the Facility During Interim Status.* A number of commenters raised questions as to whether a facility could be modified during interim status. Comments stated that facilities should be able to make such modifications during interim status as are: (1) needed to keep the facility in operations, (2) necessary in order to meet the section 3004 standards or (3) needed to insure full beneficial use of the facility. On the other hand is the concern that allowing such changes during interim status would provide a loophole to avoid the requirements for obtaining a permit (as would occur if the modification of an existing HWM facility was tantamount to construction of a new facility), or for submitting less major, but significant changes to a facility to the kind of review and cross-check that a fully effective permit would provide. In response to these comments the final regulation sets forth the following approach to making changes in a facility during the interim status period.

Part A of the permit application basically defines the process which will be used for treatment, storage or disposal of hazardous wastes and the hazardous wastes to be handled at a facility during interim status. In order to make any changes in such items the owner or operator of the facility must submit a revised Part A permit application and in some instances such changes must be approved by the Director.

New hazardous wastes (not previously specified on the Part A permit application) may be handled if the application is revised prior to such a change. No approval of the Director is required in this instance. Furthermore additional quantities of hazardous waste (already specified on the permit application) may be handled at any time within the design capacity of the facility without revising the application.

Increases in design capacity or changes in the processes used at the facility may only be made upon submittal of a revised application and with Director approval. The Director may approve additional processes if he or she finds that they (1) are necessary because of an emergency situation; or (2) are necessary to comply with Federal, State or local laws. The Director may approve increases in the design capacity of the facility if he or she finds that this is necessary because of lack of available capacity at other facilities. In any of these instances the Director may inspect a facility prior to or after such a change and may disapprove a change that would result in a violation of the interim status standards.

Changes in ownership and operational control of a facility may only occur during the interim status period in accordance with the requirements of 40 CFR § 265.150. A revised Part A permit application is required 90 days prior to such a change so that the Director has an opportunity to determine whether such requirements are completed.

Finally, EPA will prohibit any changes to an existing facility during interim status which are so extensive as to amount to the construction of a new facility. Failure to do this would allow avoidance of the requirement that all sources which are in fact physically new go through the full permitting process before construction begins. For this purpose EPA has adopted the practice under the Clean Air Act of designating as a new facility any change that when completed would amount to more than 50% of the capital value of the facility.

The Agency believes that this approach to changes in a facility during interim status will allow reasonable modifications in existing facilities without creating a situation in which the requirements for obtaining a permit are nullified.

EPA believes that this approach represents a legally acceptable resolution to a question which the statute does not address.

Nothing in the statute provides that applicants are bound by their Part A application, and it has never been the practice when Congress requires existing facilities to come under permits to freeze their present patterns of operations until final agency action. Any such rule could have drastic consequences which Congress presumably did not intend, particularly since Congress explicitly recognized that several years might be necessary to process all RCRA permit applications. In addition, those consequences would be predominantly suffered by facilities which, because they are small or well operated, are low on the priority list of the permitting authority. To require affirmative action before such facilities could change their operations would not only be burdensome on them, but would divert the resources of the permitting agency toward such facilities and away from more urgent tasks.

At the same time, EPA does not believe that facilities which have not yet received a RCRA permit should be completely free of specific regulatory requirements. The existence of interim status standards grounded in the statute indicate that Congress intended such facilities to be subject to at least the outlines of the general RCRA scheme. In addition, the requirement to file a permit application as the price of interim status can only mean that the permitting agency can require updating of that application if it ceases to be accurate. Where the updated application indicated that the facility might cease to conform to the general RCRA regulatory scheme, EPA would be free to take enforcement action as these regulations provide.

(3) *Commencement and Termination of Interim Status.* The proposal provided that interim status began at the time the Director advised the applicant that his or her Part A application had been received. Commenters pointed out that under section 3005(e) of RCRA interim status is not granted by the Director, but begins at the time an application is submitted (and after notification under section 3010). EPA agrees with this interpretation and did not intend a different effect under these regulations. The acknowledgment was not an

attempt to place further restriction on or delay interim status. However, a method is necessary to insure that the Director and applicant know the required information has been submitted.

EPA has revised the proposal at § 122.23(a) to require an applicant to either submit notification and Part A of the application by certified mail or to hand deliver such information to provide assurance to both the applicant and EPA that the information has been sent and received.

One commenter suggested that EPA consider adopting a definite date for termination of all interim status. When a permit application is complete EPA does not have the authority to terminate interim status short of the administrative disposition of the permit application. The time period necessary to take final action on all permits is contingent upon the availability of resources. Therefore a definite date for termination of all interim status cannot be established.

§ 122.24 Contents of Part A of the RCRA permit application.

The comments received on this section are discussed in the preamble to the consolidated application forms, published elsewhere in today's **Federal Register.**

§ 122.25 Contents of Part B of the RCRA permit application.

The proposed regulation identified six general informational categories for inclusion in Part B of the permit application. These included a master plan for the facility which combined all of the plans required by the section 3004 facility standards. Also included were geological and hydrogeological data, a description of the climate at the site, a list of positions and job descriptions and a listing of the performance bonds and other financial instruments.

This general approach created some confusion because the relationship between the proposed section 3004 regulation and the permit application requirements was not clear. Many commenters believed that they were required to submit all the information included in each category. They suggested that the information needs be limited to the type of facility (e.g. landfill, incinerator). EPA agreed with these comments and restructured the Part B informational requirements. The Part B application requirements now parallel the structure of the section 3004 standards promulgated in Part 264 of this chapter.

Only Subparts B through E of Part 264 have been promulgated to date. This covers requirements which generally apply to all facilities. Subsequent subparts of Part 264 including standards for specific facility types (landfills, incinerators, etc.) will be promulgated later this year. The Part B permit application requirements being promulgated today essentially pertain to information which is common to all hazardous waste facilities as well as the specific plans required of all facilities in Subparts B through E of Part 264. The Part B application requirements will be amended to reflect additional planning requirements and the technical standards (e.g. equipment design, site preparation and design) which will be promulgated in Part 264 later this year.

Section 122.23 of the proposed rules contained provisions for the Director to waive certain application requirements in Part B if the information was not applicable to the facility and was not needed to establish compliance with the section 3004 standards. The Agency received numerous comments on the use of the waiver provision. While the reorganization of the regulation may eliminate the need for this waiver provision, it is not possible to reach a final decision on its use until the full Part 264 standards are promulgated.

§ 122.26 Permits by rule.

The proposed regulation provided for a permit by rule for facilities accepting special wastes, ocean disposal barges and vessels, and certain POTWs. In these instances application for a permit was not required and an actual permit would not be issued. The owner and operator of such a facility would be deemed to have a RCRA permit if certain specific conditions in the regulation were complied with. Many comments were received on this provision.

Comments from industry generally approved of this approach, though some argued that limiting the permit by rule to POTWs was arbitrary and that privately owned treatment works and NPDES industrial surface impoundments should be treated in a similar manner. However some commenters stated that the permit by rule is illegal under RCRA, as section 3005 requires each HWM facility to have a permit. These commenters objected to the permit by rule approach as less environmentally protective than site-specific permits and argued that permit by rule eliminates public notice and public participation and that EPA and the public lose the chance to gain information about such facilities.

Although the scope of the permit by rule provisions has been cut back substantially, EPA continues to believe that such an approach is both legally justified and appropriate in certain cases. The courts have interpreted the Clean Water Act to allow the issuance of "general" or "area" permits covering point sources under that statute. *Natural Resources Defense Council v. Costle,* 568 F.2d. 1369, 1381 (D.C. Cir. 1977). The court recognized that use of such approaches might be the only way to fulfill the legislative intent in a setting of limited resources. Yet the permit provisions of the Clean Water Act against which that case was decided are stronger than those of RCRA, for not only do they affirmatively require every "point source" to have a permit, but unlike RCRA, they underline the implication that source-by-source examination is required by limiting both the time for which a permit application will be acceptable instead of a permit, and the maximum term of the permit once issued. In addition, section 1006 of RCRA directs the Administrator to integrate the administration of that statute "to the maximum extent practicable" with the provisions of other EPA statutes, including the Clean Water Act, the Ocean Dumping Act, and the Safe Drinking Water Act.

Against this background, EPA believes that there can be little question of its ability to issue a permit by rule to facilities where the activities that a RCRA permit would regulate are for the most part already regulated under another EPA permit and the only purely RCRA-related provisions are those that are not site-specific and do not need to be particularized in an individual permit. The choice here is between requiring a duplicate permit proceeding and duplicate paperwork or simply making the missing RCRA provisions applicable through a general regulatory statement. EPA has chosen the latter course.

Despite criticism the permit by rule approach has been retained for POTWs for the reasons discussed above. This provision caused considerable confusion in the proposed regulation. Permit by rule was only to be applicable to the rare situation where a POTW received hazardous waste by rail or truck or by a pipe that did not carry sewage since sewer line influent to a POTW would in most instances be exempted from the RCRA definition of solid waste which includes dissolved or suspended materials in domestic sewage. Many commenters misunderstood this point and argued for extending the permit by rule approach to a wide variety of other operations such as privately owned treatment works and NPDES surface impoundments.

As explained earlier and in the section 3001 preamble, these facilities

do not come under the special Congressional intent applicable to POTWs and there is therefore no reason to exempt them from otherwise applicable RCRA requirements.

The remaining uses of permit by rule are for 1) barges or other vessels for ocean disposal of hazardous wastes with a permit under the Marine Protection, Research and Sanctuaries Act and 2) underground injection of hazardous wastes with a permit under the UIC program of the Safe Drinking Water Act. Both of these situations meet the criteria for permit by rule described previously. In both of these cases the owner or operator is deemed to have a RCRA permit if he or she has a valid permit under the other program, is in compliance with that permit and also complies with the RCRA manifest, recordkeeping and reporting requirements. Shoreside facilities related to ocean disposal activities and surface storage and treatment prior to underground injection are not covered by permits under these other statutes and the RCRA site-specific permit requirements apply to the handling of hazardous waste at such installations.

Owners and operators of facilities with a permit by rule are not required to submit a RCRA permit application. However if an owner or operator of an existing underground injection well does not have a UIC permit he or she must comply with the RCRA notification and permit application requirements in order to qualify for interim status.

Control of UIC Wells Injecting Hazardous Wastes. The RCRA hazardous waste permit program regulates the treatment, storage, and disposal of hazardous wastes. The UIC permit program, governed by Subpart C of this Part and Part 123, governs State programs regulating injection wells, including those which dispose of hazardous wastes by underground injection. The two programs therefore potentially overlap, and could result in duplicative regulation of the same practices. In order to avoid this, in the proposed consolidated permit regulations EPA sought to set clear jurisdictional boundaries for the two programs so that each would regulate the practices it was specifically designed to control, and duplication could be eliminated. In the main, these jurisdictional boundaries are retained in these final regulations, and are discussed below.

In general, UIC permits will be required for the well itself, while RCRA permits will be required for associated above-ground facilities which require permits under this Subpart—for example, those which store hazardous wastes prior to injection. A number of commenters objected to this scheme, and recommended that the UIC program control all facilities associated with a UIC well, even if such facilities might meet RCRA permitting requirements. EPA rejected this approach for two reasons. First, there is no doubt that EPA has authority to regulate surface storage facilities under RCRA; it is less clear that such authority exists under the SDWA. Even if authority is present under the SDWA, the UIC provisions of that statute are ill-suited to control risks associated with surface facilities, including possible explosions, leakage of hazardous waste into the atmosphere, or spills.

The final regulations depart from the proposal in that all UIC wells injecting hazardous waste will for an interim period be subject to regulation under RCRA. RCRA interim status standards have been revised so that they can be applied to wells. Thus, existing UIC hazardous waste wells must notify under RCRA section 3010 and file a Part A application form. Such wells will qualify for interim status, and will be subject to interim status standards like any other HWM facility. Except as noted below (in the discussion of new § 122.30, "Interim RCRA Permits for Class I Wells"), RCRA permits will not be issued for UIC wells injecting hazardous wastes. When UIC programs become effective, all such wells will either be issued UIC permits (in which case they will qualify for the RCRA permit by rule, § 122.26), or they will be required to shut down (see, for example, § 122.36).

There are several reasons why it is necessary to require UIC wells to obtain interim status and comply with RCRA interim status standards during this period. Perhaps most important is that, under section 3005 of RCRA, these facilities will not be allowed to receive hazardous wastes unless they have interim status, a RCRA permit, or a UIC permit which in turn would qualify them for a RCRA permit by rule. Mechanisms for issuing the UIC permits will not be in place for some time. Thus, the only practical alternative is for UIC wells to qualify for interim status.

Moreover, under the SDWA, substantive regulations do not become enforceable until they are incorporated into a UIC program adopted by a State or promulgated by EPA. States are allowed 270 days after the promulgation of UIC regulations to submit a program, and the Administrator may extend this period by as much as another 270 days. If the program submitted is unacceptable, EPA must promulgate one. This could take considerable additional time, resulting in delays of perhaps as much as two years after issuance of UIC program regulations before effective regulation of injection wells begins. EPA sees no reason why wells cannot be regulated during this period under interim status standards. These standards are simple, basic, and will provide some measure of control. The requirement that an application be submitted will also enable EPA to develop early a complete inventory of injection wells disposing of hazardous wastes, forming a basis for prompt and effective regulation of the facilities when UIC programs are in place.

Among other requirements UIC wells with interim status will be required to comply with the manifest system under 40 CFR Part 265, Subpart E when they receive hazardous wastes. Failure to impose manifest requirements on these facilities would create major obstacles to carrying out one of the primary functions of the manifest system: to track the movement of hazardous wastes from generation to disposal.

When a final UIC permit is issued to a UIC hazardous waste injection well, the well will become subject to the general RCRA permit by rule. Thus, they will not be required to obtain individual HWM facility permits. Sections 122.36 and 122.45 identify the requirements for UIC permits for these facilities. Many of the requirements of analogous RCRA regulations are incorporated in their entirety. Others are modified so as to fit wells, or are not applicable to wells. The resulting regulatory scheme provides, in EPA's view, a degree of control which is equivalent to that which would be obtained if the facilities were required to obtain individual permits under RCRA. A more detailed discussion of this issue may be found elsewhere in the preamble to § 122.36 and in the preamble to § 122.45. Thus, nothing would be gained by dual permitting, and a permit by rule carries out the purposes of § 1006(b) of RCRA, which obligates EPA to "avoid duplication, to the maximum extent practical, with the appropriate provisions of * * * the Safe Drinking Water Act" * * *.

§ *122.27 Emergency permits.*

Several comments were received on the proposed emergency authorization provision. In general, commenters supported EPA's proposal. Some commenters stated that the 90-day limit for such authorization was too short while another commenter stated this action should not be limited to permitted facilities. Another commenter stated that this provision was unnecessary as

EPA had available to it immediate relief through court action.

EPA continues to believe this provision is fully justified under the statute. Though section 7003 does authorize a court to grant emergency relief, that requirement is independent of permitting authority under section 3005 and is probably better adapted to forbidding certain acts than to permitting disposal. The right of the government to take summary administrative action in response to an emergency is well recognized in other regulatory fields and in the law generally. As the preamble to Part 124 explains, RCRA specifies no explicit requirements for issuing a permit. EPA believes that reading the general RCRA language to allow summary action in a limited and urgent category of cases is the interpretation that best carries out the overall intent of the legislation to protect public health and the environment.

This provision has been extended to include facilities that do not have a permit; however EPA continues to be conservative in defining the scope of this exemption to prevent the possibility of abuse, particularly while the program is still so new, and to restrict the number of cases in which regulatory action will be taken without an opportunity for public comment.

§ 122.28 Additional conditions applicable to all RCRA permits.

Numerous comments were received on the proposed RCRA permit conditions (proposed § 122.24). Many of the comments were in fact comments on the cross-references to the RCRA section 3004 regulations. These comments were received after the close of the comment period for that particular regulation and are not germane to Part 122 Subpart B. To the extent those comments were made during the comment period for the section 3004 regulation, they were considered as part of the rulemaking for that regulation.

Commenters interpreted the proposed permit conditions, § 122.24(e), to mean that an entire facility must be constructed or modified before any given part of that facility could be operated, or that an entire facility must be closed while part of the facility is being modified. EPA's intent was that only those portions of a facility affected by modifications would be covered by this requirement. The regulations have been revised so that this intent is explicit (final § 122.28(c)). The provision also allows for phased construction and operation of a facility over time, if the existing parts can operate alone and in compliance with the permit requirements.

Several commenters objected to the requirement that an engineer registered in the State in which the facility is located certify that the facility has been constructed or modified in compliance with the permit. Some commenters argued that this requirement is too restrictive for Federal facilities. Other commenters argued this requirement is not necessary as most States have reciprocity agreements for registered engineers. EPA agrees that requiring an engineer to be registered in the State in which the facility is located is overly restrictive and the regulation has been changed. Certification by a "registered professional engineer" is still required because a certain level of expertise is required to certify compliance with permits.

Numerous commenters stated that a time limit should be placed on the Director to inspect a completed facility. Suggestions of 10 days and 30 days were offered. Most commenters expressed concern that the Director could unduly delay start-up of a facility by not acting promptly in this regard. EPA has restructured the regulation to help alleviate this problem. If the Director does not notify the applicant of his or her intent to inspect within 15 days of the receipt of certification, he or she waives the right to prior inspection, and authorization to commence operations is automatically granted.

Another commenter stated that EPA had not provided a standard to be applied by the Director to determine whether operation should begin. The regulation now provides that the Director shall authorize commencement of operation if he or she finds the facility is in compliance with the conditions of the permit.

Several commenters also objected to the proposed requirement (§ 122.24(b)) which allowed the Director to establish permit requirements as necessary to protect human health and the environment. Commenters thought this provision allowed the Director too much discretion and would lead to imposition of conditions unrelated to RCRA. EPA agrees that this provision is unnecessary and has deleted it. However, as the preamble to the section 3004 regulations explains, in many cases the permit writer will have to exercise considerable discretion to adapt the requirements of general regulatory provisions to a specific permit. See also § 122.8 and accompanying preamble.

Several State agencies commented that in order to reduce paperwork permits should incorporate specific permit conditions by referencing appropriate sections of Federal regulations rather than list each condition in its entirety. The regulations accommodate this (see § 122.7).

§ 122.30 Interim RCRA permits for UIC wells.

There is an additional respect in which these regulations must be harmonized with those for UIC permits. RCRA prohibits the disposal of hazardous wastes except in a RCRA-permitted facility. This prohibition will take effect this fall, when the second phase of RCRA regulations, including technical standards for HWM facilities, is published. UIC Class I and Class IV wells with interim status may continue to operate. New UIC Class I wells and Class IV wells will be prohibited by RCRA from accepting hazardous waste for disposal because only existing facilities qualify for interim status (under section 3005(e) of RCRA). (See § 122.32 for a discussion of how injection wells are classified under UIC.) If these wells are permitted under UIC, they will be covered by a RCRA permit by rule (§ 122.26). However, many States may require as much as a year after the RCRA prohibition takes effect to develop and submit a UIC program. Until then, there will be no UIC program and therefore no authority to permit new Class I wells (or Class IV wells, if EPA decides to allow them to be permitted). Thus, EPA could inadvertently create a moratorium on the construction of new Class I wells which could last two or more years. Because these wells are, in some cases, the preferred method of disposal of hazardous waste, EPA believes this result is undesirable.

Accordingly, EPA intends to issue standards under RCRA § 3004 which would allow EPA or approved States to issue RCRA permits to new hazardous waste injection wells. Such standards would be patterned closely on 40 CFR Part 146, so that wells would not be subject to possible new or inconsistent construction and operation requirements as their RCRA permits expire and they come under regulation under the UIC program.

The actual issuance of the permits involved can be done either by EPA Regional Administrators or by the States. At their option, States may assume, under section 3006 of RCRA and 40 CFR Part 123, permitting authority for Class I wells during the period after the RCRA permit requirement goes into effect, but prior to approval or promulgation of a UIC program in the State. Accordingly, States may apply to EPA for approval to issue permits under RCRA to Class I wells, as part of their applications either

for interim or final authorization. The technical standards for such permits will be issued this fall at the same time as the other RCRA technical standards, and will be closely modeled upon 40 CFR Part 146, the technical standards for UIC permits. Because EPA continues to view the UIC program as the most effective vehicle for regulation of underground injection, the permits will be limited in duration to not more than two years. At the end of the two year period, either the State will have an approved UIC program or EPA will have promulgated one under the SDWA.

The Regional Administrator will have authority to issue RCRA permits to UIC facilities under the same conditions in the event that the State Director does not seek authority to issue them. EPA does not anticipate that it will be asked to issue such permits except in a very few cases. The total number of Class I UIC wells is small—about 400—and has grown at a slow rate.

Class IV wells are continuing to be studied in connection with the request for comments on Class IV UIC wells (see preamble discussion of §§ 122.36 and 122.45). EPA will announce treatment of these wells this fall at the completion of consideration of comments.

Proposed § 122.25(a), Health Care Facility Permits. The provisions for special permits for health care facilities have been deleted. The section 3001 regulations do not include infectious waste at present and the section 3004 regulation does not have specific standards for the treatment, storage or disposal of infectious waste. If future versions of these regulations cover infectious waste the permit requirements can be revised if necessary.

Proposed § 122.25(b), Experimental Permits. As proposed, RCRA permits were normally to be issued for the designed life of the facility and experimental special permits were to be issued for up to one year with a one year maximum extension. Because EPA will now issue RCRA permits only for up to ten years, and permits can be limited to one year if necessary, the experimental permits section has been deleted.

Proposed § 122.27, Reporting requirements. Comments suggested that the reporting requirements under this section be reviewed to determine if less stringent requirements would suffice. EPA has done this and has reduced the requirements to the minimum it now estimates are necessary to carry out the RCRA program in an adequate and responsible way. Since the program has not started yet, any estimate of the reporting needs is likely to require revision in the light of experience, and EPA will re-examine these requirements once the program has a sufficient degree of operating history behind it. All RCRA reporting requirements for permitting agencies are now contained in § 122.18.

Subpart C—Additional Requirements for UIC Program

These regulations in part establish program requirements for State Underground Injection Control programs under the Safe Drinking Water Act. However, not all the regulations called for under section 1421 of that Act appear in these consolidated permit regulations. The technical requirements for State UIC programs will appear separately as Part 146. The Agency expects to publish Part 146 regulations within a month.

The SDWA requires any State listed under section 1422 of that Act to submit a UIC program for approval within 270 days after "promulgation of any regulation under section 1421 . . . ." The Administrator may grant a 270 day extension. EPA believes, however, that it would be inappropriate for States to be subject to a statutory deadline for preparing and submitting programs when many of the necessary requirements for the programs have not yet been issued. The statute does not specify when "promulgation" takes place. Accordingly, to avoid confusion, EPA is fixing the date of "promulgation" of Part 122, 123, and 124, to the extent that they establish UIC program requirements, to the effective date of the 40 CFR Part 146 regulations. This effective date will be 30 days after the publication in the **Federal Register** of regulations under Part 146.

§ 122.31 Purpose and scope of Subpart C.

This is intended to be an introductory or "roadmap" section corresponding to sections which have been added to Subparts A, B, and D. One goal of this section is to clarify the connection between the proposed process for "identification" and the regulatory requirements designed to protect underground sources of drinking water (USDWs). The section now emphasizes the fact that USDWs are to be protected regardless of whether they have been accurately mapped or otherwise identified. Mapping or otherwise identifying USDWs will aid the Director in fulfilling this requirement.

The Director may also identify "exempted aquifers" using criteria in Part 146. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Exempted aquifers are treated as exempt only if they have been affirmatively identified as "exempted aquifers" by the Director in the UIC program for the State.

This section also contains a list of "specific inclusions" and "specific exclusions" parallel to similar lists in the other Subparts of Part 122. These lists are designed to give readers a quick indication of whether their facilities come within the scope of the UIC program. These inclusions and exclusions are not exhaustive, but illustrative. The language of the regulations must be applied to determine whether the program applies to a particular activity.

Septic tanks or cesspools used to dispose of hazardous wastes have been specifically included within the definition of an injection well. In House Report No. 93-1185 (page 31) Congress specifically expressed its intentions that EPA include underground injection systems "other than individual residential waste disposal systems" when they are used to inject contaminants, including hazardous waste.

Several commenters questioned whether EPA should impose the same monitoring, reporting, construction and operating requirements for injection wells sited in areas without any USDW to be protected as it does in areas with one or more USDW. One commenter questioned EPA's legal authority to control wells located outside State territorial waters. Several additional commenters asked EPA to clarify the scope of coverage. EPA agrees that the UIC program is a State program and is not applicable to injection wells located outside State territorial waters (i.e., to injection wells at platforms located on the outer continental shelf). A specific provision to this effect has been added to § 122.31(d).

Section 122.43 has been added to allow the Director discretion in reducing regulatory requirements under certain circumstances.

In the proposal, EPA exempted drilling muds and cement from the program, because the Agency did not impose requirements prior to operation. Since preconstruction permits are now required, this exemption has been deleted. When UIC permits are issued, they should routinely authorize emplacement of these materials.

§ 122.32 Classification of injection wells.

In response to several comments the definition of Class I wells (other than hazardous waste wells) has been limited

to include only those wells injecting beneath formations which contain USDWs within one quarter mile of the well site. Individual formations are often identifiable for hundreds of miles and a formation may be suitable in one area as a source of drinking water yet not in another. The limitation prevents a well from being subjected to Class I requirements simply because it injects under an aquifer which, miles away, contains drinking water. Such a well would now be treated as Class V. Class I will also now include all wells injecting hazardous wastes other than Class IV wells.

EPA proposed to classify wells disposing of "nuclear" wastes in either Class I or Class IV, but did not define the term in the proposal. Few commenters addressed this aspect of the proposal, although some objected to granting States authority over these sources. The President on February 12, 1980, issued an Executive Order outlining a program to arrive at a comprehensive radioactive waste management program. Until this program is complete, and EPA has had an opportunity for full consultations with the Nuclear Regulatory Commission, the Department of Energy, and other agencies with responsibilities potentially affecting radioactive wastes, it would be premature for EPA to issue regulations concerning the disposal of radioactive wastes into Class I wells. Moreover, EPA wishes to coordinate any regulations governing sand backfill wells with regulatory measures it may undertake under the Uranium Mill Tailings Act. Accordingly, EPA has modified the classification of wells so that wells disposing of radioactive wastes below strata containing a USDW will be Class V wells.

However, the disposal of radioactive wastes into or above USDWs is an environmentally undesirable practice. Therefore, EPA has added a definition of "radioactive waste" in § 122.3 which clarifies that the term "nuclear" waste used in the proposal was intended to cover not only the radioactive wastes which are hazardous wastes under RCRA but also fission by-products and similar wastes covered under the Atomic Energy Act of 1954. The disposal of all such wastes into or above USDWs is included in Class IV and will be regulated according to the scheme promulgated here for Class IV wells: those Class IV wells injecting into a USDW are prohibited; requirements for other Class IV wells will be promulgated in the fall of this year. (See the discussion of Class IV requirements below.)

A large number of commenters questioned the need for regulations governing Class II oil and gas wells. Many felt that existing State programs are adequate and many questioned the legality of Federal requirements citing the SDWA's prohibition against interfering with or impeding oil or natural gas production.

Class II wells still include all those covered by the proposal except those injecting natural or synthetic gas. However, there are many features of these regulations which are designed to prevent inclusion in the UIC program from being unduly burdensome. These include permitting by rule for existing Class II wells for the life of the well; additional time (three years) for compliance with construction requirements; area permitting for entire well fields and allowing for new enhanced recovery wells covered by existing area permits to be installed prior to notice to the Director; and elimination of the area of review and corrective action requirements for existing Class II wells. Those Part 146 requirements for Class II wells which are potentially burdensome are written with flexibility. Others, for example monitoring and reporting, are not burdensome enough to cause interference with oil and gas production.

The hydrocarbon storage industry argued that: (1) the underground storage of natural gas does not meet the statutory requirement for underground injection because it is stored and not disposed of; (2) Congress did not intend for EPA to regulate the storage of natural gas; and (3) natural gas is not a "contaminant." In both the SDWA and the 1977 Amendment to the Act the term "underground injection" means the "subsurface emplacement of fluids by well injection." Natural gas is a fluid which is emplaced into an underground formation or reservoir for the purpose of storage by well injection.

The House Committee Report (H.R. Report 93-1185, page 31) indicates that the Committee decided to include natural gas under the definition of a fluid. The term "fluid" is defined in both this document and in the April 20, 1979 proposed Part 146 regulations (44 FR 34270) as a "material or substance which flows or moves whether semisolid, liquid, sludge or any other form or state."

The SDWA defines "contaminant" broadly as "any physical, chemical, biological, or radiological substance or matter in water." (Section 1401(6).)

Even though EPA believes natural gas is clearly subject to the Act's regulatory scope, EPA believes that the commenters are correct insofar as they make a technical argument that underground storage of natural gas poses no threat to USDWs in the vast majority of cases and that inherent economic reasons compel operators on their own initiative to employ stringent technical controls to prevent loss of an extremely valuable resource. However, the Agency does have some concern that natural gas storage could displace formation fluids into a USDW. Accordingly, this section has been modified so as to classify the underground storage of natural gas and other gaseous hydrocarbons within Class V. As such they will be authorized by rule and subject to assessment by the Director and any further regulatory requirements that may be fashioned in the future. In the interim, the Director will have authority to take action against such wells, including requiring them to get a permit, in those cases where it is necessary, see § 122.37(c). Underground storage of liquid hydrocarbons (gasoline, crude petroleum, and others) will remain in Class II. These hydrocarbons have a greater potential for contaminating water than do gases, which would be normally driven into the atmosphere as soon as the contaminated water was drawn from the tap.

The definition of Class III injection wells has remained unchanged.

The definition of Class IV wells has been limited with regard to its proximity to a USDW, in the same way, and for the same reason, as the definition for Class I wells. In addition, the proposed definition covered any well injection by a HWM facility, which was overly broad. Several commenters suggested that Class IV wells should be limited to those wells which inject hazardous waste and not include any and all injection wells owned by a hazardous waste generator or disposer. EPA concurs and has redefined Class IV wells as those, including non-residential septic system wells, used by hazardous waste management facilities to inject hazardous material into or above formations that contain an underground source of drinking water. Disposal wells not associated with HWM facilities, such as those on farms injecting water containing pesticide residues, will be classified as Class V.

Any injection well which is not otherwise classified will be a Class V well. Such wells are not free from regulation (see § 122.34), but need not comply with the technical design and operation requirements prescribed for other classes of wells in Part 146.

Commenters said that sand backfill operations using uranium mill tailings which meet the hazardous waste criteria

of RCRA might be injecting materials termed hazardous. They pointed out that the proposed regulations consider sand backfill operations to be Class V wells but, if they do inject hazardous waste, the operations might be considered Class IV wells.

In sand backfill operations waste materials remaining from the milling process are returned to abandoned portions of the mine from which they were originally removed. While some of these materials may be defined as hazardous they are waste from processing operations that must be disposed of in some manner. Even though there are environmental risks connected with the placement of certain materials in sand backfill operations, in some instances, it is the most environmentally safe method of disposal. EPA believes further study is needed before technical criteria can be prescribed for these wells. They will therefore be classified in Class V, whether or not the tailings are hazardous wastes. Keeping these operations in Class V allows an inventory and assessment procedure to determine the actual risk individual sand backfill operations present. Provisions are already contained in the regulations for removal (including immediate closure) of any Class V wells which present a significant risk.

§ 122.33 Prohibition of unauthorized injection

This new section has been added to clarify the basic legal authority which any State must have in order to carry out a UIC program. A requirement that the State prohibit construction of an unauthorized well, as well as injection, has been added. EPA believes that permits must be issued and control requirements applied before a well is constructed, not simply when it goes into operation. Among the technical requirements of Part 146 are construction requirements. It may not be possible to assure compliance with these requirements if a permit is not issued until after construction of the well.

§ 122.34 Prohibition of movement of fluid into underground sources of drinking water

We have moved proposed § 122.38, the general prohibition against movement of fluids into USDWs, up front as new § 122.34. The technical rationale for the prohibition, and responses to comments, appear in the preamble to Part 146. The provision has been augmented to include the basic provisions designed to achieve protection of USDWs for all classes of wells, not just Class I, II, and III.

EPA believes that this reorganization will serve to place the basic requirements of the UIC program up front, and dispel confusion about their operation. For Classes I, II, and III, no injection may be authorized by permit or rule if it causes or allows the movement of fluid into a USDW. If monitoring indicates movement, the Director may impose additional requirements as necessary. This standard for Classes I, II, and III was selected because it is operationally meaningful (i.e., it can be measured or otherwise determined) and because it can be achieved through the use of available, good engineering practices.

Because of the design of Class IV wells, the use of good engineering practices will not reliably insure that movement of fluids into USDWs will not occur. Consequently, Class IV wells injecting directly into a USDW are to be closed. The regulation of other Class IV wells is reserved.

Similarly, Class V embraces wells of differing construction and design, many of which inject non-hazardous fluids into and above USDWs. A "no movement" standard would not make sense for these wells. Therefore, the prohibition relies on the language of the SDWA. Class V wells are not to cause a violation of primary drinking water standards and they are not to affect the health of persons adversely. While the Class V wells are being assessed, the Director is to take action with regard to any well that violates either of these prohibitions. Such action may be accomplished through an order or by requiring the injector to apply for a permit.

The permit mechanism may be a more efficient one under some State laws to prescribe controls. The regulation leaves to the Director's discretion what technical requirements would be imposed through such a permit. However, all the conditions in §§ 122.7, 122.41, and 122.42 must be included in such permits except for the plugging and abandonment requirements and mechanical integrity requirements of § 122.42, which the Director may include as a discretionary matter. By an amendment to § 122.9 (duration of permits), a Class V well may be permitted for up to ten years.

A new provision has been included to authorize the Director to take emergency actions whenever EPA would be authorized to do so under section 1431 of the SDWA, to prevent imminent and substantial endangerment to the health of persons.

122.35 Identification of underground sources of drinking water and exempted aquifers

Numerous commenters noted the apparent contradiction between Part 146 and Part 122 on aquifer designation and noted that EPA used different definitions for a USDW in the RCRA and UIC programs. EPA has clarified its intent and resolved the differences between RCRA and UIC by identifying USDWs by definition. The Director may designate aquifers as USDWs to facilitate program administration and put potential injectors on notice of regulatory requirements.

EPA encourages State Directors to designate aquifers as USDWs, and to make the designation as thorough and complete as possible. Even if an aquifer is not designated, it is a USDW if it meets the technical criteria of § 122.3 and has not been exempted. For this reason, the burden will be on any owner and operator planning to construct an injection well to ascertain if the well is likely to pass close enough to a USDW to require a permit, or to determine if a permit is otherwise required (if, for example, the injector is injecting hazardous wastes). Thus, for example, an injector might commence drilling a well believing it was not going to inject hazardous wastes and that the well would not intersect or pass close to a USDW. Such a well might be authorized by rule as a Class V well. If the drilling operation intersects an aquifer, however, the driller must sample the water and test it to determine if it is a USDW, and if so, must cease all further drilling and construction until it has obtained a permit as required by the State program.

Some aquifers may not, as commenters noted, be amenable to description by geographic methods. The Director may identify USDWs or exempted aquifers in narrative terms or a combination of narrative and geographic terms.

The State Director may also identify "exempted aquifers." A definition of "exempted aquifer" has been added to § 122.3(c). This term takes the place of the exceptions to USDW's formerly listed in proposed § 146.04, which also appeared in the definition of USDW in proposed § 122.3(a). The term and its definition have been adopted by EPA from several suggestions by commenters. An exempted aquifer is an aquifer or portion which would normally qualify as a USDW but which for any of several specified reasons has no actual potential for providing drinking water and which has been affirmatively identified as an exempted aquifer by the

State Director as part of the program description required by § 123.4(g). If a State Director exempts an aquifer or portion of an aquifer, it is not treated as a USDW subject to the protections of these regulations.

§§ 122.36 and 122.45 Requirements for Class IV and other hazardous waste wells.

In the final regulations, all wells which are used to inject "hazardous waste," as defined under RCRA, are grouped into Classes I or IV. Class IV also covers the injection of radioactive wastes. Standards for Class I wells have already been discussed above. Section 122.36 establishes, on an interim basis, a prohibition, also required for approvable State administered programs, against the injection of hazardous waste directly into underground sources of drinking water (USDWs). The prohibition is effective six months after the effective date of a State program. Requirements applicable to other Class IV wells—those which inject above, but not into, USDWs—are reserved. Also reserved are additional requirements (for example, monitoring and retention of records) for Class IV wells injecting into USDWs.

Section 122.45 establishes additional requirements for operators of wells through which manifested hazardous wastes are injected. They apply to Class I wells and will apply to Class IV wells as final standards are established. This section essentially requires that the operators of these wells comply with selected requirements established for hazardous waste management facilities under 40 CFR Part 122 Subpart C and 40 CFR Part 264.

The proposed standards for wells used to inject hazardous waste (§ 122.45, 44 FR 34285, June 14, 1979) provided for a ban on the construction and operation of new Class IV wells, and a three-year phase-out of existing ones. The proposal would also have required that wells used to inject hazardous waste comply with the manifest and record-keeping requirements of the hazardous waste management regulations.

The definition of Class IV has been narrowed. The proposal required only that the well be owned or operated by: (1) a generator of hazardous waste; (2) the owner or operator of a hazardous waste management facility, and (3) that the injection be into or above a USDW in order to be included in Class IV. Commenters correctly pointed out that this definition could embrace wells that were not in fact used to inject hazardous waste. A requirement that hazardous wastes be injected has now been added to the definition of Class IV. The definition also clarifies that the injection has to be "into or above a formation which, within one-quarter mile of the well, contains a USDW" (§ 122.32).

A *second* major change has been made with regard to the coordination of regulatory authorities under RCRA and SDWA. Both Acts mandate regulatory controls on these wells: RCRA because hazardous wastes are disposed of, the SDWA because fluid is emplaced beneath the surface. The draft regulations proposed that all surface facilities involved in managing hazardous waste be regulated under RCRA. The well itself, from the cut-off valve at the wellhead was to be regulated under SDWA. The rationale for the proposal was that the different technologies (surface management v. injection) could be grouped and regulated by technical requirements appropriate to each.

One commenter in particular objected, arguing that the injection of hazardous waste be regulated under RCRA because the regulations under RCRA could afford a higher level of protection. The Agency does not agree that the SDWA is inherently weaker in preventing the potential impacts of injection. Indeed, the SDWA provides broader authority to regulate the injection of materials (e.g., oil and gas related brines and fission by-products) than RCRA.

However, because the SDWA allows States up to 18 months to develop UIC programs, there could be instances in which no effective UIC program will exist in a State for two years after the effective date of these regulations. In order to provide some level of environmental protection during this period, § 122.45 now requires all injectors of hazardous waste to obtain "interim status" under the hazardous waste management program. When the applicable State UIC program becomes effective, such injectors will be regulated under the UIC program. However, § 122.26 provides for a permit by rule under RCRA which will be satisfied if the injector is in compliance with the applicable UIC standards. In order to make control under SWDA substantially equivalent to control under RCRA, § 122.45 has been expanded to include appropriate standards from 40 CFR Part 264 in addition to the manifest system.

The *third* major change from the proposal is that the requirements for Class IV wells, other than those injecting hazardous wastes into a USDW, are reserved. There are several reasons for this decision. While few commenters questioned the basic premise underlying the proposal, some questioned whether, at least in some cases, the migration of fluid into a USDW would in fact cause any adverse effects either on drinking water supplies or human health. Other commenters suggested that a well should not be banned if it overlies a deep or remote USDW which it is not likely to contaminate. As noted above, commenters also indicated their belief that the definition of Class IV was too broadly drawn, and that, therefore, the proposed standard was unnecessarily protective. The Agency has reviewed these comments and is mindful of its obligation to proceed with extraordinary care before imposing an absolute ban on any practice. The Agency's concern in fashioning the proposal was to afford protection to drinking water sources. Nor is the Agency contemplating any changes which would sacrifice or endanger drinking water sources people rely on. Furthermore, wells injecting hazardous wastes are also subject to RCRA which mandates a broader set of environmental concerns than drinking water. Nevertheless, there may well be portions of aquifers so deep or remote that they may never serve as drinking water sources, or conditions under which a particular injection may not have an impact on the quality of the drinking water source.

A further reason for the proposed approach is that regulations under RCRA and SDWA touch at several points. Facilities under Class I and Class IV overlap the class of facilities designated under RCRA as hazardous waste management facilities. It is, therefore, appropriate that technical standards under RCRA and UIC be consistent, to the extent allowable under the governing statutes, for facilities capable of causing a similar degree of environmental risk.

EPA has decided to defer issuance of permitting standards for HWM facilities until fall 1980. Adoption of UIC standards now for Class IV wells could prove misleading to the States and the public, because EPA might decide this fall to revise the standards to reflect policy decisions made in connection with RCRA standards. The best course is to defer the technical standards for Class IV wells which inject above USDWs until fall 1980. Accordingly, we now solicit further comment on requirements for Class IV wells.

EPA has under consideration several options which would allow Class IV wells to inject, in certain circumstances. In order to assist commenters, these options are described below. In addition to the SDWA, EPA is considering invoking RCRA authority to deal with

Class IV wells. Accordingly, after consideration of comments, EPA will publish regulations this fall amending 40 CFR Part 122, Subpart C, or Parts 146, 264, or 265. At that time, EPA may decide to prohibit all Class IV wells as proposed under SDWA or RCRA or both, adopt any of the options discussed below, or adopt any combination or modification of the options which appears justified based upon the record, including comments received.

The language of the Act (section 1421(d)(2)) states that:

> Underground injection endangers drinking water sources if such injection may result in the presence of underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulations or may otherwise adversely affect the health of persons.

For the proposed regulations, EPA adopted a conservative approach to the designation of USDWs. This approach was based upon that suggested in the House Committee Report on SDWA (H.R. Rept. No. 93–1185, 92d Cong., 2d Sess. at p. 32). Thus, EPA proposed to protect any aquifer or aquifer portion already in use as a source of drinking water. Aquifers or portions which could potentially serve as drinking water sources would also be protected if they could yield useable quantities of water containing fewer than 10,000 mg/l of TDS.

Potential drinking water sources which met the technical definition could be designated as "exempted aquifers" if they are: (1) hydrocarbon, mineral or geothermal energy producing; (2) so contaminated as to make their use for human consumption technically or economically impractical; and (3) located in such a fashion as to make their use technically or economically impractical.

Within this regulatory approach, two alternative methods suggest themselves for expanding the range of allowable Class IV practices. The first is to attempt a more precise distinction between ground water in general and ground water that serves or can reasonably be expected to serve as a source of drinking water. Option A takes this approach.

A second possible approach is to attempt a more precise definition of the circumstances under which the presence of contaminants in a USDW may or may not cause a system to exceed national primary drinking water (NPDWR) standards or otherwise adversely affect the health of persons. Option B takes the latter approach.

Option A. This option would entail modification of the definition of a USDW to decline to protect USDWs in areas adequately served by other sources. EPA is aware of areas of the country which are underlain by aquifers containing immense quantities of usable fresh water, or where surface water supplies are so plentiful that they could reasonably be expected to supply all foreseeable needs for drinking water. In such cases, EPA is willing to consider a policy which would authorize injection through Class IV wells.

In this approach, an additional basis for exemption could be added to § 146.04 that would allow the Director to decline to protect an aquifer or its portion if it "otherwise cannot reasonably be expected to serve as a source of drinking water." To justify such an exemption, the Director could be required to consider the following factors:

- present and future availability of alternative sources of drinking water;
- future population growth and land use patterns in the area; and
- the expected growth in the demand for drinking water.

In keeping with the revised definition noted above, such wells would fall under Class I because they would inject into exempted aquifers (i.e., not into or above a USDW). Injectors would apply for permits with a duration of up to ten years as specified in 40 CFR 146 Subpart B, with one exception. The applicant would be required to make a showing that the injection would not impact aquifers or portions of aquifers protected as USDWs. Such a showing would involve a demonstration that the injection zone is not in hydraulic connection with or that the natural flow from the injection zone is away from protected USDWs.

The application would be processed as any other Class I permit application. Under § 122.43, the Director would have the discretion to require such permit conditions as he believes necessary to protect USDWs.

Option B. This option would recognize that the injection or presence of contaminants in a USDW may not necessarily lead to drinking water supplies exceeding the NPDW standards or adverse effects on the health of persons. Based on this rational, a more liberal approach could be taken to regulating Class IV wells if the applicant could demonstrate that the injection: (1) is environmentally the most acceptable method of disposal; and (2) would not contaminate the portion of the aquifer from which water is drawn for drinking.

Under such an approach, the standard that the applicant would have to demonstrate would be that:

- technology for safe disposal is not available, taking into account the costs;
- injecting fluid will be less harmful than use of other available means; and
- technology and other means will be employed to reduce volume and toxicity of waters.

The applicant would be required to:

- demonstrate that the proposed injection is the most environmentally acceptable alternative available considering technology and the cost of:
  - Trucking to an approved site.
  - Pretreatment prior to injection.
  - Construction of a Class I well.
  - Incineration.
  - Segregation of streams and/or reduction in flow.
- demonstrate anticipated ground water impact will not adversely affect the health of persons or violate NPDWR based on the following information:
  - Injection volume and pressure.
  - Life of operation.
  - Direction of ground water flow.
  - Proximity to use.
  - Monitoring up gradient and down-gradient.
  - Geological and hydrological data.
  - Closure plan.

There would be certain common elements under both options. Injectors would be required to obtain a permit to operate a Class IV well within one year of the effective date of the State program or close. Permits could be for a duration of 10 years, and new wells would be subject to the requirement in § 122.33 that a permit be obtained prior to the construction of a new well.

Similarly, there are certain common questions with regard to implementation under either option. The Agency solicits specific, detailed comments on these questions: *First,* do factual circumstances exist in which EPA should allow injection of hazardous waste into or above an underground source of drinking water? *Second,* if so, what information should be required of the applicant to show that the injection will not endanger drinking water sources, and what criteria should the Director use in granting or denying permits? *Third,* should new and existing Class IV wells be treated differently or alike? *Fourth,* should the decision to allow the use of a Class IV well be made as part of a statewide or regional plan (e.g., section 208, land use, RCRA section 4007 solid waste plan, UIC program application) or as part of the individual permit decision? *Fifth,* what factors should be considered in subdividing aquifers into relatively confined exempted areas and USDWs?

Sixth, what procedures should be imposed to ensure full public participation in decisions to allow injection through Class IV wells? *Seventh,* what kinds of post-closure care requirements (monitoring, third-party liability, use restrictions) should be imposed on Class IV well operators? *Eighth,* are the authorities under SDWA and CWA sufficient to prevent the potential impacts of such injections or should RCRA authorities be invoked to meet non-human health related environmental concerns such as aquifers discharging to streams and surface impact on vegetation?

These final regulations prohibit new Class IV wells injecting directly into USDWs as of the effective date of these regulations. Existing such Class IV facilities are allowed only six months from the effective date of the State program in which to close, which will in many cases, be more than two years after the date of these national regulations. Even though requirements for these wells are reserved under the UIC program, all Class IV wells must meet interim status standards under RCRA.

§ 122.37 Authorization of underground injection by rule.

Only minor changes have been made from the proposal. First, the section has been written to clarify when construction requirements must be complied with. Second, the rules are limited to exclude wells which have not responded to inventories generally, not merely Class IV and V inventories.

A number of commenters noted that this section as proposed did not explicitly specify what operational requirements were applicable to injectors authorized by rule, as opposed to by permit. This section has been revised to incorporate the applicable requirements of §§ 122.41 and 122.42. Most of these requirements are as necessary for rules as they are for permits. The exceptions (for example, the requirement that the injector apply for a renewal permit) are explicitly noted here.

In response to comments, this section has been revised to allow a rule to continue (even beyond its termination date) to authorize injection where the injector has applied for a permit and the Director has not yet acted on the application.

A new paragraph (c) has been added to this section to authorize the Director to require an injector authorized by rule to apply for a permit. EPA believes that this authority may be necessary in some cases to provide a means of promptly imposing cleanup measures on problem wells, or of allowing the Director to phase in the permitting of wells in an orderly way.

EPA rejects the claim by one industry that the authorization of existing Class II wells by rule will result in loss of oil reserves. Existing wells are allowed to continue current operations with the exception that they must start monitoring and reporting, at small cost. The estimated costs for this monitoring and reporting are given in the preamble to 40 CFR Part 146.

§ 122.38 Authorization of underground injection by permit.

As proposed, the section referred to a schedule for submitting permit applications which was to be part of a State Director's program submission under Part 123. However, no mention was made of what happens when EPA is the permitting authority. When EPA promulgates any UIC program for a State, it will specify the schedule for applications to be submitted. For States, the program description under § 123.4 will establish the schedule.

Proposed paragraph (d), mechanical integrity, has been relocated as a permit condition in § 122.42. A very large number of commenters objected that the prohibition against permitting wells which lacked mechanical integrity was illogical since permits are issued prior to construction and mechanical integrity cannot be shown until after construction. Relocation and rephrasing of this requirement is responsive to this concern.

A commenter objected to the proposed provision authorizing a State to allow an applicant to submit an application as much as four years after program approval. The commenter pointed out that this schedule conflicted with the three-year schedule set out in section 1421(b) of the SDWA. EPA has retained the four-year phase-in. All injectors must be authorized either by permit or rule under a State program, as required by section 1421. However, EPA believes that a reasonable phase-in period is necessary for States to issue permits in an orderly way, and finds a four-year period to be reasonable. Moreover, the States will have inventory information under § 122.37 well before the expiration of the four-year period and can take action under § 122.37(b) to require an early application if necessary.

A commenter asked EPA to specify how long in advance of operation a permit application is required. Since a permit will be needed for construction, each owner or operator should submit a complete (under § 122.5(c)) application for a permit as early as possible to allow time for the Director to process the application. Since the time needed to process a permit will vary with complexity, available State resources, controversial situations, and other factors, EPA has chosen not to require a fixed time for submission prior to starting construction. Instead, EPA has retained the requirement that the application be submitted to the Director a reasonable time before construction is expected to begin. EPA suggests that an applicant submit applications at least six months in advance of planned construction.

§ 122.39 Area permits.

This section has been extensively rewritten for logic and clarity. The only substantive change is to allow for new injection wells within the area without requiring *prior* administrative authorization. Many commenters noted that without such a requirement it would be impossible for some Class III operations, such as frasch process or solution mining operations to continue. The rewritten section should eliminate any possibility that the need for authorization will hold up the drilling of additional wells within the area. However, additional wells are carefully regulated under the terms of the area permit and the permit can be modified or revoked if its terms are violated. Additional wells will constitute grounds for minor modifications of the area permit which, if necessary, can be made without requiring public notice and opportunity for a hearing.

Commenters pointed out that many Class II well fields are cut by faults, even though the field is a distinct unit. These commenters contended it was unreasonable to limit area permits to fields injecting into the same aquifer. In response, EPA has eliminated the requirement that all wells inject into the same aquifer. They need only be within the same well field, facility site, reservoir, project, or similar unit in the same State. The final rule also adopts a commenter's suggestion that control by a single "owner or operator," rather than a single "person," be required for area permits.

Comments objected to the authorization of new wells within an area covered by an area permit where the Director has not considered the cumulative impact of the new wells, when added to those existing at the time of permit issuance. EPA agrees, and has added a requirement that the Director consider these cumulative impacts before issuing an area permit which authorizes new wells to be drilled without specific approval by the

Director. The final rules do not require that the location of every well that might be drilled under an area permit be identified in advance of permit issuance. However, there must be sufficient information on potential new wells in order for the Director to consider cumulative impact. If there is not, the Director may issue an area permit covering only existing wells if he or she wishes to, but new wells will be required to obtain individual permits.

§ 122.40 Emergency permits.

EPA proposed this section as § 122.40, "Temporary authorization." It has been renamed "Temporary permits" to correspond to its actual function, and to the scheme of the SDWA, which requires UIC programs to prohibit any injection not authorized either by a rule or a permit. EPA does not view this section as unlawful or as an attempt to depart from the statutory scheme, as contended by one commenter. A temporary permit is a permit. The procedures for its issuance, while different from those for other permits under this Part, in no way contravene the SDWA. EPA believes, moreover, that the stringent and narrow conditions under which temporary permits can be granted not only fill a real need, but will assure that the injection does not endanger drinking water sources.

The issuance of these permits is, of course, optional with the State Director. No State which does not wish to issue temporary permits is required to do so by these regulations.

Numerous commenters expressed concern that the EPA permitting procedures have the potential for creating or contributing to major delays in issuing permits. Several stated that issuance of draft permits is an unnecessary step in the UIC permitting process. Others claimed that the detailed procedures in Part 124 appear to be excessive in that they provide for unwarranted delays in the permitting process for oil and gas wells.

EPA evaluated these comments and found that the permitting time delays arising from these regulations would not cause an unwarranted delay except where new field (wildcat) wells were involved. If a wildcat operator found oil he or she might have to delay initial production in order to secure a UIC permit to drill an injection well which conforms with these regulations.

To avoid any unnecessary delay in production for new field wildcat wells, § 122.40 has been expanded to permit the Director to issue an emergency authorization for a new Class II injection well where a substantial delay in production of oil or gas resources will occur unless it is granted. Such authorization must not result in the movement of fluids into a USDW. The authorization is valid only during the time the permit application is being processed, provided the application is submitted within 90 days, a period EPA considers more than ample.

§ 122.41 Additional conditions applicable to all UIC permits.

One commenter noted that the sequence of permitting steps and construction for new wells was confusing in the proposal. EPA agrees and has moved a paragraph covering construction requirements into this section from §§ 146.12, 146.22, 146.32 and 146.42. Permits are issued prior to construction and contain requirements which govern the construction of the well. Wells must be in compliance with these requirements before injection begins. Changes in construction plans during construction may be approved by the Director as minor modifications. To avoid any unnecessary delay in production for new field wildcat wells, § 122.40 has been expanded to permit the Director to issue a temporary permit for an injection well where a substantial delay in production of oil or gas resources will occur unless temporary authorization is granted to new Class II wells. Such permit must not result in the movement of fluids into a USDW. The temporary permit is valid only during the time the permit application is being processed.

The plugging and abandonment condition has been rewritten to cover the possiblity of conversions of wells to new uses rather than abandonment. Injectors must notify the Director 180 days in advance of plans to convert or abandon a well so that the Director may review the plugging and abandonment procedures or otherwise act to prevent contamination.

A new requirement has been added that the permittee retain records on the nature and composition of injected fluids until at least five years after plugging and abandonment, at which time the Director may require the permittee to turn over the records. This provision is necessary in order to assure that if contamination of a USDW is discovered, the Director will have ready access to records of injected fluids which might be necessary to trace the origin and direction of flow of the contaminating fluids. EPA encourages the States to establish a system to retain these records for as long as possible.

§ 122.42 Establishing UIC permit conditions.

While § 122.41 itself prescribes permit conditions, this section prescribes the manner in which certain types of permit conditions must be established by the Director when issuing permits. The section is also intended to serve as a complete cross-reference to the applicable requirements of 40 CFR Part 146, as well as other requirements of Part 122, Subpart C, which must be applied through UIC permit issuance. Most of the requirements referenced in this section are actually established elsewhere, and comments on those requirements are dealt with in connection with the sections which establish them. However, several requirements established by this section do not appear elsewhere, and are discussed below.

Construction requirements and plugging and abandonment procedures are handled the same way. The permit applicant must develop and submit for the Director's approval permit conditions necessary to assure adequate plugging and abandonment, or testing, drilling, and construction. The Director may adopt the proposed conditions or prescribe other appropriate ones. The injector is presumably in the best position to know how these construction-related requirements can best be tailored to the individual well site. This provision will enable the Director to take advantage of that expertise, as well as giving the applicant an opportunity to suggest optimally efficient permit requirements.

This section also includes financial responsibility requirements. These were proposed as § 122.42(a)(7). The proposal did not specify a dollar amount for the performance bond or other instrument, but each well would have been required to be covered by a financial responsibility instrument. A number of comments were received. Many of these comments addressed the dollar amounts of financial responsibility instruments already required under some State laws, and suggested that applying these amounts to each well would shut down many marginal well operations. In consideration of these comments, EPA has revised the regulations to give the Director clear discretion to approve any form of financial responsibility which is equivalent to a performance bond to close, plug, and abandon the well in a manner prescribed by the Director.

The Director might conclude, for example, that the applicant's financial statement showing large assets sufficiently proves the applicant's financial stability and reliability. A

State Director might require an applicant to set up an escrow account where authorized by State law (because of Federal statutes, this alternative is not open to a Regional Administrator).

Similarly, if the Director requires a performance bond, he or she may authorize an owner or operator controlling a large number of wells to post a single instrument of financial responsibility covering all wells within a State. EPA considered establishing a minimum dollar amount for performance bonds covering all wells within a State. This did not appear practicable, however, for two reasons. First, such a fixed requirement seemed inconsistent with the broad discretion granted to the Director to approve alternative methods of establishing financial responsibility. Second, no dollar amount could be defined which EPA would be confident would be adequate for all wells under all circumstances, without being prohibitively high for most cases. The costs of plugging and abandonment range from $1500 for some Class II wells to as much as $30,000–$40,000 or more for some Class I wells. In most situations, EPA believes that a $60,000 bond would be sufficient for an otherwise financially stable owner or operator to post for a number of wells within a State. However, this figure is only guidance, and the Director is free to establish a higher or lower figure as circumstances dictate.

Some commenters contended that a bond requirement would shut down marginal and stripper wells. Such wells are often operated by large multi-national corporations which should have no difficulty establishing financial responsibility absent a bond. For smaller operators, the Director will be able to employ a single instrument for all wells under the operator's control. This authority is expected to reduce the economic burden to the lowest possible point consistent with effective regulation.

§ 122.43 Waiver of requirements by Director.

Some commenters suggested that some of the technical requirements of these regulations are not necessary when injection takes place far from any potential drinking water source and where the fluids are not likely to migrate into a USDW. EPA agrees and has added limited authority to allow the Director to waive the technical requirements for operation, monitoring, and reporting in cases where the radius of the zone of endangering influence is a negative number. In cases where injection does not take place into, through or above a USDW, the Director may also waive requirements for area of review, construction and mechanical integrity. The Director's fact sheet under paragraph (c) should explain not only the technical basis for the waiver under this section, but also why compliance with the requirements would not be feasible.

Proposed § 122.43 Noncompliance reporting.

This section has been moved to Subpart A, § 122.17.

§ 122.44 Corrective action.

This section has been extensively rewritten both for clarity and substance. Several commenters objected to the provision in the proposal that the Director shall prescribe steps for corrective action by noting that the improperly completed wells may be on property not owned by the permittee. EPA has determined that no exception shall be made for situations when corrective action on a third party's land is necessary. The Director may still prescribe such steps, although of course he or she can not require that a third party's property rights be violated. Rather, if an injector can not work out an agreement with a neighboring landowner, then the permit may be terminated or the injection will not be authorized. However, an additional option available to the Director in setting corrective action requirements has been emphasized. This consists of limiting injection pressure, and may avoid shutting some wells down in situations where other corrective actions are impossible because of conflicting property interests.

The burden and roles of the applicant or permittee and the Director in proposing corrective action have been clarified. The applicant must identify wells within the area of review. The applicant may, but is not required to, include a plan for corrective action in the application. If no such plan is included, or if the plan is inadequate, the Director may request one, or require further information. The Director then places corrective action requirements in the permit.

Several of the paragraphs in the proposal covered the handling of migration of fluids into USDWs generally rather than covering only corrective action. These provisions have been moved into the expanded general prohibition against movement of fluids into USDWs, new § 122.34.

Some commenters suggested that Frasch wells should be exempted from corrective action requirements because economics preclude leaks in such wells. If these commenters are correct, and no leaks are found, then corrective action would of course not be required for existing wells (See 40 CFR Part 146 Subpart D).

§ 122.45 Requirements for wells managing hazardous waste.

This section is intended to integrate the requirements of these regulations with those issued under RCRA for hazardous waste management facilities. RCRA prohibits disposal of hazardous wastes except at facilities which are permitted under RCRA. In order to avoid needless duplicative regulation of the same disposal actions under two statutes, Subpart B of this Part establishes under RCRA a permit by rule for UIC wells which hold final permits under an approved State UIC program, or a federal program. The two programs should be consistent, however. Accordingly, this section establishes requirements similar to those under RCRA, but adapts those requirements to the particular circumstances of injection wells.

The manifest system has been adopted without change. However, financial responsibility for UIC facilities differs from that for RCRA-permitted facilities. EPA believes that the circumstances are fundamentally different. A properly sited, designed and operated Class I disposal well offers little risk of leakage and contamination during the period of injection. Thus the primary purpose of financial responsibility is to ensure proper plugging and abandonment. EPA believes this can be done more simply for UIC wells than for RCRA facilities and has accordingly left the Director broad flexibility. Similarly, plugging and abandonment for a UIC well is dissimilar to closure for a RCRA facility. Plugging and abandonment is as close as can be obtained to assurance that fluids will not migrate and contaminate drinking water sources. For a UIC Class I well, observance of proper operating and pressure monitoring practices provide assurance against migration and contamination of USDWs. After the well is plugged, the plugging operation leaves an impermeable barrier between the injection zone and any USDW. Thus post-closure monitoring wells and other post-closure maintenance required under RCRA are unnecessary. For a HWM facility, closure is only the beginning of necessary extensive post-closure monitoring and protection. Thus plugging and abandonment is all that these regulations require of wells injecting hazardous waste. However, completion of required procedures must be certified by an independent registered professional engineer. RCRA

notification and training requirements apply without change to UIC wells.

Other UIC program requirements are equivalent to their RCRA counterparts. For example, owners or operators of Class I wells are required to analyze injected fluids often enough to yield representative data on its characteristics (§ 146.13(b)(1)). They must regularly monitor and report to the Director injection pressure, flow rate and volume, annular pressure, and any other information which might indicate movement of fluids out of the injection zone (§ 146.13(c)). If the well leaks or otherwise causes movement of fluids into USDWs, it must be repaired. To the extent that these wells present the hazards of explosion or other sudden incidents requiring emergency equipment or contingency plans under RCRA, these hazards will be associated with surface facilities, which continue to be subject to RCRA even though they are at the site of an injection well.

In order to assure prompt application of controls under the UIC program, owners and operators of UIC wells injecting hazardous wastes must apply for a permit within six months of program approval.

Subpart D—Additional Requirements for NPDES Program

Subpart D of Part 122 contains requirements which are for the most part identical to those in Part 122 of the final NPDES regulations, published on June 7, 1979 (44 FR 32854). Subpart D also contains the deadlines for request for variances from effluent limitations (previously in § 124.51 of the NPDES regulations). The Agency received a large volume of comments on these provisions. Many of these comments either repeated or incorporated by reference the comments previously made on the NPDES regulations which became final on June 7, 1979. EPA feels that comments that were made during the comment period for the June 7, 1979 regulation have been adequately considered and addressed in the preamble to those regulations. EPA has considered only those comments on the NPDES regulations which raised new issues. Some changes have been made as a result of comments and of consolidation, as discussed below.

Subpart D now incorporates regulations proposed separately on June 14, 1979 (44 FR 34393). The incorporated regulations accompanied the draft consolidation application forms (44 FR 34346) and are intended to improve control of toxic pollutant discharges under the NPDES program. Changes from the proposal include specification of the contents of the new NPDES application form, new duties to report certain pollutants, and accompanying requirements for establishing permit conditions. The regulations appear now in §§ 122.53, 122.62, 122.63, and Appendix D, and are discussed in detail in the preamble to the final consolidated application forms published elsewhere in today's **Federal Register**. The major changes from the proposal are summarized in this preamble in the appropriate sections.

§ *122.51 Purpose and scope.*

EPA has expanded § 122.51, Purpose and scope, to include proposed §§ 122.62 (Law authorizing NPDES permits) and 122.63 (Exclusions). The new section, in line with other subparts, contains a paragraph outlining the scope of the NPDES permit program. The "specific inclusions" list discharges that require NPDES permits, although the list is not exclusive.

EPA has added a new "specific exclusion," § 122.51(c)(2)(iv), which deals with the need to discharge chemicals and other materials to counter the effects of sudden hazardous discharges. The provision exempts any discharge made in compliance with the instructions of an On-Scene Coordinator. The Coordinator is a Federal official designated by EPA or the U.S. Coast Guard to direct Federal discharge removal efforts at the scene of an oil or hazardous substance discharge according to Regional Contingency Plans. The exemption is necessary because the NPDES permit process is inappropriate for discharges required by a Federal official in this context.

Another new exclusion, § 122.51(c)(vi), lists return flows from irrigated agriculture as exempt from the NPDES permit requirement. This does not represent a change in policy; irrigation return flows are also excluded from the definition of point source in these and the prior final NPDES regulations as required by section 502(14) of CWA. It is added here for clarity.

§ *122.52 Prohibitions.*

Proposed § 122.67(i) (now § 122.52(i)) included the terms "effluent limitation segment" and "water quality segment," which were defined in 40 CFR § 130.2 (a)(1) and (a)(2). Because those regulations have been superseded, we have deleted the two terms. The provision now implements section 303(d) and 303(e) of CWA by prohibiting permits for a new source or new discharger if its discharge will cause or contribute to the violation of a water quality standard. A new source or new discharger proposing to discharge into a water segment that does not now meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by section 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which a pollutant load allocation has been performed, may receive a permit if it shows that sufficient pollutant load allocations to allow for the discharge remain and that existing dischargers into the segment are subject to compliance schedules designed to eliminate the segment's noncompliance with water quality standards.

Many commenters observed that no criteria were provided by the Agency for determining "entitlement" to pollutant load allocations. Upon reconsideration, we agree that it would be almost impossible to prove "entitlement;" thus, we have deleted the requirement that the applicant demonstrate the facility's entitlement to the remaining pollutant load allocation. In addition, the requirement that a discharger demonstrate, at the time of applying for a permit, that there are sufficient remaining pollutant load allocations to allow for the discharge has been changed to allow the demonstration to be made at any time before the close of the public comment period. This change was made in response to comments that compliance with the proposed regulation would be unduly burdensome and that the information necessary to make the required demonstration, in many cases, would not be readily available to the discharger at the time of application.

§ *122.53 Application for a permit.*

(1) *New application requirement.* Proposed § 122.64(b) required existing permittees to submit a new application automatically when certain facility changes would either result in new or substantially increased discharges or a change in the nature of the discharge, or violate the conditions of the permit. Commenters argued that this would be unduly burdensome because of the detailed testing requirements which are likely to be a part of the new consolidated application forms. EPA agrees that this subparagraph is unnecessary for three reasons: (1) the regulations now require the permittee to notify the Director of planned alterations or additions to the permitted facility as soon as possible (§ 122.7(l)(1)); (2) application-based notification requirements have been established for toxic pollutants (§ 122.61(a)); and (3) § 124.5 gives the Director authority to request an updated application from the permittee, if necessary, where cause exists to modify

or revoke and reissue a permit. Thus, this subparagraph has been deleted.

(2) Final § 122.53(c) phases in the new application requirements which have been promulgated today, (see §§ 122.4(d), 122.53(d) and 122.53(e)) for existing dischargers other than POTWs. These new requirements apply to (1) any such discharger whose existing permit expires after November 30, 1980 and (2) any such discharger whose permit expires on or before November 30, 1980 but who has not submitted an application prior to April 30, 1980, the approximate date these regulations become public. The reason for distinguishing between these two groups is discussed below:

The schedule for phasing in the new application requirements has been set after consideration of several factors. On one hand, it is desirable to make the requirements effective as early as possible so that the newly-required information on toxic discharges is made available to permit writers. On the other hand, as some commenters have noted, applicants must have ample time to sample and analyze their waste streams for toxic pollutants. A further consideration is the effect of § 122.10(b) of the final NPDES regulations (now incorporated, with changes, into § 122.53(c)). The regulation (proposed in the consolidated permit regulations as § 122.64(b)) required applicants for EPA-issued permits to reapply at least 180 days prior to permit expiration. (Many NPDES States have similar rules.) Thus, permittees whose permits are due to expire before November 30, 1980 had to submit applications to EPA by June 3, 1980. It would be unfair to require dischargers in this group who have already applied to apply once again for the same permit.

Based upon the above considerations, EPA decided to phase in the new application requirements beginning with those dischargers whose permits expire after approximately six months from when these regulations are promulgated, i.e., after November 30, 1980. Applicants whose permits expire before that date will in most cases have already applied under the old requirements. They need not reapply except that those whose permits expire before November 30, 1980, but who have not yet applied by April 30, 1980 are required to apply under the new requirements.

Dischargers whose permits expire after November 30, 1980 must comply with the new application requirements, even if they have already applied for permit renewal. It would be inappropriate to exclude these applicants from the new requirements simply because they have submitted applications unusually early.

To allow applicants sufficient time to apply under the new requirements, EPA is temporarily relaxing its general requirements that applicants submit applications at least 180 days before permit expiration. The rule will initially be waived and then gradually phased back in accordance with the table in § 122.53(c).

EPA recognizes that in some situations, despite the relaxation of the 180-day rule, some applicants may not be able to sample and analyze their waste streams and submit the results by the application deadlines. Therefore, applicants whose permits expire before June 1, 1981 may apply for time extensions to submit that data. However, the extension must be limited to a maximum of six months and must not go beyond June 30, 1981. These limitations are necessary to ensure that permit issuance and compliance will meet the statutory July 1, 1984 deadline of CWA section 301(b).

(2) *Information requirements.* Section 122.53(d) lists the information which existing industrial NPDES permit applicants must supply to the Director in addition to the information listed in § 122.4(d). Dischargers applying to EPA for their permits will supply this information on Form 2c of the consolidated application forms. Dischargers applying to States for permits will use State application forms, which may be different from EPA's form; however, § 123.7(d) requires State forms to include at least the information listed in § 122.53(d).

Additions to § 122.53 were proposed along with a public notice of the draft consolidated permit application forms as Part III of the June 14, 1979 **Federal Register** (44 FR 34393, 34346). A detailed discussion of the significant comments received on the proposal and EPA's responses appears in the preamble to the public notice of the consolidated application forms published elsewhere in today's **Federal Register**. The major changes from the proposal are summarized as follows:

(i) The sections of the regulations listing information to be provided by all applicants have been moved to Subpart A of Part 122, discussed above at § 122.4(d).

(ii) A new paragraph has been added (§ 122.53(d)(1)) which requires applicants to list the latitude and longitude of each outfall and the name of the receiving water.

(iii) The requirement for submission of a line drawing with a water balance (§ 122.53(d)(2), proposed as § 122.64(d)(9)) has been modified to indicate that flows may be estimated and that multiple operations may be indicated as a single unit. Also, when a water balance cannot be determined, applicants may provide a pictorial description of the source, use, and treatment of water.

(iv) The requirement to describe flow, processes contributing wastewater, and treatment units (§ 122.53(d)(3), proposed as § 122.64(d)(10) and (14)) has been simplified by deleting the requirement for reporting maximum flows for types of wastewater, including storm runoff. The new subparagraph also states processes may be described in general terms. Two requirements have also been added: applicants must list the average flow of wastewater contributed by each process, and privately-owned treatment works must identify all users (see further discussion contained in the preamble to the consolidated application form in today's **Federal Register**).

(v) The requirement to list the production or other measure of operation (e.g., raw materials consumed, products manufactured) used in any applicable effluent guideline, (§ 122.53(d)(5), proposed § 122.64(d)(8)), has been modified to require listing of only a maximum measure of actual production as required by § 122.63(d)(2).

(vi) The analytical testing requirements have been modified in a number of ways (§ 122.53(d)(7), proposed § 122.64(d)(16)):

1. The list of pollutants (§ 122.53(d)(7)(i)) for which all applicants must test now includes ammonia, and no longer includes cyanide, total phenols, and total Kjeldahl nitrogen.

2. The list of organic toxic pollutants for which primary industries must test in process wastewater has been specified for each of the 34 primary categories (see Table II in Appendix D to Part 122, Subpart D). (In the case of 2,3,7,8 tetrachlorodibenzo-p-dioxin, (TCDD), the testing requirement depends on the applicant's use or production of a specific list of chemicals potentially contaminated with TCDD.) The organic toxic pollutants are specified by the four fractions tested by the Gas Chromotography/Mass Spectrometry analytical method. All primary applicants must test for cyanide, total phenols, and the metals on the toxics list. Also, all applicants must test for any toxic pollutant they expect to be present.

3. The list of pollutants for which applicants must indicate expected presence or absence now includes total organic nitrogen, and no longer includes ammonia, asbestos, or additional

pesticides (see Table IV in Appendix D to Part 122, Subpart D). Also, applicants who indicate that a pollutant on this list (which includes all of the toxic pollutants except asbestos) is present must now test for that pollutant, while the proposal allowed an estimate.

4. A list has been added of pollutants for which applicants must indicate the reasons for the presence of any expected pollutants (see Table V in Appendix D to Part 122, Subpart D). This list includes asbestos and 73 hazardous substances.

(vii) A paragraph has been added (§ 122.53(d)(8)) which exempts applicants qualifying as small businesses from submitting analyses for any organic toxic pollutants.

(viii) A paragraph has been added (§ 122.53(d)(9) and (10)) requiring applicants to: (1) list any toxic pollutants which they use or manufacture; and (2) describe any discharges of pollutants they expect to exceed the maximum values reported through testing.

(ix) The requirements concerning Best Management Practices (BMP) plans and potential discharges of toxic pollutants or hazardous substances not through outfalls has been deleted (proposed § 122.64(d)(12) and (13)).

(x) The paragraph requiring reporting of additional chemical testing results has been deleted (proposed § 122.64(d)(18)).

(xi) The paragraph allowing applicants the option of reporting information to obtain exclusions from the requirements and penalties of section 311 of CWA has been deleted (proposed § 122.64(d)(19)).

(xii) The requirement to report any previous biological toxicity tests (proposed § 122.64(d)(18), now § 122.53(d)(11)) has been modified to delete the requirement to report the results of the test.

(xiii) The requirement to report the identity of laboratories performing any reported analyses (§ 122.53(d)(12)), has been added, and modified to require identification of which pollutants were analyzed by the laboratories.

(xiv) The paragraph allowing the Director to require additional information from an applicant (proposed § 122.64(d)(20), now § 122.53(d)(13)) has been modified by adding the word "reasonably."

Section 122.53(e) deals with concentrated animal feeding operations and aquatic animal production facilities. It lists the information which permit applicants must supply to the Director in addition to the information listed in § 122.4(d). Applicants applying to EPA for their permits will supply this information on Form 2b of the consolidated application forms. Applicants applying to States for permits will use State application forms, which may be different from EPA's form; however, § 123.7(d) requires State forms to include at least the information listed in § 122.53(e).

Form 2b was published as a part of the public notice of the draft consolidated permit application forms, in Part III of the June 14, 1979 **Federal Register** (44 FR 34346). However, the corresponding regulations were inadvertently omitted from the proposed application regulations (44 FR 39393, June 14, 1979). The final regulations correspond to the final Form 2b, which is published elsewhere in today's **Federal Register**; the comments received and the changes made are discussed as a part of that preamble. The regulations require applicants to provide the following information:

(i) For concentrated animal feeding operations, a description of the size of the operation and of the waste control system.

(ii) For concentrated aquatic animal production facilities, a description of the water use and of the size of the operation.

Two paragraphs have been added to § 122.53, but are now reserved for future publication of the application requirements for POTWs and for new sources. This material will be proposed during the summer of 1980 (§ 122.53(f) and (g)).

(4) *New source applications and variance requests.* Certain requirements from Part 124 of the final NPDES regulations for applications from new sources and requests for variances were moved to the application section of Part 122, Subpart D in the proposal. Final §§ 122.53(h), (i), (j), and (k) include these requirements with some rewording, but no substantive changes. Also, the definition of variance in § 122.3 has been amended to include all modifications and variances specifically authorized by the Clean Water Act. Therefore, the term "variance" can be used for all permit conditions based on these CWA provisions, and the term "modification" reserved for permit modifications under § 124.5.

Final § 122.53(k) now specifically allows the draft or final permit to contain, along with the applicable limitation, the alternative limitations which may become effective automatically upon grant of the variance.

§ 122.54 and § 122.55 Concentrated animal feeding operations and concentrated aquatic animal production facilities.

The detailed criteria for determining whether facilities are "concentrated animal feeding operations," (§ 122.54, proposed § 122.76), or "concentrated aquatic animal production facilities," (§ 122.55, proposed § 122.77) required to obtain permits, have been moved from the text and placed in Appendices B and C, respectively, to allow smoother reading of the regulations.

§ 122.57 Separate storm sewers.

Section 122.57(b) (proposed § 122.79(b)) defines a "separate storm sewer" as a conveyance used primarily for collecting storm water runoff, which is either located in an urbanized area or designated (normally because it is a significant contributor of pollution) as a separate storm sewer. EPA does not consider storm sewers which do not fall under this definition (i.e., rural storm sewers or those not designated) to be point sources subject to NPDES permit requirements unless the storm water runoff is contaminated (see § 122.57(b)(3)). The former NPDES regulations had a comment to that effect, see 40 CFR § 125.52(a)(1). Because we did not repeat the language of the comment in the June 7, 1979 revised NPDES regulations or in the June 14, 1979 proposed consolidated regulations, commenters asked whether EPA was changing its policy. To make clear that we are not changing our policy, a sentence has been added (§ 122.57(b)(2)) stating that such storm sewers are not point sources.

§ 122.59 General permits.

EPA has rewritten and reorganized the general permits section (proposed § 122.82) for clarity and to make minor changes. First, the "General Permit Program Area (GPPA)" has been eliminated because this entity, along with its procedural trappings, served no purpose which could not be served equally well simply by the area described in the permit. Second, the proposal stated that the general permit program area could be "reviewed" if necessary to address water quality problems. The general permit can be modified for any of the causes listed in § 122.15 that apply to all permits. Information indicating unacceptable cumulative impacts now appears as an example of information which is cause for modifying a permit under § 122.15(a)(2) and applies as well to general and area permits under the State 404 programs and UIC programs.

Third, the procedure for EPA Headquarters review of EPA issued draft general permits, proposed in § 124.7(a)(2) and the comment following § 122.82(a), has been shortened to allow EPA 30 days rather than 90 to review and raise objections to the draft permit (final § 124.58).

Fourth, the proposal (§ 122.83(e)(2)) stated that the Director could revoke a general permit as it applied to an individual discharger and require that discharger to obtain an individual permit, but EPA could do this only after an on-site inspection. The requirement for an on-site inspection has been deleted because the causes for requiring an individual permit (examples are listed in § 122.59(b)(2)(i)) can be adequately determined without an inspection.

Fifth, the sources other than separate storm sewers that may be covered by a general permit are no longer limited to "minor" sources, so long as the category specified in the permit meets the requirements of § 122.59(a)(2).

Finally, § 122.59(b)(2)(iv) clarifies that the general permit automatically terminates on the effective date of an individual permit.

§ 122.60 Additional conditions applicable to all NPDES permits.

§ 122.60(a)(1) states the duty of the permittee to comply with toxic effluent standards or prohibitions regardless of whether they appear in the permit. This requirement formerly appeared as a comment to proposed § 122.68(b).

Section 122.60(b) (proposed § 122.68(e)): The proposal required a permittee to control production and all discharges upon reduction, loss, or failure of the treatment facility, until the facility is restored or an alternate method of treatment provided. Some commenters argued that this requirement to control both production and discharges was burdensome and that some flexibility should be allowed based on the degree of noncompliance. EPA agrees in part and has revised § 122.60(b) to require a permittee to control either production or all discharges rather than both. However, if the circumstances warrant the permittee may still be required to control both production and all discharges.

Portions of paragraphs (d) through (h) of proposed § 122.71 have been moved to § 122.60. These monitoring requirements are mandatory for all permittees and as such properly appear in the standard NPDES permit conditions. They are discussed under § 122.62(i) below.

Section 122.60(f) contains the 24-hour reporting requirements for NPDES. This paragraph is intended to coordinate with the reporting requirements under § 122.7(l). The proposal required 24-hour reporting of unanticipated bypasses if the permittee wished for the bypass not to be "prohibited." This requirement has been coordinated with the 24-hour reporting duties and therefore now applies in all instances regardless of whether the bypass will be "prohibited." Similarly, in the proposal upsets only had to be reported if the permittee wished to establish an affirmative defense to an enforcement action for noncompliance. This 24-hour reporting duty has now also been coordinated with the other 24-hour reporting duties and is mandatory in all instances where the upset causes any effluent limitation in the permit to be violated. Finally, the Director may now specify in the permit any other pollutant which he or she wishes to be reported within 24 hours if a maximum daily discharge limitation is violated.

Section 122.60(g) contains provisions covering bypass. The paragraph has been extensively redrafted for clarity. In general, the paragraph now clarifies that bypass which causes violation of effluent limitations is prohibited; the proposal appeared to place the presumption in favor of approval of a bypass. Consequently, ten day advance notice of any anticipated bypass which may violate effluent limitations is now a requirement in all cases, and not simply an optional mechanism for obtaining "approval" of an otherwise prohibited bypass. Similarly, EPA has deleted the statement in proposed § 122.68(c)(3) that "if there is any doubt" as to the necessity for the discharge, enforcement action may be taken. Finally, the reorganized section clarifies the applicability of the requirement that backup equipment be available to prevent bypass. In general, bypass will not be excused except in extreme situations, and the lack of adequate backup equipment for downtime periods will not be a defense unless the permittee could not have anticipated the need for such equipment at the time the facility was constructed. Similarly, although in general bypass which does not exceed effluent limitations is not prohibited, this is true only if the bypass also was necessary for essential maintenance.

§ 122.61 Additional conditions applicable to specified categories of NPDES permits.

(1) Section 122.61(a) requires existing industrial permittees to notify the Director when some activity has occurred or will occur, causing them to discharge toxic pollutants at a level exceeding five times the level reported in the permit application. Permittees must also notify the Director if they begin to use or manufacture a toxic pollutant which they did not report in the permit application. This requirement has been changed from the proposal (§ 122.68(a) in Part III of the June 14, 1979 **Federal Register** (44 FR 34393)) which established permit limits at five times the reported level or detection limit. In response to a large number of comments on this section, EPA has changed its approach towards controlling pollutants not limited in permits. A detailed discussion of the new section and the comments received on the proposal appears elsewhere in today's **Federal Register** in the preamble to the public notice of the consolidated application forms.

(2) Section 122.61(b) specifies conditions applicable to all POTWs. They were proposed as § 122.69(d)(1), in the section titled "Applicable limitations, standards, prohibitions, and conditions." Rather than leaving them as requirements for permit writers to specify on a case-by-case basis, they were moved, without substantive change, to this section because they are applicable to all POTWs.

§ 122.62 Establishing NPDES permit conditions.

(1) We have divided proposed § 122.69(a), which listed required limitations, into two paragraphs, § 122.62(a) and (b). Section 122.62(a) contains requirements for technology-based limitations, to be imposed either on the basis of guidelines or case-by-case under § 125.3. It also specifies requirements concerning new source performance standards which were proposed as § 122.69(c).

(2) Section 122.62(c) modifies the proposed § 122.69(b) by deleting the four dates in proposed Appendix A (September 30 and December 31, 1980 and March 31 and June 30, 1981) and replacing them by a single date identified in the text of § 122.62(c), which is June 30, 1981. Any permit issued on or before June 30, 1981 to any dischargers in an industrial category listed in Appendix A must contain a reopener clause as provided in this section. This will ensure incorporation of the requirements of effluent guidelines into permits issued to these dischargers. Any permit issued after June 30, 1981 to these dischargers must meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of the Clean Water Act, whether or not applicable effluent limitation guidelines have been promulgated for those industries.

The effect of the revision from the proposal is to extend the time during which permit writers may wait for promulgation of guidelines before writing permits requiring BAT and BCT. This change has been made for several reasons.

First, many commenters expressed concern that in the absence of guidelines, permit writers would begin setting BAT limits on a case-by-case basis, resulting in a lack of uniformity. As a solution, two commenters supported allowing the permitting authority to extend expired permits until applicable guidelines are promulgated.

The dates in proposed Appendix A were derived by adding 18 months to the effluent guideline promulgation dates set in the original NRDC Consent Decree. Due to the enormity of the task, it became evident that EPA would not be able to meet that ambitious schedule. Therefore, the promulgation dates were delayed substantially in the modified Consent Decree on March 9, 1979. Furthermore, a moderate slippage beyond the new deadlines is likely for some industries. As a result, some guidelines will be promulgated after the applicable dates in proposed Appendix A.

To maximize the usage of effluent guidelines by permit writers, the September 30 and December 31, 1980 and March 31, 1981 dates in proposed Appendix A have all been extended to June 30, 1981 in the final regulations. Due to the statutory deadline of July 1, 1984, the June 30, 1981 date is the latest date by which it would be reasonable to wait for promulgation of guidelines. After that date, permits must require compliance with sections 301(b)(2) (A), (C), (D), (E), and (F) of CWA, whether or not guidelines have been promulgated.

In conjunction with revising the expiration dates for short-term BPT permits, EPA is revising one other aspect of its second round permits policy. On page 25 of "Policies and Guidance for Issuing the Second Round of NPDES Permits to Industrial Dischargers" (July 1978), EPA directed EPA Regional offices to issue only short-term permits to primary industries unless BAT guidelines for toxics were promulgated. (States were allowed to issue long-term permits with reopener clauses, provided that the permits required BAT and BCT, based upon best engineering judgment). EPA is now rescinding this directive.

As of today, EPA permit writers may issue long-term permits to primary industries even if guidelines have not yet been promulgated, provided that the permits require BAT and BCT and contain reopener clauses. The reason for this change is that the July 1, 1984 deadline for compliance with BAT and BCT is two years closer than it was when the Second Round Permit Policy was written. In some situations (for example, when the applicable guideline is not likely to be promulgated by July 1981) it may be appropriate to issue a long-term BAT permit, rather than to issue a short-term permit for a very short period of time and then issue a long-term permit soon afterwards.

In general, EPA continues to encourage EPA (as well as State) permit writers to issue short-term permits (or, where necessary, extend them administratively under section 558(c) of the Administrative Procedures Act or analogous State law) to primary industry dischargers until BAT guidelines are promulgated or until July 1, 1981 (see § 122.53(c)). However, EPA permit writers are now being given the same flexibility as State permit writers have had to issue long-term BAT and BCT permits, based on best engineering judgment, in appropriate circumstances.

The proposal also required the reopened permit to be modified to include "any other requirements of CWA then applicable," and stated that the reopened permit could be "modified or, alternatively, revoked and reissued." These provisions are inconsistent with the provisions of § 122.15 and, because they are not required by paragraph 10 of the *NRDC* v. *Train* settlement agreement, they have been deleted. The reopener clause now requires that "the permit shall be modified or revoked and reissued to conform to that effluent standard or limitation."

(3) Section 122.62(d) (proposed § 122.69(f)) lists water quality standards and State requirements in addition to or more stringent than technology-based standards or limitations. Proposed § 122.69(f)(10), which included technology-based limitations on pollutants not limited in guidelines, has been deleted from this paragraph, because such limitations are now covered by expanded § 122.62(a).

In response to a comment that proposed § 122.69(f)(3) was overbroad, EPA has amended § 122.62(d)(3) to provide that an NPDES permit will not include more stringent conditions of a State certification which has been stayed by a court of competent jurisdiction or by an appropriate State agency. EPA will include in the permit, however, any more stringent conditions necessary to meet EPA's obligation under § 301(b)(1)(C) of CWA.

(4) Section 122.62(e) requires permits to contain limits controlling all toxic pollutants which either are reported at levels exceeding BAT or are used or manufactured at the facility. Limits may be placed directly on these toxic pollutants, or indirectly on other pollutants if those limits will result in equivalent treatment of the toxic pollutants. This provision is included in the final regulations as a result of a change in the Agency's approach toward controlling pollutants not limited in permits. In the preamble to the regulations proposed in Part III of the June 14, 1979 **Federal Register** (44 FR 34393), EPA expressed the policy that permits should control all significant pollutants, and that the proposed application-based limit (proposed § 122.68(a)) was designed only to control unexpected pollutants. In response to a large number of comments, EPA now distinguishes between pollutants that should be controlled by the permit and all other pollutants, which are regulated only by the requirement that permittees notify the Director when their discharge does or will exceed five times the reported level or detection limit of toxic pollutants (§ 122.61(a)). A more detailed discussion of these regulations appears elsewhere in today's **Federal Register**, in the preamble to the public notice of the consolidated application forms.

(5) Section 122.62(g) is a new provision which requires permit writers to specify which pollutants will require 24-hour notice under § 122.60(f)(3) to the Director when their maximum daily discharge limitations are violated. This is a change from the proposal (§ 122.11(h)) which required 24-hour reporting for toxic pollutants and hazardous substances. Because in some cases toxic pollutants and hazardous substances will be controlled by limits on other pollutants, permit writers must be able to require 24-hour reporting for these other pollutants. In addition, the Director may specify any other pollutant as one which must be reported if a maximum daily discharge limitation is exceeded.

(6) Section 122.62(h) specifies that NPDES permit durations must comply with § 122.64. All provisions of Subpart D which contain requirements for how permits must be written are cross-referenced in section 122.62.

(7) *Monitoring.* Section 122.62(i) (proposed § 122.71) specifies the monitoring requirements that must be placed in NPDES permits. Proposed § 122.71, "NPDES requirements for recording and reporting of monitoring reports" (sic) has been deleted and its provisions placed in this section and §§ 122.7 and 122.60 to conform to the organization of the consolidated regulations. The requirement to report all monitoring and the statements of the

potential liability for falsifying monitoring results under the Clean Water Act have been moved to final § 122.60 (conditions applicable to all NPDES permits), with only minor wording changes.

Proposed § 122.71(d) is deleted from the final regulations. This provision encouraged permittees to request that additional monitoring requirements be placed in their permits when they felt that the conditions in their draft permits were not sufficient to yield representative data. It was deleted because section (g) of proposed § 122.71 (retained with minor wording changes as § 122.60(f)(2)) required that permittees use all monitoring results in calculating compliance with permit limits, including any results from monitoring more frequently than required by the permit. Therefore, permittees may undertake additional monitoring to yield more representative results without requesting permit modifications. (The general requirement that monitoring be representative now appears in § 122.7, applicable to all programs).

Other provisions of proposed § 122.71 appear in final § 122.62(i). Certain changes have been made in this paragraph to correspond to the Agency's policy concerning the use of test methods which are approved under 40 CFR Part 136 and which are used in the development of effluent standards and limitations. Specifically, the final regulations state that permits must require monitoring using test methods approved under 40 CFR Part 136, for all pollutants having approved test methods, and that permits must specify a test method to be used in monitoring for pollutants not having approved test methods. (Approved test methods include any alternate test method approved by the procedures in 40 CFR Part 136; therefore the additional language in proposed § 122.71(b)(1) is unnecessary and is deleted.) The major change from the proposal is the deletion of the requirement that the Director specify monitoring test methods to correspond to the test methods used in developing effluent limitations, proposed § 122.71(b)(3) and (4). This requirement has been deleted because it is not always appropriate to constrain the choice of monitoring methods to those used in developing effluent guidelines. Additional provisions in the proposal which required the permit to specify any test methods and sampling frequency required by standards or guidelines (proposed §§ 122.71(b)(3), (4), and 122.71(c)) have been deleted because the general requirements of § 122.62 that permits correspond to standards and guidelines will ensure that these requirements (which are unusual in standards and guidelines) will be incorporated into the permit.

The final regulations retain the proposed provision allowing the Director to specify monitoring requirements for pollutants reported in the application form but not limited in the permit. The proposal appeared in Part III of the June 14, 1979 **Federal Register** (44 FR 34393) as a part of the proposed consolidated application forms. Final § 122.62(i)(1)(iii) retains the provision as one example of additional monitoring requirements the Director may specify in the permit.

The requirement for specifying in permits a schedule for submitting monitoring results, alluded to in proposed § 122.14(d) but inadvertently dropped from proposed Subart D, now appears in § 122.62(i)(2) and follows the requirement that the minimum frequency be once per year, with certain discharges requiring more frequent reporting, as in the final NPDES regulations published on June 7, 1979 (§ 122.23(a), 44 FR 32910).

(8) Section 122.62(j) contains the requirement for permits to require a pretreatment program from POTWs. Minor wording changes have been made from proposed § 122.69(d). Other parts of proposed § 122.69(d) are incorporated in § 122.61(b).

(9) *Best management practices.* The comment following the requirement for permits to contain management practices (proposed § 122.69(g), now § 122.62(k)) has been deleted as unnecessary; however, the examples of management practices are still applicable. It should be noted that separate requirements for developing a Best Management Practices program are contained in Part 125, Subpart K.

(10) *"Anti-backsliding."* Proposed § 122.68(i) (now § 122.62(l)) reflects EPA's "anti-backsliding policy" as initially modified in the NPDES regulations. This policy prohibits the renewal or reissuance of NPDES permits containing interim effluent limitations less stringent than those imposed in the previous permit. The three exceptions applied only when both (1) the previous permit limitations were made on a case-by-case basis under section 402(a)(1) of CWA in the absence of promulgated effluent guidelines, and when (2) the subsequently promulgated effluent guidelines were less stringent. Numerous comments were received asserting that the provision was unduly restrictive. One commenter noted that the proposed regulation could be construed to "lock" dischargers into maintaining a fixed treatment efficiency even when maintenance of that efficiency level was not necessary to comply with applicable effluent guidelines. EPA reconsidered the "anti-backsliding" rule and has added two new exceptions. The first, § 122.62(l)(4), explicitly states what was implicit before: less stringent limitations may be appropriate when there has been a material and substantial change in the circumstances on which the previous permit was based which would constitute grounds for permit modification or revocation and reissuance. The second new exception to the rule, § 122.62(l)(5), allows reducing permit limitations to correspond to subsequently-promulgated guideline limitations when increased production significantly reduces treatment efficiency. This exception will, in effect, allow dischargers that have constructed treatment facilities which are capable of treating increased discharges resulting from a substantial increase in production to take advantage of this "banked" treatment efficiency as long as doing so will still allow them to meet permit limits based on subsequently promulgated effluent guidelines.

(11) *Privately owned treatment works.* Discharges of pollutants are within the jurisdiction of CWA whether they are made directly or indirectly into navigable waters. See *United States* v. *Granite State Packing Co.*, 343 F. Supp. 57 (D.N.H. 1972), *aff'd.* 470 F.2d 303 (1st Cir. 1972). Some dischargers, however, arrange for other private companies to treat their wastes before discharge into navigable waters. Although all these dischargers technically require NPDES permits under CWA, controls usually are most appropriately applied at the point of treatment. In recognition of this fact and in response to comments critical of a requirement that users of privately owned treatment works obtain NPDES permits, EPA has made several changes that affect these users. We have added a new subparagraph (m) to authorize the permit writer to include in the permit issued to a privately owned treatment works any conditions expressly applicable to any user, as a limited co-permittee, that may reasonably be necessary to ensure compliance with applicable requirements of the NPDES program. For example, a permit issued to a treatment works might require each user to notify the Director if it begins or expects to begin to use or manufacture a toxic pollutant not reported in the permit application. The permit writer alternatively may issue separate permits

to the treatment works and to the users, or may require any user to submit its own permit application. The Director's decision to (1) impose no conditions applicable to the users, (2) impose conditions on one or more users, (3) issue separate permits, or (4) require separate permits, and the basis for the decision, must be included in the fact sheet prepared for the draft permit. This discretionary authority should provide the Director sufficient flexibility both to ensure compliance with applicable standards and limitations and to minimize any administrative burdens. Proposed § 122.64 has been amended by adding a new provision (now § 122.53(d)(3)) that requires the privately owned treatment works to identify in its permit application all users of the treatment works. Sections 122.51(c)(2)(b)(ii) (amending proposed § 122.63(a)) and 122.53(a) (proposed § 122.64(a)) exclude users from having to apply for and obtain a permit, except as the Director otherwise may require under § 122.62. Finally, EPA has amended proposed § 124.11(b)(1) to add a new subparagraph (now § 124.10(c)(2)(v)) to require that public notice of permits be sent to users identified in the permit application submitted by the privately owned treatment works. These requirements apply prospectively, so that only after the effective date of these regulations will privately owned treatment works have to identify their users in their permit applications and permit writers be required to choose whether to impose permit conditions or application requirements on such users under § 122.63(m). (Of course, permit writers, in appropriate cases, may determine that it is unnecessary to impose any permit requirements on the users of the treatment works.) Existing permits held by privately owned treatment works, however, may contain conditions applicable to their users (whether or not the users are identified in the permit). Permitting authorities will continue to enforce those conditions. See the Decision of the General Counsel No. 43 (Friendswood Development Company).

§ 122.63 Calculating NPDES permit conditions.

(1) Section 122.63(b) sets requirements for calculating permit limits on the basis of the actual production of the facility. The regulation has been reworded with no substantive change from the proposed § 122.70(a)(2), including the comment. Additionally EPA has now specified that the time period for the production must correspond to the time period for the permit limit. For example, permit limits usually are written for a maximum daily discharge, and an average monthly discharge which is usually lower by a factor of 1.5 or 2. Therefore, a one-month production figure should be used to calculate the average monthly discharge limitation, or a one-day production to calculate the maximum daily limitation.

(2) Paragraphs (c), (d), and (e), have been reworded from the proposal with no substantive change. The definitions in proposed § 122.70(c) have been reworded somewhat and moved to the definitions section.

The definitions of "average monthly discharge limitation," "average weekly discharge limitation," and "maximum daily discharge limitation" all use the term "daily discharge," which is also defined. This has allowed the elimination of duplicate wording in the definitions and has made the terms more nearly parallel.

(2) Paragraph 122.63(f) (proposed § 122.70(c) and (d)) now provides permit issuers greater flexibility in using concentration limits. Whenever appropriate, permits may include a concentration limit in addition to a mass limit. Limitations expressed exclusively in terms other than mass may be used (1) when applicable effluent guideline limitations are expressed other than in mass; (2) when on a case-by-case basis the mass of the discharge cannot be related to production or other measures of operation, and dilution will not be used as a substitute for treatment; or (3) for pH or other pollutants which cannot appropriately be expressed as mass. For example, total suspended solids discharges from certain mining operations may be unrelated to measures of operation. Finally, a permit can always contain a non-mass limit in addition to a mass limit, and the permittee must comply with both.

(3) § 122.63(i) (proposed § 122.70(i)) concerns requirements for placing limitations on internal waste streams.

The provision now requires the permit writer to include in the fact sheet under § 124.56 the unusual circumstances which require the imposition of such limits. This requirement will ensure that the permittee and other interested persons will be able to judge the reasons why such limitations, which are to be imposed only in exceptional circumstances, are being used in each case.

§ 122.64 Duration of certain NPDES permits.

This requirements section has been modified by deleting the dates in proposed Appendix A and replacing them in the body of the regulation with the single date of June 30, 1981. The reasons for this change are discussed in the preamble to § 122.62(c).

§ 122.66 New sources and new dischargers.

(1) Paragraph 122.66(d)(2) (proposed § 122.81(d)) governing exclusions from the protection period has been modified slightly to clarify that the Director may impose any permit limit in conformance with § 125.3 on a toxic pollutant or hazardous substance not controlled by new source performance standards during the protection period, thus including limits imposed on a case-by-case basis as well as those required by effluent guidelines.

(2) Proposed § 122.81(d)(3) (now § 122.66(d)(3)) required that permittees with a 10 year "protection period" pursuant to § 122.81(d)(1) be in compliance with all applicable requirements immediately upon the expiration of the protection period. Some commenters were concerned that when new requirements were promulgated a short time before the expiration of the protection period this section could force dischargers to shut down pending construction of treatment facilities necessary to achieve immediate compliance. EPA recognizes this concern and has revised final § 122.66(d)(3) to allow additional time for compliance, but only when necessary to comply with requirements promulgated less than 3 years before the expiration of the protection period. This three-year period parallels the requirements of sections 301(b)(2)(D) and (F) of CWA, which allow dischargers up to three years to comply with certain newly promulgated effluent limitations.

(3) An additional change to proposed § 122.81(d)(4) (now § 122.66(d)(4)) allows new dischargers which commenced discharge before August 13, 1979 (the effective date of the June 7, 1979, NPDES regulations) to qualify for schedules of compliance. (See further discussion in the preamble to § 122.10(a).)

(4) Some commenters seemed confused about the distinction in proposed § 122.81(b) (now § 122.66(b)) between construction that creates a new source at the site of an existing source and construction that only modifies the existing source. Therefore, we have clarified paragraphs (b)(1) and (b)(2) to emphasize that construction of a new source requires construction of a new building, structure, facility, or installation. Construction that alters, replaces, or adds to existing process or production equipment without creating these separate, physical entities is merely a modification subject to § 122.15. For example, the construction

of an additional digester within an existing building at a pulp mill to increase plant capacity would be a modification, whereas the construction of a separate building to produce inorganic chemicals at the site of an existing organic chemicals plant would create a new source.

(5) Section 122.66(c) (proposed § 122.81(c)) contains several minor changes to conform to the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, 40 CFR Parts 1500–1508. Those regulations include a requirement that agencies prepare a finding of no significant impact, rather than issuing a "negative declaration" where an environmental assessment has been prepared which indicates that an environmental impact statement (EIS) is not needed. Thus the final section substitutes the phrase "finding of no significant impact" where the proposal required a "negative declaration."

Section 122.66(c)(4)(ii) (proposed § 122.81(c)(4)(ii)) barred on-site construction for new sources for which an EIS was not required until 15 days after issuance of a negative declaration. This paragraph has been changed to state that on-site construction shall not commence until 30 days after issuance of a finding of no significant impact, to allow for public comment in line with CEQ's NEPA regulations at 40 CFR § 1501.4(e), and EPA's regulations implementing CEQ's regulations at 40 CFR § 6.400(d). CEQ's regulations, 40 CFR § 1501.4(e), provide in certain circumstances that no action shall be taken until 30 days following the issuance of a finding of no significant impact to allow for public review. EPA has decided that this rule shall apply in all cases where a finding of no significant impact has been issued, in line with the public review procedures for final environmental impact statements.

Proposed § 122.72.

Proposed § 122.72, which contained NPDES noncompliance reporting requirements, has been moved to § 122.18. The substance of the proposed section has not changed. All of the noncompliance reporting requirements for each program have been consolidated in § 122.18.

Proposed § 122.83.

EPA has deleted § 122.83 of the proposal, "Special considerations under Federal law." However, EPA-issued NPDES permits must still reflect requirements of other applicable Federal laws or regulations under section 301(b)(1)(C) of CWA, as incorporated in § 122.61(g)(5). In addition, all EPA-issued permits must reflect requirements of other Federal laws or regulations, as listed in § 122.12 and as further discussed in the accompaning preamble discussion.

Appendices

New appendices have been added (and modifications have been made to Appendix A, discussed in the preamble to § 122.62(c)). Appendix B lists criteria for concentrated animal feeding operations under § 122.54 and Appendix C lists criteria for concentrated aquatic animal production facilities under § 122.55. Appendix D lists several tables of pollutants required to be tested by existing industrial dischargers under § 122.53(d), discussed in the preamble to the consolidated application forms elsewhere in today's **Federal Register**.

Table VII.—Relationship of June 7 Part 122 to Today's Regulations

Summary of Changes from Part 122 of the June 7 Regulations

EPA has developed the Table VII for use by readers who are familiar with Part 122 of the final NPDES regulations published on June 7, 1979 (44 FR 32854). The table shows the new numbering of each section of Part 122 of the June 7 regulations, and shows what changes, additions, and deletions have been made to the paragraphs and subparagraphs of each section. We hope that this table will provide a guide to a more detailed examination of the changed regulations themselves. The table is organized as follows:

- The *first column* lists each paragraph or subparagraph of the June 7 regulations in order.
- The *middle column*, in the first phrase, gives the subject of the June 7 paragraph or subparagraph in a few words. The second phrase gives a summary indication of changes from the June 7 regulations.
- The *last column* lists the paragraphs or subparagraphs of today's regulations corresponding to the contents of the paragraph or subparagraph of the June 7 regulations in the first column.
- Each June 7 section heading (for example, *Purpose and scope*) is listed separately and italicized. At the end of each June 7 section, any additional paragraphs in the corresponding section of today's regulations are listed. A blank in the first column indicates that the paragraph is competely new. A bracketed reference to a paragraph of the June 7 regulations in the first column indicates that the paragraph has been moved into the corresponding section of today's regulations from some other section of the June 7 regulations. In both instances no explanation appears in the second column. This is because the bracketed June 7 paragraph is also listed, and explained, in the place where it originally appeared, and because completely new material is fully addressed in this preamble. These two devices ensure that all additional changes and reorganizations pertaining to a section of the June 7 regulations are noted at the end of the section.

BILLING CODE 6560-01-M

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.1	Purpose and scope	§122.1, §122.2, §122.51
§122.1(a)	Coverage of NPDES. Reworded, no substantive change	§122.1(a)(iii)
§122.1(b)	Coverage of 122, 123, 124. Reworded, no substantive change	§122.1(b)
§122.1(b)(3)	Coverage of 125 by States. Moved to Part 123	§123.7(d)
§122.1(c)	Permits implement the law. Deleted, duplicates other provisions	
§122.1(d)	Permits issued by RA or State Director. Deleted, duplicates definitions	
§122.1(d) [Comment]	RA and State Director include delegees. Deleted, duplicates definitions	
§122.2	Law authorizing NPDES permits. Minor wording changes	§122.51
§122.2(a)	301(a) of CWA. Minor wording changes	§122.51(b)(1)
§122.2(b)	402(a)(1) of CWA. Minor wording changes	§122.51(b)(2)
§122.2(c)	318(a) of CWA. Minor wording changes	§122.51(b)(3)
§122.2(d)	405 of CWA. Minor wording changes	§122.51(b)(4)
§122.2(e)	402(b), 318(b) & (c), 405(c) of CWA. Minor wording changes	§122.51(b)(5)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.2(f)	404 of CWA. Moved to Part 123	§123.1
§122.2(g)	304(i) of CWA. Minor wording changes	§122.51(b)(6)
§122.2(h)	501(a) of CWA. Minor wording changes	§122.51(b)(7)
§122.2(i)	101(e) of CWA. Minor wording changes	§122.51(b)(8), §122.1(e)
§122.3	Definitions	§122.3, No longer with paragraph numbers
§122.3 [Comment]	Other terms defined in CWA. Minor wording changes; comment incorporated	§122.3
§122.3(a)	"Act" Deleted, CWA used instead	CWA used instead
§122.3(b)	"Administrator" Added: "or an authorized representative"	§122.3
§122.3(c)	"Application" Minor wording changes	§122.3
§122.3(d)	"Applicable standards and limitations" Minor wording changes	§122.3
§122.3(e)	"Approved State program" Most of definition deleted	§122.3
§122.3(f)	"BMPs" Minor wording changes; combined with 404	§122.3
§122.3(h)	"Direct discharge" Minor wording changes	§122.3

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.3(i)	"Director" Comment incorporated into text	§122.3
§122.3(j)	"Discharge" Minor wording changes	§122.3
§122.3(k)	"Discharge of a pollutant" Minor wording changes	§122.3
§122.3(l)	"DMR" Minor wording changes	§122.3
§122.3(m)	"Effluent limitation" Minor wording changes	§122.3
§122.3(n)	"Enforcement Division Director" Deleted as duplicative	
§122.3(p)	"Indirect discharger" Minor wording changes	§122.3
§122.3(q)	"Interstate agency" Minor wording changes	§122.3
§122.3(s)	"NPDES" Added: "pretreatment"	§122.3
§122.3(t)	"Navigable waters" Term is deleted: minor wording changes for definition of "waters of the United States"	
§122.3(u)	"New discharger" Includes indirect discharger switching to direct discharge, and mobile point sources which move (e.g., drilling rigs)	§122.3
§122.3(v)	"New source" Minor wording changes; comment deleted	§122.3

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.3(w)	"Permit" Reworded; includes general permit; excludes draft and proposed permits	§122.3
§122.3(x)	"Person" Reworded, no substantive change	§122.3
§122.3(z)	"Pollutant" Minor wording changes; comment incorporated into note	§122.3
§122.3(aa)	"Process wastewater" Same	§122.3
§122.3(bb)	"POTW" Reworded, no substantive change	§122.3
§122.3(cc)	"Regional Administrator" Minor wording changes	§122.3
§122.3(dd)	"Schedule of compliance" Minor wording changes	§122.3
§122.3(hh)	"State" Minor wording changes	§122.3
§122.3(ii)	"State Director" Minor wording changes	§122.3
§122.3(jj)	"Variance" Added: now includes modifications of time deadlines	§122.3
§122.3(kk)	"Waters of the United States" Now defined; wording changes, clarifying treatment ponds exclusions	§122.3
[§122.16(c)(3)]	"Average monthly discharge limitation"	§122.3
[§122.16(c)(4)]	"Average weekly discharge limitation"	§122.3

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
[§122.16(c)(1)]	"Continuous discharge"	§122.3
	"Daily discharge"	§122.3
	"Draft permit"	§122.3
	"Effluent limitations guideline"	§122.3
	"Facility or activity"	§122.3
	"General permit"	§122.3
	"Hazardous substance"	§122.3
	"Major facility"	§122.3
[§122.16(c)(2)]	"Maximum daily discharge limitation"	§122.3
	"Owner or operator"	§122.3
	"Primary industry"	§122.3
	"Privately owned treatment works"	§122.3
	"Proposed permit"	§122.3
	"Recommencing discharger"	§122.3
	"Secondary industry"	§122.3
	"Site"	§122.3
	"State/EPA Agreement"	§122.3
	"Toxic pollutant"	§122.3
[§122.3(t)(6)]	"Wetlands"	§122.3
§122.4	Exclusions	§122.51(c)(2)
§122.4(a)(1)	Sewage from vessels. Added: when secured to a storage or seafood facility	§122.51(c)(2)(i)
§122.4(a)(2)	404. Same	§122.51(c)(2)(ii)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.4(a)(3)	Indirect dischargers. Part of comment incorporated	§122.51(c)(2)(iii)
§122.4(a)(4)	Silvicultural. Minor wording changes	§122.51(c)(2)(v)
§122.4(b)	State regulation not precluded. Minor wording changes	§122.1(f)
	Inclusions - a specific list.	§122.51(c)(1)
	Exclusions - ordered by on-scene coordinator.	§122.51(c)(iv)
	Exclusions - irrigation return flows.	§122.51(c)(vi)
§122.5	Signatories	§122.6
§122.5(a)	Permit applications. Same	§122.6(a)
§122.5(b)	Reports; authorization. Added: a position can be authorized	§122.6(b)
§122.5(c)	Changes to authorization. Reworded: submitted prior to or together with reports	§122.6(c)
§122.5(d)	Certification. Same; comment deleted	§122.6(d)
§122.5(e)	Applicable to States. Still applicable to States; may adopt equivalent language, taken care of in general provisions of Part 123	
§122.10	Application for a permit	§122.4, §122.53
§122.10(a)	Who must apply. Minor wording changes	§122.4(a), §122.53(a)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.10(b)(1)	Reapplication when increase discharge. Deleted - now grounds for modification, Director may require new application, see §124.5	
§122.10(b)(2)	Expiring permits - 180 day rule. Same for POTWS; reworded: phasing-in for new application forms	§122.53(c)
§122.10(c)	New discharger. Minor wording changes	§122.53(b)
	Who applies? Operators must apply	§122.4(b)
[§122.11(a)]	Completeness. Permit can't be issued until application is complete, to Director's satisfaction	§122.4(c)
	Information requirements. Lists information required in Form 1	§122.4(d)
	Recordkeeping. Requires applicants to keep data used for applications for three years	§122.4(e)
	Information requirements for existing industrials. Lists information required in Form 2c	§122.53(d)
	Information from animal feedlots & fishfarms. Lists information in Form 2b	§122.53(e)
	Information from POTWs [Reserved]. Will list information in Form 2a	§122.53(f)
	Information from new industrials [Reserved]. Will list information in Form 2d	§122.53(g)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
[§124.12]	Special provisions for new sources. Minor wording changes	§122.53(h)
[§124.51(a),(b)]	Variance requests by non-POTWs. Reworded, no substantive change	§122.53(i)
[§124.51(a),(c)]	Variance requests by POTWs. Reworded, no substantive change	§122.53(j)
[§124.51(d)]	Expedited variance procedures. Reworded, time specified after notice is received (instead of "before draft permit is formulated") added: draft or final permit may contain alternative limitations; comment deleted	§122.53(k)
§122.11	Permit issuance, effect of a permit	§122.13
§122.11(a)	Application completeness. Reworded, no substantive change	§122.4(c)
§122.11(b)	Final EPA action. Incorporated into 124	§124.19
§122.11(c)	Compliance is compliance with CWA. Minor wording changes	§122.13(a)
§122.11(d)(1)	Issuance does not convey rights or privileges. Same	§122.13(b)
§122.11(d)(2)	Issuance does not authorize injury. Reworded, no substantive change	§122.13(c)
§122.11(d)(3)	Issuance does not preempt State law. Deleted as redundant	
§122.12	Duration, continuation, transfer	§122.5, §122.9, §122.14, §122.64
§122.12(a)	Duration. Reworded; "modification etc." deleted as redundant	§122.9(a)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.12(b)(1)	Continuation by EPA. Minor wording changes	§122.5(a)
§122.12(b)(2)	Effectiveness of continued permits. Minor wording changes	§122.5(b)
§122.12(b)(3)	Enforcement of continued permits. Reorganized, no major changes	§122.5(c)
§122.12(b)(4)	Continuation by States. Minor wording changes	§122.5(d)
§122.12(c)	Short-term permits. All dates in Appendix A are June 30, 1981; rearrangement and wording changes; parts of comments deleted or moved to §122.62(c); no BAT permits without toxics data.	§122.64
§122.12(d)	Transfer. Reworded: automatic transfers under conditions similar to §122.12(d); otherwise, permit must be modified to transfer	§122.14, §122.7(l)(3)
§122.13	Prohibitions	§122.52
§122.13(a)	Noncompliance with CWA. Minor wording changes	§122.52(a)
§122.13(b)	No State certification. Minor wording changes	§122.52(b)
§122.13(c)	Regional Administrator objects. Same	§122.52(c)
§122.13(d)	Nonattainment of water quality of States. Minor wording changes	§122.52(d)
§122.13(e)	Impairing navigation. Same	§122.52(e)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.13(f)	Radiological waste. Same	§122.52(f)
§122.13(g)	Inconsistent with 208 plan. Minor wording changes	§122.52(g)
§122.13(h)	Ocean discharge. Minor wording changes	§122.52(h)
§122.13(i)	Violation of water quality. Change to prohibit any discharge violating water quality standards; new source must demonstrate sufficient allocation before close of public comment period, need not prove "entitlement"	§122.52(i) and (j)
§122.14	Conditions applicable to all permits Incorporation by reference requires specific cite.	§122.7, §122.60, §122.61
§122.14(a) [Reserved]	[Application-based limits]. Existing dischargers must notify Director if they exceed five-times levels reported in the application	§122.61(a)
§122.14(b)	Duty to comply. Reworded, no substantive change	§122.7(a)
§122.14(c)	Permit may be modified. Added: filing of a modification request does not stay conditions	§122.7(a), §122.7(f)
§122.14(d)	Toxic standards or prohibitions Comment into standard permit terms, §122.60(a)(1); requirement to modify into modification §122.15 and into §122.62	§122.60(a)(1), §122.15(a)(5)(ii), §122.62(b)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.14(e)	Reporting requirements. No longer tied to causes for modification; causes spelled out individually; Director's right to request application in modification (§124.5)	§122.7(l)
§122.14(f)	Right of entry, copying, etc. Minor wording changes	§122.7(i)
§122.14(g)	Operate efficiently. Added: requires backup equipment only to comply with permit; minor wording changes	§122.7(e)
§122.14(h)	Noncompliance reporting. Extensively rearranged, some substantive changes. Added: permits must specify 24-hr. pollutants, others not reported; planned changes and anticipated non-compliance in advance	§122.7(l)(2), (l)(6), (l)(7), §122.60(f)(3), §122.62(g)
§122.14(i)	Duty to minimize impact of noncompliance. Minor wording changes	§122.7(d)
§122.14(j)	Duty to halt activities. In §122.7; not a defense against enforcement, §122.60; minor wording changes	§122.7(c), §122.60(b)
§122.14(k)	Bypass. Rearranged, no substantive change	§122.60(g)
§122.14(l)	Upset. Comment partially incorporated, no substantive change	§122.60(h)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
[§122.10(a)]	Duty to reapply.	§122.7(b)
[§122.11(d)]	Permit does not convey property rights.	§122.7(g)
	Duty to provide information to the Director.	§122.7(h)
[§122.20(b)(2)]	Monitoring must be representative.	§122.7(j)(1)
[§122.21(b)]	Retaining records of monitoring.	§122.7(j)(2)
[§122.5(a)]	Signatory requirements.	§122.7(k)
[§122.31(e)(1)]	Reporting planned changes.	§122.7(l)(1)
[§122.12(d)(1)]	Reporting transfers.	§122.7(l)(3)
[§122.22(a)]	Reporting monitoring results.	§122.7(l)(4)
[§122.22(c)]	Reporting compliance with construction schedule.	§122.7(l)(5)
[§122.31(d)(2)]	Reporting other information previously reported falsely.	§122.7(l)(7)
	Listing of civil & criminal penalities.	§122.60(a)(2)
[§122.20(c)]	Monitor using 40 CFR 136.	§122.60(c)(1)
[§122.20(f)]	Penalties for falsifying monitoring.	§122.60(c)(2)
[§122.21(c), §122.22(d)]	Penalties for false statements.	§122.60(d)
[§122.22(a), (b); 122.16(c)]	Monitoring reports.	§122.60(e)
[§122.14(k)(2)(iii), §122.14(l)(3)(iii)]	24-hr. reporting for upset & bypass.	§122.60(f)
	Application-based notification.	§122.61(a)
[§122.15(d)(1)]	New users reporting by POTWs.	§122.61(b)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.15	Applicable limitations and standards	§122.8, §122.62
§122.15	"Applicable requirement." Minor wording changes	§122.8(b)
§122.15(a)	Effluent limitations and standards. Clarifications, separation of technology-based and other standards; including new sources; no substantive changes	§122.62(a),(b)
§122.15(b)	Short-term permits; reopener clause. All dates in Appendix A are June 30, 1980, conforming changes here; reopener clause now only reopens permit to include guideline, not all requirements of CWA	§122.62(c)
§122.15(c)	New source performance standards. Wording changes, incorporated into technology-based standards section, no substantive changes	§122.62(a)
§122.15(d)(1)	POTW notice of new users. Moved to standard permit conditions, comment incorporated	§122.61(b)
§122.15(d)(2)	POTW pretreatment program. Minor wording changes	§122.62(j)
§122.15(e)	POTW grant requirements. Comment deleted	§122.62(n)
§122.15(f)(1)-(9)	Additional water quality standards. Minor wording changes	§122.62(d)(1)-(9)
§122.15(f)(10)	Technology-based case-by-case limits. Incorporated into §122.62(a)	§122.62(a)
§122.15(f)(3)	State certification. Added: if certification is stayed, conditions under CWA section 301(b)(1)(c)	§122.62(d)(3)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.15(g)	Best management practices. Comment deleted	§122.62(k)
§122.15(h)	Sewage sludge. Same	§122.62(o)
§122.15(i)	Reissued permits with no less stringent limits. Added: changes in circumstances allows less stringent limits; increased production leading to reduced treatment efficiency	§122.62(l)
§122.15(j)	Vessels - Coast Guard regulations. Minor wording changes	§122.62(p)
§122.15(k)	Conditions for navigation. Same	§122.62(q)
	Incorporation of conditions by reference.	§122.8(c)
	Limits on toxic pollutants.	§122.62(e)
	Higher notification level.	§122.62(f)
	Indicators for 24-hr. reporting.	§122.62(g)
[§122.12(a)]	Permit durations.	§122.62(h)
[§122.20(a)]	Monitoring requirements.	§122.62(i)
	Privately owned treatment works.	§122.62(m)
§122.16	Calculation of effluent limits	§122.63
§122.16(a)(1)	Limits for each outfall. Reworded, no substantive change	§122.63(a)
§122.16(a)(2)	Actual production limits for non-POTWs. Reworded, comment incorporated; time period for production same as time period for limits	§122.63(b)(2)
§122.16(a)(3)	Design flow limits for POTWs. Same	§122.63(b)(1)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.16(b)	Total metals. Reworded, no substantive change	§122.63(c)
§122.16(c)	Maximum daily etc. limits. Added: "unless impracticable" Comment added to §122.60(e)(3)	§122.63(d)
§122.16(c)(1)-(4)	Definitions. Put into definitions section, some rewording, no substantive change	§122.3
§122.16(d)	Mass limits. Added: (1) mass-based limits not required when case-by-case production can't be used; (2) concentration-based limits allowed in addition to mass-based limits, and permittee must comply with both	§122.63(f)
§122.16(e)	Gross limits. Same	§122.63(g)
§122.16(f)	Net limits. Reworded, no substantive change, also added to causes for modification (§122.15)	§122.63(h); §122.15(a)(5)(iv) and (a)(5)(v)
§122.16(g)	Noncontinuous discharges. Same	§122.63(e)
§122.16(h)	Limits on internal wastestreams. Added: the fact sheet must include an explanation of why the limits are necessary; comment incorporated	§122.63(i)
[§122.41]	Disposal into wells, etc.	§122.63(j)
§122.17	Schedules of compliance	§122.10

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.17(a)	Require compliance ASAP and no later than CWA deadline. Rearranged, no substantive change	§122.10(a)(1)
§122.17(b)	Interim requirements. Interim dates required if compliance is more than 1 year (instead of 9 months) away; examples put in Note	§122.10(a)(3), §122.10(a)(3)[Note]
§122.17(b)(1)	Time between dates. Time between interim dates may be up to 1 year (instead of 9 months)	§122.10(a)(3)(i)
§122.17(b)(2)	Divide into stages; submit reports. Again, time between interim dates may be 1 year; no other change	§122.10(a)(3)(ii)
§122.17(c)	Alternative schedules of compliance. Reworded, any termination of discharge	§122.10(b)
§122.17(c)(1)	Termination after permit is issued. Minor wording changes	§122.10(b)(1)
§122.17(c)(1)(i)	Modification to include termination. Reworded, no substantive change	§122.10(b)(1)(i)
§122.17(c)(1)(ii)	Terminate before miss any interim date. Same	§122.10(b)(1)(ii)
§122.17(c)(2)	Decision before permit is issued. Reworded, no substantive change	§122.10(b)(2)
§122.17(c)(3)	Alternative schedules. Added: Director may modify a permit to include two schedules (as well as issue a permit)	§122.10(b)(3)
§122.17(c)(3)(i)	Date for final decision. Reworded, no substantive change	§122.10(b)(3)(i)
§122.17(c)(3)(ii)	Schedule leading to termination. Reworded, no substantive change	§122.10(b)(3)(iii)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.17(c)(3)(iii)	Schedule leading to compliance. Reworded, compliance must be achieved as soon as possible	§122.10(b)(3)(ii)
§122.17(c)(3)(iv)	Follow appropriate schedule after decision. Reworded, no substantive change	§122.10(b)(3)(iv)
§122.17(c)(4)	Requirement to post a bond. DELETED	
§122.17(c)(5)	Firm public commitment. Reworded, comment deleted; no substantive change	§122.10(b)(4)
§122.17(d)	Director may modify compliance schedule. Reworded, moved to causes for modification, no substantive change	§122.15(a)(4)
§122.17(e)	POTW innovative technology grants. Reworded, moved to causes for modification, no substantive change	§122.15(a)(5)(xi)
§122.17(f)	No compliance schedule for new sources, etc. Reworded, moved to first paragraph, no major change	§122.10(a)(2)
§122.20	Monitoring	§122.7(j), §122.7(l)(4), §122.11, §122.60(c), §122.60(j)(1), §122.62(i)(1)
§122.20(a)	Permits must contain monitoring requirements. Reworded, no substantive change	§122.62(i)(1)
§122.20(a)(1)	Monitor for each pollutant limited. Reworded, no substantive change	§122.62(i)(1)(i)
§122.20(a)(2)	Monitor volume. Reworded, no substantive change	§122.62(i)(1)(ii)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.20(a)(3)	Monitor otherwise. Reworded, added example of requiring monitoring for pollutants reported in application, internal wastestreams, and net limits	§122.62(i)(1)(iii)
§122.20(b)(1)	Permits must specify monitoring equipment. Minor wording changes	§122.11(a)
§122.20(b)(2)	Monitoring frequency must be sufficiently representative. Added: may require continuous monitoring; deleted specific requirement for more frequent monitoring of variable effluents (representativeness requirement remains) other rewording; in standard permit conditions, permittees must take representative samples	§122.11(b), §122.7(j)(1)
§122.20(b)(3)	Permits must specify monitoring methods. Deleted as redundant	
§122.20(c)(1)	40 CFR Part 136 listed or alternate approved methods must be used. Permittees must use 40 CFR Part 136 methods or a method specified in the permit	§122.62(i)(iv), §122.60(c)(1)
§122.20(c)(2)	Director specifies a method in permit where no 136. Minor wording changes	§122.62(i)(1)(iv)
§122.20(c)(3)	Director may specify guideline method. DELETED	
§122.20(c)(4)	Director must specify guideline method if 40 CFR 136. DELETED	
§122.20(d)	Sampling frequency shall be consistent with guideline. DELETED	

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.20(e)	Permittee should request more frequent monitoring. DELETED	
§122.20(f)	Penalties for falsifying monitoring. Same, moved to standard permit conditions	§122.60(c)(2)
[§122.22(a)]	Reporting frequency.	§122.11(c)
§122.21	Recording of monitoring results	§122.7(j)(2),(j)(3); §122.60(d)
§122.21(a)	Records of monitoring information. Deleted "and monitoring activities"	§122.7(j)(3)
§122.21(a)(1)	Date, place, and time of sampling. Same	§122.7(j)(3)(i)
§122.21(a)(2)	Samplers. Minor wording changes.	§122.7(j)(3)(ii)
§122.21(a)(3)	Date of analyses. Same	§122.7(j)(3)(iii)
§122.21(a)(4)	Analyzers. Minor wording changes.	§122.7(j)(3)(iv)
§122.21(a)(5)	Analytical techniques. Same	§122.7(j)(3)(v)
§122.21(a)(6)	Results. Same	§122.7(j)(3)(vi)
§122.21(b)	Records and results kept for 3 years. Added: all reports required by the permit and application data; at least 3 years from the date of the sample, measurement, or report; minor wording changes	§122.7(j)(2)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.21(b)(1)	Three years automatically extended during litigation. Now Director must request extension	§122.7(j)(2)
§122.21(b)(2)	Three years extended by Director's request. Minor wording changes	§122.7(j)(2)
§122.21(c)	Penalties for false statements. Minor wording changes	§122.60(d)
§122.22	Reporting of monitoring results by permittees	§122.7(l)(5), §122.60(e), §122.60(l)(5), §122.60(d), §122.62(i), §122.10(a)(4)
§122.22(a)	Permittees must use DMR. Minor wording changes	§122.60(e)(1)
§122.22(a)	Reports at least once per year. Now is duty of Director to specify in permit	§122.62(i)(2), §122.11(c)
§122.22(a)	Permittee must report other data not required by permit. DELETED	
§122.22(a) [Comment]	Examples of reporting frequency. Most of comment deleted	§122.62(i)(2)
§122.22(b)	Permittee must report more frequent monitoring. Reworded, no substantive change	§122.60(e)(2)
§122.22(c)	Permittee must report compliance with interim dates. Reworded, put in both standard permit conditions and schedules of compliance; no substantive change	§122.7(l)(5), §122.10(a)(4)
§122.22(d)	Penalities for false statement. Combined with §122.21(c) in standard permit conditions	§122.60(d)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.23	Noncompliance reporting by the Director	§122.18
§122.23(a)	State reports to Region; Regional reports to HQ. Changes: reports submitted to RA (instead of Enforcement Division Director), Regional reports submitted by RA to EPA Headquarters (instead of by Enforcement Division Director to EPA OWE)	§122.18, §122.18(e)
§122.23(b)	Reports of noncompliance by majors. Reworded, no substantive change	§122.18(a)
§122.23(b)(1)	Report failure to meet construction date. Reworded, no substantive change	§122.18(a)(2)
§122.23(b)(2)	Failure to submit schedule reports. Combined with failure to submit monitoring reports; minor wording changes	§122.18(a)(2)(iii)
§122.23(b)(3)(i)	Noncompliance with applicable limitations. Keyed on violation of permit (instead of applicable standards); unless returned to compliance before 45 days after reporting noncompliance was due (instead of "or date when DMR was due")	§122.18(a)(2)(v)(A)
§122.23(b)(3)(ii)	Pattern of noncompliance. Reworded, no substantive change	§122.18(a)(2)(v)(B)
§122.23(b)(3)(iii)	Significant noncompliance. Reworded, no substantive change	§122.18(a)(2)(v)(C)
§122.23(b)(4)	Failure to report DMR. Combined with failure to submit progress reports, minor wording changes	§122.18(a)(2)(iii)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.23(b)(4)	Failure to report noncompliance. Deleted as duplicative	
§122.23(b)(5)	Deficient reports. Reworded, no substantive change	§122.18(a)(2)(iv)
§122.23(b)(6)	Modification of compliance schedule. Reworded, reporting required when schedule is modified	§122.18(a)(2)(ii)
§122.23(b)(6) [Comment]	All noncompliance reported until resolved. Reworded, no substantive change	§122.18(a)(2)
§122.23(c)(1)	Information required in report. Rearranged, no substantive change	§122.18(a)(1)(iv)
§122.23(c)(1)(i)	Name, location, permit number. Same	§122.18(a)(1)(iv)(A)
§122.23(c)(1)(ii)	Date and description of noncompliance. Combined with requirement for a single entry per permittee (§122.23(c)(3)); minor wording changes	§122.18(a)(1)(iv)(B)
§122.23(c)(1)(iii)	Date and description of Director's actions. Same	§122.18(a)(1)(iv)(C)
§122.23(c)(1)(iv)	Status of noncompliance. Status as of date of review (instead of date of action)	§122.18(a)(1)(iv)(D)
§122.23(c)(1)(v)	Mitigating factors. Same	§122.18(a)(1)(iv)(E)
§122.23(c)(2)	Separate lists for POTW, non-POTW, Federal. Minor wording changes	§122.18(a)(1)(i)
§122.23(c)(3)	Single entry per permittee. Combined with date and description requirement; minor wording changes	§122.18(a)(1)(iv)(B)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.23(c)(4)	Alphabetized. Minor wording changes	§122.18(a)(1)(iii)
§122.23(d)	Statistical information. Minor wording changes	§122.18(a)(2)(vi)
§122.23(e)	Annual reports for non-majors. Reports must include number reviewed, number noncomplying, number of enforcement actions, and number of modifications extending deadlines	§122.18(c)(1)
§122.23(e)	Separate list of non-majors behind in construction. Same	§122.18(c)
§122.23(f)(1)	Reporting schedule for quarterly reports. Same	§122.18(e)(1)
§122.23(f)(2)	Reporting schedule for annual reports. Reports submitted at end of calendar year (December 31) (instead of fiscal year)	§122.18(e)(2)
§122.23(g)	Reports available to the public. No longer specified separately	§122.18(e)(2) footnote
§122.23(g) [Comment]	Designation of majors. Majors are defined in §122.3	§122.3
	Separate list for facilities with two or more permits.	§122.18(a)(1)(ii)
§122.30	General modification, revocation, termination. No longer a separate section	
§122.31	Modification, revocation and reissuance, and termination	§122.15, §122.16, §122.17
§122.31(a)	Any permit may be modified, etc. for cause. Same	§122.13(a), §122.15

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.31(b)	Modification can't give longer than 5-year term. Put into duration section	§122.9(d)
§122.31(c)	Director may initiate. Director may revoke and reissue only for separate cause or at permittee's request; may initiate modification if cause exists	§122.15
§122.31(c)	Any interested person may request. Incorporated into 124	§124.5(a)
§122.31(d)	Causes for modification, revocation and reissuance, and termination. Separated causes for revocation and reissuance or termination, from modification; modifications only of condition giving cause	§122.15(a)
§122.31(d)(1)	Noncompliance with permit. Now cause for termination, "noncompliance" (instead of "violation")	§122.16(a)(1)
§122.31(d)(2)	Misrepresentation of facts. Now cause for termination; reworded: failure to disclose fully "at any time"	§122.16(a)(2)
§122.31(d)(3)	Reduction or elimination of discharge. Now cause for termination; last two examples deleted	§122.16(a)(4)
§122.31(d)(4)	Threat to human health. Now cause for termination; reworded: determination (instead of "information"); "human health or the environment" (instead of "human health or welfare"); added: "which can only be regulated to acceptable levels by permit modification or termination."	§122.16(a)(3)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.31(d)(5)	Transfer. Cause for a revocation and reissuance; continues to be cause for modification but not revocation and reissuance after automatic transfer.	§122.15(b)(2)
§122.31(e)	Cause for modification or revocation and reissuance. Modification only, unless permittee requests; modification only opens up condition giving cause	§122.15(a)
§122.31(e)(1)	Substantial alterations. Reworded: "which justify the application of permit conditions that are different or absent in the existing permit" (instead of "which were not covered in the effective permit"); examples deleted; comment partially incorporated, with less discussion of new sources	§122.15(a)(1)
§122.31(e)(2)	New information. Reworded, clarified, "information" not "factors"; other changes	§122.15(a)(2)
§122.31(e)(3)	New regulations. Combined with judical remand (§122.31(e)(4))	§122.15(a)(3)
§122.31(e)(3)(i)	Permit condition based on revised regulation. Minor wording changes	§122.15(a)(3)(i)(A)
§122.31(e)(3)(ii)	EPA action has revised. Minor wording changes	§122.15(a)(3)(i)(B)
§122.31(e)(3)(iii)	Request filed within 90 days. Reworded, no substantive change	§122.15(a)(3)(i)(C)
§122.31(e)(4)	Judicial remand or stay. Remanded by a court of competent jurisdiction; "remand or stay" (instead of "remand")	§122.15(a)(3)(ii)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.31(e)(5)	As authorized by CWA. Requirements listed separately in §122.15(a)(5)(ii)	§122.15(a)(5)(ii)
§122.31(e)(6)	Cross references. Separated	§122.15(a)
§122.31(e)(6)	Required by toxic standard or prohibition. Written out	§122.15(a)(5)(ii)
§122.31(e)(6)	Required by toxics reopener clause. Written out	§122.15(a)(5)(iii)
§122.31(e)(6)	To modify compliance schedule. Written out, transferred from §122.17(d)	§122.15(a)(4)
§122.31(e)(6)	Innovative waste treatment grant to POTW. Written out, transferred from §122.17(e)	§122.15(a)(5)(xi)
§122.31(e)(7)	Failure to notify affected State. Same	§122.15(a)(5)(vii)
§122.31(f)	Minor modification. Added: Consent of permittee required; deleted: unless would make permit less stringent	§122.17
§122.31(f)(1)	Minor modification, Correction of typos. Same	§122.17(a)
§122.31(f)(2)	More frequent monitoring. Minor wording changes	§122.17(b)
§122.31(f)(3)	Change in compliance schedule. Minor wording changes	§122.17(c)
§122.31(f)(4)	Transfer. Reworded, requirement for agreement included (instead of referenced), no substantive change	§122.17(d)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.31(f)(5)	Change in construction for new source. Same	§122.17(g)(1)
§122.31(f)(6)	Delete outfall. Minor wording changes	§122.17(g)(2)
[§122.10(b)(1) §122.14(e)]	Director may request an application.	§122.15
	Modification when State certification changes.	§122.15(a)(3)(iii)
[§122.16(f)(1)]	To incorporate net limits.	§122.15(a)(5)(iv)
[§122.16(f)(1)(ii)]	To remove net limits.	§122.15(a)(5)(v)
	When "reopener" for pretreatment is triggered.	§122.15(a)(5)(iii)
	To reopen pretreatment compliance schedule.	§122.15(a)(5)(vi)
	When discharge exceeds §125.3 levels.	§122.15(a)(5)(viii)
	When permittee begins to use or manufacture toxics.	§122.15(a)(5)(ix)
	To establish a higher "notificaton level."	§122.15(a)(5)(x)
[§122.31(d)]	Any cause for termination is cause for revocation.	§122.15(b)(1)
[§122.30]	Director follows Part 124 procedures for termination.	§122.16(b)
§122.40	General--Special NPDES programs No longer a separate section	
§122.41	Disposal into wells, etc.	§122.65
§122.41(a)	When to make adjustments. Same	§122.65(a)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.41(a)(1)	If no waste discharged. Same	§122.65(a)(1)
§122.41(a)(2)	Calculation for partial discharges. Minor wording changes, comment incorporated	§122.65(a)(2)
§122.41(b)	Not applicable for concentration guidelines. Minor wording changes	§122.65(b)
§122.41(c)	May be more stringent. Increased number of cross-references	§122.65(c)
§122.42	Concentrated animal feeding operations	§122.54
§122.42(a)	Permit requirements. Same	§122.54(a)
§122.42(b)(1)	Definition of animal feeding operation. Same	§122.54(b)(1)
§122.42(b)(2)	Definition of concentrated. Moved to Appendix B, no substantive change	§122.54(b)(2), Appendix B
§122.42(c)	Case-by-case designation. Minor wording changes	§122.54(c)
§122.43	Concentrated aquatic animal production facilities	§122.55
§122.43(a)	Permit required. Same	§122.55(a)
§122.43(b)	Definition of concentrated. Moved to Appendix C, no substantive changes	§122.55(b), Appendix C
§122.43(c)	Case-by-case designation. Minor wording changes	§122.55(c)
§122.44	Aquaculture projects	§122.56

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.44(a)	Permit requirements. Same	§122.56(a)
§122.44(b)	Definitions. Same	§122.56(b)
§122.45	Separate storm sewers	§122.57
§122.45(a)	Permit required. Added: coverage of permit from comment at end of §122.45, minor wording changes	§122.57(a)
§122.45(b)	Definitions. Reworded, clarified	§122.57(b)
§122.45(c)	Case-by-case designation. Minor wording changes	§122.57(c)
§122.46	Silvicultural activities	§122.58
§122.46(a)	Permit required. Same	§122.58(a)
§122.46(b)	Definitions. Minor wording changes	§122.58(b)
§122.47	New sources and new dischargers	§122.66
§122.47(a)	Definitions. Same, "site" moved to §122.3	§122.66(a)
§122.47(b)(1)(i)	Construction on a new site. Same	§122.66(b)(1)(i)
§122.47(b)(1)(ii)	Construction on an existing site. Reworded, totally replaces or causes change in discharge; comment deleted	§122.66(b)(1)(ii)
§122.47(b)(2)	Modification of existing source. Reworded - construction must create new building	§122.66(b)(2)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.47(b)(3)	Commencement of construction. Same	§122.66(b)(3)
§122.47(c)(1)	Requirement for an EIS. Same	§122.66(c)(1)
§122.47(c)(2)	EIS includes recommendation. Minor wording changes	§122.66(c)(2)
§122.47(c)(3)	RA review. Added: "issue, condition, or deny"; "or a finding of no significant impact"	§122.66(c)(3)
§122.47(c)(4)(i)	No on-site construction with EIS. Added: RA must find no irreversible impact; provisions of agreement shall be put into permit	§122.66(c)(4)(i)
§122.47(c)(4)(ii)	No on-site construction with no EIS. Must wait 30 days (instead of 15), RA must make "no significant impact" determination of construction (instead of the probable need for EIS)	§122.66(c)(4)(ii)
§122.47(c)(5)	Notification of on-site construction. Same	§122.66(c)(5)
§122.47(d)	Effect of NSPS. Added: paragraph clarifying that existing sources are not covered from comment at end of §122.47	§122.66(d)
§122.47(d)(1)	Protection period. Same	§122.66(d)(1)
§122.47(d)(2)	Doesn't apply to toxics. Added: Does not apply to any §125.3 limit on toxics or hazardous substances	§122.66(d)(2)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.47(d)(3)	Compliance schedules. Added: compliance schedules allowed to meet conditions promulgated within 3 years of permit expiration	§122.66(d)(3)
§122.47(d)(4)	Start-up control equipment. Same	§122.66(d)(4)
§122.47(d)(5)	Effectiveness of NSPS. Same	§122.66(d)(5)
§122.48	General permits	§122.59
§122.48(a)(2)	Definition of "GPPA." No longer separately defined, no substantive change	§122.59(a)(1)
§122.48(a)(2) [Comment]	Objection by EPA. Moved to 123 and 124	§124.57, §123.76
§122.48(a)(3)	Definition of general permit. Definition shortened, regulatory requirements elsewhere; no substantive change	§122.3, §124.57, §123.76, §122.59(a)(1)
§122.48(b)(1)	Coverage of separate storm sewers. Same	§122.59(a)(2)(i)
§122.48(b)(2)	Coverage of other sources. Minor wording changes	§122.59(a)(2)(ii)
§122.48(c)	Covers a category within area. No longer a separate requirement	§122.59(a)(1)
§122.48(c)(1)	Area. Minor wording changes	§122.59(a)(1)
§122.48(c)(2)	Designation subject to review. DELETED	
§122.48(c)(3)	Procedures follow Part 124. Reworded, no substantive change	§122.59(b)(1)

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.48(c)(3) [Comment]	Providing notice. Added to §124.57	§124.57
§122.48(d)(1)	Excluded sources. Reworded, no substantive change	§122.59(a)(1), §122.59(b)(2)
§122.48(d)(2)(i)	Permit applies to all not excluded. Reworded, no substantive change	§122.59(a)(1)
§122.48(d)(2)(ii)	Request for coverage. Minor wording changes	§122.59(b)(2)(v)
§122.48(e)(1)	Requirement for individual permit. Reworded, no substantive change	§122.59(b)(2)(i)
§122.48(e)(2)	EPA revocation. Reworded, requirement for onsite inspection deleted; allowance for additional time added	§122.59(b)(2)(ii)
§122.48(e)(3)	Request for individual permit. Reworded, no substantive change	§122.59(b)(2)(iii)
§122.48(e)(4)	Effect of individual permit. Incorporated with §122.48(e)(5)	§122.59(b)(2)(iv)
§122.48(e)(5)	Processing under Part 124. Incorporated with §122.48(e)(4)	§122.59(b)(2)(iv)
§122.49	Special considerations under Federal law.	§122.12
§122.49(a)	EO 11990 (Wetlands). Reserved in today's regulations	§122.12(f) (Reserved)
§122.49(b)	EO 11988 (Floodplains). Reserved in today's regulations	§122.12(f) (Reserved)
§122.49(c)	Wild and Scenic Rivers. Narrative added	§122.12(a)
§122.49(d)	National Historic Preservation. Narrative added	§122.12(b)
§122.49(e)	Land and Water Conservation Act. DELETED	

TABLE VII

RELATIONSHIP OF JUNE 7 PART 122 TO TODAY'S REGULATIONS
(Continued)

June 7 Paragraph Number	Subject and Any Changes	Today's Paragraph Number(s)
§122.49(f)	Endangered Species. Narrative added	§122.12(c)
§122.49(g)	Coastal Zone Management. Narrative added, comment deleted	§122.12(d)
§122.49(h)	RCRA. DELETED	
§122.49(i)	SDWA. DELETED	
§122.49(j)	Ocean Dumping. DELETED	
§122.49(k)	Surface Mining. DELETED	
§122.49(l)	Fish and Wildlife Coordination. Minor word changes	§122.12(e)
[122.47(c)]	NEPA. Coverage specified	§122.12(f)
§122.60	Delegation of Authority DELETED	
	Confidentiality of Information	§122.19

BILLING CODE 6560-01-C

PART 123—STATE PROGRAM REQUIREMENTS

A. What Does This Part Do?

This Part establishes the requirements for State RCRA, UIC, NPDES, and 404 programs and the process for approval, revision, and withdrawal of these State programs. It also establishes guidelines for EPA overview of these programs, including the requirement for a Memorandum of Agreement between EPA and the State. Although State programs are established and operated under State law, approved State RCRA, UIC, NPDES, and 404 programs also implement Federal law and operate in lieu of Federally administered programs. A permit issued by a State under State law after its program has been approved satisfies the Federal permit requirement. Under the CWA, EPA retains the right to object to ("veto") NPDES and 404 permits proposed to be issued by approved States. Part 123 contains the procedures for EPA objection to these permits.

Part 123 is divided into a general subpart (Subpart A) and five program specific subparts (Subparts B–F). Unless expressly indicated, the requirements of Subpart A are generally applicable to all of the State Programs covered by this Part, except State RCRA programs under interim authorization; their requirements are contained solely in Subpart F. Subparts B, C, D and E provide program-specific requirements additional to those of Subpart A for the RCRA final authorization, UIC, NPDES, and 404 programs, respectively.

The procedures for issuing permits, as well as the minimum technical requirements for such permits, are incorporated into the requirements for State programs by cross-references to other provisions of EPA regulations. For example, many of the permit requirements contained in Part 122, which is applicable in full to EPA-administered permit programs, are applicable to State programs through cross-references in Part 123. Because 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 devoted solely to 404 permitting. Instead, Part 123, Subpart E contains the additional permit processing requirements applicable to State 404 programs.

With one major exception, the requirements of Part 123 represent the *minimum* requirements which States must meet to qualify for approval. States are allowed some flexibility in how they implement these requirements and are free to impose more stringent controls pursuant to State law. (The exception, discussed below, concerns the statutory requirement under RCRA that State hazardous waste programs be "consistent" with other approved State programs and with the Federal program.)

Many of the comments EPA received on proposed Part 123 objected to this scheme of setting minimum requirements for State programs and allowing States flexibility to implement those requirements. Some commenters felt that the requirements for State programs were too detailed and inflexible and that EPA should simply approve "effective" State programs. On the other hand, many national companies favored nationally uniform requirements and raised objections to allowing flexibility among the States. After careful consideration, EPA rejects both the suggestion that State program requirements should be totally flexible and the suggestion that they be much more rigid.

EPA believes that numerous problems would occur if it were to simply approve "effective" State programs without setting minimum requirements. First, since many States are presently working on developing programs, setting specific minimum requirements enables these States to know with certainty whether their program will be approvable. For example, State A is working on a hazardous waste statute. A controversial aspect of this legislation is the level of penalties and fines for program violations. By specifically establishing the minimum levels of fines for State programs in Part 123, EPA has given clear guidance. A requirement only of "effectiveness," which is subject to multiple interpretations, would subject the State to the risk of disapproval by EPA unless it enacted legislation identical to the Federal law.

It would be most difficult for the Agency to approve programs based on "effectiveness." To generate a record that a State program is "effective" which would withstand judicial scrutiny, EPA would have to look much beyond the State's submission for approval. Moreover, unless EPA established standards on which to judge whether the program was effective, it would be difficult to justify approving one State's program and denying another's. These regulations establish the specific criteria which are needed in order to make and justify these approval decisions.

In addition, because decisionmaking based on effectiveness relies primarily on the past performance of a program, it would be particularly difficult to judge State programs which are new or substantially modified since these programs would have no "track-record." Moreover, past performance is not as important to EPA as expected future performance. The Agency does not intend to disapprove all State programs which have had problems in the past. It views the decision whether or not to approve a State program as being forward looking; the Agency is primarily concerned that the program be effective in the future.[4]

Finally, all three of the statutes authorizing the State programs covered by this Part contemplate specific criteria for State programs (see CWA section 101(e), 402(b), 404(h), and 304(i); RCRA sections 3006(a) and 7004(b), and SDWA section 1421). There is a growing body of case law which suggests that in the absence of specific requirements EPA would not be able to deny a State's request for approval.

On the other hand, EPA rejects the suggestion that State programs be nationally uniform (i.e., that they should meet *all* the requirements of Parts 122 and 124). The Agency has carefully analyzed each of the Part 122 and Part 124 requirements to determine which are essential to State programs. In evaluating which requirements the State should adopt, EPA employed the following criteria:

(1) Is the requirement necessary to protect public health and the environment?;

(2) Is there a need for national uniformity with respect to the requirement?;

(3) Is the requirement necessary to promote a programmatic goal? (e.g., to promote public participation); and

(4) Is the requirement necessary under Federal law for State programs? (e.g., 5-year permit terms for NPDES and 404 permits).

Many of the procedures of Parts 122 and 124 do not meet these criteria, and therefore have not been made applicable to State programs. For example, while the Agency believes that fact sheets, draft permits, and 30 day public comment periods are necessary to ensure the opportunity for public participation (an explicit goal of Federal environmental programs), it does not

[4] In this regard, there was one place in the proposed regulations where the Agency suggested that past performance in enforcement would be a factor in evaluating State RCRA programs (see the *Comment* after proposed § 123.34(d)). This provision was strongly criticized by a large number of commenters who felt that past performance is not a relevant factor in evaluating a State program. While EPA believes that past performance can be considered, it agrees with the commenters that the decision whether or not to approve a State program is forward looking and that past performance should not be the only or prime decision factor.

believe that the process for administrative appeals of permits need to be uniform. Indeed, most States have their own administrative procedures acts and there were no comments suggesting that these were inadequate.

B. How Does This Part Relate to the June 14, 1979 Proposal?

The following is a discussion of the significant comments received and changes made to the June 14, 1979 proposal. Editorial and stylistic changes have been made to all sections and are not discussed.

Subpart A—General Program Requirements

A frequent complaint about the proposed consolidated permit regulations was that they were too complex and confusing. Some of the comments noted that there were a great number of cross-references in Part 123 and a general bifurcation of requirements between Subpart A and the program-specific subparts. Indeed, this bifurcation generated many of the cross-references.

To mitigate this problem EPA has further consolidated requirements by moving some of the material found in the program-specific subparts into the general subpart. For example, the criteria for withdrawal of State programs are found in § 123.14. In the proposal, one additional ground for withdrawal was included for State RCRA programs in Subpart B at § 123.41. In these regulations, EPA has moved proposed § 123.41 into the same section which contains the other grounds for withdrawal but, to avoid confusion, has clearly labeled it as being applicable only to State RCRA programs. While this approach means that some of the program-specific requirements are contained in Subpart A, it has resulted in the elimination of many cross-references and sections.

Subpart A is not applicable to State RCRA programs under interim authorization.

§ *123.1 Purpose and scope.*

Some commenters questioned whether a State authorized to administer one of the programs under this Part would be required to seek authority to administer the others. The answer is no. EPA has never intended these regulations to act in such a manner. While EPA strongly encourages States to seek authority to administer all programs under this Part, and has promulgated these regulations in order to simplify the States' task in administering multiple programs, no affirmative duty to develop such programs is established by these regulations. It should by noted, however, that section 1422 of SDWA does require States listed by the Administrator to develop UIC programs. (All States have now been so listed.) In answer to a similiar comment concerning the requirement to consolidate, States are not being forced to consolidate when they administer multiple programs. These regulations, however, provide the framework for consolidation for those States that wish to do so. EPA encourages such consolidation.

Many commenters expressed concern about § 123.1(g) (proposed § 123.1(c)), regarding the transition from an EPA (or Corps of Engineers in the case of the 404 program) to a State administered program, and wanted EPA to retain permit issuance authority over permits being processed at the time of transfer. Potential permittees indicated it would be unfair to make an applicant whose application had been processed by EPA start over again with the State. While the Agency is sympathetic to these concerns, the statutes preclude retention of permit issuance authority after State program approval. For example, the Clean Water Act mandates that the Administrator (or the Secretary in the case of 404 programs) "suspend the issuance of permits" upon approval of a State program (see CWA sections 402(c) and 404(h)). Upon approval the State has the sole permit issuing authority. EPA cannot preclude States from reconsidering decisions made by EPA (or the Corps) during the processing of a permit application, as some commenters requested. EPA (or the Corps) will, however, transfer all pending permit applications and other relevant information, including the record of any proceedings, to the State at the time of program approval, and will work closely with the State to avoid unnecessary repetition. EPA (or the Corps) may maintain jurisdiction over permits issued prior to the transfer. Arrangements for the orderly administration of these permits are usually included in the Memorandum of Agreement.

Most of what was a *Comment* to proposed § 123.1(e) has now been included in the body of the regulation in § 123.1(j). The question of who has responsibility for program administration over activities on Indian lands drew many comments. Objections were raised to the requirement that States *must* administer the program over activities on Indian lands to the extent they are authorized to do so, coupled with the requirement of proposed § 123.5 that the State Attorney General analyze the State's authority over Indian lands. Because States will lack jurisdiction, in most instances, to control activities on Indian lands, and since many of the comments suggested that requiring the State to take a position on the issue could generate significant political controversies, EPA has modified the requirement of the proposal. EPA will assume that a State lacks authority unless the State affirmatively asserts authority and supports its assertion with an analysis from the State Attorney General. Thus, the State will not be forced to take a position unless it chooses to assert jurisdiction.

The provisions in § 123.1(k) (proposed § 123.1(f)) clarify that, except in regard to certain aspects of State RCRA programs, States may provide more stringent controls than do the comparable Federal programs. Provisions applicable under an EPA-administered program need not be adopted or may be modified by a State if their omission or modification would make the State program more stringent than the Federal program. For example, a State NPDES or 404 program need not provide for the issuance of general permits, but could instead require all dischargers to receive an individual permit. Likewise, NPDES States need not adopt upset or bypass provisions since more stringent control can be achieved without them.

Most of the *Comment* included in proposed § 123.1(f) regarding State programs with a greater scope of coverage then required by Federal law has been incorporated into the regulation, § 123.1(k)(2).

§ *123.2 Definitions.*

Although the definitions of Part 122 apply to the terms used in Part 123, States are not required to adopt the same definitions. For example, although a State NPDES program must cover all "discharges of pollutants" into "navigable waters," it need not adopt the same language in defining the scope of coverage of the State program. For example, many NPDES States tie the permit requirement to the discharge of "waste," or use a different definition of waters. This is acceptable as long as the State does not adopt language which reduces the scope of coverage of the State program below the scope of coverage of the Federal program.

§ *123.3 Elements of a program submission.*

This section establishes the documentation and information which a State must submit to EPA before program review can begin. Since the time allowed for EPA review of a State program submission is quite limited, it is

essential that all the necessary documents be submitted before the statutory review period starts. The Agency views each element of a submission as essential to review in making its approval decision. Program-specific additions have been added to the list of required elements so that all the elements are contained in one section.

Apparently, many commenters misconstrued the language of proposed paragraph (a). These commenters thought that EPA's 30-day review for completeness of the submission occurred *before* the commencement of the statutory-review period and pointed out that to do so would not be legal. EPA recognizes that the statutory-review period commences on the date of receipt of a complete submission and not on the date the Agency determines the submission is complete. § 123.3(b) has been revised to clarify this.

Proposed § 123.3(b)(5), which required that a State submit copies of the forms it intends to use in its program, has been shifted to § 123.4. Submission of these forms is more appropriate as a component of the program description than as a separate requirement.

§ *123.4 Program description.*

All the program-specific additional requirements for the program description (i.e., proposed §§ 123.34 (RCRA), 123.52 (UIC), and 123.95 (404)) have been incorporated into this section and clearly identified.

The 404 requirement for a single agency has been dropped so as not to preclude States from using a "one-stop" permitting body for certain types of facilities, e.g., energy facilities. However, EPA believes that the use of a single State 404 agency is a preferable approach, offering more administrative simplicity and substantive consistency, and avoiding much potential confusion. Where more than one agency has responsibility for administering a State 404 program, the program submission must specifically address this division of authority, and discuss how the program will be administered and enforced by the State. Each responsible State agency must have full authority in the category of its jurisdiction. §§ 123.4(h)(7) and (8) have been added to establish these requirements.

Some commenters suggested that States be required to demonstrate that the staff designated to administer the program is adequate. Indeed, this is the purpose of § 123.4(b). Also, to avoid confusion, § 123.4(b) has been clarified to explicitly provide that any agency administering a program must have state-wide jurisdiction. A series of regional boards cannot administer a program unless they are sufficiently under the control of a State agency. The purpose of this requirement is to avoid inconsistent program administration within a State.

States with more than one agency responsible for administering a program are encouraged to designate a lead agency to facilitate communications between EPA and the State agencies having program responsibility. State RCRA programs must designate a lead agency. The lead agency need not be one of the agencies administering the program.

The requirement for submission by States of the forms they will use in their programs (proposed § 123.3(d)(5)) has been retained, but is now included as a part of the program description (§ 123.4(d)). Some commenters pointed out that program-specific requirements for State forms were not identified in the proposal. EPA has tried to clarify this. Other commenters suggested that States be required to use uniform national forms. EPA believes that States should have the flexibility to develop their own forms as long as they require the same basic information as EPA. Only in the case of the NPDES Discharge Monitoring Report is an identical form required.

§ *123.5 Attorney General's statement.*

The Attorney General's statement is a central part of any State application for program approval. The Attorney General's statement is heavily relied upon by EPA in determining what authorities exist in a State, and thus whether these authorities can adequately operate in lieu of Federal requirements. While EPA will review a State's legal authorities, a complete evaluation is not possible without the Attorney General's interpretation of various provisions of State law. The Attorney General's certification can also be valuable where a State program is challenged for failure to conform with Federal requirements. The Agency will develop model Attorney General's statement formats for use in meeting the requirement of this section.

The proposal (§ 123.5(a)) required that the authorities cited by the Attorney General be in full force and effect at the time the statement is signed. This provision has been changed so as to prevent unnecessary delays in the approval process. The Attorney General may now sign the statement before the authorities are fully effective as long as the statutes and regulations cited by the Attorney General have been lawfully adopted prior to signing, and will be fully effective when the program is approved. For example, the provision now allows the Attorney General to sign the statement at the time of promulgation of a necessary regulations, even though its effectiveness is to be delayed.

In response to comments that States not be forced to assert jurisdiction over activities on Indian lands, § 123.5(b) has been changed to provide that the Attorney General need analyze the State's authority over activities on Indian lands only when the State asserts such jurisdiction.

One commenter suggested that the showing required under proposed § 123.94(b) for State section 404 programs regarding specification of disposal sites be deleted for lack of statutory basis. EPA concurs and has deleted this requirement.

§ *123.6 Memorandum of agreement.*

The program-specific requirements for the Memorandum of Agreement (i.e., proposed §§ 123.37 (RCRA), 123.72 (NPDES), and 123.92 (404)) have been moved into this section for convenience.

One commenter suggested that MOAs be submitted to rulemaking, public notice, comment and hearing procedures before execution by the State Director. All MOAs will be subject to public scrutiny prior to program approval (when they become effective) if not prior to their signing by the State Director. In the case of RCRA and UIC programs, States are required to issue public notice of, and provide opportunity for public comment and hearings on their programs, a part of which is the MOA, prior to submittal to EPA. States are not required to provide similar procedures for NPDES and 404 programs, although some may do so. However, under all four programs, EPA will provide public notice of the receipt of State program submissions, including MOAs, provide a public comment period, and schedule a public hearing.

§ *123.6(b)*—This paragraph identifies the basic requirements of the MOA. The *Note* under § 123.6(b)(2) points out that the nature and basis of EPA review of State permits varies among the programs. Under the CWA programs, EPA has a statutory duty to review State NPDES and 404 permits, and may object to permits proposed to be issued by a State. EPA is authorized to issue the NPDES permit, or the Corps of Engineers the 404 permit, if the State does not modify the permit within a specified period to satisfy EPA's objections. Under RCRA, EPA may not veto a proposed State permit to which it objects, but may terminate a permit issued by a State to the extent the permit does not reflect comments made

by EPA which it stated were necessary to implement State program requirements. Under the UIC program, EPA has neither a statutory right of review nor the ability to veto a State permit, but may make arrangements with the State through the MOA to review and comment upon State permits. Under all four programs, the MOA should be the vehicle for specifying the details of EPA's review of State programs.

Comments were received on proposed § 123.6(b)(4)(i) stating that EPA should always notify States before conducting inspections of facilities or activities within a State and that the section should be modified accordingly. EPA will, under most circumstances, provide advance notification. However, for cases of emergency and when otherwise necessary, EPA must retain the right to dispense with advance notification of inspections. § 123.6(b)(4)(i) has therefore been retained in its proposed form.

Proposed § 123.6(b)(4)(ii) concerning "fiscal arrangements for effective litigation support" has been dropped. Commenters indicated that they did not understand the nature of the requirement. The proposal included this as a means to ensure that enforcement activities are adequately funded, particularly when enforcement is conducted by an office outside the approved State agency (e.g., an Attorney General's office). Although EPA remains concerned about ensuring adequate funding for enforcement, it decided that this is appropriately handled in the context of a State/EPA agreement rather than through the MOA.

A new provision has been added to § 123.6(b)(4) requiring that the MOA include arrangements for the coordination of enforcement activities by EPA and the State.

Some commenters were concerned that § 123.6(b)(5), regarding the joint processing of permits required by EPA and a State under different programs, could lead to delays in permit issuance. They believed that approval of one permit would hinge on compliance with another. The intent of this paragraph has been misinterpreted. First, joint processing of permits is not required by the regulations, but rather is at the option of EPA and the State. It is intended to promote efficiency and avoid duplication and inconsistency. Where joint processing is chosen, the agreement could provide for separating out troublesome permits to avoid delays in issuing the others. § 124.4 provides for this separation. Further, the public would have an opportunity to comment on any provision regarding joint processing before program approval. § 123.6(b)(5) has been retained.

One commenter suggested that where more than one agency in a State administers a given program the MOA should require intra-State coordination. Such coordination has not been made an MOA requirement. While procedures for intra-State coordination may be referred to in the MOA, they are better discussed in the program description than in the MOA. § 123.4(b) requires a description of these intra-State procedures for coordination. In the case of State 404 programs a memorandum of understanding between the responsible State agencies will need to be included in the program description when more than one agency seeks to administer the program, and the responsible agencies will all need to be parties to the MOA under this section.

§ *123.6(f)*—Several comments were received on this paragraph (proposed § 123.92(a)), which pertains to the scope of waivers of permit review available to the Regional Administrator under State 404 programs. These comments expressed two opposite viewpoints; some suggested that virtually no waivers be granted, while others suggested that the State be given a blanket waiver of EPA permit review upon program approval. EPA continues to take an intermediate position based on the express language of sections 404(j) and (k) of CWA, which provides EPA authority to review State permits, but allows waivers for specific classes and categories of activities.

Certain types of activities are likely to have substantial environmental effects, and EPA feels that it should always have an opportunity to review permit applications and draft permits for these activities. One such category is "major discharges." A commenter suggested that a definition for "major discharger" be formulated and applied nationwide. EPA believes that development of a nationwide definition is unrealistic given the variety of discharge and aquatic resource combinations within each State, and has therefore decided that such a definition is better placed in individual State MOA's with the Regional Administrator.

Another commenter requested an escalation procedure for resolving disagreements among Federal agencies on the scope of waivers. EPA disagrees. The waiver provision under section 404(k) does not require the concurrence of other Federal agencies. EPA has, through these regulations, provided other Federal agencies with an opportunity to comment on waivers by providing for consultation with the Corps of Engineers, Fish and Wildlife Service, and National Marine Fisheries Service on the scope of the waivers to be contained in the State/EPA MOA. Since the MOA is part of the State program submittal, these agencies will have an opportunity to comment on the waivers during the official review process required by sections 404(g)(2) and (3). Furthermore, EPA has required that procedures for MOA modification be consistent with those for MOA development. Thus, consultation with these other involved Federal agencies will also take place before any further waivers are implemented.

One commenter felt that the term "discharge which may affect the waters of another State" in § 123.6(f)(1)(i)(A) needed further definition to establish a reasonable basis for its use as a criterion. Although the term has not been further defined because it derives directly from the requirements of CWA section 404(h)(1), it is meant to apply to discharges which may cause or contribute to the likelihood of a long or short term chemical, physical, or biological change in the other State's waters, or which may violate the other State's water quality standards. In response to a number of comments, EPA has expanded the list of critical areas not subject to waiver in § 123.6(f)(1)(i)(C).

EPA agrees with one commenter who felt that if no problems are encountered with permits that are waived, the Agency should consider expanding the types of discharges for which review is waived. However, when EPA finds that individual permit review is needed to implement the goals of section 404, the Agency reserves the right to withdraw the waiver under § 123.6(g)(1). The only way the Agency has of determining this is by monitoring permit applications within waived categories when needed.

Proposed § 123.7 Requirement to obtain a permit.

This proposed section has been dropped because it was too vague and generalized. Program-specific language has been developed instead. Generally speaking, State law must provide for regulation of all activities regulated by the Federal program.

§ *123.7 Requirements for permitting.*

This section was proposed as § 123.8. It lists the provisions of Parts 122 and 124 with which State programs must comply. The program-specific additional permit requirements [proposed §§ 123.39 (RCRA), 123.57 (UIC), and 123.73 (NPDES)] have been moved into this section for convenience. In addition, the cross-referenced section of Parts 122 and 124 now specify, in their headings,

that they are applicable to State programs. It should be noted that States are not precluded from adopting any of the other provisions of Parts 122 and 124. However, only the provisions listed in § 123.7 are specifically required of State programs.

Many comments suggested that the requirements applicable to States were too detailed and inflexible. In response, EPA reanalyzed the sections listed in the proposal (§ 123.8) which were applicable to all programs to determine if any sections could be eliminated as State requirements, or made applicable to States in a manner that would provide the States with greater flexibility. As a result of this analysis, certain sections and subsections of Parts 122 and 124 are no longer applicable to States (i.e., the requirement for a statement of basis and selected provisions regarding permit issuance, draft permits, and public notice).

EPA considered the idea of separating the remaining general State program requirements so as to establish two levels of applicability, one of which would allow States greater flexibility in how they could implement selected requirements. The idea was rejected, however, because of the confusion this bifurcation would cause among States seeking to determine what authorities would satisfy the requirements of provisions placed at varying levels and because of the difficulty of justifying the placement of a requirement at a given level.

The requirement that State programs have legal authority to implement and be administered in conformance with the listed provisions has been retained. This requirement does not mean that States must implement provisions identical to the listed provisions; only that they establish requirements which are at least as stringent as the corresponding listed provisions. Assistance will be made available to States by EPA on how they can satisfy this section.

Comments were also received expressing the belief that all of the provisions of Parts 122 and 124 should be made applicable to States. As discussed earlier in this Preamble, that notion was rejected. Comments were received, as well, regarding the failure of § 123.7 to apply specific provisions of Parts 122 and 124 to States. One commenter recommended that the transfer provisions of Part 122 should apply to States. This recommendation has been adopted. Transfer requirements were made applicable to NPDES States in the Agency's June 7, 1979, NPDES regulation (44 FR 32854) and are now made applicable to the other programs under this Part to assure that the State Director is given notice of a transfer of ownership and may react to it. Other commenters suggested that States be required to protect confidential information to the same extent as EPA. This suggestion has been rejected. § 123.7(a)(13) requires States to implement §§ 122.19(b)–(d). This means that States must grant public access to at least the same type of information as does EPA. EPA will not, however, dictate how a State must treat other information submitted to it. § 122.19(a) (proposed § 122.16(a)), therefore, has not been made applicable to States. Finally, a commenter requested that State notice and hearing procedures for RCRA permits be the same as EPA procedures. The provisions of Part 124 regarding notice and hearing were, in the proposal, and remain, in these final regulations, applicable to States to the extent necessary to assure adequate public participation. EPA believes that beyond these minimum requirements, States should have flexibility to establish their own administrative procedures.

The list of applicable requirements in § 123.7(a) has been adjusted to reflect the transfer of those permit application requirement provisions common to all programs from the individual program subparts of Part 122 to the general Subpart, § 122.4. It imposes no additional requirements on the States. This change appears at § 123.7(a)(1). The corresponding provision of Part 124, § 124.3(a), has also been made applicable. Also, an addition has been made to the list of applicable requirements, § 123.7(a)(15), to clarify that a draft permit must be prepared and circulated by approved States before a permit is modified or revoked and reissued as required by § 124.5. This requirement is not applicable to State 404 permits when no draft permit is prepared prior to initial permit issuance.

The language in proposed § 123.8 has been amended, in response to commenters' concern that the section limited State authority to impose requirements more stringent than Federal requirements, to make clear that the applicability of the listed sections to State programs does not infringe on a State's right to be more stringent. For example, State NPDES programs need not adopt the provisions for bypass and upset in § 122.60. However, when States include provisions on bypass and upset, these may not be less stringent than those allowed by EPA regulations.

§ 123.8 Requirements for compliance evaluation programs.

This section was proposed as § 123.9. The additional requirements for State NPDES compliance evaluation programs (proposed § 123.80) have been included in this section for convenience.

A comment was received suggesting that States not be required to make the information gathered under § 123.8(b)(1) available to EPA if it is prepared in anticipation of or is in any way associated with litigation. EPA cannot accept this suggestion. EPA does not intend to interfere with State litigation. However, the information collected by a State regarding persons subject to regulation who have failed to comply with permit application or other program requirements must be available to EPA in order for EPA to perform its statutory responsibilities to oversee approved State programs. The information which this commenter seeks withheld from EPA is information vital to EPA's oversight of State enforcement activities. § 122.8(b)(1) has been retained.

One commenter requested that § 123.8(b)(2) indicate how often periodic inspections should be made. EPA agrees that the establishment of such schedules is desirable, but feels that it is better handled on a State by State and year by year basis because of the continually changing nature of State permit activity. Schedules for periodic inspections, therefore, will continue to be established in annual State/EPA agreements.

§ 123.9 Requirements for enforcement authority.

This section was proposed as § 123.10. The requirements for State enforcement programs generated more comments than any other section of Subpart A. The proposal generalized the requirements to a degree which made them confusing and vague. Therefore, EPA has chosen to set some of the requirements on a program-specific basis closely tracking the EPA enforcement authority in each of the programs.

Most of the controversy on this section centered on the amounts of civil and criminal penalties or fines recoverable under State law and the types of violations to which they apply. EPA's proposal would have required States to have essentially the same enforcement capabilities as EPA, including the ability to collect the same maximum fines and penalties. The final regulation adopts a similar approach, but affords a greater degree of flexibility on the amounts recoverable. All State programs must have both civil penalties and criminal sanctions. Fines and penalties must be recoverable under State law; a State program cannot rely on the levying of Federal fines, as one commenter suggested, since the State,

not EPA, is to have primary enforcement responsibility upon program approval. The violations for which these fines and penalties must be recoverable, which some commenters claimed were set out too broadly in the proposal, are now clearly set out and coincide with EPA's authority under each statute.

The Agency has determined that it is necessary to set specific minimum levels of fines and penalties which States must have the authority to recover in order to ensure effective State enforcement programs. Without such minimum levels, EPA would often be forced to take its own enforcement action in approved States because the State action imposed inadequate penalties. Such EPA action, while available as a backup, is not intended to be relied upon as the prime enforcement mechanism in approved States. Accordingly, the Agency has set minimum levels of fines and penalties. However, it has reduced the levels below those available to EPA based on the large volume of comments from States requesting such relief.

In the area of State RCRA programs, the minimum levels of fines and penalties are set at $10,000 per day at the suggestion of the National Governors Association. Also, imprisonment for at least six months must be available. These are the minimums which must be present in a State program before it can be considered to "provide adequate enforcement" under section 3008(b) of RCRA. The violations for which criminal remedies must be obtainable was changed from "any program violation" because many commenters pointed out that EPA cannot obtain criminal remedies for any program violation. The situations where criminal remedies must be available now closely parallels the language of section 3008 of RCRA.

The levels of fines and penalties for State NPDES programs has been adjusted to the same level reflected in past Agency policy. All currently approved NPDES States meet the final regulation.

The levels of civil penalties and criminal fines for State UIC programs have been similarly reduced below Federal amounts. The minimum civil penalties and criminal fines have been set at $2,500 and $5,000 per day, respectively. However, in the case of Class II wells, States need only have the authority to recover a civil penalty of $1,000 per day, and may substitute the authority for pipeline (or production) severance for criminal fines. Several commenters noted that they had this authority for pipeline severance available to them, and that it proved to be more effective than monetary fines. EPA agrees that this may be preferable and has, therefore, allowed States to choose between pipeline severance and criminal fines for Class II wells.

One commenter suggested that the requirement of § 123.9(a)(1) (proposed § 123.10(a)(1))—that States have the authority to restrain immediately unauthorized activities endangering public health or the environment—was too broad for purposes of the UIC program, and that endangerment of the environment should be eliminated as a cause for immediate action. This commenter cited section 1431 of SDWA which allows immediate action only when there is an "imminent and substantial endangerment to the health of persons." Section 1431 is not applicable to State UIC programs. Further, section 1421(a)(1) is intended to assure effective programs. Reference to endangerment of (threatening) the environment has been retained in § 123.9(a)(1) because it is a necessary element of State enforcement programs.

The alternative in proposed § 123.10(a)(1) which allowed States to choose having available either the remedy of immediately notifying the Regional Administrator by telephone of unauthorized activities or the remedy of immediately and effectively restraining such activities by order or by suit has been dropped. The latter remedy is now required of all State programs. The remedy of telephone notification was dropped as an option since it is an obvious ability of all States. The more important authority of being able to immediately restrain an unauthorized activity is one which can be satisfied either with an administrative cease and desist order or with the ability to seek in court a temporary restraining order, an ability which few, if any, States lack.

States are still required to have the same array of enforcement tools as EPA, except that imprisonment is only required for State RCRA programs. State programs may not impose a greater burden of proof for establishing violations than is required of EPA under the appropriate Acts. A State could not, for example, require a showing "beyond a reasonable doubt" to establish a civil violation. If a greater burden of proof were allowed, enforcement actions would be less often successful and State programs, therefore, less effective.

The penalty policy provision in the proposal (§ 123.10(c)) has been retained unchanged despite numerous objections that it not be applied to States. EPA believes that it is entirely reasonable to expect States to assess penalties which are "appropriate to the violation." The additional criteria for assessing penalties apply only to "deadline" violations and are inherently flexible so as to provide States with a wide margin of discretion in their application.

Some commenters argued that the penalty policy could not be applied to States administering RCRA programs because under section 3008(c) of RCRA the Administrator may only consider the seriousness of the violation and good faith efforts to comply with applicable requirements in assessing a penalty. The Agency believes that the factors contained in § 123.9(c) fit within these broad statutory standards. Moreover, EPA interprets section 3008(c) of RCRA to allow adoption of a penalty policy by States which is not strictly within the standards of section 3008(c), since the listing in section 3008(c) is not exclusive. In addition, section 3008 covers only Federal enforcement and is not directly applicable to the States.

§ *123.9(d)*—This section establishes minimum guidelines to ensure that the public has an adequate opportunity to participate in the enforcement process itself. This regulation is promulgated, in part, pursuant to the provisions of section 101(e) of the CWA and section 7004(b) of RCRA which require EPA, in cooperation with States, to publish minimum guidelines which provide for such public participation. Additionally, this regulation is promulgated in response to the opinion of the Seventh Circuit in *Citizens for a Better Environment* v. *EPA* (596 F. 2d 270, Petition for rehearing denied, 13 ERC 1095, 7th Cir. 1979). It was proposed as § 123.10(d) on August 22, 1979 (44 FR 49275).

The August 22, 1979 proposal required all States wishing to receive or maintain programs covered by the consolidated permit program to provide citizen intervention as of right. Additionally, EPA suggested several other mechanisms for public participation. After reviewing the public comments on this proposal, the Agency has established requirements which ensure the benefits of public participation, while intruding less into the States' management of their judicial and administrative systems.

Many commenters objected to the proposed requirement of intervention as of right in State enforcement action. Various reasons were advanced including that the Agency lacks statutory and constitutional authority to impose such a requirement and that under section 101(b) of CWA States have the primary responsibility to control pollution. Additionally, many States pointed to the possible disruption or loss of existing programs if State legislatures were asked to enact statutory changes. Although the Agency

does not agree with all of the arguments advanced by commenters, intervention as of right is not now mandatory but is one of two options to be adopted by States.

The first option allows States to provide for intervention as of right by citizens who have an interest which is or may be adversely affected by a violation. This coverage is comparable to existing rights in Federal court. Alternatively, States may provide assurance that they will not oppose intervention by citizens when such intervention may be permissibly authorized under State law. States employing this option are also required to ensure that citizen complaints of potential violations are received and responded to, and that any proposed settlement of an enforcement action is published for public comment.

Commenters also objected to the application of these requirements to RCRA and UIC programs. Many pointed out that *CBE* v. *EPA, supra,* in which the Seventh Circuit invalidated the Administrator's approval of the Illinois NPDES program, was based only on the requirements of section 101(e) of the CWA. EPA believes that the application of these requirements to programs under RCRA and SDWA, in addition to CWA, is warranted. Section 7004(b) of RCRA is virtually identical to section 101(e) of CWA, and contains the same obligation to promulgate regulations dealing with public participation. Although SDWA contains no such specific requirements, section 1450(a)(1) authorizes the Administrator to prescribe regulations which are necessary or appropriate to carry out his functions under the Act. The Agency believes that these minimum public participation requirements are both necessary and appropriate for an adequate State UIC program. The requirements of § 123.9(d), therefore, remain applicable to all programs covered by Subpart A of these regulations.

Numerous commenters urged the Agency to adopt all the mechanisms for public participation suggested in the proposal. Some stated that the right of participation in State court should be equivalent to that available in Federal Court. Although these regulations require that States provide a meaningful opportunity for public participation in enforcement, they represent minimum guidelines and do allow States some flexibility in developing these provisions. Nothing in the Act or its legislative history indicates that Congress intended that States be required to provide identical rights to those Congress specified for citizens in Federal court.

Some commenters objected to the suggestion, adopted as part of the second alternative, that States be required to publish proposed settlements for public comment. They claimed that this could disrupt a process which requires that settlements be negotiated in private and adopted quickly. However, it is just such a situation, with its potential for abuse, which public participation is designed to avoid. Experience by the Federal government indicates that noticing proposed settlements for public comment does not make it appreciably harder to settle cases. Thus, notice of settlement must be published although the settlement itself needn't be published. Interested persons will be allowed to view the settlement if they wish. This process is similar to that now employed by the Department of Justice (28 CFR § 50.7).

Some commenters stated that the Agency should define "citizen." Many pointed to section 505(d) of CWA which defines citizens as persons who have an interest which is or may be adversely affected. The Agency has adopted a similar definition in this rule. However, it should be noted that the legislative history of section 505 indicates Congress' intention to give citizens the broadest right of participation permitted by the requirement of "standing" contained in the U.S. Constitution. Similar breadth would be required of States choosing to provide intervention as of right.

It was also suggested that the Agency require States to provide their citizens a right to compel State officials to perform non-discretionary duties. EPA does not believe that such a right need be specified in these minimum guidelines. When States are not performing necessary duties, citizens have the right to petition EPA to withdraw the State's authority to administer the program.

Some commenters objected to the length of time which States are given to comply with these requirements. However, this period is the same given for compliance with all new requirements contained in these consolidated permit regulations.

Some commenters asserted that EPA has not developed these regulations "in cooperation with the States" as required by RCRA and SDWA. Due to the time constraints imposed by the court in *CBE* v *EPA, supra,* the proposal was developed by EPA. However, States were fully informed and their views on the proposal were actively sought. Comments were received from agencies in over 30 States. These comments were carefully and fully considered in developing this regulation.

§ 123.10 Sharing of information.

This section was proposed as § 123.16. Paragraph (a) requires approved States to share information with EPA. Many States indicated that under State law they may not be able to make confidential information available to EPA upon request. However, since EPA cannot exercise its statutory oversight and enforcement responsibilities without access to all the information it needs, including confidential information, the paragraph has not been changed.

A commenter stated that if EPA receives confidential information from a State, the Agency should preserve the confidentiality of the information. When the Agency receives information from a State which is claimed as confidential by the submitter EPA will treat this information in accordance with its business confidentiality regulations at 40 CFR Part 2. These regulations treat all information claimed confidential by the submitter as confidential until an explicit determination is made that it is not entitled to confidential treatment. A submitter gets prior notice of this determination under 40 CFR § 2.205.

If a State operates a broader program than is required by Federal law, this information sharing requirement applies only to the Federally required portion.

Under § 123.10(b), EPA will provide States with information from its files when the State requires the information to administer a Federal program. If the information has been claimed confidential by its submitter, EPA will disclose the information to a State in accordance with the procedures of 40 CFR Part 2. In particular, 40 CFR § 2.301(h)(3), which is incorporated by reference in § 2.302(h)(3) (NPDES/404 permits), § 2.304(h)(3) (UIC Permits), and § 2.305(h)(3) (RCRA permits), provides that EPA will disclose information claimed confidential to a State if the State has the authority to compel that information or, if it does not have such authority, if EPA determines that the State will provide adequate protection to the interests of the affected business.

One commenter stated that a submitter should get notice before confidential information it submitted to EPA is disclosed to a State. Under the Part 2 regulations, EPA will give notice to the submitter before disclosure to the State if the State agency does not have the authority to directly compel submission of the information. If the State does have the authority to compel submission of the information, notice is not required. EPA's disclosure of

information to an approved State under § 123.10(b) is essentially the same as disclosure to EPA employees or other Federal agencies who perform a function on behalf of EPA. Notice is not required prior to disclosure in either of these instances. See 40 CFR §§ 2.209(c)(3) and (e).

Proposed § 123.11 Progress reports.

This proposed section has been dropped because it was duplicative of other provisions in this Part. The requirement that States with interim authorization under RCRA, and those listed as needing a UIC program submit progress reports is found in Subparts F and C, respectively.

§ 123.13 Procedure for revision of State programs.

This section was proposed as § 123.13. The procedures for revising State programs are designed to be flexible enough to cover both minor and major modifications. The Agency will issue public notice and provide opportunity for public comment on substantial proposed program modifications, and will indicate its approval by notice in the **Federal Register**. In most instances of minor modifications, EPA will not issue public notice and will indicate its approval by letter.

One commenter requested that there be no formal EPA review of nominal changes in the structure and responsibilities of State agencies administering an approved program. It was not the intent of the proposal nor is it of these final regulations to require EPA review in such cases. Only when the controlling Federal or State statutory or regulatory authority is modified or supplemented, or when the State proposes to transfer all or part of a program from an approved State agency to another agency may EPA approval be necessary. Changes solely in the internal structure of an approved State agency, with no changes in the overall authority of the agency, do not require EPA approval.

A new provision (§ 123.13(g)) has been added to reinstate the time periods for compliance with revised NPDES requirements by approved State NPDES programs. Those compliance deadlines had been suspended on March 13, 1980 (45 FR 16182) to allow NPDES States to await promulgation of these consolidated regulations before modifying their programs.

§ 123.13(g) also requires NPDES States to implement the new NPDES application requirements for existing dischargers other than POTW's contained in §§ 122.4(d) and 122.53(d) and (e), for all dischargers whose permits expire after November 30, 1980 or whose permits expire before November 30, 1980 but who have not reapplied prior to April 30, 1980. This is necessary to assure that the imminent round of BAT permit issuances are written with adequate knowledge of the toxic pollutants being discharged. (See the preamble to the consolidated application form, published elsewhere in today's **Federal Register**, and the preamble to §§ 122.53 and 122.62 for detailed discussion of the new application, its use in the NPDES program, and the considerations involved in phasing in the use of the new application.)

While these application requirements will have to be implemented more rapidly by States than other new NPDES requirements, EPA anticipates that States should have no difficulty implementing them in a timely manner. EPA is not requiring that States immediately develop new forms to secure the information required under §§ 122.4(d) and 122.53(d) and (e). Until such time as they develop new forms they may either receive the required information without the use of any form, or they may use EPA's new consolidated Forms 1, 2b and 2c (see separate publication in today's **Federal Register** of EPA consolidated application forms). EPA will provide adequate supplies of these forms to States wishing to use them. States which develop new application forms consistent with §§ 122.4(d) and 122.53(d) and (e) will receive expedited approval. EPA will consider these new forms to be nonsubstantial program modifications under § 123.13(b)(2).

§ 123.14 Criteria for withdrawal of State programs.

This section was proposed as § 123.14. One commenter thought that program withdrawal should be mandatory for any violation by a State of the requirements of this Part. Such a requirement would be draconian and has been rejected by the Agency and the Courts. See *Save the Bay* v. *Administrator*, 556 F.2d 1282 (5th Cir. 1977).

§ 123.15 Procedures for withdrawal of State programs.

This section was proposed as § 123.15. A commenter suggested that EPA give a written response to any petition for withdrawal of a State program. This suggestion has been adopted. Also, language has been added to clarify that actions taken by a State prior to withdrawal are valid and are not affected by withdrawal. Thus, a permit issued by a State prior to program withdrawal would remain valid after withdrawal. This provision appears at § 123.15(c).

Subpart B—Additional Requirements for State Hazardous Waste Programs

Subpart F—Requirements for Interim Authorization of State Hazardous Waste Programs

RCRA is unique among the statutes covered by these consolidated regulations in that it provides for two different types of EPA approval of State programs—"interim authorization," which may extend for only 24 months after the full Federal program has been established—and "final authorization," which is the same type of permanent approval authorized by the other statutes implemented by this Part.

EPA originally proposed guidelines for both interim and final authorization of State hazardous waste programs under section 3006 of RCRA on February 1, 1978 (43 FR 4365). On June 14, 1979, EPA reproposed the guidelines as part of these consolidated permit regulations. Because of the public interest in the Federal hazardous waste regulatory program and because of the particular need for States to know early in 1980 what EPA would require for interim authorization, the Agency, on January 29, 1980, published in the **Federal Register** (45 FR 6752) Advance Notice of what today's regulations impose as requirements for both interim and final authorization of State hazardous waste programs. The Agency did not accept comments on this Advance Notice, nor did it respond in the Advance Notice to comments made on the June 14, 1979 proposal.

In the June 14, 1979 proposal, EPA responded to comments received concerning the February 1, 1978 proposal and discussed certain program decisions. These will not be reiterated fully here. However, EPA strongly solicited comments on many aspects of the proposal pertaining to interim authorization. Comments on these aspects and the basis for this final regulation for interim authorization as it appears today are addressed below.

In the June 14, 1979 proposal of Part 123, requirements for both interim authorization and final authorization were contained in Subparts A and B. This caused confusion among many commenters as to which requirements pertained to which type of authorization. In order to make the final regulations easier to read and work with, EPA has now separated the RCRA provisions in this Part into two Subparts—one for final authorization and one for interim authorization. EPA believes that the

requirements for interim authorization are most comprehensible when set forth as a discreet, autonomous subpart of Part 123.

Thus, new Subpart F includes all of the requirements for interim authorization, having explicitly adopted the applicable portions of Subpart A. Accordingly, Subpart F can be read as a unit by those interested in interim authorization only. This system will also allow Subpart F to be dropped from the Code of Federal Regulations when the interim authorization period is over. Subpart B now includes the requirements for final authorization additional to those contained in Subpart A. Although this separation causes some duplication of requirements which pertain to both interim and final authorization, EPA believes this reorganization will remedy the unclearness of the proposal concerning requirements for interim authorization.

Because final and interim authorization are so closely related, they are discussed together in this section of the Preamble. The discussion first covers two general issues relevant to both programs. Interim authorization is discussed next, since it comes first in time and is expected to provide the foundation for final authorization. Finally, Subpart B concerning final authorization is discussed.

Equivalence and consistency. One of the most frequently discussed issues in the comments on the RCRA portions of the proposed Part 123 regulations concerned the extent to which State programs should be required to be substantive and procedural duplicates of the Federal program before they could be approved for either interim or final authorization. Many industries argued for requiring nearly identical State programs, out of an understandable and legitimate concern about the burden of adhering to many dissimilar State programs, while many States argued for a more lenient test, for equally understandable reasons. The basic legal framework of the problem is laid out here; EPA's detailed resolution of the issue is explained later in the program-specific discussion.

RCRA expresses a concern for national consistency of State programs during final authorization, but backs-off from that goal of consistency during interim authorization. The statute requires States with final authorization to have programs both "equivalent to" and "consistent with" the full Federal program. However, during the period of interim authorization States must have programs that are only "substantially equivalent" to the Federal program.

Although these provisions taken together evidence a clear concern to avoid duplicative and overlapping regulations and to make State hazardous waste control programs relatively equal to each other and to the Federal program, particularly during final authorization, they must be considered in light of section 3009 of RCRA. Section 3009 of RCRA states that after the Federal RCRA program becomes effective, no State may administer a program less stringent than the Federal program. The statutory language does not directly address the question whether more stringent State requirements are preempted, though EPA believes in certain circumstances, discussed later in the preamble, they well might be. However, the section taken as a whole does suggest by negative implication that RCRA was not intended to have sweeping preemptive effect. Thus States may impose requirements under their own laws which are more stringent than the Federal requirements, but section 3006 forbids EPA from approving these requirements as part of a State final authorization program if they are "inconsistent" with the Federal program.

Accordingly, establishing very tight standards for EPA approval of State programs would not necessarily advance some of the basic goals of the statute—to establish Federal minimum standards, but not abruptly halt the development of State programs, and to reduce the existence of overlapping or duplicative State regulatory programs. Indeed, setting a very high threshold might produce the reverse effect by removing an incentive for States to take moderate steps to make their program more similar to the Federal program, but not identical to it.

Though EPA has tightened a number of the requirements for approval of State programs, it has not accepted the comments calling for the programs to be identical. Instead, as discussed below, it has adhered to a more flexible approach, particularly where interim authorization is concerned. Final State RCRA programs though may not be less stringent than the Federal program.

Review of State permits. Section 3008(a)(3) of RCRA authorizes the Administrator, after giving notice, to revoke any RCRA permit whose holder is in violation of any of the requirements of Subtitle C, or State requirements established under that Subtitle, and to assess a civil penalty against that person. The statute explicitly allows this whether the permit concerned was issued by EPA or by a State with an approved program.

The proposed regulations did not specify any restrictions on this authority, and thus by implication allowed it to be used at any time. (This implication was reinforced by the very broad grounds for modification of RCRA permits set forth in proposed § 122.9.)

In these final regulations, EPA has made more explicit and narrowed the grounds on which it will move to revoke State-issued permits or enforce against their holders. First, EPA may take such actions at any time, after giving notice to the State, if the holder of a State-issued permit has not complied with its terms. EPA intends that States should have primary enforcement responsibility, but the Agency retains independent enforcement authority in an approved State and will use it to the extent a State fails to take necessary enforcement action. Beyond that, the regulations state that EPA will only revoke State-issued permits or enforce against their holders to the extent permittees do not comply with conditions included in comments made by EPA during the period for review of State permits required by §§ 123.6, 123.38, and 123.134 and which EPA stated were necessary to implement approved program requirements. EPA comments on the proposed State permit would only address whether the permit properly implemented the approved State requirements, not whether it implemented the Federal requirements that were not effective in the State. EPA does not intend to take enforcement action against a State permit holder who is in compliance with a condition commented upon by EPA during its review period and recommended for inclusion in the permit, even though the condition is not included in the permit. This is clearly not a result EPA intended in establishing these permit review procedures. Permit applicants will be on notice as to comments made by EPA during the review period as these comments will be sent to the permit applicant before the permit is issued.

This approach means that in cases where EPA has no comments on a State permit or where the comments are successfully accommodated, compliance with the State permit will be deemed compliance with the requirements of the State program and Subtitle C, for Federal enforcement purposes, apart form an "imminent hazard" action under section 7003. However, it also reserves to EPA the authority to prevent a State-issued permit from shielding owners and operators from Federal enforcement to the extent that EPA has timely expressed its views that the permit in question is not adequate to carry out the

purposes of RCRA. This will allow EPA a measure of control over State RCRA programs short of the drastic and often impractical step of withdrawing program approval. The language of section 3008(a)(3) indicates that Congress had such an oversight role in mind when State-issued RCRA permits were concerned.

EPA will follow this approach both in States with final authorization and in States which are issuing permits under Phase II of interim authorization. During Phase I of interim authorization, "interim status standards" or their State equivalents apply to facilities which have not received a full RCRA permit. Some States with Phase I interim authorization may elect to enforce their version of the interim status standards by granting permits containing those conditions. This approach is perfectly acceptable. However, a permit containing those standards has no status as a RCRA permit and does not relieve the facility holding it of the obligation to apply for and receive a full RCRA permit when the Director requests.

Interim Authorization

§ 123.121 Purpose and scope.

As noted above, RCRA is unique among the programs covered by these consolidated regulations in providing not just for full and permanent authorization to States to administer a permit program instead of EPA, but also for a preliminary transitional stage called "interim authorization." Section 3006(c) of RCRA provides that

> Any State which has in existence a hazardous waste program pursuant to State law before the date 90 days after the date of promulgation of regulations under sections 3002, 3003, 3004, and 3005, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subtitle. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subtitle for a 24-month period beginning on the date 6 months after the date of promulgation of regulations under sections 3002 through 3005.

Unlike final authorization programs, which must be "equivalent" to the Federal program, "consistent" with the Federal program and programs in other States, and provide adequate enforcement assurances, the State interim authorization program must only be "substantially equivalent" to the Federal program. The legislative history emphasizes Congress' intent that interim authorization be granted in a relatively liberal manner so as not to disrupt on-going State efforts and to encourage States to continue their efforts so that they will be ready to take over responsibility for the full program when interim authorization is over.

The timing and conditions for interim authorization, and the relationship between various State programs and between the Federal program and State programs under interim authorization, have been among the most difficult questions to be addressed in these consolidated regulations.

In the proposal, EPA specified a single starting date for interim authorization, namely "the date 6 months after the promulgation of regulations under section 3001 of RCRA." The proposed requirements for obtaining interim authorization were relatively loose. A State was not required to have a program for listing and designating hazardous wastes or for implementing the manifest system in order to obtain interim authorization. Instead it was only required to control by permit *either* on-site or off-site hazardous waste disposal facilities and to conduct an effective enforcement program.

The final regulations significantly change the approach taken in the proposal. First, the interim authorization program will be implemented in two "phases" corresponding to the two stages in which the underlying Federal program will itself take effect. The reasons for and mechanics of this approach are discussed immediately below. Second, the requirements for approval of interim authorization have been tightened significantly. A much greater degree of similarily to the corresponding requirements of the Federal program will now be required.

As the preamble to the RCRA section 3004 regulations sets forth, EPA will establish the regulations setting up the RCRA program in its initial form in two stages. The first set of regulations (or "Phase 1"), which will become effective 6 months from the date of their promulgation, will accomplish the initial identification of characteristics of hazardous waste and listing of hazardous wastes (Part 261), establish the standards applicable to generators and transporters of hazardous wastes, including establishing the manifest system (Parts 262 and 263), erect "interim status" standards applicable to existing HWM facilities before they receive permits (Part 265) and set out permitting procedures (Part 122).

The second set of regulations (or "Phase II"), to be promulgated in the fall of 1980, will complete the job of establishing the initial set of standards that govern the operation of HWM facilities. Full permitting of these facilities will be able to proceed on the effective date of these regulations. This two-stage approach has proved to be the only practical way, given the size of the regulatory task involved, of putting the program in motion expeditiously.

As far as the Federal program is concerned, the only concrete operational difference that will flow from this two-stage approach, as opposed to one in which the regulations were all promulgated at once, will be that a period of 6 months will be created during which existing HWM facilities will be subject to interim status standards but no permits will be issued. However, as the preamble to the section 3004 regulations explains, the statute explicitly foresees that many facilities will not be permitted for years after the program starts and provides for "interim status" for these facilities. The two-stage approach operates within that basic understanding.

It would be inconsistent and contrary to Congressional intent to establish interim authorization in one stage only when the basic Federal program is being established in two stages. As a practical matter, a one stage interim authorization program could only have been done by postponing the beginning of interim authorization until after both stages of the Federal program were promulgated. That would have meant creating a period of 6 months in which EPA would run a purely Federal program without any possibility of a State formally taking it over. This would have been contrary to the Congressional desire that States take formal responsibility for the program as soon as possible.

For these reasons, EPA has elected to allow interim authorization for the first phase of the Federal program as well as for the second. EPA believes this approach is legal under the statute.

Section 3006(c) of RCRA consists of two sentences embodying somewhat different policies. The second sentence requires EPA, upon finding that a State program is "substantially equivalent" to the Federal program, to

> grant an interim authorization to the State to carry out such program in lieu of the Federal program for a 24-month period beginning on the date 6 months after the date of promulgation of regulations under sections 3002 through 3005.

This sentence allows States 2 years from the effective date of the regulations establishing the full Federal program in its initial form to come into compliance with the Federal program and, during that grace period, allows Federal approval of State programs that do not

yet meet the equivalency test required for final authorization.

The approach EPA has adopted carries out that policy by limiting interim authorization to 2 years from the effective date of the full initial RCRA program regulations, which includes the Phase II regulations to be promulgated next fall. It would have been consistent with the literal language of this second sentence to have limited interim authorization to a two year period beginning on the effective date of the Phase I regulations, and EPA considered that approach.

However, that approach would have failed entirely to carry out the policies in the first sentence of section 3006(c). That sentence reads:

> Any State which has in existence a hazardous waste management program pursuant to State law before the date 90 days after promulgation of regulations under sections 3002, 3003, 3004, and 3005 may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subtitle.

This sentence expresses and the legislative history underlines, an intent that States be able to apply for interim authorization and get it promptly after promulgation of regulations setting up a meaningful regulatory program under Subtitle C. To forbid application until after promulgation of next fall's regulations would not have been consistent with that purpose. Accordingly, EPA has elected to allow interim authorization for this stage (Phase I) of the program as well. Though this technically will result in interim authorization in some cases extending for more than the 24 months specified by the second sentence of section 3006(c), the purpose behind that 24-month ceiling will be preserved, and EPA feels the extension is necessary to carry out the purposes of the section as a whole.

Preconditions to applying. Section 3006(c) of RCRA provides that interim authorization may only be granted to States which have "in existence a hazardous waste program pursuant to State law" no more than 90 days after promulgation of the RCRA program regulations.

EPA interprets the word "program" as used above to mean enabling legislation only. EPA believes this interpretation is in keeping with Congress' desire to give States which have begun developing hazardous waste programs enough time to bring these programs into conformity with Federal requirements. Ninety days from the date of promulgation of the substantive Federal regulations—when their final terms become known for the first time—would be an extraordinarily short time in which to require States to react to them and bring their regulatory programs as a whole into "substantial equivalence" with them. Given the statements favoring use of interim authorization in the legislative history of RCRA, we do not believe that Congress intended such a strict reading. Although EPA will not require States to have more than legislative authority in place to meet the 90-day cutoff, it will require all aspects of the State program to be "substantially equivalent" to the Federal program by the time interim authorization is actually granted.

For these reasons EPA interprets the relevant statutory provisions as requiring States to have the necessary *legislative authority* in place 90 days after promulgation of the Federal regulations. Since there will be two phases of Federal regulations and interim authorization for each phase, the requirement for legislative authority will be applied to each phase separately. States that wish to apply for Phase I interim authorization must have legislative authority for Phase I within 90 days from today. States that wish to apply for Phase II interim authorization to administer a program in lieu of the full Federal program as it will exist after next Fall must have the legislative authority necessary for Phase II in existence 90 days after promulgation of the Phase II regulations.

§ *123.122 Schedule.*

With the issuance of these regulations, events and possibilities surrounding State assumption of the RCRA program will begin to unfold as follows:

Phase I application. A State may apply for interim authorization for Phase I of the Federal program, without an accompanying application for Phase II, during the period between the promulgation of requirements for Phase I, today, and the effective date of the Phase II regulations, which will be 6 months after their promulgation, or some time in the Spring of 1981.

This application window, approximately 1 year in length, will divide roughly into a first half, consisting of the estimated 6 months between promulgation of Phase I and promulgation of Phase II; and a second half, consisting of the 6 months between promulgation of the Phase II regulations and their effective date.

During the first half of the "window," before Phase II is promulgated, only applications for Phase I will be possible.* Although an argument can be made that after the Phase II requirements are known, only applications for complete interim authorization, including both Phase I and Phase II, should be permitted, EPA has not accepted that argument in these regulations. To be approved for interim authorization, a State program must show "substantial equivalence" to the Federal program. As discussed later in this preamble, EPA has significantly tightened the standards for making that showing over those set forth in the proposal, and it can be expected that in some cases States will have to make quite a few changes in their existing programs to conform them to the "substantial equivalence" requirement. Six months may often be too short a time for that, and so a year has been allowed. Letting this year overlap the promulgation date of the Phase II regulations will mean that there will not be any abrupt interruptions in filing and processing of State applications for interim authorization. By contrast, forbidding State applications that did not include Phase II as of the promulgation date of Phase II would create a period when no interim authorization applications could be filed because States would be adjusting their programs to the newly promulgated Phase II requirements. A discontinuity of this nature would be contrary to the Congressional intent that interim authorizations not be subject to avoidable obstacles.

Phase II application. A State may apply for interim authorization for Phase II of the Federal program (and Phase I, at the same time, if it has not already been approved for Phase I), any time between the time the requirements establishing Phase II are promulgated, sometime next fall, and 6 months after the effective date of those regulations, which is expected to be approximately October of 1981.

Relationship between Phase I authorization and Phase II authorization. As noted above, for 6 months after promulgation of the Phase II regulations, a State may apply for Phase I interim authorization or for both Phase I and II or for Phase II interim authorization, if it already has Phase I authorization (or for final authorization). A State may never obtain only Phase II interim authorization. Starting with the effective date of the Phase II regulations

* This issue of the **Federal Register** contains EPA's initial list of wastes under section 3001 of RCRA. In June, EPA expects to list additional wastes, and the candidates for that listing have also been published today. EPA encourages States applying for interim authorization before the June promulgation to include the wastes set forth today as candidates for listing in June in their Phase I submissions. That will avoid the need to supplement the application later and will reduce confusion and paperwork.

in approximately April of 1981, only applications for Phase II, or for Phase I and II combined, will be accepted.

All Phase I interim authorizations will expire automatically 6 months after the effective date of the Phase II regulations, or approximately October 1981 if a Phase II application has not been filed by that date. In other words, any State with Phase I interim authorization must apply for Phase II approximately by October 1981, or lose the program. EPA established this requirement to minimize the time during which States would be operating interim authorization programs that did not correspond to the then effective Federal program, and to keep States moving toward final authorization. The dates adopted allow States approximately 12 months after promulgation of the Phase II regulations to apply for Phase II interim authorization. This is the same length of time allowed to States to file Phase I applications, and was set for the same reasons. It allows a period of 6 months (approximately April 1981 to October 1981) when States could be operating Phase I programs even though the Phase II program was effective. Although such a phase-in time is inevitable if the interim authorization process is to be kept operating without avoidable interruption as Congress intended, it has obvious potential for creating confusion and inconsistency and its duration should be minimized. Finally, cutting off Phase I is desirable as a means of making sure that States are moving toward final authorization at least to the extent of adopting the requirements necessary for Phase II.

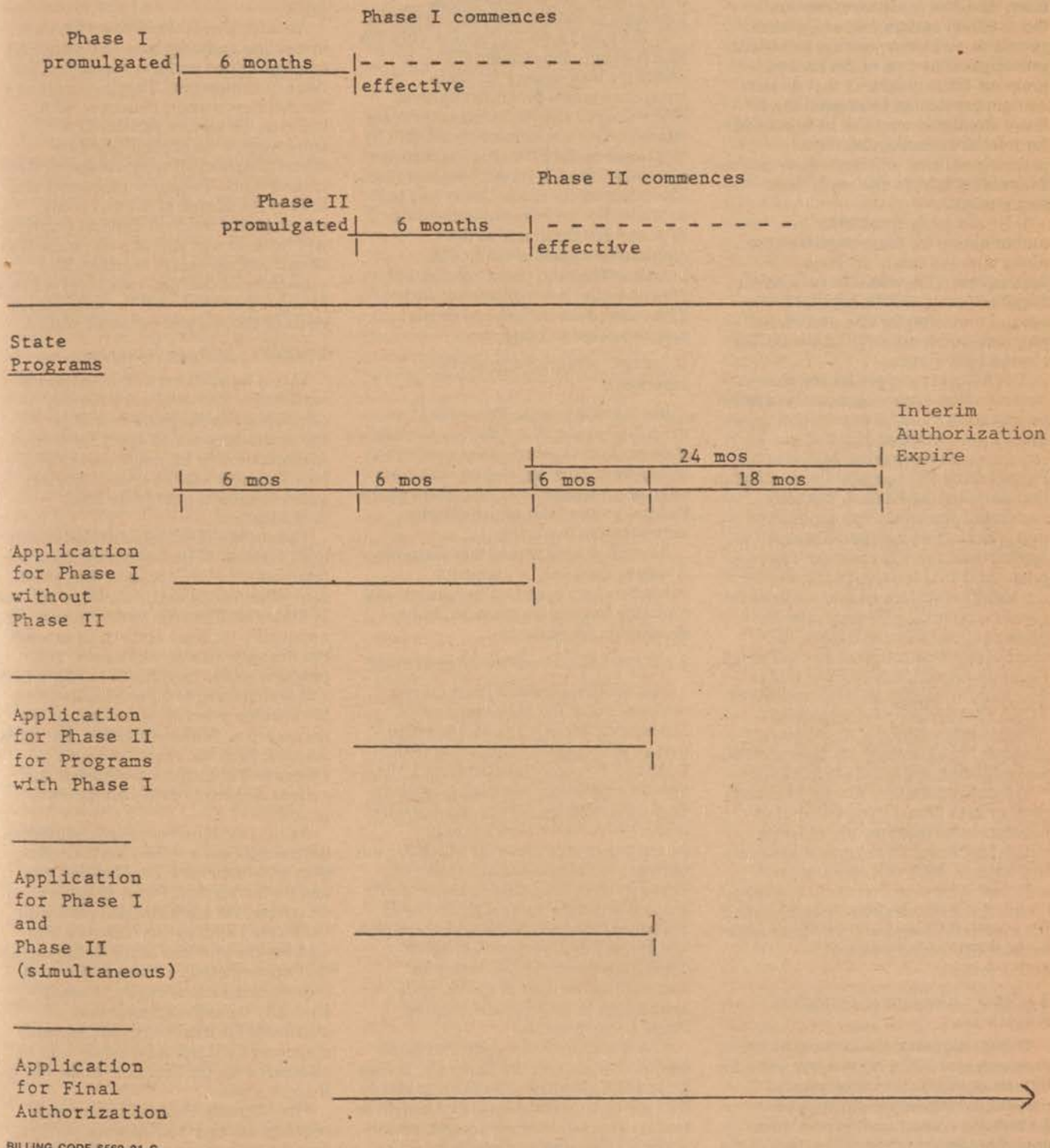
Relationship between interim authorization and final authorization. A State may apply for final authorization at any time after the Phase II regulations are promulgated. Final authorization, if granted, automatically ends interim authorization in that State and the applicability of Subpart F.

No applications for interim authorization of any sort will be accepted more than 6 months after the Phase II regulations become effective. In other words, no applications will be accepted after approximately October of 1981. EPA has established this requirement because applications made after this date, taking into account the necessary period for processing and approving a State submission, would result in conferring interim authorization that would at most, last only slightly more than a year before it would automatically terminate. This is too short a time to justify the administrative effort required to draw up and approve the application, particularly when an application for final authorization would have to be drawn up, reviewed, and approved within that same year.

Finally, as the statute requires, any State with interim authorization that has not received final authorization 2 years after the effective date of the Phase II regulations (about April 1983) will automatically lose interim authorization and the program will revert to EPA. (See Schedule of Events.)

BILLING CODE 6560-01-M

SCHEDULE OF EVENTS



BILLING CODE 6560-01-C

Manifest system. In general, as later portions of this preamble discuss, State programs approved for Phase I or Phase II must be substantially equivalent to each part of the corresponding Federal program. For reasons also discussed later, EPA has made an exception for the manifest system and associated generator and transporter requirements promulgated as part of the Phase I program. State programs that do not contain provisions corresponding to these standards may still be approved for interim authorization. More precisely, a State will have three choices in deciding how to deal with these requirements:

1. It may apply for interim authorization for these requirements along with the rest of its Phase I application. This would have been the required course if EPA had not made special provision for this part of the program, and it may still be the option chosen by a State.

2. A State may apply for interim authorization to run the manifest system as part of its Phase II application, even though the corresponding Federal requirements were promulgated in Phase I. EPA will operate the manifest in that State during Phase I. The only restriction placed on this application that will not be placed on Phase II applications for other parts of the program is that the legal authority for the manifest system must have been in place no later than 90 days after the promulgation of Phase I. Since the manifest system is part of Phase I of the Federal program, this requirement is necessary to satisfy the requirement of RCRA that States only be granted interim authorization if they have a program "in existence" 90 days after the promulgation of the Federal program.

3. Finally, a State may apply for and receive both Phase I and Phase II of interim authorization without being authorized to run the manifest system. In that case, EPA will operate the manifest system in that State throughout its interim authorization. Assumption of the manifest system will still be required in these States before final authorization.

§ 123.123 Elements of a program submission.

This section lists the elements a State must submit to EPA in its application for interim authorization. It is largely derived from relevant portions of § 123.3, the corresponding provision governing final authorization. Due to the phased nature of interim authorization, a State will have to amend all or some of the elements in its Phase I application when it applies for Phase II.

§ 123.124 Program description.

This section lists the required components of a complete program description, which is one element of the program submission. It is largely derived from § 123.4, the corresponding provision governing final authorization.

In the June 14, 1979 proposal, only the RCRA program mandated States to identify a lead agency for State hazardous waste program approval. EPA received several comments noting this fact. One commenter stated that by this requirement EPA was improperly dictating a State's internal organization. The intent of the requirement was only to facilitate communication between EPA and the State, due to the multimedia nature of the RCRA program. The term "lead" means only "the principal point of contact with EPA," and does not refer to overall program responsibility.

§ 123.125 Attorney General's statement.

In accordance with the provisions described above, the Attorney General's statement must attest to the enactment of any necessary legislation within 90 days of promulgation of the phase of the Federal program for which interim authorization is sought.

As with the other program elements, Attorney Generals' statements submitted for Phase I authorization will probably have to be amended to be acceptable for Phase II.

§ 123.126 Memorandum of agreement.

This section contains the required components of the Memorandum of Agreement (MOA). The MOA is also a part of the program submission under § 123.123. It largely derives from § 123.6, the corresponding provision governing final authorization. Those components of the MOA which concern only permitting procedures and which are not relevant until the commencement of Phase II, have been distinguished and put in a separate paragraph and need not be included in MOAs which are part of a Phase I application. Any MOA negotiated during Phase I must be amended at the time of the Phase II application to incorporate required Phase II components.

EPA's authority to inspect has been modified slightly in the final rule, in that § 123.126(b)(6) has been added to clarify that the MOA cannot limit EPA's right to inspect generators, transporters, or non-major facilities when there is cause to believe a facility is not in compliance. One commenter stated that EPA's inspections should be limited to only "problem sites." This implies that EPA should become involved only after an activity has been identified as a "problem." This would negate a significant aspect of the oversight role, which is to ensure that problem sites do not arise or are identified in the first place.

An additional comment on EPA's inspection authority was that only EPA employees can perform inspection, not Agency contractors. This is correct as the Act now stands. However, EPA believes the statute permits EPA employees to be accompanied by contract personnel who will assist them in their work. The extra personnel add little to the degree of intrusiveness which would result. A Federal employee will be in charge and will be required to obtain any necessary warrant. The assistance of contract personnel is likely to mean, however, that the substantive goals of the Act will be better served.

§ 123.127 Authorization plan.

This is a provision of the Subpart F regulations that does not have any counterpart in Subparts A or B. It requires States which apply for interim authorization to set out in some detail how they will use the time of interim authorization to qualify for final authorization.

The statute obviously intends interim authorization to be a stepping-stone to final authorization. Beyond this, great disruption would occur if a large number of States with interim authorization did not qualify for final authorization when interim authorization was over. The program would then revert in full to EPA and would have to be redelegated over the ensuing years as States pulled the necessary authorities together. For these reasons, EPA has required States to assess and document in advance the actions needed to establish the final program.

As the regulation explicitly provides, States must submit their authorization plan with the Phase I application and update it with their Phase II application. Of course, the authorization plan with the Phase I application only needs to address the portions of the final program that are included in Phase I. The final requirements contained in Phase II—basically the detailed technical standards for treatment, storage, and disposal of hazardous wastes—can be addressed for the first time in the Phase II application.

The Attorney General's statement required under § 123.125 must certify that the authorization plan, if carried out, would meet the requirements of final authorization.

EPA does not agree with the comment that EPA should make the decision as to

what modifications are necessary for final authorization. Although EPA will provide guidance and assistance to the State in developing its authorization plan, it is the State which is in the best position to identify required revisions and modifications and to determine how best to accomplish them.

§§ 123.128 and 123.129 Program requirements for interim authorization for phase I and for phase II.

These sections set forth the substantive requirements for an approvable State interim authorization program. They have been entirely rewritten because EPA's position on program requirements for interim authorization has changed significantly since the June 14, 1979 proposal. There EPA stated that eligibility 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." EPA agrees with the numerous commenters that argued that a State should have a fundamentally complete hazardous waste management program as compared with the Federal program in order to receive interim authorization.

In addition, this final regulation is much more specific than the proposal in describing what a State program must do to receive interim authorization. This specificity should alleviate the lack of clarity in the proposed regulations which numerous commenters pointed out.

In rewriting these provisions EPA had to deal with the question of the degree of similarity to the Federal program it should require of State programs before approving them for interim authorization, and the question of whether State programs including less than all the requirements of the corresponding phase of the Federal program should be approved.

Degree of similarity. In establishing the substantive requirements for interim authorization, EPA has had to balance two competing interests evident in RCRA, its legislative history, and the public comments on EPA's proposed guidelines for State programs. These two interests are: (1) assuring that at least a minimum level of protection of the human health and the environment is established nationwide; and (2) encouraging continued development of States' own programs without disruption, so that as many States as possible can assume responsibility for the program.

The legislative history indicates that Congress created interim authorization to reconcile these two interests. Interim authorization allows State programs time to achieve the desired level of control (complete equivalence with the Federal program), but also requires such programs to provide an adequate degree of protection to human health and the environment. Congress specified in section 3006(c) that a State could receive interim authorization if its program was "substantially equivalent" to the Federal program, leaving it up to EPA to define "substantial equivalence."

There were several public comments on the need for a working definition of this term, in order to remedy its vagueness. EPA now defines substantial equivalence as "to a large degree, or in the main, equal in effect." "Effect," of course, could mean either effect in protecting health and the environment or effect in the sense of requirements imposed on regulated industries and others. EPA has and intends to keep both these meanings in mind, as well as concerns about State autonomy, in judging the substantial equivalence of State programs. So, for example, variations in the manifest system, which calls for eventually creating a single accounting system to track wastes from State of origin to State of deposition, could be extremely burdensome to the companies that would have to cope with the inconsistencies, and to the governments that would have to regulate taking the differences in the manifest systems into account. Here, both concern for the environment and concern for avoiding regulatory burden argue for a relatively high degree of similarity. Permitting standards, by contrast, will be applied in local decisions, and the initial Federal standards will leave a good deal of discretion to permit-writers. Here the arguments for uniformity are weaker, though EPA sets minimum standards to assure protection of human health and the environment.

EPA believes this general working definition, and the specific requirements found in these sections, represent a middle ground between the approaches advocated in the public comments. The comments generally fell into two groups. Some commenters wanted EPA to require States to regulate all facilities that the Federal program would, and wanted State standards to be very similar to the Federal standards. Others thought that States should only require minimal coverage of either on-site or off-site disposal during interim authorization, and thought EPA need not examine the substance of State requirements or compare them to Federal requirements, but only examine the effectiveness of the State program.

At least one commenter suggested that the regulations should explicitly state that a State program may be less stringent than the Federal program for interim authorization. The Agency believes that while section 3009 disallows imposition by a State of "any requirements less stringent than those authorized under this subtitle respecting the same matter as governed by (EPA) regulations . . .," section 3009 was clearly not intended to mandate application of a "no less stringent" standard to State programs which seek interim authorization. Application of section 3009 to such State programs is in direct contradiction to the "substantially equivalent" standard for interim authorization mandated in section 3006(c).

Thus, EPA will not apply the mandate of section 3009 to States seeking interim authorization. This position is unchanged from the Agency's position in the June 14, 1979 proposal. EPA will, however, apply the mandate of section 3009 to State programs seeking final authorization and all State programs will be required to satisfy section 3009 to receive final authorization.

EPA also believes that States that have not received interim authorization are subject to the "no less stringent" requirement of section 3009. However, as a practical matter, it is unlikely that EPA in the early years of the program would treat this as a matter of high priority and take enforcement actions.

Partial programs. Because hazardous waste management is generally a new activity for State governments, it is inevitable that many States will not, by the effective date of the Federal program, have in place programs which control all of the same aspects as the Federal program controls, especially since many State regulations will be patterned after the Federal regulations which are just now being promulgated. This situation raised a major policy decision for EPA. The Agency had two options:

(1) To authorize immediately those parts of a State program that are substantially equivalent to the Federal program, or

(2) To postpone authorization in a State until the entire State program is substantially equivalent.

In the June 14, 1979 proposal the Agency rejected partial programs for final authorization. The Agency, however, solicited comments on the possible alternatives to EPA regulation of activities that are not regulated by the State during interim authorization. Comments ranged from endorsement of interim authorization of parts of State programs which meet Federal

requirements, to rejection of State regulation of certain activities and EPA regulation of others. Commenters strongly urged clarification of this point. With one major exception, EPA has chosen to postpone interim authorization in a State until the entire State program for the relevant Phase of the Federal program is substantially equivalent to the relevant Phase of the Federal program. The exception, covering the manifest system and other generator and transporter requirements, is discussed below.[5]

In all other areas, the State program must be substantially equivalent to the relevant phase of the Federal program. Further fragmentation of the program with a variety of program parts divided between the State and EPA would result in excessive complexity for regulated parties.[6]

§ *123.128(a)* (Identification and listing of hazardous wastes). This paragraph provides that States seeking interim authorization must demonstrate control over a "a universe of hazardous wastes generated, transported, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program. * * *"

The definition of substantial equivalence for the identification and listing of hazardous wastes is one of the keys to control of hazardous waste by States during interim authorization. This definition will necessarily determine what wastes will become part of the hazardous waste management program required by RCRA, thus assuring their proper management. Wastes outside of the definition will not receive the attention RCRA affords. Thus, it is important that during interim authorization States be required to control as many hazardous wastes as possible without detracting from the basic concepts of substantial equivalence and interim authorization. In setting the appropriate level of control EPA had to balance arguments that States be required to control exactly the same wastes as controlled under the Federal program, that differing definitions and lists would create intolerable inconsistencies and that States only control a universe of wastes "substantially equivalent" to the Federal program.

EPA cannot accept the suggestion that interim authorization be granted only to States that define hazardous wastes in the same manner as EPA defines hazardous wastes. Present State laws and regulations define hazardous wastes in ways which make it likely that few if any States now cover exactly the same wastes as identified in the section 3001 regulation. Time will be needed to bring the State definitions into conformance with the Federal definition.

It is true, however, that allowing different States to have definitions or lists of hazardous wastes which are different from each other or from the Federal definition or list has the potential for creating considerable confusion. When a waste moves from a State in which it is defined or listed as hazardous into one where it is not, or the reverse, questions of how to deal with the waste and how to treat the manifest documents will arise and must be dealt with. EPA's answers to those questions are given below, but the problem will not arise at all to the extent the "universe" of wastes is the same from State to State.

The burdens created by these inconsistencies will vary, of course, with their extent. In an attempt to minimize them without forcing all State programs into the same mold immediately, EPA has adopted a somewhat tighter formulation of the basic test of "substantial equivalence" here than for other elements of interim authorization due to the greater potential for harm from wastes not defined or listed as hazardous and not properly managed even during interim authorization.

§ *123.128(b)–(d)* (Generator, transporter, and related manifest requirements). The one area where EPA will allow an exception to a complete, substantially equivalent State program is the manifest system and the associated generator and transporter requirements. It appears to EPA that these are the parts of the Federal program for which States would have the most difficulty in meeting the substantial equivalence test by the effective date of Phase I. In particular, many States probably will not have a manifest system in place that adequately controls interstate shipments of hazardous wastes consistent with the Federal manifest system. EPA does not believe that the lack of authority for this program part should cause States to be denied interim authorization. That approach could result in a great many States being denied interim authorization contrary to basic Congressional intent.

§ 123.128(d) therefore allows EPA to administer and enforce the Federal nationwide manifest system and generator and transporter requirements in a State without depriving the State of interim authorization for the rest of its program. This specific option is new, though in the proposal EPA did discuss the alternative of an entirely Federal manifest system. In the June 14, 1979 proposal EPA suggested that States must implement all statutory and regulatory hazardous waste management authorities they possess. EPA received comments on this point, and now believes that this consideration must yield to the concern for consistency and uniformity in the manifest system, which is the heart of the "cradle-to-grave" control system of RCRA, and has significant consequences on interstate commerce. States not authorized to run the manifest system during interim authorization should work to develop a manifest system and associated generator and transporter standards equivalent to and consistent with the Federal system as required for final authorization.

In order to obtain interim authorization, States are not required to have statutory or regulatory authority over certain aspects regulated under the Hazardous Materials Transportation Act by the Department of Transportation (DOT). However, this authority will be required for final authorization. These aspects include requirements for: accumulation of wastes in containers meeting DOT standards prior to shipment; packaging, labeling, marking and placarding of wastes; the forwarding of the manifest or shipping document for shipments solely by railroad or solely by water (bulk shipments only); and provision of the DOT proper shipping name.

This approach to interim authorization was taken in order to avoid the potential disruption of existing State programs which could occur if adoption of these DOT provisions necessitated hasty legislative and/or regulatory changes. For interstate transportation of hazardous waste these DOT requirements operate independently of the requirements that are contained in a State hazardous waste program. Thus, a degree of control of hazardous waste and protection of human health and the

[5] The phasing of interim authorization can also be seen as the authorization of part of a State program and thus as another exception to the requirement for a complete State program. EPA does not view it this way, however, for two reasons. First, the two phases of interim authorization are necessitated by the two phases of the Federal regulations, and the State program for Phase I or Phase II will be substantially equivalent to the Federal program for Phase I and Phase II; and second, EPA does not intend to authorize a State for only one phase of the program (evidenced by the automatic reversion of Phase I to EPA if a State does not apply for, or is denied, Phase II).

[6] For example, since EPA will not enforce the Federal requirements for those elements of a State program which it has authorized, further fragmentation of program approval would subject the regulated community to a patchwork of State and Federal regulations.

environment substantially equivalent to the Federal program is afforded in other States without the need for a State with interim authorization to include in its program the authority to administer (and enforce) these requirements. In other words, the aspects of DOT's program listed above must be complied with for the interstate transportation of hazardous waste in a State with interim authorization authorized to operate the manifest system. In such a case, the universe of wastes subject to these requirements is the Federal universe, as defined by 40 CFR Part 261. Any generator or transporter proposing to ship a waste interstate which is hazardous under Part 261 must comply with DOT's requirements.

Shipments of hazardous waste by intrastate motor carriers are not subject to DOT requirements during interim authorization, although the majority of States have adopted DOT requirements in their motor vehicle codes or by other means. For the reasons stated above, EPA has chosen not to set minimum requirements respecting these standards as a condition for interim authorization. However, since the transportation of hazardous waste by interstate carriers will be subject to DOT regulations, EPA encourages States to adopt transportation requirements which are consistent with DOT's regulations.

In addition, EPA will continue to require reports directly to it of international shipments of hazardous wastes. This is uniquely an issue that concerns the National Government, and requiring reports directly to EPA is the simplest procedural mechanism for ensuring that there is a central national repository of information about those shipments.

§§ *123.128(e) and 123.129* (Hazardous waste treatment, storage, and disposal facilities). During interim authorization a State must have authority to regulate all types of hazardous waste treatment, storage and disposal facilities except those that do not exist in the State on the date of interim authorization. This is a significantly stricter requirement than the one that appeared in the June 14, 1979 proposal.

When Phase II is concerned, a State must have in effect a permit program substantially equivalent to the Federal hazardous waste permit program, including substantially equivalent public participation provisions.

EPA cannot accept the suggestion that a system of permits by rule more extensive than the one in the Federal system be accepted for purposes of interim authorization. The safety and control of HWM facilities, particularly in the early years of the program, will be to a great extent a matter of site-specific judgment requiring site-specific examination.

As discussed in more detail earlier in this preamble (Part 122, Subpart B—Additional requirements for Hazardous Waste programs), the Agency has integrated the overlapping requirements of RCRA and SDWA relative to the underground injection of hazardous waste into wells. Briefly, the approach is as follows: Existing wells that receive hazardous waste will be considered to be "hazardous waste management facilities." During the "interim status" period their owners or operators will be required to comply with certain requirements of 40 CFR Parts 122 and 265, including such requirements as filing of notifications and Part A permit applications, and compliance with the manifest system and interim status standards. As discussed in the preamble to Part 122, Subpart B, EPA also will make provisions for issuing interim RCRA permits to class I wells handling hazardous waste.

Because this regulation under RCRA of wells injecting hazardous waste is somewhat different than what EPA proposed, EPA will give a State the option of whether to cover such wells under Phases I and II of its State hazardous waste program until the State has an approved UIC program (§ 123.128(e)(8)). If a State chooses not to regulate wells injecting hazardous waste under its RCRA program, EPA will enforce the interim status standards for such wells, and will, once the permitting standards for Class I wells injecting hazardous waste are in place, issue permits to owners and operators requesting them.

Relationship of State programs to each other and to the Federal program under interim authorization. As noted above, EPA has significantly revised its approach to interim authorization since the time of proposal, tightened the test for determining "substantial equivalence" and forbidden partial programs. These changes should greatly reduce the cases in which differences between State programs, and between State programs and the Federal program, lead to inconsistencies which require resolution. However, EPA has identified several types of inconsistencies which may still arise. The independent application of DOT regulations respecting interstate shipments (including requirements for the identification of waste and use of the manifest) should help mitigate the impacts of the first three potential problems discussed below.

1. Inconsistencies due to differences in the "universe" of wastes from State to State. Two types of inconsistencies can arise here. First, a waste could move from a State where it is not designated or listed as hazardous into one where it is designated or listed. Both under section 3009 of RCRA and under the general State police power, each State has the right to control the movement and disposal within its boundaries of wastes which it considers hazardous. Accordingly, under new § 123.130(b), when wastes move from a State where they are not listed or designated to one in which they are, they become subject to the treatment, storage and disposal requirements and the transporter requirements of that second State.

Also, a waste could move from a State where it is listed into one where it is not designated or listed. This is by far the most troubling of the four types of inconsistencies. EPA intends to administer the program so as to minimize the chances that this situation will in fact occur. Specifically, EPA will not approve State programs which affirmatively appear to include a smaller "universe" of wastes than the Federal program covers. However, since during interim authorization EPA will allow State programs to vary from the Federal program in their listing characteristics and test methods, it may be that a State program will turn out to be underinclusive even though that was not clear at the time of approval. By the same reasoning used above, the wastes become unregulated (except as general State law may provide) upon moving into the second State and, under § 123.130(a), may be managed as permitted by the laws of the State into which it has been transported. In addition, § 123.128(b)(6) requires State manifest systems to insure that all interstate shipments of hazardous waste be designated for delivery to facilities authorized to operate under an approved State program.

Clearly, under this approach States could become preferred "dumping grounds" for wastes which they did not regulate, but neighboring States did. However, the possibility of that occurring cannot be avoided under any approach which gives effect to the "substantial equivalence" language of RCRA.[7]

[7] EPA will also permit States to obtain interim authorization even if they lack regulatory authority over certain types of storage, treatment, or disposal facilities as long as those facilities do not exist in the State at the time interim authorization is granted. This provision raises the possibility that such a facility could be opened in the State during the time of interim authorization and operate unregulated. However, EPA believes that this will not prove to be a practical problem. It will be difficult to construct and open large or complex

Footnotes continued on next page

2. The State has interim authorization but EPA is running the manifest system. In this case, the Federal manifest system and Federal standards for generators and transporters will be enforced in the State. The universe of wastes subject to these Federal requirements, however, will be the universe of wastes covered by the State program. It will not be the Federal universe as defined in 40 CFR Part 261. However, DOT's requirements are applicable to interstate shipments of hazardous wastes in the Federal universe as defined in 40 CFR Part 261.

3. A State has Phase I authorization during Phase II. This state of affairs, as explained above, can only last for 6 months. During this period, EPA could administer and enforce the Federal permit program in the State. However, it is most unlikely that EPA would operate an active permit program that would duplicate State regulation of existing facilities. Instead, EPA would almost certainly confine itself to issuing permits to new facilities which need them to begin construction.

§§ *123.128(f) and (g)* (Enforcement and compliance evaluation). The proposal provided that States applying for interim authorization had to show, in their application, substantial compliance with proposed § 123.10, the enforcement requirements of Subpart A, and compliance with the rest of Subpart A, including the compliance evaluation requirements of proposed § 123.9. Requirements for enforcement authority and compliance evaluation programs for interim authorization are now contained in § 123.128(f) and (g).

For compliance evaluation, the requirements for interim authorization are substantively the same as those found in § 123.8, requirements for final authorization, including requirements for public participation.

For enforcement action authority, substantial equivalence has been defined with specificity. A State can qualify for interim authorization with lesser amounts of fines than required for final authorization or under the Federal program. A State must have the authority to impose civil *or* criminal sanctions, but need not have authority to imprison. Upon review of existing State legislation, EPA found that a significant number of State programs would not qualify for interim authorization if required to have the same enforcement provisions as the Federal program. In keeping with the Congressional intent that the interim authorization period provide time for States with less stringent programs to reach equivalence rather than have the program halted in its development, EPA has determined that an adequate degree of protection of human health and the environment will be provided by these requirements, while allowing as many States as possible to operate the program.

Once a State receives interim authorization, EPA retains oversight authority (section 3008) concerning the activities regulated by the State. The language in section 3006(c) that a State program with interim authorization "operates in lieu of the Federal program" does not mean, as suggested by one commenter, that EPA has no authority to enforce the State's program either in conjunction with or through the State. Section 3008(a)(2) specifically authorizes Federal enforcement of such a State program.

Section 3008(a) provides that EPA may enforce "any requirement of this subtitle" after, as one commenter noted, EPA has given notice to the authorized State. The preamble to the June 14, 1979 proposal at page 34259 stated that in an authorized State EPA might "enforce directly against any facility or activity violating the Federal standards" under the authority of section 3008(a)(2). It should be understood that in a State with interim or final authorization, the "requirements of the subtitle" which EPA will enforce under section 3008 are the State program requirements.

§ *123.132 Sharing of information.*

This section is the same as § 123.10 and is discussed in the preamble to that section.

§ *123.133 Coordination with other programs.*

This section is self-explanatory. The question of coordination is fully discussed in the preamble to Part 124.

§ *123.134 EPA review of State permits.*

The major issue raised by this section—when EPA will use its authority to revoke a State permit—has been discussed earlier.

Beyond this, quite a number of comments were received on the definition of "major" facility permit and how EPA will review State permits. As the preamble to Part 122 explains, a precise definition of a "major" facility is not possible at this stage of the program. Instead, the definition will be established year by year and State by State in guidance. However, EPA does expect that the numbers chosen will result in review of approximately ten percent of the permit applications for a State.

One commenter suggested that EPA limit its review of permits to receiving "summaries" and that it review the actual application only upon specific request. There may be cases where such an approach would be appropriate. However, a "summary" (which the regulations may require in any event in the form of a fact sheet) would not be enough for a thorough review of an important permit. Accordingly EPA believes that transmittal of more documents for certain types of permits should be provided for in the MOA.

§ *123.135 Approval process.*

In the June 14, 1979 proposal, the approval process for interim authorization was identical to the approval process for final authorization. In this final regulation EPA has shortened the approval process for interim authorization. There are two reasons for this change. First, section 3006(b) explicitly mandates, for final authorization, specific procedures which a State seeking final authorization and EPA granting authorization must follow. Section 3006(c), the provision for interim authorization, contains none of these procedural requirements.

Second, extensive procedural requirements for interim authorization approvals would be inappropriate given the short duration of interim authorization, and would contravene the Agency's desire to minimize the potential for duplicate Federal and State hazardous waste programs. Protracted approval procedures enhance the potential for duplicate State and Federal programs while an application is being processed.

The Agency is, however, committed to extensive public participation in the interim authorization process and is mindful of the need for reasoned decisionmaking in granting interim authorization. Therefore, the approval process for interim authorization will contain all the elements of the approval process for final authorization except for the requirement that the State publish its notice of intent to apply for interim authorization and the requirement that the Administrator make a tentative determination to approve the State program.

Unlike section 3006(b), section 3006(c) does not include a statutory review period (i.e., a period of time allotted to EPA for review of a complete program submission). In light of the Agency's desire to minimize the possibility of duplicate State and Federal programs.

Footnotes continued from last page
facilities during the 2 years allowed for interim authorization, and anyone who does build such a facility will do so in the knowledge that he or she will be subject to RCRA's full permit requirements when interim authorization expires, and may lose his or her investment if he or she does not qualify under them.

the Agency is committed to expedited review of State submissions for interim authorization. Thus, the Administrator will issue notice in the **Federal Register** of a hearing on the State's submission and will make a final determination whether or not to approve a State program as quickly as possible, but in no case later than 120 days after receipt of a complete program submission.

§ 123.136 Withdrawal of state programs.

This section is derived from § 123.14. It includes as an additional criterion for withdrawal of interim authorization State failure to meet the schedule for or accomplish the additions or revisions to its program set forth in its authorization plan. This criterion is required because interim authorization was specifically established to facilitate State assumption of a fully equivalent hazardous waste program.

The intent of Congress was clearly to grant interim authorization to States which would strive to achieve the requirements for final authorization in the twenty-four month period provided in section 3006(c). The authorization plan sets forth the necessary steps the State must take to achieve these requirements in this period. If it appears that a State will not achieve these requirements and clearly will not receive final authorization, it may be less disruptive to withdraw the program than to wait for it to lapse automatically. Hence, this added criterion for program withdrawal.

§ 123.137 Reversion of State programs.

This section is new. It provides that a State program shall terminate and revert to EPA if either the State fails to submit the amended application required for Phase II interim authorization as required by § 122.122(c)(4) or the Regional Administrator determines, in accordance with procedures set forth at § 123.136, that the amended State program submission does not meet the requirements for interim authorization corresponding to Phase II. There are no similar provisions in other subparts of this Part.

This automatic termination and reversion provision is necessary here because as described above, the two phases of interim authorization are integral parts of a State hazardous waste program. EPA does not intend to provide authorization for only one phase. Therefore, States with interim authorization for Phase I will be expected to seek interim authorization for Phase II; and States which received Phase I interim authorization but do not apply for interim authorization for Phase II shall not retain Phase I interim authorization beyond the 6 month period following the effective date of Phase II.

This rulemaking does not set forth detailed specifications for how the reversion of a State program to EPA will actually occur. EPA will address that subject in a future rulemaking if that appears necessary. If such a reversion takes place, it is EPA's intention to assure that facilities which had received interim status under the Federal program before a State received interim authorization, retain interim status if the program reverts to EPA and the State has not issued the facility a RCRA permit during interim authorization. Facilities which have received State-issued RCRA permits during Phase II of interim authorization will retain their permitted status until that State permit expires or is terminated. It is also EPA's intention to assure that facilities which had the equivalent of interim status under the State program will be eligible for Federal interim status.

Final Authorization.

By the time of final authorization under Subpart B of this Part, the national program for controlling hazardous wastes should be substantially more settled than it will be during interim authorization. In addition, the statutory scheme governing final authorization is more clear-cut. For both these reasons, this Subpart is significantly less intricate than Subpart F and requires less preamble discussion.

§ 123.31 Purpose and scope.

This is an introductory section. This section points out that interim authorization is *not* a precondition to final authorization. States may apply for final authorization at any time after promulgation of the Phase II regulations whether or not they have applied for or received interim authorization.

§ 123.32 Consistency.

As the discussion earlier in this Preamble states, Congress intended for State programs receiving final authorization to become fully part of an integrated national program to control hazardous wastes. Section 3006(b) of RCRA provides that State programs can only be approved if they are "equivalent to" and "consistent with" the Federal program. EPA has therefore tightened considerably the requirements for approval of final programs over those for approval of interim programs, although, as the earlier discussion also states, it has not gone as far as some commenters suggested.

This section provides that any aspect of a State program which operates as a ban on the interstate movement of hazardous waste is automatically inconsistent. A recent court decision, *City of Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978), has held that such statutes are unconstitutional because they violate the interstate commerce clause, and EPA believes that decision is correct. However, since the text of RCRA speaks only to the "inconsistency" of State program submissions, not of State laws generally, this provision is restricted to the same extent.

EPA believes that State requirements which forbid the construction or operation of hazardous waste disposal facilities could be subject to attack by the same reasoning adopted by the courts that have struck down transportation bans. A State that refuses entirely to allow a necessary part of national commerce—the disposal of hazardous wastes—to take place within its boundaries is impeding the flow of interstate commerce just as much as a State that refuses to allow the transportation of those wastes. The interstate commerce concerns involved here are underlined by the establishment through RCRA of a national regulatory scheme, even though that scheme is not on its face preemptive. Accordingly, State programs which contain provisions that prohibit treatment, storage or disposal of hazardous waste within the State, will be deemed inconsistent if the prohibition has no basis in human health or environmental protection.

Finally, the section provides that if the manifest system does not meet the requirements of Part 123, the State program will be deemed inconsistent. Since the manifest is a document that may actually travel from State to State, it is important that the various States be very similar in this regard.

A number of comments raised as a "consistency" issue that State programs might be too lax in some respect so that a State would become a "waste haven" for a region. Though the terms "consistent" and "equivalent" do have a certain degree of overlapping content, in general EPA, during final authorization, will deal with problems of State programs that conflict with each other or impose unnecessary procedural burdens, as a "consistency" issue. Questions as to whether the programs are strong enough will be dealt with as a matter of "equivalence." Those matters are discussed below. To summarize, EPA has not required States to adopt EPA's precise regulations, but has required them to achieve the same effect, and has been particularly careful

to require very close similarity where problems of dissimilar State requirements might arise.

§ 123.33 Identification and listing of wastes.

This section requires States to control the same "universe" of wastes as the Federal program. This requirement will avoid the problems of differing lists pointed out earlier. Of course, a State is free to control additional wastes if it desires but, as explained earlier, this control will not extend beyond the State boundaries. In other words, unless other States have equally more inclusive programs, the extra wastes listed will not be considered hazardous in other States.

§ 123.34 Requirements for generators of hazardous waste.

As explained above, EPA places particular weight on consistency between the manifest systems in different States. The June 14, 1979, proposal provided that States must use the manifest format published by EPA and this requirement remains in the final rule. This means that a State's manifest form or format must contain the same information as required for the Federal manifest format. EPA has decided to retain a flexible approach to the manifest system and has not published a manifest form, for reasons explained in the preamble to the section 3002 regulations (45 FR 12728–29 (February 26, 1980)).

While EPA decided to minimize burdensome paperwork by only requiring exceptions reports by generators (40 CFR § 262.42), the Agency recognizes that several States view tracking of individual manifests as an integral and necessary part of their enforcement program. Indeed, several States have such a tracking system which typically requires generators and facility operators to send copies of all manifests to the State. The Agency views the continuation of such a tracking system by a State as allowable under Section 3009 of RCRA, provided the State adheres to all Federal manifest system requirements (e.g., the generator remains responsible for exception reporting).

As stated in the Preamble to § 123.128(b)–(d), certain aspects of the DOT hazardous materials program, though not required to be part of a State's interim authorization program, must be regulated as part of a State's final authorization program. These aspects include requirements for: accumulation of wastes in containers meeting DOT standards prior to shipment; packaging, labeling, marking and placarding of wastes; the forwarding of the manifest or shipping document for shipments solely by railroad or solely by water (bulk shipments only); and provision of the DOT proper shipping name. The Agency believes that, for final authorization, a State must incorporate these DOT requirements into its program, as EPA has in 40 CFR Part 262.

The overriding concern behind this requirement is the need for regulatory simplicity and elimination of confusion by split administration, i.e., generators and transporters will be able to look solely to the State hazardous waste management agency for all requirements with which they must comply.

§ 123.36 Requirements for hazardous waste management facilities.

This section contains standards for facilities that will be incorporated in permits for these facilities. Most of these requirements will be promulgated in Phase II and thus this section may well need revision at that time to fill in details.

§ 123.37 Requirements with respect to permits and permit applications.

This section requires the State Director, after a State has received final authorization, to review and change as necessary any permits issued by the State under Phase II of interim authorization. Where such permits are issued under Phase II, the Director should consider giving them a shorter term than the 10-year maximum now specified in order to make this re-examination easier.

§ 123.38 EPA review of State permits.

The significant issues raised by this section have been discussed earlier in this preamble.

§ 123.39 Approval process.

RCRA specifically provides the approval process for final authorization of State RCRA programs, which is different from that for interim authorization. The approval process has been simplified for interim, but remains virtually identical to the proposal for final authorization. One change, in response to a public comment, is that the final rule does not require the State to provide a copy of the actual transcript of the public hearing, but can instead provide a summary of the proceedings.

Subpart C—Additional Requirements for State UIC Programs

Many of the requirements of this subpart have been moved into Subpart A for the reasons explained above. Proposed §§ 123.52, 123.57, and 123.60 have been moved into §§ 123.4, 123.7, and 123.13, respectively. In addition, the requirements for State programs listed in § 123.7 are changed to the extent changes have been made in Parts 122 and 124. All States must ban certain Class IV wells as provided in § 122.36. Treatment of other Class IV wells has been reserved as discussed in the preamble to that section.

§ 123.51 Purpose and scope.

§ 123.51(d)—This paragraph (proposed § 123.51(f)(1)) generated a certain amount of confusion. EPA does not want a State to develop a detailed program covering classes of wells which do not exist in the State and which are not likely to come into being (except that the State must have a program to ban Class IV wells). However, the Agency is concerned that State programs control all types of injections and not inadvertently authorize new injections not previously found in the State. Therefore, States with no wells in a certain class (other than Class IV) have the following options:

(1) Without distinguishing between classes of wells, treat all injections as though they fall into EPA's Class I.

(2) Prohibit injections in non-existent classes explicitly.

(3) When the State can demonstrate that injections are not authorized in the absence of rules, and no rules are established over a particular class of well, EPA will accept this as an implicit prohibition. A certification to this effect from the State Attorney General is necessary, however. The State must control Class IV wells to the extent required by §§ 122.36 and 122.45 even though the State may not currently have any Class IV wells.

§ 123.52 Requirement to obtain a permit.

This section was proposed as § 123.54. State law must prohibit all well injections which are not authorized either by rule or by permit, and must provide the authority to regulate all well injections currently in place in the State, either by rule or by permit. Before any type of well injection not currently in place can be authorized, the State progam must be amended to cover that type of injection.

Proposed § 123.53 Attorney General's statement.

The specific requirement in this section has been dropped. The State's authority to prohibit or authorize well injections without a permit must be discussed, however, in the Attorney General's statement under § 123.5.

Proposed § 123.56 Annual report.

This section has been moved to § 122.18.

§ 123.54 Approval process.

Some commenters suggested that EPA was too stringent in its public notice requirements in proposed § 123.58(a), now § 123.54(a). They suggested that States should be given greater flexibility to handle public notice of their programs prior to submission. EPA strongly encourages public involvement in all of its programs and has not reduced these requirements below what was proposed. However, § 123.54(c) has been rewritten to clarify the circumstances under which the Regional Administrator may decline to hold a public hearing on a program approval.

Subpart D—Additional Requirements for State NPDES Programs

This Subpart reflects the requirements of EPA's revised NPDES regulations. (44 *FR* 32854, June 7, 1979). No substantive changes have been made. Sections 123.74 and 123.75 (proposed §§ 123.77 and 123.78) have been reorganized for greater clarity.

Proposed § 123.75 has been dropped because the requirements of that section that States have adequate authority to inspect, monitor, enter, and require reports, are duplicative of other requirements of these regulations. See §§ 122.7 (applicable permit conditions), 122.11 (monitoring requirements), and 123.8 (requirements for compliance evaluation programs).

Subpart E—Additional Requirements for State Programs Under Section 404 of the Clean Water Act

This Subpart has been reorganized to be more comprehensible.

§ 123.91 Purpose and scope.

One commenter suggested that § 123.91(c) be modified to allow EPA approval of State 404 programs lacking jurisdiction over all the waters within the State falling under the definition of "State regulated waters." EPA has thoroughly studied both the express language of CWA and the legislative history of the Act regarding the breadth of State section 404 programs. Both clearly indicate that State section 404 programs must regulate discharges of dredged or fill materials into all waters of the United States except those expressly reserved to the Corps of Engineers under section 404(g)(1) of CWA. For this reason, partial programs cannot be approved.

One commenter argued that § 123.91(d) limited the scope of State programs to regulation of only those activities permitted by the State after program approval. EPA disagrees. § 123.91(d) clearly allows approved States to assume responsibility over existing general permits issued by the Corps of Engineers. The Memorandum of Agreement between the State and the Secretary, under § 123.99, will be the vehicle for establishing which Corps issued permits the State will administer and enforce.

§ 123.92 Activities not requiring permits.

This section was proposed as § 123.107.

A number of commenters objected to the description of activities exempt from the requirement of having to obtain a permit, on the grounds that the exemptions have been drawn so narrowly that the 404 program intrudes illegally into activities reserved to the 208 program. EPA believes these objections are based on a misunderstanding of the relationship between sections 404 and 208. It is clear from the statutory scheme and legislative history that sections 402 and 404 must reach all point source discharges except those explicitly exempted in sections 404(f), 404(r), or 402(*l*). Section 208 was intended to supplement those programs by covering major non-point sources of pollution, by ensuring coordination between point and non-point source controls, by coordinating treatment facilities, and by preventing pollution as well as controlling it. Thus, it is not correct to assume that merely because an activity is identified in section 208 it is a nonpoint source; similarly, the BMPs in section 404(f)(1)(E) are not invalid merely because they reach point some problems which the 208 plans also address. Sections 404 and 208 simply do not define distinct spheres of influence.

§ 123.92(a)(1)—Several commenters objected to the restrictive language of § 123.92(a)(1). This subparagraph has been rewritten to more clearly specify the activities which are exempted from the section 404 permit requirement instead of focusing on those activities which do require permits, as the purpose of this section is to identify those activities which do not require permits.

The definitions of "plowing," "seeding," "cultivating," "minor drainage" and "harvesting" (proposed § 122.3(e)) have been moved into this paragraph for convenience. The terms appear only in this paragraph. Comments received on the definitions of cultivating, harvesting, minor drainage, and plowing are as follows:

Cultivating

EPA agrees with the commenter who recommended the deletion of the word "planted" in the definition of "cultivating," and has changed the definition accordingly to make it clear that cultivating naturally occurring crops, such as salt hay, may be exempt as long as the other requirements are met.

Harvesting

The Agency has included established ranch lands in the definition of "harvesting" to better coincide with statutory language.

Minor Drainage

A large number of commenters objected to the definition of "minor drainage." Most complained that, by limiting minor drainage to upland drains (and connections of such drains to waters of the United States), the regulation "exempted" only those activities which were already outside the scope of section 404. These commenters cited several passages in the legislative history to support their argument that some drainage within wetlands was also meant to be exempted. These commenters noted that the "recapture" provision in section 404(f)(2) would serve as assurance that the exempted drainage would have only minimal effects. The commenters also observed that the proposed definition would require a drainage proponent to determine the presence or absence of wetlands before he or she would know whether a permit is needed. A few commenters, citing the potential for abuse from wetlands drainage, recommended that the proposed definition be retained.

The definition of minor drainage is not an easy problem to solve. The legislative history contains numerous, inconsistent references to minor drainage and to other section 404(f)(1) exemptions. Some portions of the legislative history clearly support the position taken in the proposal, such as the statement that the provision for minor drainage merely recognizes that upland drainage does not involve the discharge of dredged and fill material in waters of the United States, and therefore does not ever need a permit. However, other passages in the legislative history suggest that the minor drainage provision is intended to aid farmers and foresters who are actively farming an area which may technically be waters of the United States, at least where these activities will not have a significant impact on the aquatic ecosystem.

After a careful review of the entire legislative history and consideration of the numerous comments, EPA has concluded that it would be appropriate to define "minor drainage" to include certain clearly defined drainage activities in wetlands which are part of on-going agricultural and silvicultural operations and which have minimal adverse effects, where permits are an unnecessary burden. Subparagraphs (ii), (iii), and (iv) of the new definition reflect this revision. It should be stressed that each of these provisions applies to activities that are part of an on-going farming or forestry operation; they do not exempt activities which convert wetlands to non-wetlands or which bring wetlands into farming use. The listed activities will have minimal adverse effects partly because they involve limited, reversible alterations to the hydrological regime.

Subparagraph (ii) refers to activities incidental to the planting, cultivating, protecting, or harvesting of rice, cranberries of other wetland crop species, in farm or forest areas in established use for such wetland crop production. This will allow a farmer to temporarily dewater the area for a particular step, such as planting, as long as the area is kept in *wetland* plant production (with or without rotation with other crops where such rotation is a normal practice). The phrase "wetland crop species," in the definition of minor drainage, must be read in connection with the phrase "food, fiber, and forest products" in § 123.92(a)(1)(i). Thus, it does not include peat and similar materials extracted or mined from the wetland substrate, even if such materials are derived from plants which also yield food or fiber or tree products.

Subparagraph (iii) also recognizes the particular situation of rice and cranberry (and possibly other farm or forest crop) growers, whose manipulation of water levels may involve the discharge of fill material.

Subparagraph (iv) responds to the concerns of farmers and foresters who pointed out that storms and floods occasionally deposit silt bars in pre-existing drainage channels in established crop lands; these bars block the normal drainage and often threaten crops which are not adapted to the new flooding regime. Such blockages may be due to storms, floods, beaver dams, and other such "events." We have included a requirement that such blockages be removed within one year of placement to be eligible for the exemption. This should ensure that this exemption will not be used to drain wetlands which happen to have been created by fluvial action over a period of time.

EPA considered adding a provision to exempt drainage of small, isolated, occasionally wet areas where such wet areas are surrounded by lands in established farming use. EPA concluded for a number of reasons that it would be unnecessary or unwise to include this provision in the definition of minor drainage.

First, many of these small, isolated wet areas may not be waters of the United States either because they are not wet enough to be "wetlands" under § 122.3 or because, even if wetlands, their destruction or degradation would not have any effect on interstate commerce. Including an "exemption" for such areas might create the erroneous impression that, but for the exception and subject to the recapture provisions of section 404(f)(2), each puddle and damp spot would need a permit. There is, of course, no such requirement unless there is a discharge into waters of the United States.

Second, in the case where waters of the United States are involved, such drainage would generally be covered by an existing nationwide general permit issued by the Corps of Engineers. States may arrange with the Secretary of the Army to take over the administration of such general permits, for State regulated waters, upon program approval. (See § 123.91(d)). Under one current nationwide permit (33 CFR § 323.4–2) discharges of dredged and fill material are authorized, subject to certain conditions not likely to affect farmers, in: (1) Non-tidal rivers, streams and their impoundments including adjacent wetlands that are located above the headwaters; (2) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are fed or drained by a river or stream above the headwaters. In the absence of adjacent wetlands the surface area of a lake shall be determined at the ordinary high water mark; (3) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are isolated and not a part of a surface river or stream. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark; and (4) Other non-tidal waters of the United States other than isolated lakes larger than 10 acres (see (3) above) that are not part of a surface tributary system to interstate waters or navigable waters of the United States (see 33 CFR § 323.2(a)(5)). These small isolated wetlands would be covered by this nationwide permit.

There are strong policy grounds for continuing to rely on the general permit approach for regulating small, isolated, wetlands in regions where agricultural and silvicultural activities predominate. For example, the general permit approach allows a certain flexibility, in the event that the cumulative impact of such drainage should become more significant in the future. This flexibility arises in two ways. First, under the Corps' regulations and under State programs, the permitting authority has the discretion to require an individual permit in a particular case where required by concerns for the aquatic environment (as expressed in the section 404(b)(1) guidelines). For example, the permitting authority may conclude that in a particular area individual scrutiny is needed for the drainage of isolated wetlands (e.g., prairie potholes) of a certain size or type. Second, general permits are issued for fixed terms, not exceeding 5 years, and must be renewed upon expiration in order to continue in effect. The opportunity for public hearing required for such renewal will give State administrators, farmers, and other interested citizens an opportunity to assess the continued need for the general permit and its conditions, based on environmental conditions, and other relevant matters. For instance, in the previous example, the State Director may conclude that the loss of prairie potholes has had such an impact on migratory waterfowl that future discharges into any prairie pothole should have individual permits.

EPA believes that this approach complies with the direction of Congress to give the States a role in the implementation of the 404 program, recognizing that some States may choose a more protective approach than the minimum standards set by the Federal program. At the same time, this definition assures that the legitimate interests of farmers and other groups, as reflected in section 404(f), are also protected.

Plowing

Several commenters pointed out that plowing is a normal forestry as well as farming activity. We have amended the definition of plowing to reflect this. Others objected to the exclusion from plowing of redistribution of surface materials by grading, on the grounds that filling in depressions in irrigated fields may actually be a BMP.

Plowing, as defined, is not a point source and, under § 123.92, will not require a section 404 permit. However, other activities which involve the redistribution of soil or other surface materials to fill in waters of the U.S. are

not included in this definition and may require a section 404 permit.

Several commenters questioned the requirement that plowing take place on "established" farm or forest lands. This requirement has been deleted. However, it is still necessary to distinguish ongoing farming and forestry activities, which are exempt under section 404(f)(1) of CWA, from activities which convert waters of the United States to a new use, which, under section 404(f)(2), are not exempt.

EPA believes that redistribution of material should be subject to the scrutiny of the permit process when it results in the conversion of waters of the United States to dry land. In appropriate circumstances, with appropriate conditions, such redistribution may be permitted as provided in the section 404(b)(1) guidelines.

§ *123.92(a)(2)*—Some commenters felt that § 123.92(a)(2) was too vague or too inflexible for all emergency situations. EPA disagrees, and has retained this paragraph with only minor revisions.

§ *123.92(a)(3)*—A number of commenters objected to the language defining the exemption for the connection of irrigation ditches to waters of the U.S. as being too restrictive. The revised language clarifies that a permit is required only for those connections that involve construction of a water intake structure which results in significant discernable alterations to the flow or circulation of waters of the United States. It is not the intent of EPA that simple connections fall under the permit requirement. Furthermore, construction of bank protection features for ditches which do not reach into waters of the U.S. do not need a permit in any case.

§ *123.92(a)(6)*—Numerous reviewers objected to the baseline best management practices proposed in § 123.107(a)(5) on which the road construction exemption is based. Objections centered on two issues: (1) whether it is appropriate, or indeed legal, for EPA to prescribe by regulation a set of nationwide BMPs for State 404 programs; and, (2) whether the baseline BMPs in the proposal improperly control activities that do not relate to road construction involving the discharge of dredged and fill material.

As to the first of these objections, the Agency, after review of the legislative history of CWA section 404(f)(1)(E), finds no direct or implicit guidance as to the means by which Congress intended the best management practices requirement to be implemented. Our intent in specifying baseline best management practices was, and is, to identify basic measures which *are* nationally applicable and which can form a core or framework to which States may add more detailed and locally applicable BMPs which they believe are needed to assure that the environmental protection objectives of section 404(f)(1)(E) are met. We also believe that an explicit statement of minimum standards will aid States in preparing program submissions for approval. For this reason, we have retained the approach of baseline BMP's in § 123.92(a)(6).

EPA has carefully considered the second objection, relative to the scope of the specific BMPs, in light of the legislative history of section 404(f)(1)(E), and has concluded that in some cases the proposed BMPs were too broad. The Agency has, therefore, revised the list of BMPs in order to focus upon environmentally protective measures which are directly linked to the methodology and location of discharges for road construction. Proposed (i), (x), (xi), (xvi) and (xvii) have been deleted, and other proposed BMPs have been revised accordingly. Revisions have also been made to maintain consistency with the Corps of Engineers. Consistent with these other changes, we have also added several new BMPs, §§ 123.92(a)(6)(v), (xi), and (xii). New (v) emphasizes the importance of minimizing disturbance within the waters of the United States lying adjacent to road corridors. This BMP is designed to reduce the adverse impacts of road construction in waters of the United States by encouraging the widespread use of procedures which restrict road construction to the actual corridor to be occupied by the finished road. New (xi) and (xii) are both included to maintain consistency with the BMPs applied by the Corps of Engineers. New (xi) requires that the public health and welfare be protected. New (xii) requires that health and economic concerns be protected by the protection of shellfish production areas. Below is a BMP by BMP analysis of comments received and changes made in each of the proposed baseline BMPs.

Most of the comments on proposed (i) were not favorable, expressing concerns that this BMP was outside EPA's authority, that the absolute nature of the prohibition made it impracticable, and that it might even result in the need for additional road construction. Although the Agency agrees with the comments favorable to proposed (i) that logging in streams may be environmentally harmful, proposed (i) has been deleted as not being within the proper scope of this section.

Although many commenters approved of proposed (ii) (now (i)), others felt that it was already covered under section 208 or that it was too inflexible. In response to this latter comment, the Agency has included more factors to be used in determining what restrictions are feasible in any given case.

Proposed (iii) (now (ii)) has been revised to require the minimization of discharges of dredged or fill material only. This responds to those comments which stated that the BMP, as proposed, was not limited to dredged or fill material, and was impractical.

Many commenters agreed with proposed (iv) (now (iii)), and so it has been retained and only slightly revised. The Agency does not agree with those commenters who felt that allowances for certain types of discharges or for extreme flows should be included in this BMP. The phrase "high" flows has been changed to "flood" flows for clarity.

Comments on proposed (v) (now (vii)) were generally favorable, and so this BMP was retained with minor revisions. The revisions specify that the affected activities are related to road crossings. The Agency does not feel that it is impractical, as two comments stated.

Almost all commenters agreed with proposed (vi) (now (x)) and proposed (vii) (now (xiv)), and they have been retained unchanged.

Although a few commenters felt that proposed (viii) (now (ix)) needed more definition or explanation, EPA has retained this BMP unchanged in light of the predominance of favorable comments and the availability of information compiled under the Endangered Species Act for implementing this requirement.

Most commenters agree with proposed (ix) (now (iv)), and it has been retained, although limited to erosion prevention. Several commenters suggested that the word "prevent" be replaced with "minimize" or "control," but the Agency and the greater number of commenters felt that the original language is both preferable and practicable.

All comments on proposed (x) were negative, with the primary objections being that it exceeded EPA's authority, was too restrictive, was covered under section 208 and was inappropriately regulated under section 404, and was not practicable. In response to these comments, proposed (x) has been deleted.

Almost all of the comments on proposed (xi) were negative. Primary concerns were that it exceeded EPA's scope of authority, was covered under section 208 and was inappropriately regulated under section 404, was

unrelated to farm or forest road construction, was not practicable, and would not always lead to environmentally protective practices. Only one commenter favored retaining this BMP. In response to these comments, proposed (xi) has been deleted.

Many commenters agreed with proposed (xii) (now (vi)) which, in response to comments, has been slightly revised to relate specifically to road crossings. The Agency disagrees with the many commenters who felt that this BMP was not adequately specific to section 404 and that it was best regulated under section 208 only, since it is clearly concerned with potential discharges into waters of the U.S.

Proposed (xiii) (now (viii)) has been revised in response to a number of comments which criticized the zone of vegetation and thermal pollution requirements as being ineffective or not necessarily protective of the environment. The other major point of criticism in the comments was that this is not adequately related to section 404 and is properly regulated under section 208. The Agency disagrees with this point of view, and feels that this BMP may be appropriate to both sections 404 and 208. A number of commenters agreed with this position, and so proposed (xiii) has been revised and retained.

A large number of commenters agreed with proposed (xiv) (now (xiii)), which has been retained unchanged. Critical comments generally stated that this BMP was not adequately related to section 404 or that it exceeds EPA's authority. EPA feels that neither criticism is well-founded since the requirement applies to discharges regulated under section 404 and assures compliance with two related Federal laws.

Almost all of the commenters agreed with proposed (xv) (now (xv)) and it has been retained substantially as proposed. EPA feels that there is no basis for the comments that this requirement is impractical or that it might result in environmentally harmful activities.

No favorable comments were received regarding proposed (xvi). The general criticisms were that this BMP was not adequately related to section 404 and was more appropriately regulated under section 208 and/or FIFRA, that it was not practicable, that it was beyond the scope of EPA's authority, and that the language was not adequately defined or specific. In response to these comments proposed (xvi) has been deleted.

No favorable comments were received regarding proposed (xvii). Objections to this BMP were generally that it was covered under section 208 and regulation under section 404 was not appropriate, that it was not practicable or not necessary, that it exceeded EPA's authority, and that it was unrelated to farm or forest road construction. In response to these comments proposed (xvii) has been deleted.

In addition to these revisions and deletions EPA has included in these regulations three other baseline BMPs. As explained above, new BMP (v) is intended to restrict the adverse impacts of road fill construction on waters of the U.S. to the specific site of the fill. It specifically affects the manner in which dredged or fill material is discharged for road construction, and so is clearly appropriate in this section.

New (xi) and (xii) are both designed to protect the public health and welfare by protecting water supply and food production areas from contamination resulting from discharges allowed under this paragraph.

§ *123.92(d)*—One commenter expressed concern that proposed § 123.107(d), which exempts Federal projects qualifying under section 404(r) of CWA from State section 404 permit requirements, is contrary to the provisions of section 404(t) of CWA. Section 404(t) preserves for the States the right to regulate discharges of dredged or fill material in the navigable waters of the State. To clarify the distinction between section 404(r) and section 404(t), the paragraph has been changed to specify that projects qualifying under section 404(r) are exempt from regulation under the Federal or State section 404 program, but may be regulated under other State or Federal programs.

§ *123.94 Permit application.*

This section was proposed as § 123.108.

Several commenters suggested that the permit application content requirements of proposed § 123.108(c) be simplified and reduced. The Agency agrees, and in revising those requirements has attempted to clarify what is required in the application, reduce duplication, and limit application requirements to the information which is normally required for evaluation of proposed projects.

A number of commenters objected to what they considered the unreasonable economic costs of providing the application information required by the proposal. We believe the simplification and reduction of those requirements will result in commensurate reduction in costs to the applicant. The Note under § 123.94(c)(2)(v) also seeks to ensure that the level of information required will be appropriate to the necessary review, pursuant to the section 404(b)(1) guidelines, 40 CFR § 230.4(c) (as proposed in 44 FR 54222, September 18, 1979).

§ *123.96 Emergency permits.*

EPA has revised the section on emergencies (proposed § 123.111) to ensure that procedures and requirements relating to discharges of dredged and fill material will be waived only to the extent necessary to meet emergencies. The provision still allows the Director the necessary flexibility to respond to situations which would result in an unacceptable hazard to life or severe loss of property if corrective action is not undertaken during the usual processing period. At the same time, the revised language assures the public's right to participate at the earliest feasible opportunity.

§ *123.97 Additional conditions applicable to all 404 permits.*

This section contains the standard permit conditions which the State Director shall include in all State 404 permits. The permittee now must be required to maintain the authorized work area as described in the permit in order to prevent subsequent violations of CWA standards due to previously authorized activities. In addition every permit must specify that only activities specifically identified and authorized in the permit are authorized activities. This maintains consistency with Corps permits, and alerts the permittee to the fact that the permit allows him/her to perform only work specifically described by the permit. Any other activities which require a permit but are not specifically identified and authorized in the permit cannot be performed unless the permit is modified or a new permit is obtained.

§ *123.98 Establishing 404 permit conditions.*

This section also includes permit conditions which the State Director shall include in State 404 permits. These conditions may vary in their wording from permit to permit, but must be applied, to the extent appropriate, in every permit.

The permit must now include descriptions of the geographic area, specific site, type, size, and purpose of any authorized discharge, as well as the water quality standards, effluent limitations, and toxic effluent standards with which the discharge must comply. These requirements are intended to avoid any confusion as to what is authorized by the permit and what limitations are imposed on the

authorized discharge. The permit must also include a specific date by which work must commence. This will ensure that the permittee knows exactly when the discharge is authorized and when it is not.

§ 123.99 Memorandum of agreement with the Secretary.

This section was proposed as § 123.93. One commenter suggested that the requirement for the State and the Secretary to enter into an agreement was unnecessary. EPA disagrees. The MOA with the Secretary is the primary means of implementing the requirements of sections 404(g) and (h) of CWA. It is necessary to coordinate the transfer of the Federal program applicable to State-regulated waters to the State, and to clearly establish where the jurisdiction of the Corps ends and that of the State begins. The Corps will identify for the State those waters within the State over which the Corps will retain jurisdiction. The MOA with the Secretary will describe this division of jurisdiction, and confirm the State's understanding of its jurisdiction as set out in the program description under § 123.4(h)(1).

Two commenters felt that § 123.99(f), which prohibits the State from issuing a section 404 permit if in the judgement of the Secretary the discharge would substantially impair anchorage or navigation, should be struck. EPA cannot incorporate these comments since to do so would conflict with the express language of section 404(g)(1)(F) of CWA.

§ 123.100 Transmission of information to EPA and other Federal agencies.

This section was proposed as § 123.98. Several commenters objected to any application of the draft permit requirements of § 124.6 to State section 404 programs. As in the proposal, draft State section 404 permits will continue to be required in certain cases. In most cases draft permits will not be required. However, for those activities for which EPA may never waive permit review, such as major projects or projects in particularly sensitive areas, and for other activities when EPA deems it necessary, the State will be required to prepare and circulate a draft permit. (See the discussion under § 124.6 of this preamble for a general justification of the draft permit requirement.) As discussed in the preamble to § 123.6(f), the categories of discharges for which a draft State section 404 permit is required have been more clearly defined.

§ 123.101 EPA review of and objections to State permits.

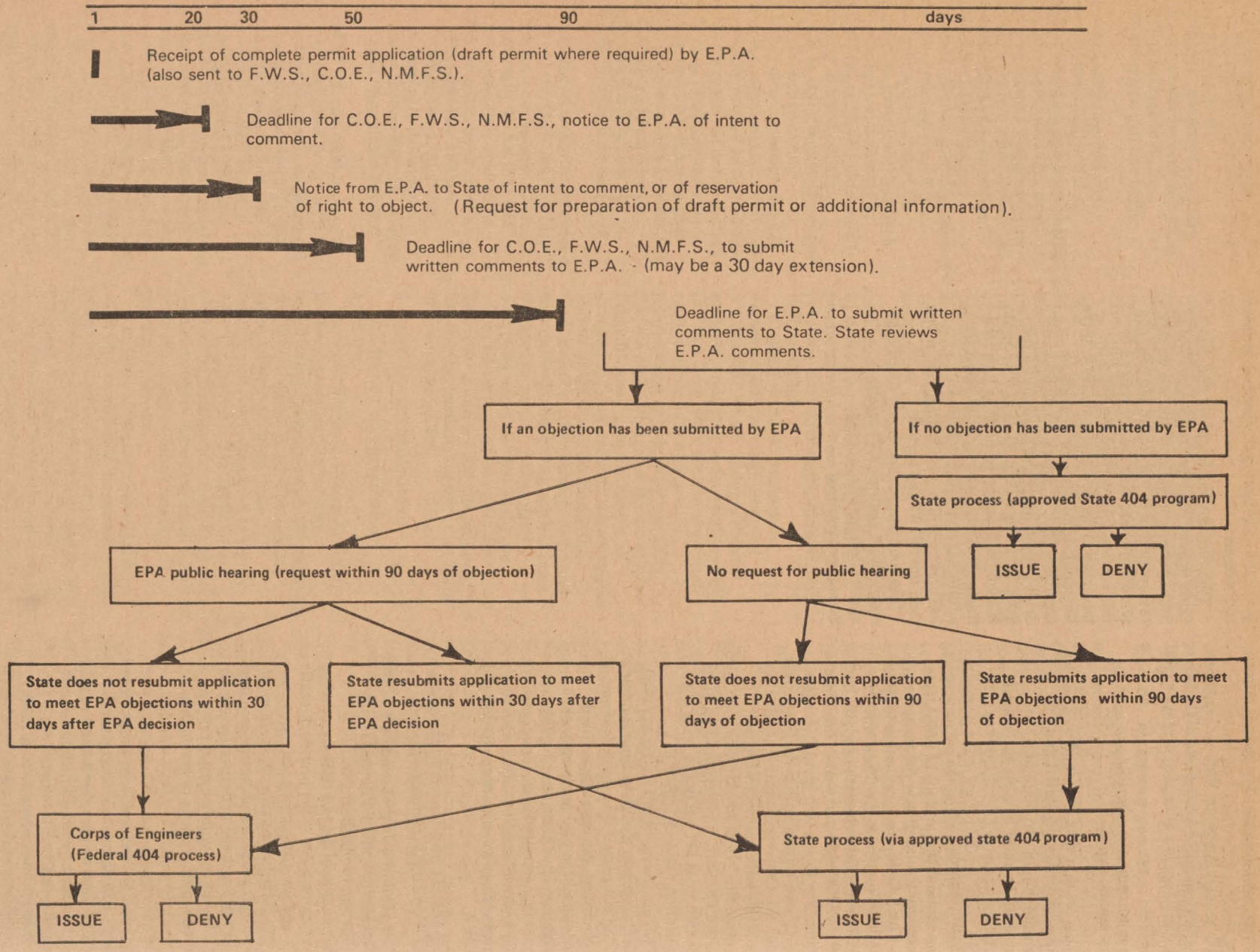
Two industry commenters and one State agency objected to EPA review of State permits in general and the 90-day review period in particular. No changes were made because the provisions of this section follow from the express language of section 404(j) of CWA. If the Regional Administrator is going to comment upon a permit application or draft permit, he or she shall notify the State Director within 30 days of receipt. If such notification is made in time, the Regional Administrator shall have an additional 60 days to respond. Responses will normally be given in less than the full 90-day period.

The following chart should clarify the entire State section 404 permit application review process.

BILLING CODE 6560-01-M

BILLING CODE 6560-01-C

STATE 404 PROGRAMS—PERMIT APPLICATION REVIEW PROCESS



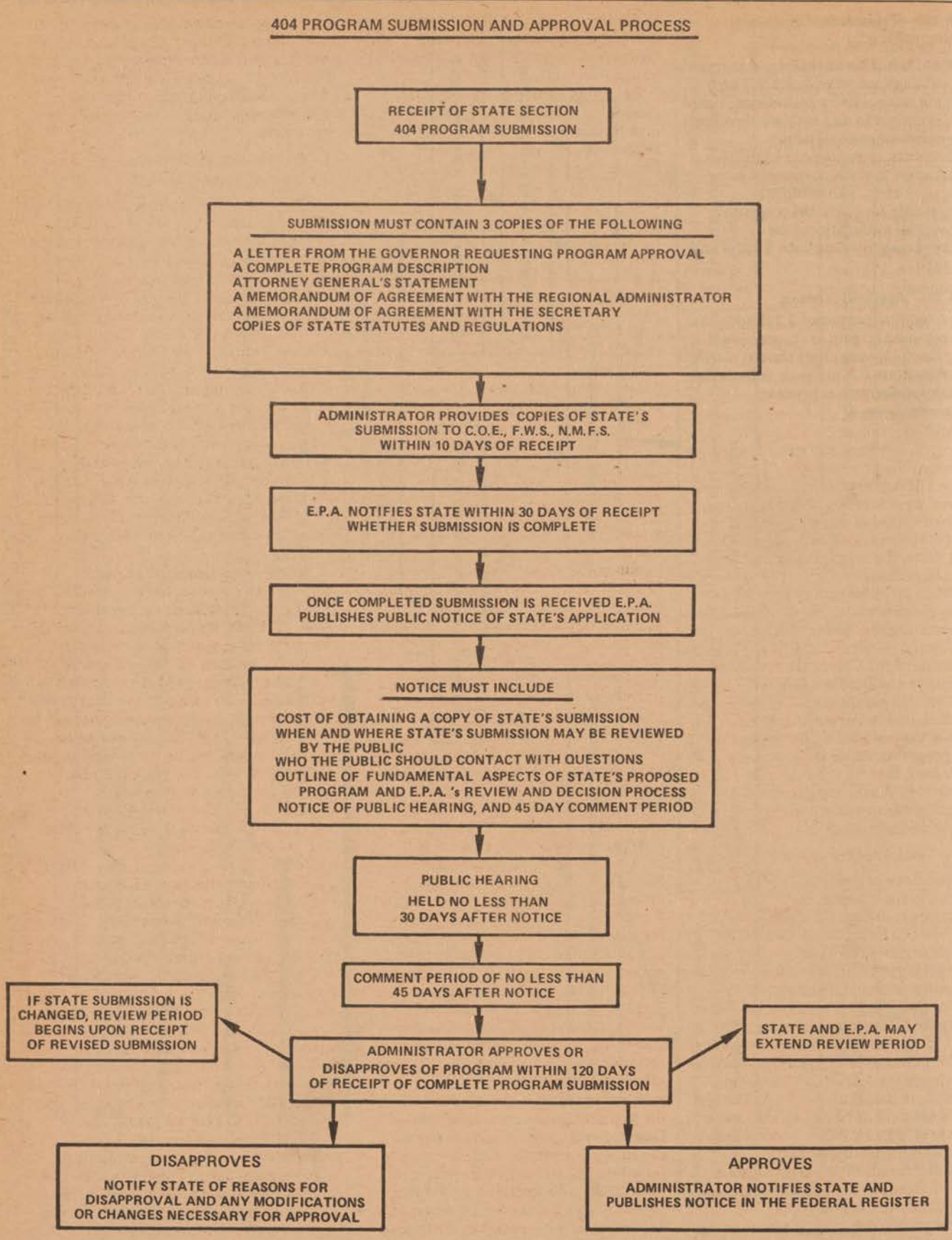
§ *123.103 Enforcement authority.*

This section was proposed as § 123.101. It has been shortened in order to avoid duplication with § 123.9 and eliminate unnecessary provisions. These changes do not in any way weaken the State enforcement authority requirements; expectations of diligent and effective State enforcement have not been altered. The complete requirements for State 404 program enforcement authority can be ascertained by reading both § 123.9 and §123.103.

§ *123.104* **Approval process.**

This section (proposed § 123.104) has been retained largely in its proposed form. The following chart should clarify the entire State 404 program submission and program approval process.

BILLING CODE 6560-01-M



BILLING CODE 6560-01-C

I. Part 124—Procedures for Decisionmaking.

A. What Does This Part Do?

Part 124 establishes the procedures for issuing, denying, modifying, revoking and reissuing, or terminating EPA-issued RCRA, UIC, PSD, and NPDES permits. It also establishes procedures applicable to certain State administered permit programs.

This framework gives EPA the discretion to process RCRA, UIC, PSD, or NPDES permits separately or in combination. While consolidating permit procedures is not mandatory, it is encouraged whenever a facility or activity requires permits under more than one statute. Without consolidation, a facility needing multiple permits would repeat the entire permit process for each permit. But with the opportunity for joint issuance of draft permits, joint comment periods, and joint public hearings under Part 124, a facility would go through the process only once.

When EPA issues all the permits required by a facility, the process may be consolidated at any time. When responsibility is divided between EPA and a State, the regulations encourage joint proceedings.

Part 124 includes procedures for issuing permits under regulations implementing the "prevention of significant deterioration" (PSD) provisions of the Clean Air Act. These procedures are similar to 40 CFR § 52.21(r). No parallel requirements have been included in Parts 122 and 123 because the mechanism for approving State programs under the Clean Air Act differs from that for other permit programs. EPA will explore the possibility of more comprehensive consolidation in the future.

B. How Does This Part Work?

Under these procedures, a facility must apply for a permit under the requirements in Part 122 (RCRA, UIC, NPDES) or 40 CFR § 52.21 (PSD). The Director reviews the application and notifies the applicant when the application is complete (§ 124.3). The Director then decides whether to deny the application or prepare a draft permit. If the former, the Director issues a notice of intent to deny; if the latter, he or she prepares a draft permit under § 124.6. Both decisions are accompanied by a "statement of basis" (§ 124.7) or a "fact sheet" (§ 124.8) that becomes part of the "administrative record" assembled for all EPA-issued permits (§ 124.9). Because of practical limits on EPA's ability to explain in comprehensive detail each of the permits it issues, the depth of discussion in the fact sheet or statement of basis will be related to the importance of the issues involved and their controversial nature.

Decisions to modify, revoke and reissue, or terminate a permit (§ 124.5) also require the Director to deny the request or prepare a draft permit. The Director may take any of these actions either on his or her initiative or by acting on a request submitted by any interested person. Denials of requests for modification, revocation and reissuance, or termination, unlike denials of applications, are not subject to public notice, public comment or public hearings. If the Director decides to deny the request, he or she sends the requester a notice briefly stating reasons for the denial. This notice is not accompanied by a "statement of basis" or a "fact sheet." And an "administrative record" is not assembled. Denials of requests for modification, revocation and reissuance, or termination cannot be formally appealed to the Administrator under § 124.19 but only informally under § 124.5(b). All draft permits prepared under §§ 124.5 and 124.6 are subject to public notice (§ 124.10), public comment (§ 124.11) and, in suitable cases, public hearings (§ 124.12). This process allows any interested person to bring forward any comments or questions concerning the draft permit or its supporting materials. After the comment period (including any public hearing) has closed, EPA issues a final decision on a permit (§ 124.15). The final permit decision is accompanied by a response to all significant comments (§ 124.17) which, together with additional supporting material, completes the final administrative record (§ 124.18).

Whenever commenters on a draft permit ask that changes be made, the final permit will not become effective until 30 days after notice is served under § 124.15(a). This gap between the date of issuance and the effective date of a final permit allows interested persons time to appeal a decision on a RCRA, UIC, or PSD permit to the Administrator under § 124.19 or request an evidentiary hearing for an NPDES permit under § 124.74. If no such comments are received, the final permit is issued and effective the same day.

When an approved State program is the permitting authority, the State Director must prepare a draft permit, provide public notice and opportunity for a hearing and allow the public at least 30 days to comment on the draft permit before a final permit is issued. A fact sheet for all major permits is also required. (These regulations do not include requirements for processing State-issued PSD permits.) Section headings (or when necessary, paragraph headings) have been highlighted to make it easier to identify which Part 124 requirements apply to approved State programs.

C. What Kinds of Hearings Are Available Under This Part?

There are three kinds of hearings available under Part 124: the public hearing, the evidentiary hearing and the non-adversary panel hearing.

(1) *The Public Hearing.* Section 124.12 describes a public hearing that is purely legislative in nature. Public hearings are granted in two situations: (1) upon written request, if the Director finds "a significant degree of public interest" in a RCRA, UIC, PSD, or NPDES draft permit or (2) without request at the Director's discretion. At such a hearing, oral or written statements and data concerning the draft permit can be submitted by any interested person. In general, this is the only type of hearing that will be held on RCRA, UIC, or PSD permits. Limited exceptions to this rule are described below.

(2) *The Evidentiary Hearing.* Evidentiary hearings are provided for in Subpart E. These hearings are available whenever NPDES permits are contested, if a written request is filed within 30 days after a decision on the final permit. Evidentiary hearings also are available whenever RCRA permits are terminated. Under certain circumstances (outlined in § 124.74(b)(2)), persons requesting an evidentiary hearing on an NPDES permit also may request that the evidentiary hearing include closely related conditions of a RCRA or UIC permit. PSD permits can never be made subject to a Subpart E hearing.

(3) *The Non-Adversary Panel Hearing.* Subpart F contains procedures for conducting a non-adversary panel hearing. These new procedures primarily apply to specific kinds of NPDES permits. Panel hearings may be held for first decisons on any CWA variance and for the issuance of any other NPDES permit which constitutes "initial licensing" under the Administrative Procedure Act. The Regional Administrator also may use these procedures when making RCRA or UIC permit decisions, or when preparing a draft NPDES general permit under § 122.59. Finally, the parties to an evidentiary hearing under Subpart E may agree to use Subpart F procedures instead. Whenever a Subpart F hearing is held on one permit and other permits subject to this Part have been consolidated with that first permit, all

the permits are processed together under Subpart F.

In a panel hearing the Presiding Officer sits with a panel of other EPA employees. Together they question the participants, rule on requests for cross-examination, and schedule supplemental hearings for cross-examination. A recommended decision is issued and becomes final if not appealed to the Administrator within 30 days. (The Presiding Officer will generally be an Administrative Law Judge. Persons other than Administrative Law Judges may serve as Presiding Officers if no NPDES permit other than a general permit is involved or by agreement of the parties if an NPDES permit other than a general permit is involved.)

To clarify the different types of hearings available, EPA has adopted the following terminology:

A "public hearing" is a hearing under section 124.12.

An "evidentiary hearing" is a hearing under Subpart E of Part 124.

A "panel hearing" is a hearing under Subpart F of Part 124.

A "formal hearing" is either a hearing under Subpart E or a hearing under Subpart F, since both types of hearings conform to the formal hearing requirements of the Administrative Procedure Act.

These terms can be found in the "definitions" section (§ 124.2).

D. How Does This Part Relate to the June 14, 1979, Proposed Regulations?

The following is a discussion of significant comments received and the basis for revisions made to Part 124 of the proposed regulations. Minor editorial changes have been made in most sections and are not discussed.

EPA has attempted to address all significant comments received on this Part during this rulemaking. However, the procedures in Part 124 are a direct outgrowth of the procedures in the final NPDES regulations published June 7, 1979. See 44 FR 32854. Many comments addressed in the preamble to those regulations apparently were answered satisfactorily and were not raised again. As they still may be relevant to a full understanding of these procedures, the reader may find it helpful to read the preamble to the final NPDES regulations as well as this preamble.

§ *124.1 Purpose and scope.*

A number of commenters questioned the value of the entire consolidation effort. Several points were made.

(1) Consolidation will be too cumbersome.

Several commenters argued that consolidation would slow down the permitting process to the pace of the slowest permit. They provided graphic examples of how confusion would result when decisionmaking on one permit interacted with decisionmaking on another. These commenters also argued for the efficiency of a facility getting its permits in sequence, as they are needed, rather than all at once. Accordingly, the comments suggested that consolidation ought to be at the option of the permit applicant.

While issuing several permits together often may take longer than issuing the first of a sequence of permits, this is not the whole picture. First, RCRA, UIC, PSD, and new source NPDES permits are construction permits. A new facility or activity which requires a permit under more than one statute must obtain *all* required permits before construction can begin. Thus, it is the granting of the *last* permit, not the first, that completes the job of specifying the environmental requirements applicable to a plant. Planning and financing often cannot proceed until those administrative requirements are fixed. Consolidating the procedures, in almost all cases, will accelerate the granting of that last and most important permit.

Second, and more important, the very process of issuing permits to a major source in sequence, rather than at the same time, leads to problems of its own. The issuance of an earlier permit may have been based on assumptions about what a later permit would require. When the later permit imposes unanticipated requirements, the first permit then may need to be re-examined. Moreover, evidence introduced at a later permit proceeding may affect the evidence at an earlier proceeding and call into question an earlier decision. Whenever such situations arise, the Agency (and the applicant) are faced with either trying to patch up the earlier permit, which is slow and cumbersome, or moving toward final action and judicial review with questions of consistency unresolved. Consolidation at least provides a mechanism by which such problems can be identified and resolved before the final permits are issued.

For these reasons EPA has rejected the suggestion not to proceed further with consolidation at this time.*

*One commenter argued that these regulations should be delayed because of possible inconsistency with the Energy Mobilization Board proposals. In fact, these regulations are entirely consistent with that legislation. Both the House and Senate versions of the bill place their major emphasis on coordinating, and where possible, consolidating decisionmaking for a facility. This is also the aim of these regulations.

EPA also has rejected the suggestion that consolidation should be the choice of the permit applicant only. The regulations provide that the permit applicant may request consolidation, and in most cases considerable weight will be given to that request. There may be some cases when staggering the issuance of permits fits a project construction schedule better than issuing all the permits together, and when the dangers inherent in issuing permits in sequence are worth risking. However, both the States' and EPA's interests in handling their own workload and the public interest in effective environmental regulation also must be considered. Since both of these interests could be served by consolidating permits in a particular case, the suggestion to give the permit applicant veto power over consolidation has not been accepted.

(2) New programs should not be consolidated with older ones.

One commenter argued that because the RCRA and UIC programs are new, untested, and subject to change, they should not be consolidated with the NPDES and PSD programs.

We agree that these programs are new and that consolidation is an untested effort. It is quite likely that in a few years, these consolidated regulations might be comprehensively rewritten to account for what we will have learned, just as the NPDES regulations had to be revised in light of practical experience.

However, this is no reason for avoiding consolidation. From the very beginning of these new programs, questions about their relationship to each other and to older permit programs were inevitable. These consolidated regulations are simply an effort to address in advance some of those questions explicitly rather than to improvise solutions later on a case-by-case basis.

(3) Consolidation will make NEPA more broadly applicable.

When these regulations were proposed, the preamble stated EPA's position that the National Environmental Policy Act (NEPA) does not require preparation of an environmental impact statement (EIS) when permits are issued under the RCRA, UIC, or PSD programs, or when non-new source NPDES permits are issued. 44 *FR* 34247. (June 14, 1979)

No comments opposing this position were received, and a number of comments supported it, either directly or by necessary implication. Accordingly, the same position has been adopted in the final regulations. See § 124.9.

Several commenters were concerned that consolidating permits would make

NEPA more broadly applicable. One commenter argued that even though PSD permits are exempt from NEPA by statute, if a PSD permit were consolidated with a new source NPDES permit for the same plant, PSD issues might have to be discussed in the EIS on the NPDES permit. The result would make NEPA applicable to the PSD permit despite the explicit language of the Clean Air Act.

EPA agrees that this is an anomalous result, but it is hard to see how to avoid it. Given the explicit language of many NEPA cases that *all* the reasonably foreseeable major impacts of a project must be discussed in an EIS, a strong argument can be made that the kind of comprehensive balancing analysis NEPA contemplates would be impossible if air quality impacts were totally excluded. This argument, however, does not rise or fall on whether the permits are consolidated. It applies just as strongly to an NPDES permit issued to a source after *or* before a PSD permit. Indeed, in one recent case EPA has been challenged for its failure to adequately consider air issues in an EIS on an NPDES permit issued after the source's PSD permit. *Save the Valley, Inc.* v. *EPA*, Civil No. 79–3058 (6th Cir. 1979). In such a case, issuing permits in sequence rather than together will likely lead to confusion of the NEPA issues. If the EIS is prepared for one permit before another permit is issued, any new information provided in subsequent permit proceedings may lead to charges that the EIS is inadequate for not considering it. If the EIS is prepared after some of the permits are issued, any new information in the EIS, conversely, may lead to charges that the consideration of the earlier permits was inadequate.

Consolidating permit proceedings offers a procedural vehicle for avoiding these results and ensures that work on the EIS does not have to be re-examined in the context of an individual permit decision.

§ *124.2 Definitions.*

A few commenters stated that the regulations did not clarify whether permit modification, revocation and reissuance, and termination would be processed through the same procedures as permit issuance and denial. To make this clear, the regulations identify, on a section-by-section basis, which kinds of permit actions are concerned.

This section has also been rewritten to specify more precisely the definitions that apply to the PSD program, and to help make clear that, for PSD, the general provisions of Part 122 do not apply.

§ *124.3 Application for a permit.*

(1) A number of commenters urged EPA to specify a date by which an application should be considered complete. One commenter suggested that this date should be the date of a complete response to the Director's request for additional information. EPA has accepted this suggestion, but has not accepted a second suggestion to limit the Director's authority to request information that will make the application complete. Without the power to require such information, the Director will not be able to make responsible decisions. If the Director believes an application is incomplete and needs to be supplemented, this section now requires him or her to list, in a notice of deficiency, all the information needed to make an application complete. The limiting factor is that not more than one deficiency notice may be issued in any given permit proceeding.

(2) Beyond this, many commenters urged that EPA set legally binding deadlines for its own actions under this Part. These comments have not been fully accepted for the reasons set forth in the preamble to the final NPDES regulations. See 44 *FR* 32892 (June 7, 1979).

But, EPA has partially accepted the comments where major new facilities or activities are concerned. EPA will now set and make public a schedule for decisionmaking for each new project.

The schedule is not legally binding, although EPA expects schedules to be followed in most cases. If schedules were set so that they could be met in all cases, they would not be of much use as a management tool. Accordingly, EPA expects to set schedules tight enough to pose some risk of not meeting them, and it expects some schedules will not be met. This provision does not apply to PSD permits as they are already subject to a one-year, statutorily imposed, timetable for decision.

(3) Some commenters recommended that § 124.3(a) explicitly exempt UIC activities authorized by rule under § 122.37 from the application requirement. This section does not apply to them because UIC activities authorized by rule do not "require a permit." An exemption has been added to the final regulations to make this explicit.

(4) 40 CFR § 52.21(r)(3) provides that certain sources requiring a PSD permit need not go through EPA permitting procedures if the relevant State has already provided an equivalent opportunity for public comment. These provisions have been included in Part 124 as § 124.3(b).

§ *124.4 Consolidation of permit processing.*

(1) EPA has redrafted proposed § 124.4 in its entirety. The proposal covered both existing and new facilities and allowed applicants to delay filing RCRA and UIC permit applications for up to 180 days in order to consolidate them with applications for new NPDES permits or with reapplications for expiring NPDES permits.

These elaborate provisions were included in the proposal because RCRA and UIC permits were to be granted for the life of the facility. Thus, it was necessary to provide a special mechanism to coordinate issuing these permits with renewals of five-year NPDES permits. Now that RCRA permits and UIC permits for Class I wells also will be issued for fixed terms, it will be much simpler to coordinate by allowing the Director to set permits to expire simultaneously; the regulations have been rewritten to provide for that.

A special provision for coordinating applications is unnecessary for new facilities. Since all permits subject to this Part will be required at the same early stage of the project's planning, there will be a natural incentive to file corresponding applications even earlier and at about the same time.

(2) A number of commenters (including some who opposed the concept of consolidation) urged that States should be required to consolidate permit proceedings with EPA whenever EPA and a State share permitting authority for a given facility or activity. EPA believes it would be unwise to start the consolidation effort by compelling the States to act in parallel with the Federal government whenever the Federal government saw fit. Because the efficiency of the consolidation effort will partially depend on State cooperation, the comment has not been accepted. The regulations have been amended to reflect EPA's position that approved States are encouraged to consolidate applications, but are not required to do so.

(3) The sections relating to consolidation of draft permits were originally part of proposed § 124.6. Proposed § 124.6(d) has been combined with the new § 124.4 to make clear that consolidation can occur at different stages in the permitting process. Comments addressing proposed § 124.6(d) are answered here.

Several commenters objected to the potential consolidation of PSD permits with other permits. They argued that consolidation of PSD permits would

cause unreasonably delay, and might even breach the one-year statutory deadline imposed by CAA section 165(c).

EPA disagrees. Compliance with the statutory deadline has not been a problem with the vast majority of PSD permits. The applicant's right to a speedy decision is explicitly preserved by § 124.4(e) which provides that consolidation leading to a breach of the deadline will not occur without the applicant's consent. One year is short compared to the time generally needed by the private sector to plan and construct a facility without regard to any Federal regulation; large facilities often require more than a decade. Taking longer to process the PSD permit alone due to consolidation is likely to be more than offset by the shorter time needed to process other permits for the same facility and by gains from considering applications together instead of sequentially. Because it is the *application* date which fixes the right to available PSD increments, consolidation will not affect a facility's "place in line" for available increments.

§ 124.5 Modification, revocation and reissuance, or termination of permits.

This section combines proposed §§ 124.5 and 124.7 under a single heading in order to eliminate an unnecessary distinction between actions arising out of requests by interested persons (including the permittee) and actions undertaken by the Director without any preceding request. Whether a modification, revocation and reissuance, or termination is based on a request or on an independent decision by the Director, the action must be supported by cause under §§ 122.15 or 122.16. This section has been amended to allow the Director to request the submission of an updated application whenever a permit is being modified and to require the submission of a new application whenever a permit is being revoked and reissued. A draft permit must be prepared for any modification or revocation and reissuance unless the permit modification qualifies as a minor modification under § 122.17. A "notice of intent to terminate" is a type of draft permit and is issued for all proposed terminations. These drafts, whether in permit or notice form, are processed the same as any draft permit prepared under § 124.6. They are accompanied by a statement of basis (§ 124.7) or a fact sheet (§ 124.8), based on the administrative record (§ 124.9), subject to public notice (§ 124.10), and public comment (§ 124.11) and public hearings (§ 124.12). Terminations of RCRA and NPDES permits are eligible for evidentiary hearings under § 124.74.

(1) EPA has kept this section separate from the section on draft permits (§ 124.6) for two reasons. First, EPA wants to distinguish permit actions that can be initiated only by the permittee (permit issuance based upon an application under § 124.6) from permit actions that can be initiated by the Director (124.5).

We emphasize this distinction in response to one commenter who asked whether the Director could prepare a draft permit for a facility that had not even applied for one. The Director's authority to take permit actions without having received an application is limited to the situations specified in § 124.5 and to general permits and permits by rule. Second, EPA wants to distinguish a denial of a request for modification, revocation and reissuance, or termination under § 124.5 from a tentative decision to deny a permit application under § 124.6.The former is not subject to the same procedures as a denial of an application for a permit. Notice of a denial of a request for modification, revocation and reissuance or termination is not a draft permit and there is no opportunity for public comment, a public hearing or a formal administrative appeal. These denials are subject only to an informal appeal under § 124.5(b).

In adopting this position, EPA rejected comments urging that modification denials be appealable through the same agency procedures as permit issuance or denial. Departures from the cycle of permit issuance and periodic reexamination should not be encouraged in such a manner. If encouraged, they could keep many permits in a state of perpetual reexamination thus impeding the control program being implemented.

(2) Other commenters urged that the Director should be required to consult with the permittee before he or she modifies, revokes and reissues, or terminates a permit. In most cases, modifications by the Director will be triggered by information submitted by the permittee, and the Director may determine whether "cause" exists under § 122.15. Therefore, "surprise" modification actions will be rare. Although EPA agrees that consultation may be advisable in many cases, there may be other cases where it is not advisable. Accordingly, the comment has not been accepted.

(3) The Natural Resources Defense Council asked that interested persons besides the permittee be allowed to request permit modification, revocation and reissuance, or termination. EPA agrees with this comment and has rewritten § 124.5 to reflect this.

(4) This section does not contain special procedures for modifying PSD permits. EPA will decide whether such procedures are necessary when it promulgates rules based on its September 5, 1979 Notice of Proposed Rulemaking and may amend this section at that time. This section, however, does contain procedures based on 40 CFR § 52.21(w) for terminating PSD permits. Since the purpose of § 52.21(w) is to quickly adjust permits granted under an erroneous interpretation of the law to the clear standards of the *Alabama Power* decision, no procedures are provided for those decisions. They simply will be granted or denied by the Regional Administrator upon written application.

§ 124.6 Draft permits.

(1) A number of commenters objected to the use of draft permits. These commenters would perfer to comment on the permit application before the agency takes a tentative position instead of after such a position has been taken and prepared in the form of a draft permit. These commenters feel that preparing a draft permit creates the impression that the agency already has prejudged the case. EPA disagrees with this view. A draft permit functions only as a *tentative* decision on the issuance, modification, revocation and reissuance, or termination of a permit. It is a mere proposal, subject to change based upon comments received during the public comment (including the public hearing) period. Moreover, there is a major advantage to the public in commenting on the draft permit rather than on the application alone. Comments on the application are invariably restricted to the content of the application, reflecting only the applicant's analysis and policy choices. The draft permit, on the other hand, embodies the tentative views and analysis of the decisionmaker who the comments are, ultimately, designed to influence. Therefore, comments on a draft permit can be written in a more focused and informed way.

(2) This section also has been amended to make clear that the standard permit provisions of Part 122 do not apply to PSD permits.

§ 124.7 Statement of basis.

§ 124.8 Fact sheet.

(1) EPA has rejected comments urging that the discussion requirements in both these sections be expanded. As explained in the preamble to EPA's Final NPDES Regulations (see 44 *FR* 32881 (June 7, 1979)), the statement of

basis is supposed to be a brief summary that meets minimum requirements. If the Director needs to provide more detail, he or she always may prepare a fact sheet, which is more comprehensive than a statement of basis.

(2) EPA also has rejected comments urging that the statement of basis requirement be eliminated for UIC permits for Class II wells. Preparing a statement of basis should not be burdensome even for individual wells, and the burden under the UIC program will be eliminated for injections authorized by rule (§ 122.37) and reduced for injections within area permits (§ 122.36).

(3) Commenters suggested that EPA define "major permits" more precisely. Though this would be desirable, the comment cannot be accepted now. Such a definition is a function both of EPA's knowledge of the impact of the pollution involved and of its resources to address this aspect of permit issuance. Both are too uncertain right now to justify departing from the present approach of year-by-year designation of "major" permits, which is described in § 122.3.

§ 124.9 Administrative record for draft permits when EPA is the permitting authority.

(1) Several commenters urged EPA to include supporting as well as nonsupporting documents in the administrative record. Because the documents for draft permits under this section will generally comprise most of the material in the final administrative record, EPA agrees that the record should include both kinds of documents. Fact sheets (and, to the extent discussion is needed, statements of basis) also should be objective statements of the issues faced by EPA and should cite documents on both sides of controversial issues. No change has been made because the existing text is consistent with this interpretation.

(2) Another commenter suggested that all material in the administrative record be stamped with the date of submission. This approach, or a variation of it, might be advisable in some cases (or for some documents). However, right now EPA does not know enough about handling these administrative records to specify a particular approach on questions of detail in this regulation.

§ 124.10 Public notice of permit actions and public comment period.

(1) Several commenters stated that this section sounded as if public hearings could not be scheduled when a permit is issued and would only be held in response to requests received during the public comment period. The commenters assumed, and EPA agrees, that hearings often will be scheduled at the same time the public notice is issued. A sentence has been added to § 124.10(a) to make this clear.

(2) One commenter questioned the provision for giving notice of 404 permit action to adjacent property owners, arguing that the identity of such owners in some cases, might be very hard to determine. Although EPA believes such cases will be rare, the language has been changed to require notice to be given to "any reasonably ascertainable" property owner.

(3) Another commenter objected to the "comment" in the proposal that gave the Director the discretion to use press releases as a method of public notice. Although EPA eliminated that "comment," the Agency recognizes that the use of press releases for public notice is both customary and often essential for any organization that wants to communicate with the public.

(4) Finally, one commenter objected to the inclusion under § 124.10(d) of a "summary of major conditions" in the notice of draft permits. It argued that this would either lead to long notices or to litigation for failure to provide an adequate "summary."

EPA agrees and has eliminated summaries from the public notice requirements. Not only would summaries result in long public notices, they would also impose an increased burden on the Director by requiring the preparation of an additional document. Since summaries repeat essentially the same information contained in the permit application, draft permit and statement of basis or fact sheet, EPA has decided to require copies of the latter documents to be sent to certain persons instead. This requirement would spare Directors from an additional burden without sacrificing public participation. Other interested persons may request copies of these documents.

§ 124.12 Public hearings.

Several commenters argued that the ground for granting a hearing—"significant degree of public interest"—was vague, and that it did not take account of the permit applicant's interest (or someone else's interest) in using the hearing to explore issues further.

EPA has not changed this requirement. One of the purposes of having a public hearing is to respond to public interest, which is not subject to precise measurement. EPA, however, has added a second ground for holding a public hearing which allows the Director to hold a public hearing at his or her discretion.

Since a public hearing is not required by any of the statutes covered by this Part,[8] EPA does not believe that a refusal to hold a hearing by itself, should ever lead to invalidation of a permit. The question on judicial review should be whether the record EPA generated adequately supports the decisions involved, not whether some other record might have been better.

I. *Adjudicatory hearings or public hearings.* In the preamble to the proposed regulations, EPA stated its opinion that a formal evidentiary hearing under § 554 of the Administrative Procedure Act (APA) is not required for issuance of RCRA, UIC, or PSD permits. Supporting reasons were given. See 44 *FR* 34264–65. (June 14, 1979)

This conclusion proved uncontroversial where the UIC and PSD programs were concerned. EPA did not receive any comments challenging its conclusion that formal hearings were not required for PSD permits, and received only one dissenting comment as to UIC permits.[9]

The question of the proper procedures for RCRA permits, however, proved to be the single most controversial issue in Part 124. Several major industrial groups argued that formal hearings were required. Others were equally forceful in their arguments that no such hearing was mandated and that the procedures proposed by EPA were more elaborate than justified. Because of its importance this issue will be discussed in detail.

A. Arguments in Favor of a Formal Hearing

(1) *Due Process Arguments.* Some commenters urged that due process required a formal APA hearing before the initial decision on a RCRA permit. It is well settled by now, however, that the requirements of due process are flexible, and that the procedures used can be adapted to the nature of the problem being addressed. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 517, 524 (1978), *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), *Goss* v. *Lopez*, 419 U.S.

[8] Except for the PSD program, where an opportunity for a hearing is required by statute. See CAA section 165(a)(2). EPA believes that this requirement should be read in the light of the provisions of CAA section 307(d)(8) concerning procedural errors.

[9] One commenter argued that because the SDWA section 1424(b)(2) required a formal hearing for certain interim permits issued by the Administrator, Congress must also have intended to impose such requirements where the statute is silent, as it is in section 1421. However, as the preamble to the proposal explained, the normal approach in statutory construction is the opposite of that advocated by the comment. (See 44 *FR* 34265 (June 14, 1979).) Differing language generally indicates differing meanings, rather than the same meaning.

565 (1975). Although some of the commenters on this point cited earlier editions of Professor Davis' *Treatise on Administrative Law*, the latest edition of the *Treatise* strongly favors this flexible approach. K. Davis, *Administrative Law Treatise*, Chs. 10, 12 (2d ed 1979).)

EPA believes it has fully met whatever due process tests may apply. It has provided for notice of what the Agency proposes to do, an opportunity to challenge that proposal both through written comments and at an informal hearing, a response to comments and a decision based on the administrative record.

It has done all this in the context of decisions aimed, not at punishing past misconduct in any way, but at implementing an entirely new field of regulatory policy. Decisions will be based on choices among policy approaches; not on judgments of legal violation. Moreover, the facts at issue will be the types of technical questions that trial procedures are not particularly well suited to address.

Indeed, due to the similarity among RCRA, UIC and PSD issues, a decision that due process requires a formal APA hearing for RCRA permits certainly would lead to the conclusion that such a hearing is required, on both the Federal and State levels, for PSD and UIC permits. This conclusion probably would result in a decision that formal hearings are required for many other types of State and Federal land use permits currently granted or denied by less cumbersome methods.

(2) *The Legislative Intent.* Most commenters did not emphasize the due process argument. Instead, they looked to RCRA itself, and made two arguments; one based on the text of the statute and one on its legislative history.

(a) *The Language of the Statute.* No commenter denied that the permitting section of RCRA, section 3005, contains no reference to a "hearing" of any sort in connection with the initial grant or denial of a permit. Instead, the commenters fixed on section 3008 (b), which provides for a "public hearing" on "any order or any suspension or revocation of a permit". They argued that "order" here has the meaning given in the definitions section of the Administrative Procedure Act, namely: "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing." 5 U.S.C. § 551(6). If this argument is accepted, the initial granting or denaying of a license falls within the APA definition of "order" and a formal hearing is required. But there are three problems in accepting this argument.

First, it is an extremely strained overall reading of the statute. If Congress had meant to require a formal hearing on the issuance of RCRA permits, it would have stated that intent in the section specifically concerned with permit issuance (section 3005), not by inserting it via the back door by the use of "order" in section 3008.

Indeed, the very sentence in section 3008 referred to by proponents of formal hearings requires such hearings for the "suspension" or "revocation" of a permit as well as for any "order." This shows that Congress was perfectly capable of describing procedures for permit action in detail when it chose to, rather than leaving such procedures to be inferred from the use of the word "order." As a matter of sentence construction, it casts doubt on whether "order" can properly be read to include permit actions; if it did include permit actions, the reference in the same sentence to permit revocations and suspensions would be redundant, since they are just as much "orders" within the APA definition as decisions on issuance.

Second, though the term "order" as used in this sentence is not explicitly defined anywhere in RCRA, its meaning as derived from the text of section 3008 as a whole leads to the conclusion that "order" does *not* have the APA meaning.

Section 3008 is entitled "Federal Enforcement," which in itself leads to the inference that the exclusive subject matter of that section is enforcement.[10] Subsection 3008(a) is entitled "Compliance Orders". The three references to "orders" in that subsection obviously apply only to "compliance orders". Similarly, subsection (c) is entitled "Requirements of Compliance Orders," and the one reference to an "order" in the subsection text obviously refers to a compliance order. The reference to "order" in the text of subsection (b) is the fifth and last reference to an "order" in the text of section 3008 as a whole. It is clear that the other four references mean only compliance orders. Yet the argument for formal hearings depends on giving this particular use of the word a completely different reading from the other four, though there is nothing to indicate that different reading was intended. It seems much more logical to assume that the drafters of this section simply referred to "Compliance Orders" in subsection headings, and then used "order" throughout the body of the text as a shorthand form of reference.

Third, to adopt the APA definition of "order" here would lead to absurd and impractical results. It would require a formal hearing for all actions under RCRA that fit the APA definition of "order:" a definition that is very broad and includes much more than simple permit issuance. It would include, for example, all final decisions to award or deny grants under sections 2004, 4007, 4008, 7007, 8001 and 8006 of the statute, as well as decisions to purchase or not to purchase given recycled materials or waste disposal services under section 6002. It might also include the denial of a petition under section 3001 or section 7004(a).

(b) *The Legislative History.* The Senate version of RCRA provided that permits could only be issued or denied after "opportunity for a public hearing." The House version contained no such provision. The text of the final statute follows the House version.

Nevertheless, some commenters argued that because Senator Randolph, who addressed the Senate before final passage and summarized the changes made between the Senate and the final version did not refer to dropping the hearing requirement, it must not have been dropped.

First, this argument overlooks the fact that the final version tracked the House bill, not the Senate bill. Second, the House debates are equally free from any mention of a change of approach. Thus, a counter-argument can be made that if the Senate's hearing requirement *had* been inserted, the House would certainly have mentioned it. Finally, it is not at all inconceivable to EPA that, in the brief floor debates on the final passage of RCRA, any reference to permit issuance procedure would simply have been omitted.

B. Arguments Against Formality

Other commenters argued that the proposed EPA permit procedures which provided for a "hybrid" public hearing and potential for cross-examination were too formal. They also argued that EPA had no legal authority to impose procedures more elaborate than Congress has explicitly required. Although EPA disagrees with this argument, EPA has eliminated both the hybrid public hearing and the opportunity to cross-examine from the public hearing stage. As previously discussed, there are now only three kinds of hearings under Part 124: a legislative-type public hearing, an evidentiary hearing and a non-adversary panel hearing.

[10] By contrast, section 3005 is entitled "Permits for Treatment, Storage, or Disposal of Hazardous Waste."

EPA recognizes that some RCRA and UIC permits may raise issues better suited to a more formalized mechanism for discussion than that provided by the traditional public hearing and has amended the final regulations to allow the Director to use the "non-adversary panel hearing" procedures in Subpart F, even if those permits were not consolidated with permits requiring a panel hearing. No comparable provision has been made for PSD permits because of the potential for delay.

As noted above, RCRA and SDWA do not require any hearing before permits are issued. Accordingly, in providing the Director with a range of choices under these regulations, EPA takes the position that no particular form of hearing is required for these permits. The Director is given discretion to choose the procedures that appear likely to result in the best decision under the circumstances of the case.

C. Other Considerations

EPA has previously said that a formal APA hearing *is* required under section 3008 for termination of a RCRA permit. See 43 *FR* 34730 (August 4, 1978). Termination of a permit is very likely to rest on an "accusatory" determination that standards established in the past have not been met, rather than on a judgment of what the goals of the statute require by way of control requirements, which is likely to be the case for initial permit decisions.

EPA previously had proposed procedures for terminating RCRA permits as part of EPA's consolidated rules for assessing civil penalties and revoking or suspending permits. See 43 *FR* 34730 (Aug. 4, 1978).[11] EPA has now decided that these procedures should instead be consolidated with the formal hearings in Part 124 for NPDES permits. This will provide a greater measure of procedural consolidation among different EPA permit programs than the approach originally proposed. In addition, the NPDES procedures are somewhat better adapted than the others to handle complicated factual records of the sort that may well be involved in a RCRA permit termination. As the preamble to Part 122 states, these procedures also apply when "interim status" is terminated for failure to furnish information necessary to make a final decision.

EPA believes that RCRA permit modifications under § 122.15 and revocation and reissuance (which amounts in effect to a modification) should be handled by the procedures used for permit issuance, rather than those used for permit termination. Although the statute is not explicit on this point, the only reference to "modification" is in section 3005 and not in section 3008.

In addition, the general scheme of the statute is to provide for regulatory activities (where no hearing is required) in section 3005 and activities of a purely enforcement nature (where a formal hearing is required) in section 3008. Thus, section 3005 allows the complete denial of a RCRA permit, resulting in site closing, without any statutory hearing requirement. Section 3008, on the other hand, is entitled "Federal Enforcement" and covers criminal and civil penalties as well as permit actions. The permit actions covered are "suspension" and "revocation," both of which describe the complete removal of a permit.

Against this background, EPA believes that changes in regulatory requirements which do not result in removal of the permit should be handled under section 3005 procedures instead of section 3008 procedures. The decision will not involve judgments of wrongdoing and punishment for which section 3008 was designed; rather it will involve imposing the regulatory requirements best adapted to carry out the statutory intent for which section 3005 was designed.

For these reasons EPA has rejected comments arguing that any permit modification was in effect a "revocation" of the superseded conditions and therefore had to be subject to section 3008. Section 3008 speaks in terms of "revocation" and "suspension" of whole permits, not of individual conditions. EPA interprets this to refer to the permit as a whole, namely the authorization to operate. A contrary conclusion would lead to the result that even permit modifications which make the permit more lenient must be treated as "revocations" under the statute, since the conditions which were no longer binding would, after all, have been "revoked."

§ 124.13 Obligation to raise issues and provide information during the public comment period.

(1) Many commenters argued that it would be impossible to provide all the information and arguments this section calls for within 30 days if a permit were controversial or complicated. EPA agrees. The 30 days is intended to be the minimum comment period for all permits. This section has been changed to state that longer comment periods should be freely established in complicated cases.[11]

(2) Other commenters urged that this section be amended to limit the extent to which points must be raised and information provided during the public comment period.

These comments have been rejected. As applied to the NPDES program, the reasons for rejecting these comments are set forth in the preamble to EPA's final NPDES regulations, 44 *FR* 32884–85 (June 7, 1979). It would be illogical to accept this comment with respect to RCRA, UIC, or PSD permits because the public comment on draft RCRA, UIC, or PSD permits is the exclusive mechanism for gathering facts and arguments relating to such draft permits. The later stages are appellate in nature and new issues should not be raised on appeal.

§ 124.15 Issuance and effective date of permit.

(1) Several commenters pointed out that the provision which makes a permit effective 30 days after its issuance would leave the facility without a valid permit during that period. This potential problem would be aggravated, so the argument goes, by the provision allowing the Regional Administrator to extend beyond 30 days the date on which the permit became effective.

EPA has not accepted this comment. If the permit in question is a renewal permit under § 122.9, the original permit remains in effect until it is superseded, in whole or in part, by a new permit. See also § 124.60. A new permit may become effective immediately where no adverse comments are received. Any delay is a necessary part of a party's right to request an evidentary hearing.

(2) This section has been changed to eliminate the possibility, noted in some comments, that an NPDES permit might become "effective" after 30 days, and then become "ineffective" upon the granting of a request for evidentary hearing.

§ 124.16 Stays of contested permit conditions.

(1) One commenter urged that this provision be amended to allow stays while requests for further proceedings were pending. The way the "effective date" of the permit is handled under section 124.15 accomplishes this result automatically.

[11] These rules were promulgated in final form on April 9, 1980. 45 *FR* 24360.

[11] One commenter argued that the provision in proposed § 124.11(a) for a minimum 30 day notice of a public hearing conflicted with the requirement in 40 CFR § 25.5 for a minimum 45 day notice period. However, § 122.1(e) provides that these regulations supersede Part 25 as it applies to actions covered by Parts 122 through 124.

(2) Several commenters argued against the provision in proposed § 124.18(b) for stays based on cross-effects. But because no commenter offered any alternative way to deal with the problems at which the section is aimed, the provision remains unchanged.

(3) Other commenters urged that permits (particularly permits for new facilities) should not be stayed pending Agency appeal proceedings. This comment has not been accepted for the reasons stated in the final NPDES regulations. See 44 *FR* 32883–32884 (June 7, 1979).

In addition, under 5 U.S.C. § 704, if the permit is not stayed, it becomes judicially reviewable immediately. This result makes little sense if an appeal within the Agency is pending, since both the court and the Agency would be reviewing the same permit simultaneously. However, in cases where an evidentiary hearing is granted on an NPDES permit (or on RCRA or UIC permit conditions which are associated with an NPDES permit), EPA, in recognition of the time it takes to conduct these hearings, has provided a mechanism (§ 124.60) by which the Presiding Officer at the hearing can authorize operations to begin before the date of final agency action if certain conditions are met. These conditions are based on those normally required for issuance of a preliminary injunction.

§ 124.17 Response to comments.

One commenter attacked the statement in the "comment" in proposed § 129.19 (now a part of the regulations) that EPA could document its response to comments by adding new material to the administrative record. The commenter argued that this would violate the standards set out in *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F. 2d 375, 393–94 (D.C. Cir. 1973). EPA disagrees. That case addressed only the disclosure of data on which a *proposed* rule is based. Of course, there is no reason why the Agency cannot document in advance the course of action which it itself is proposing. What is involved here is a response to comments; not a proposal. The substance of those comments will not be known to EPA in advance since one of the major purposes of a comment period is to bring new material to the Agency's attention. Accordingly, it may often be impossible for the Agency to respond without making use of new material.

Many cases hold that an agency need not repropose an action if changes are made from the proposal. See, e.g., *International Harvester Co.* v. *Ruckelshaus*, 478 F. 2d 615, 632 n. 51 (D.C. Cir. 1973), which notes that rulemaking might never end if every change from the proposal required reproposal.

Similarly, if all new material in a response to comments required reproposal, the agency would be put to the unacceptable choice of either providing an inadequate response or embarking on the same kind of endless cycle of reproposals which the courts have already rejected.

§ 124.18 Administrative record for final permit where EPA is the permitting authority.

One commenter urged that the administrative record should be complete within 20 days after a final permit is issued, so that those who might wish to request further proceedings could make an informed decision on whether to go forward.

In response, EPA has changed this section to provide that the administrative record shall be complete on the date the permit is issued. By requiring the record to be assembled before the permit is issued, EPA has ensured that the Regional Administrator can base final decisions on the administrative record as a whole.

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(1) A number of commenters objected to the substantial showing required to justify an appeal to the Administrator. We agree with those commenters who stated that the Administrator has a broad power to review decisions under these programs. However, EPA's intent in promulgating these regulations is that (1) this power of review should be only sparingly exercised; (2) most permit conditions should be finally determined at the Regional level; and (3) review by the Administrator should be confined to cases which are important for the program as a whole, or are especially important in their own right. The proposed threshold showing is intended to further that purpose and has been retained.

(2) EPA rejects the suggestion for a 45-day time limit on *sua sponte* review by the Administrator. The 30-day time limit under this section parallels the 30-day period between the date the permit is issued and the date it becomes effective under § 124.15.

(3) One commenter suggested that the regulations explicitly require the Administrator to make findings when deciding an appeal. However, because this requirement is implicit in the establishment of a mechanism of appellate review itself, no change in the regulations is necessary.

(4) One commenter objected to PSD appeals on the grounds of delay. EPA believes that an appeal mechanism is necessary to ensure consistency in a national program and to provide central policy guidance. The best evidence is the ongoing informal appeal of PSD permits within EPA taking place without explicit regulatory provisions.

(5) Another commenter suggested that a permittee be allowed to appeal a permit on which it had not commented in order to address the possibility that the draft permit might have been acceptable to the permittee while the final permit contained unfavorable changes. This comment has been accepted and expanded to allow an appeal of the final permit by persons who failed to comment on the draft permit. The scope of such an appeal, however, is limited to whatever changes occurred between the draft and the final permit.

§ 124.20 Computation of time.

This section has been amended to include methods for computing time that conform with the Federal Rules of Civil Procedure.

Subpart B—Special Procedures Applicable to RCRA Permits [Reserved]

§ 124.31 Public notice of receipt of application and availability of summary.

EPA has deleted proposed § 124.31 from the final consolidated regulations. Although the preamble to the proposal stated that this section would ensure full public participation in the RCRA permit decision process, see 44 FR 34266. EPA has decided that this function is served equally well for all the permit programs at the general public notice stage under § 124.10 and that dual notification for RCRA applications is, therefore, unnecessary. The methods of public notice contained in § 124.10 have been specifically designed to encourage public participation in the permit decision process no matter what kind of permit is involved. EPA recognizes that RCRA permitting might be controversial and expects to conduct public hearings under § 124.12 where any interested person may submit oral or written statements and data on the RCRA issues.

Subpart C—Special Procedures Applicable to PSD Permits

A. Should PSD be Included?

Many commenters, beside generally opposing the notion of consolidation, particularly criticized the inclusion of PSD in the consolidation effort. These commenters argued that as PSD is a

preconstruction review program, the time for considering PSD issues will not be the same as the time for considering issues involving other permits. They also argued that EPA has made the procedures for issuing PSD permits more complicated and time-consuming, leading to confusion in the allocation of increments.

EPA has not accepted these comments. First, PSD does not differ from the other programs included in this Part in being a preconstruction requirement. As explained earlier, EPA's position is that new HWM facilities, NPDES new sources and underground injection wells also must have their permit in hand before construction can begin. Inclusion of PSD, therefore, should not strain permit processing schedules.

Second, the procedures for issuing a PSD permit by itself have not been made more complicated. The only significant change (§ 124.19) and the only one stressed in comments, is the provision of a formal opportunity to appeal a PSD permit to the Administrator. Such appeals are already made (usually at industry's inititative) and considered, even though the rules do not provide for them.

Some new procedures have been added to enable a single proceeding to handle more than one permit. As explained in detail above, although this may slow down issuance of the first permit, it is very likely to produce better decisions and to speed up issuance of the last permit, thereby reducing delay in reaching the actual on-line date for the facility.

EPA has no reason to expect, therefore, that including PSD in the consolidated permit regulations will make any great difference in the EPA-administered PSD permit program. It follows that EPA has no reason to expect any adverse effect on processing of permit applications and allocating increments on a first-in, first-out basis.

B. Changes Made to Better Incorporate the PSD Program

Although the PSD program is still part of these regulations, EPA has made a considerable number of changes to accommodate it. The major changes follow:

1. Proposed § 124.41 established special procedures for permitting "small sources." The *Alabama Power* decision in effect has eliminated that category of sources from mandatory PSD coverage, and so the section as proposed has been dropped.

2. Proposed § 124.41 has been changed to clarify the status of a State agency to which EPA has delegated or may delegate authority to administer these regulations. (Although regulatory authority for State delegations is presently found in 40 CFR § 52.21(v), this provision may be changed as a result of the pending amendments to the PSD regulations.) For the purposes of Part 124, a delegate State stands in the shoes of the Regional Administrator. Like the Regional Administrator, the delegate must follow the procedural requirements of Part 124. Any person aggrieved by a PSD permit issued by a delegate may appeal to the Administrator under § 124.19. Delegation under § 52.21(v) (or any successor provision) is distinct from transfer of the PSD program to a State by revisions to a State implementation plan under CAA section 110. A permit issued by a delegate is still an "EPA-issued permit"; a permit issued by a transferee State is a "State-issued permit." Part 124 does not apply to State-issued PSD permits. See § 124.1(d).

3. Proposed § 124.41 contains definitions designed to clarify the relationship between Part 124 and the PSD program, and to help ensure that portions of Part 122 are not inadvertently made applicable to PSD.

4. Section 165(d)(2) (C) and (D) of the Clean Air Act, and 40 CFR § 52.21(q) provide a complicated series of variances and exemptions which may be applied to the PSD permit for a source that will affect a Class I area. Section 124.42 relates these provisions to the Part 124 procedures. It provides that permit conditions that EPA may grant or deny must, like any other permit condition, be requested and documented before the close of the public comment period. Permit provisions which follow from a decision by the Governor of the State in question, or by the President, will be made outside the framework of Part 124 and automatically reflected in the permit.

5. Section 124.74 has been amended so that issues concerning a PSD permit may never be consolidated with a formal evidentiary hearing under Subpart E, though they may continue to be consolidated in non-adversary panel hearings under Subpart F. EPA accepted comments which argued that the potential for exceeding the one-year deadline under Subpart E proceedings was too great to risk.

6. As noted above, changes to better incorporate the PSD program have been made in §§ 124.3, 124.5 and 124.6.

7. In addition to these changes, complementary changes will be made to 40 CFR § 52.21 to clarify its relationship with Part 124. In particular, EPA expects to repeal § 52.21(r), which has been supplanted by this Part, and to insert appropriate cross-references to this Part in § 52.21.

C. Other

1. A number of commenters argued that the provision in section 307(d) of the Clean Air Act allowing 60 days to seek judicial review of a PSD permit should be reflected in the effective date of permits issued under these regulations. EPA has not accepted this comment. Accepting it would result in an automatic 60 day delay of the effective date of every permit, even those that were uncontroversial. Although the Administrative Procedure Act, 5 U.S.C. § 704, forbids making a permit effective before judicial review is available, judicial review of a PSD permit could come at any time between the date of final agency action and the closing of the section 307(d) period.

2. In the preamble to the proposal, EPA stated its position on whether "threshold" determinations that a given source would have to apply for a PSD permit should be regarded as final agency action. EPA has changed that position. Instead, the Agency supports the policy, announced in the September 1, 1979, Memorandum from the Assistant Administrator for Enforcement and the General Counsel in **Federal Register** Publication of Significant Final Activity under Title I of the Clean Air Act, that requires PSD applicability determination to be published in the **Federal Register** as final agency actions. Because of the consequences of applicability determinations for a source (for example, the triggering of a one-year monitoring requirement under CAA section 165(e)(2)) and the infrequency of factual questions, EPA has decided that for reasons of fairness and efficiency these determinations should be treated as final agency action.

Subpart D—Specific Procedures Applicable to NPDES Permits

Many of the comment on this Subpart and Subparts E and F essentially repeated points made during the rulemaking on EPA's NPDES program revisions. Those comments were addressed in the preamble to the final regulations, issued June 7, 1979, 44 *FR* 32854, and cross-references to that preamble are included here.

§ *124.53 State certification.*

Comments received here questioned both the requirement for States to supply a complete certification within 60 days, and the statement that conditions properly certificated would be automatically accepted in almost all cases. However, no new arguments were raised, so the reasons given for

these provisions in the June 7 regulations remain applicable. 44 *FR* 32880.

§ *124.56 Fact sheets.*

A new paragraph has been added to this section listing what must be included in the fact sheet. If a permit includes any of three types of conditions, the fact sheet must include an explanation of how those conditions were developed. (Section 124.8 also requires that a fact sheet, rather than a statement of basis, be developed.) The regulations governing how these three conditions are developed also require that an explanation be included in the fact sheet. See §§ 122.62(e) 122.63(i) and 125.3(g).

§ *124.59 Conditions requested by the Corps of Engineers and other government entities.*

(1) Some commenters objected to the requirement that conditions requested by the Corps of Engineers would be automatically included in NPDES permits. It remains EPA's position that such a provision is legally required for the reasons stated in the June 7 preamble. 44 *FR* 32881–82.

(2) One commenter also questioned the provision in § 124.59(c) for informal consultation with other agencies before issuing a draft permit. Consultation before a draft permit is prepared does not violate any rules against "ex parte" contacts established even by the courts that have taken the most extreme positions on this issue. Such consultation could result in more informed and expeditious processing of permit applications. Hence, the comment has been rejected.

(3) One commenter attacked the provisions requiring permit conditions required by the Corps of Engineers to be appealed through the procedures of the Corps and not through EPA procedures. This comment has been rejected for the reasons stated in the final NPDES regulations. See 44 *FR* 32881 (June 7, 1979).

§ *124.60 Issuance and effective date of NPDES permits.*

(1) Commenters again objected to the provision that an NPDES permit to a new discharger or new source would not take effect until final Agency action. As stated in the June preamble, EPA believes that such a position is entirely defensible as a matter of law. 44 FR 32883–32884. The Clean Water Act states that permits can only be issued following an opportunity for a "public hearing." Courts have interpreted this provision to mean a formal hearing. Thus, until the formal hearing stage of the proceedings is finished, the statutory preconditions to permit issuance have not been met. Even after an initial decision by an Administrative Law Judge or the Regional Administrator, 5 U.S.C. § 704 requires a permit to be stayed if judicial review is to be avoided. Since it makes little sense to judicially review a permit that is undergoing Agency review, EPA, instead of staying the control requirements in the permit, stays the status of having a permit and treats the new source or new discharger as being without a permit pending final Agency action.

EPA, however, has amended § 124.60(a) to give the Presiding Officer at an evidentiary hearing the power to authorize the source to commence operations before final agency action if the source complies with all the conditions of the contested permit. The Presiding Officer may issue such an order if the source requests and if no party objects. If a party objects, the order cannot be issued unless the source can meet the requirements listed in § 124.60(a)(2).

(2) One commenter asserted that although § 124.60(d) would prevent the lapse of an NPDES permit that was being reissued at the expiration of its term, it would not prevent the lapse of an NPDES permit which was being modified or revoked and reissued. This does not correspond to EPA's interpretation. In revocation and reissuance, the existing permit is revoked simultaneously with the establishment of the new permit conditions, leaving no gap uncovered by a permit. Similarly, when a permit is modified, the conditions change, but there is no interruption of the permit's coverage.

§ *124.62 Decisions on variances.*

Several commenters opposed the provision in this section allowing EPA to retain jurisdiction over certain variances even in a State which had been approved to administer the basic NPDES program. However, as the June preamble explained, these provisions reflect the explicit language and intent of the CWA. 44 *FR* 32882–83.

§ *124.64 Appeals of variances.*

A number of commenters objected to the test set forth in this section and § 124.117 for stays of permit conditions subject to requests for section 301(g) variances. This provision, however, simply reflects the explicit language of section 301(j)(2) of the CWA.

§ *124.65 Special procedures for discharge into marine waters under section 301(h).*

In these final regulations EPA has decided to make section 301(h) decisions subject to the same procedural options as other types of variance decisions. This section and § 124.111 have been revised to eliminate the requirement that 301(h) variances be automatically processed through a panel hearing, independent of other pending permit actions. Giving the Regional Administrator discretion on the procedures to use and whether to consolidate 301(h) decisions with other decisions on the same permit should result in decisions that can be made more efficiently and economically.

§ *124.66 Special procedures for decisions on thermal variances.*

One commenter urged that other types of variances should be made subject to the "early decision" provisions of this section. The comment pointed out that in these cases a decision on variance conditions might be necessary to allow States to make a decision. EPA believes, however, that only variances of extraordinary importance (e.g. section 316(a)) should be afforded this type of fragmented procedure, and therefore has not enlarged the "early decision" provision.

Subpart E—Evidentiary Hearing for EPA-issued NPDES Permits and EPA-Terminated RCRA Permits

§ *124.71 Applicability.*

One commenter questioned the statement in EPA's prior preambles that evidentiary hearings would not be held on general permits. 43 *FR* 37087; 44 *FR* 32884. It stated that although application for an individual permit, followed by individual proceedings on that permit, might be the best way to handle discharger-specific problems with a general permit, an evidentiary hearing should be available for challenges to the conditions of the permit in their general application.

EPA disagrees. As the preamble to the proposal stated, general permits are, functionally, rules. Evidentiary hearings today are almost never required before issuing such rules, and it is EPA's conclusion that Congress did not intend them in this context either. The notice and comment procedures provided here, together with the opportunity for judicial review, afford interested persons ample procedural protection. However, if the Regional Administrator decides to employ a more formal mechanism,

Subpart F panel hearings are available for this purpose.

EPA has added a sentence stating that termination and suspension of RCRA permits are governed by this Subpart.

§ 124.74 Requests for evidentiary hearing.

(1) Some commenters questioned the consequences of raising both legal and factual issues in a request for an evidentiary hearing. This section 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 § 124.91(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 becomes final and subject to judicial review.

(2) One commenter suggested that only persons who had commented on the draft permit should be allowed to request an evidentiary hearing on that permit.

EPA believes that persons should make as much of their case as possible during the notice and comment period before moving to an evidentiary hearing, but believes this comment goes further than appears necessary.

Section 124.76 provides that, generally speaking, the material and argument for an evidentiary hearing must have been presented during the notice and comment stage. Given this restriction, little benefit would result from restricting the participants at the hearing to those who took part at the preceding stages.

(3) Other commenters contended that the provision requiring the requester to produce documents and witnesses was too broad. This provision is no broader than the Agency subpoena power for which it substitutes. See 44 *FR* 32884.

§ 124.75 Decision on request for a hearing.

One commenter suggested that a time limit should be imposed on the Regional Administrator for either granting or denying a request for an evidentiary hearing. EPA has accepted this comment and has imposed a 30-day time limit for the granting or denying of an evidentiary hearing request.

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

A number of commenters thought this provision was too restrictive. Because no significant new points were raised, EPA continues to adhere to the position articulated in the final NPDES revision. See 44 *FR* 32884–32885. However, EPA does wish to emphasize the value of the good cause provision. This provision functions as a safety valve to prevent § 124.76 from being as restrictive as feared by the commenters. Good cause allows the Presiding Officer to exercise his or her discretion to admit issues and evidence not raised during the public comment period or at any public hearing. What is "good cause" will vary from case to case. Although suggestions of what can constitute good cause are included in the regulation itself, this list is not exhaustive. The provision has been slightly redrafted to clarify that point. These standards should be applied differently depending upon the procedural setting. When deciding whether to grant or deny a request for a hearing, the Regional Administrator should apply these standards in a relatively unrestrictive manner. Request should be rejected only if they are frivolous or clearly without merit. After a hearing has been granted and an Administrative Law Judge begins to structure the proceedings, he or she should apply those standards strictly in conformity with the principle of developing the record as much as possible during the notice and comment stages.

§ 124.78 Ex parte communications.

(1) One commenter objected to the statement that appearance as a witness is not automatically the same as the performance of "investigative or prosecuting functions" so as to invoke the *ex parte* rule. This, however, is the conclusion of Professor Davis, with which EPA concurs and which it has adopted. K. Davis, *Administrative Law Treatise*, § 11.17 (1958).

(2) Another commenter questioned why witnesses from EPA were not automatically subject to the "ex parte rule," while witnesses from outside the Agency were. The answer is that different legal tests apply to the two classes of witnesses. Witnesses from within EPA are subject only to the "separation of functions" provisions of the EPA if they have performed "investigative or prosecuting" functions. See 5 U.S.C. § 554(d).

However, the "ex parte provisions," added to the APA by the Government in the Sunshine Act, 90 Stat. 1241 *et. seq.*, apply to all contacts with any "interested person outside the Agency." See 5 U.S.C. section 544(d). The legislative history is clear that this definition includes any person whose interest in the case is greater than the interest of an ordinary member of the public. H.R. Rep. No. 94–880, 94th. Cong. 2d. Sess. at 19–20 (1976); S. Rep. No. 94–354, 94th. Cong., 1st. Sess. at 36 (1975).

§ 124.83 Prehearing conference.

(1) One commenter argued, without supporting reasons, that the discovery provisions in this section were illegal. However, the Administrative Conference of the United States has recommended that all Agencies, including those lacking formal subpoena authority adopt "discovery" procedures. The report accompanying Recommendation No. 21 asserts that such procedures would be legal. Tomlinson, "Report of the Committee on Compliance and Enforcement Proceedings in support of Recommendation No. 21," *Recommendation and Reports of the Administrative Conference of the United States*, Vol 1. 577,583.

(2) This same commenter urged that discovery be safeguarded against abuse. Any request for discovery is explicitly made subject, by § 124.83(c)(5), to the approval of the Presiding Officer. Accordingly, no change in the proposed regulation is necessary.

(3) Another commenter asked whether furnishing the names of witnesses under § 124.83(d) meant only the names of direct testimony witnesses. EPA agrees that, as a practical matter, such a limit will probably be set. But the Presiding Officer, in an appropriate case, could schedule a second conference to deal with rebuttal submissions. See § 124.83(a).

§ 124.84 Summary determination.

(a) One commenter urged that motions for summary determination should stay the hearing. This is not the practice in Federal District Courts with respect to motions for summary judgment, and the comment has not been accepted. (A similar suggestion regarding interlocutory appeals under § 124.90 has also been rejected.)

(2) EPA has accepted another commenter's suggestion that this provision be amended to include language patterned on Rule 56(f) of the Federal Rules of Civil Procedure.

§ 124.85 Hearing procedure.

(1) Several commenters questioned EPA's conclusion that the burden of persuasion for permit issuance always rests with the permit applicant. The only

new point, however, was that it made little sense to allocate the burden of persuasion differently from the burden of going forward, since a party not having the burden of persuasion, but having the burden of going forward, might hold back information unfavorable to its case. If this argument were valid, there would be no need for two concepts of "burden of proof", since the burden of going forward could always be derived from the burden of persuasion. However, not only are both concepts well established; it is settled that the question of who has the better access to information affects the burden of going forward far more easily than the burden of persuasion, and is often not dispositive even where the burden of going forward is concerned. See McCormick, *Handbook on the Law of Evidence*, at 675 (1954). See also, Wigmore, *Treatise on the Law of Evidence*, § 2486.

(2) One commenter objected to the provision in § 124.85(b)(14) for hearing opposing witnesses simultaneously or for asking them to confer outside the hearing. It claimed that this would convert an adversary hearing into a bargaining session or a scientific forum.

EPA disagrees with the apparent premise of this comment that hearing procedures should be chosen to preserve and protect adversary conduct. Hearing procedures instead should be chosen to produce the most accurate and comprehensive record for decision. When a complicated technical matter is under discussion, there may be real value in having the experts from all sides listening to each other and responding to or answering individual points. It is EPA's experience that excessively formal hearing procedures often obscure, rather than clarify, differences in methodology and points of agreement and disagreement among experts. In such cases it might be appropriate for the Presiding Officer to request the witnesses to discuss the matter informally; not to bargin a consensus solution, but simply to clarify their assumptions. Both approaches, after all, are widely used by technically trained persons to clarify issues in the course of their own professional activities, and there seems no reason to bar their use simply because a legal decision depends on that clarification.

(3) Proposed § 124.85(b)(16) prohibited cross-examination on questions of law and policy, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in a NPDES proceeding. Numerous comments were received on this provision, contending that it was unduly restrictive. One commenter suggested that this provision should be changed to allow Agency employees to be questioned on the basis for an Agency action relating to contested provisions in a final permit. EPA agrees that cross-examination may be proper on questions of policy to the extent required to disclose the factual basis for permit requirements and § 124.85(b)(16) has been revised accordingly.

(4) Other commenters objected to the automatic receipt of the administrative record into evidence under § 124.85(d)(2). The reasons for this approach were explained in the June preamble at 44 *FR* 32885. The only new argument raised was that such introduction could be prejudicial. However, in NPDES proceedings there is no jury to prejudice. Accordingly, the likelihood of prejudice in this less restrictive approach appears minimal, and it seems unlikely to outweigh the benefits of having the administrative record available.

(5) Another commenter objected to the requirement that a request for a witness to sponsor the administrative record on a showing meet a "legitmate doubt" test as well as the standards for cross-examination.

EPA partially agrees with this comment and has deleted the "legitimate doubt" test. The administrative record can be viewed as direct testimony introduced in writing, and so a sponsoring witness may be needed to allow cross-examination of the written direct. Accordingly, there is no need for an additional "legitimate doubt" test. EPA believes that the substance of this test is included in the requirement that the Presiding Officer find, before granting cross-examination, that cross-examination would be likely to clarify or resolve a relevant disputed issue of material fact. See § 124.85(d)(10).

(6) Commenters also argued that this section restricted cross-examination too much. Those comments have been rejected for the reasons stated in the June 7 preamble. See 44 *FR* 32886.

(7) The requirement contained in the proposal of this section and § 124.129 that hearings could only be settled with the approval of the Deputy Assistant Administrator for Water Enforcement has been deleted.

§ *124.86 Motions.*

Comments opposed the provision of this section allowing new regulatory requirements to be made applicable. They have not been accepted for the reasons stated in the June preamble at 44 *FR* 32886–87.

§ *124.89 Decisions.*

The provision in the proposal for treating the decisions of Administrative Law Judges simply as recommendations to the Regional Administrator when RCRA or UIC permit conditions are concerned has been deleted as causing unnecessary procedural complexity. Instead, the ALJ's decision regarding these permit conditions will be subject to appeal to the Administrator like any other decision after an evidentiary hearing.

§ *124.90 Interlocutory appeal.*

(1) One commenter argued that the test for interlocutory appeal stated in § 124.90(a)(3) was unnecessary and that the function of screening out unqualified requests for interlocutory relief could be performed by two tests set forth in § 124.90(a)(2). This comment has been accepted.

(2) This commenter also challenged the provision in section 124.90(d) that interlocutory relief is extraordinary relief. This provision has been retained to ensure that interlocutory appeals do not become an administrative burden.

(3) The provision in this section and § 124.91 for mandatory consultation of the General Counsel on matters of law has been deleted. Of course, the Administrator or the Judicial Officer will still be free to consult any member of the General Counsel's Office on such matters, and request them to draft portions of the final decision to the extent that the persons consulted are not part of the trial staff designated under § 124.78.

§ *124.91 Appeal to the Administrator.*

One commenter on this section asked that a provision be included for stays of final agency action. No such provision has been included because EPA believes questions concerning such stays are best addressed case-by-case.

Subpart F—Nonadversary Panel Procedures

Many comments were received on this Subpart. However, no new points were made that would necessitate revision of the discussion in the June 14, 1979 preamble at 44 *FR* 32887–32891.

A major feature of these procedures is the merging of the notice-and-comment procedures under Subpart A and the hearing under Subpart E into one proceeding. Accordingly, EPA believes that the full benefit of these procedures will be felt only if they are used beginning with the draft permit.

However, cases may arise in which it becomes apparent during or after Subpart A proceedings, that use of this

Subpart might be advisable. Accordingly, changes have been made to §§ 124.15, 124.74, 124.75, and various provisions of this Subpart to make it easier to switch a permit into this Subpart in cases where it was not placed under this Subpart from the beginning.

§ 124.111 Applicability.

This section has been changed to clarify that, though EPA considers variances and modifications to be eligible for "initial licensing" procedures, these procedures should not be used where they would result in duplicate hearings being held by EPA on the same permit. This could happen when a permit was being renewed and a variance application was made at the same time. The variance standing alone would be eligible for processing under Subpart F, while the other permit terms would be subject to an evidentiary hearing under Subpart E.

In such a case Subpart F could still be used if all parties agreed. However, without such agreement, the variance proceedings should be consolidated with the evidentiary hearing under Subpart E.

This principle applies to 301(h) variances as well as other types of variances.

§ 124.118 Submission of written comments on draft permit.

One commenter argued that this provision violated the APA by failing to provide for rebuttal testimony. Rebuttal rights, however, are adequately conferred in §§ 124.120 and 124.121.

§ 124.119 Presiding officer.

This section has been amended to make clear that the Chief Administrative Law Judge has no obligation to assign an Administrative Law Judge to preside at hearings not subject by statute to the formal hearing requirements of the Administrative Procedures Act when to do so would impair his or her ability to staff hearings that are subject to those requirements.

This section also has been amended to give the Presiding Officer greater control over the scheduling of the panel hearing. For example, if new evidence comes in, or if the evidence takes longer than expected to analyze, the Presiding Officer will be able to reschedule the start of the hearing or to recess it for a time after it has started.

§ 124.126 Final decision.

One commenter took the title of this section as the occasion to ask when the final *permit* was issued in proceedings under this Part.

It is EPA's position that the final permit is issued at the same time as the final "decision" described in this section.

Appendix—Guide to Decisionmaking Under Part 124

During the public comment period on the proposed Consolidated Regulations, the American Petroleum Institute (API) submitted their version of a flow chart of the Part 124 Procedures for Decisionmaking. It was seven feet long. Clearly, the API flow chart exaggerated the complexity of these regulations. To give the reader a better and more accurate understanding of how Part 124 works, EPA has attached its flow chart of these procedures as an Appendix to Part 124.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

This rulemaking contains a series of revisions and technical amendments to Part 125, Criteria and Standards for the National Pollutant Discharge Elimination System. The technical amendments correct cross-references to 40 CFR Parts 122, 123 and 124, rendered incorrect, due to publication of the consolidated permit regulations where the NPDES regulations previously appeared. Two cross-references have been corrected in § 125.104(c), which is part of Subpart K, the Best Management Practices (BMP) regulation. The effective date for Subpart K has been deferred until completion of the technical guidance document for the BMP program. See 44 FR 47063 (Aug. 10, 1979) and 45 FR 17997 (March 20, 1980). In addition, §125.3 has been revised. These revisions were proposed along with the draft consolidated application forms in the June 14, 1979 **Federal Register** (44 FR 34393).

Subpart A—Criteria and Standards for Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

§ 125.3(c)(4)—This section allows permit limits to be written in terms of toxicity to a particular species. This regulation was proposed in Part III of the June 14, 1979 **Federal Register** (44 FR 34393). Only minor wording changes have been made from the proposal. A detailed discussion of comments received on this regulation appears elsewhere in today's **Federal Register**, in the preamble to the public notice of the consolidated application form.

§ 125.3(g)—This section authorizes the Director to use indicator pollutants to control toxic pollutants and hazardous substances by setting limits on indicators as if the indicators were toxic or hazardous. Limits on indicators (for toxic pollutants and for hazardous substances) which are conventional pollutants may be set at a level more stringent than the best conventional pollution control technology (BCT); and limits on indicators (for toxic pollutants only) which are nonconventional pollutants may be set at a level which is not subject to economic or water-quality modifications under section 301 (c) or (g) of CWA. The Director must show that the indicator provides control equivalent to a direct limitation of the toxic pollutant or hazardous substance and that a direct limitation is technically or economically infeasible.

This section, insofar as it applies to toxic pollutants, was proposed in Part III of the June 14, 1979 **Federal Register** (44 FR 34393), and a proposal to extend it to include hazardous substances was published on August 29, 1979 (44 FR 50780). A detailed discussion of the new section and the comments received on these proposals appears elsewhere in today's **Federal Register**, in the preamble to the public notice of the consolidated application form. One change has been made from the proposal: the safeguards against inappropriate use of indicators have been strengthened by adding a prohibition against setting more stringent limits on indicators where the permittee would be prevented from using a method of treatment which would assure compliance with a direct limitation on a toxic pollutant or hazardous substance.

Note.—The Environmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044. In accordance with Executive Order 12044, EPA will review the effectiveness and continued need for the provisions contained in these regulations no more than 5 years after promulgation. As part of this evaluation we will consider comments from the public, permit applicants, Regional and State permit writers, and other affected parties with regard to the financial and administrative costs incurred as a result of these regulations, and ways in which these costs can be reduced.

As explained in the portion of the preamble discussing §§ 122.36 and 122.45, EPA by this notice is inviting comment on all requirements for Class IV wells. Such comments must be received by July 15, 1980. Submit comments to: Alan Levin, Director, State Program Division (WH-550), Office of Drinking Water, Environmental

Protection Agency, Washington, D.C. 20460.

EPA is also scheduling a hearing in Washington, D.C. on Tuesday, July 8, 1980. The hearing will be held at the HEW Auditorium, 330 Independence Ave., S.W., Washington, D.C., and will last from 9 a.m. to 5 p.m., unless concluded earlier.

Authority: These regulations are issued under authority of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300(f) *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and the Clean Air Act, 42 U.S.C. § 1857 *et seq.*

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

1. 40 CFR is amended by revising Parts 122, 123 and 124 to read as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

Subpart A—Definitions and General Program Requirements

Sec.
122.1 What are the consolidated permit regulations?
122.2 Purpose and scope of Part 122.
122.3 Definitions.
122.4 Application for a permit.
122.5 Continuation of expiring permits.
122.6 Signatories to permit applications and reports.
122.7 Conditions applicable to all permits.
122.8 Establishing permit conditions.
122.9 Duration of permits.
122.10 Schedules of compliance.
122.11 Requirements for recording and reporting of monitoring results.
122.12 Considerations under Federal law.
122.13 Effect of a permit.
122.14 Transfer of permits.
122.15 Modification or revocation and reissuance of permits.
122.16 Termination of permits.
122.17 Minor modifications of permits.
122.18 Noncompliance and program reporting by the Director.
122.19 Confidentiality of information.

Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

122.21 Purpose and scope of Subpart B.
122.22 Application for a permit.
122.23 Interim status.
122.24 Contents of Part A of the RCRA permit application.
122.25 Contents of Part B of the RCRA permit application.
122.26 Permits by rule.
122.27 Emergency permits.
122.28 Additional conditions applicable to all RCRA permits.
122.29 Establishing RCRA permit conditions.
122.30 Interim permits for UIC wells.

Subpart C—Additional Requirements for Underground Injection Control Programs Under the Safe Drinking Water Act

Sec.
122.31 Purpose and scope of Subpart C.
122.32 Classification of injection wells.
122.33 Prohibition of unauthorized injection.
122.34 Prohibition of movement of fluid into underground sources of drinking water.
122.35 Identification of underground sources of drinking water and exempted aquifers.
122.36 Elimination of certain Class IV wells.
122.37 Authorization of underground injection by rule.
122.38 Application for a permit: authorization by permit.
122.39 Area permits.
122.40 Emergency permits.
122.41 Additional conditions applicable to all UIC permits.
122.42 Establishing UIC permit conditions.
122.43 Waiver of requirements by Director.
122.44 Corrective action.
122.45 Requirements for wells injecting hazardous waste.

Subpart D—Additional Requirements for National Pollutant Discharge Elimination System Programs Under the Clean Water Act

122.51 Purpose and scope of Subpart D.
122.52 Prohibitions.
122.53 Application for a permit.
122.54 Concentrated animal feeding operations.
122.55 Concentrated aquatic animal production facilities.
122.56 Aquaculture projects.
122.57 Separate storm sewers.
122.58 Silvicultural activities.
122.59 General permits.
122.60 Additional conditions applicable to all NPDES permits.
122.61 Additional conditions applicable to specified categories of NPDES permits.
122.62 Establishing NPDES permit conditions.
122.63 Calculating NPDES permit conditions.
122.64 Duration of certain NPDES permits.
122.65 Disposal of pollutants into wells, into publicly owned treatment works or by land application.
122.66 New sources and new dischargers.
Appendix A to Part 122—NPDES Primary Industry Categories.
Appendix B to Part 122—NPDES Criteria for Determining a Concentrated Animal Feeding Operation (§ 122.54).
Appendix C to Part 122—NPDES Criteria for Determining a Concentrated Aquatic Animal Production Facility (§ 122.55).
Appendix D to Part 122—NPDES Permit Application Testing Requirements (§ 122.53).

Authority: Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; and Clean Water Act, 33 U.S.C. § 1251 *et seq.*

Subpart A—Definitions and General Program Requirements

§ 122.1 What are the consolidated permit regulations?

(a) *Coverage.* (1) These consolidated permit regulations include provisions for five permit programs:

(i) The *Hazardous Waste Management* (HWM) Program under Subtitle C of the Solid Waste Disposal Act, as amended by the *Resource Conservation and Recovery Act of 1976* (RCRA) (Pub. L. 94–580, as amended by Pub. L. 95–609; 42 U.S.C. § 6901 *et seq.*);

(ii) The *Underground Injection Control* (UIC) Program under Part C of the *Safe Drinking Water Act* (SDWA) (Pub. L. 95–523, as amended by Pub. L. 95–190; 42 U.S.C. § 300f *et seq.*);

(iii) The *National Pollutant Discharge Elimination System* (NPDES) Program under sections 318, 402, and 405(a) of the *Clean Water Act* (CWA) (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576; 33 U.S.C. § 1251 *et seq.*);

(iv) The *Dredge or Fill* (404) Program under section 404 of the *Clean Water Act;* and

(v) The *Prevention of Significant Deterioration* (PSD) Program under regulations implementing section 165 of the *Clean Air Act* (CAA), as amended. (Pub. L. 88–206 as amended; 42 U.S.C. § 7401 *et seq.*)

(2) For the RCRA, UIC, and NPDES programs, these regulations cover basic EPA permitting requirements (Part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (Part 123), and procedures for EPA processing of permit applications and appeals (Part 124). For the 404 program, these regulations include only the requirements which must be met for a State to administer its own program in lieu of the U.S. Army Corps of Engineers in "State regulated waters," and provisions for EPA vetoes of State issued 404 permits. For the PSD program, these regulations cover only procedures for EPA processing of PSD permits in Part 124.

(b) *Structure.* (1) *Coverage of Parts.* These consolidated permit regulations are incorporated into three Parts of Title 40 of the Code of Federal Regulations:

(i) *Part 122.* This Part contains definitions for all of the programs except PSD. It also contains basic permitting requirements for EPA-administered RCRA, UIC, and NPDES programs, such as application requirements, standard permit conditions, and monitoring and reporting requirements.

(ii) *Part 123.* This Part describes what States must do to obtain EPA approval of their RCRA, UIC, NPDES, or 404 programs. It also sets forth the minimum requirements for administering these permit programs after approval.

(iii) *Part 124.* This Part establishes the procedures for EPA issuance of RCRA, UIC, NPDES, and PSD permits. It also establishes the procedures for administrative appeals of EPA permit decisions.

(2) *Subparts.* Parts 122, 123, and 124 are each organized into subparts. Each Part has a general Subpart A which contains requirements that apply to all the programs covered by that Part. Additional subparts supplement these general provisions with requirements which apply to one or more specified programs. In case of any inconsistency between Subpart A and any program-specific subpart, the program-specific subpart is controlling.

(3) Certain requirements set forth in Parts 122 and 124 are made applicable to approved State programs, including State 404 programs, by reference in Part 123. These references are set forth in § 123.7. If a section or paragraph of Parts 122 or 124 is applicable to States, through reference in § 123.7, that fact is signaled by the following words at the end of the section or paragraph heading: *(applicable to State programs, see § 123.7).* If these words are absent, the section (or paragraph) applies only to EPA-administered permits.

(4) The structure and coverage of these regulations by program is indicated in the following chart. A permit applicant or permittee that is interested in finding out about only one of the programs covered by these regulations can use this chart to determine which regulations to read. If a State is the permitting authority, the applicant or permittee should read the State laws and program regulations which implement the requirements of Part 123 for the relevant program.

Program	Coverage		
	Part 122	Part 123	Part 124
RCRA	Subparts A and B	Subparts A, B, and F	Subparts A, B, E, and F.
UIC	Subparts A and C	Subparts A and C	Subparts A and F.
NPDES	Subparts A and D	Subparts A and D	Subparts A, D, E, and F.
404	Subpart A	Subparts A and E	Subpart A.
PSD	None	None	Subparts A, C, and F.

(c) *Relation to other requirements.* (1) *Consolidated permit application forms.* Applicants for EPA-issued RCRA Part A, UIC, NPDES, or PSD permits and persons seeking interim status under RCRA must submit their applications on EPA's consolidated permit application forms when available. (There will be no form for RCRA Part B applications and therefore no EPA application form is used. See § 122.25.) These forms, like these consolidated regulations, contain a general form covering all programs plus several program-specific forms. Although application forms have been consolidated, they, like permits, have been coordinated without losing their separate legal identities. There is no "consolidated permit." Each permit and application under a program is a separate document. Most of the information requested on these application forms (other than Form 5 for PSD) is required by these regulations. The essential information required in the general form (Form 1) is listed in § 122.4. The additional information required for RCRA Part A applications (Form 3) is listed in § 122.24, for UIC applications (Form 4) in § 122.37, and for NPDES applications (Forms 2a–d) in § 122.53. Applicants for State-issued permits must use State forms which must require at a minimum the information listed in these sections. All minimum information requirements for State 404 permit applications appear in § 123.94.

(2) *Technical regulations.* The five permit programs which are covered in these consolidated permit regulations each have separate additional regulations that contain technical requirements for those programs. These separate regulations are used by permit-issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located as follows:

RCRA	40 CFR Parts 260–266.
UIC	40 CFR Part 146.
NPDES	40 CFR Parts 125, 129, 133, 136. 40 CFR Subchapter N (Parts 400–460).
404	40 CFR Part 230.
PSD	40 CFR Part 52.

(d) *Authority.* The consolidation of these permit programs into one set of regulations is authorized by sections 101(f) and 501(a) of CWA, sections 1006 and 2002 of RCRA, section 1450 of the SDWA, and section 301 of the CAA.

(e) *Public participation.* This rule establishes the requirements for public participation in EPA and State permit issuance, enforcement, and related variance proceedings; 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 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under Parts 122, 123, and 124.

(f) *State authorities.* Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program, except as provided for the RCRA program in § 123.33 (requirement that State RCRA programs under final authorization be consistent with the Federal program and other State programs).

§ 122.2 Purpose and scope of Part 122.

(a) *Subpart A* of Part 122 contains definitions (§ 122.3) and basic permitting requirements (§§ 122.4 through 122.19). Definitions are given for the RCRA, UIC, NPDES, and State 404 programs. Definitions for EPA processing of PSD permits are in Part 124, Subpart C. The permitting requirements apply to EPA administered RCRA, UIC, and NPDES programs. (Permit program requirements for the Federal 404 program administered by the Corps of Engineers do not appear in these regulations but are found in 33 CFR Parts 320–327.) In addition, the permitting requirements apply to State-administered RCRA, UIC, NPDES, and 404 programs to the extent specified by cross-reference in § 123.7.

(b) *Subparts B, C, and D* contain additional requirements for RCRA, UIC and NPDES permitting, respectively. They apply to EPA, and to approved States to the extent specified by cross-reference in § 123.7.

§ 122.3 Definitions.

The following definitions apply to Parts 122, 123, and 124, except Part 124 coverage of the PSD program (see § 124.2). Terms not defined in this section have the meaning given by the appropriate Act. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers. When a definition applies primarily to one or more programs, those programs appear in parentheses after the defined term.

Acidizing (UIC) means the injection of acid through the borehole or "well" into a "formation" to increase permeability and porosity by dissolving the acid-soluble portion of the rock constituents.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations (NPDES) means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved

modifications or revisions. For RCRA, application also includes the information required by the Director under § 122.25 (contents of Part B of the RCRA application).

Appropriate Act and regulations means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. In the case of an "approved State program" appropriate Act and regulations includes State program requirements.

Approved program or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

Aquifer (RCRA and UIC) means a geological "formation," group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Area of reviw (UIC) means the area surrounding an "injection well" described according to the criteria set forth in § 146.06.

Average monthly discharge limitation (NPDES) means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation (NPDES) means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best management practices ("BMPs") (NPDES and 404) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." For NPDES, BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. For State 404 programs, BMPs also include methods, measures, practices, or design and performance standards, which facilitate compliance with section 404(b)(1) environmental guidelines (40 CFR Part 230), effluent limitations or prohibitions under section 307(a), and applicable water quality standards.

BMPs (NPDES and 404) means "best management practices."

Closure (RCRA) means the act of securing a "Hazardous Waste Management facility" pursuant to the requirements of 40 CFR Part 264.

Contaminant (UIC) means any physical, chemical, biological, or radiological substance or matter in water.

Contiguous zone (NPDES) means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge (NPDES) means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576; 33 U.S.C. § 1251 *et seq.*

Daily discharge (NPDS) means the "discharge of a pollutant" meansured during a calendar day or any 24–hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Direct discharge (NPDES) means the "discharge of a pollutant."

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has 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.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

Discharge (NPDES) when used without qualification means the "discharge of a pollutant."

Discharge of a pollutant (NPDES) means:

(a)(1) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(2) 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 which is being used as a means of transportation.

(b) This definition includes additions of pollutants 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 person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any "indirect discharger."

Discharge Monitoring Report ("DMR") (NPDES) means the EPA uniform national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permitees. DMRs must be used by "approved States" as well as by EPA. 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.

Discharge of dredged material (404) means any addition from any "point source" of "dredged material" into "waters of the United States." The term includes the addition of dredged material into waters of the United States and the runoff or overflow from a contained land or water dredged material disposal area. Discharges of pollutants into waters of the United States resulting from the subsequent onshore processing of dredged material are not included within this term and are subject to the NPDES program even though the extraction and deposit of such material may also require a permit from the Corps of Engineers or the State section 404 program.

Discharge of fill material (404) means the addition from any "point source" of "fill material" into "waters of the United States." The term includes 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 (RCRA) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any "hazardous waste" into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

Disposal facility (RCRA) means a facility or part of a facility at which "hazardous waste" is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure.

Disposal site (404) means that portion of the "waters of the United States" enclosed within fixed boundaries consisting of a bottom surface area and any overlaying volume of water. In the case of "wetland" on which water is not present, the disposal site consists of the wetland surface area. Fixed boundaries may consist of fixed geographic point(s) and associated dimensions, or of a discharge point and specific associated dimensions.

DMR (NPDES) means "Discharge Monitoring Report."

Draft permit means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

Drilling mud (UIC) means a heavy suspension used in drilling an "injection well," introduced down the drill pipe and through the drill bit.

Dredged material (404) means material that is excavated or dredged from "waters of the United States."

Effluent limitation (NPDES) means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines (NPDES) means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

Effluents (404) means "dredged material" or "fill material," including return flow from confined sites.

Emergency permit means a RCRA, UIC, or State 404 "permit" issued in accordance with §§ 122.27, 122.40 or 123.96, respectively.

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Exempted aquifer (UIC) means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in § 122.35(b).

Existing HWM facility (RCRA) means a facility which was in operation or for which construction had commenced, on or before October 21, 1976. Construction had commenced if:

(a) The owner or operator had obtained all necessary Federal, State, and local preconstruction approvals or permits; and

(b)(1) A continuous physical, on-site construction program had begun, or

(2) The owner or operator had entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for construction of the facility to be completed within a reasonable time.

[Note.—This definition reflects the literal language of the statute. However, EPA believes that amendments to RCRA now in conference will shortly be enacted and will change the date for determining when a facility is an "existing facility" to one no earlier than May of 1980; indications are that the conferees are considering October 30, 1980. Accordingly, EPA encourages every owner or operator of a facility which was built or under physical construction as of the promulgation date of these regulations to file Part A of its permit application so that it can be quickly processed for interim status when the change in the law takes effect. When those amendments are enacted, EPA will amend this definition.]

Existing injection well (UIC) means an "injection well" other than a "new injection well."

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source," or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Fill material (404) means any "pollutant" which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

Final authorization (RCRA) means approval by EPA of a State program which has met the requirements of § 3006(b) of RCRA and the applicable requirements of Part 123, Subparts A and B.

Fluid (UIC) means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Formation (UIC) means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid (UIC) means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud."

General permit (NPDES and 404) means an NPDES or 404 "permit" authorizing a category of discharges under the CWA within a geographical area. For NPDES, a general permit means a permit issued under § 122.59. For 404, a general permit means a permit issued under § 123.95.

Generator (RCRA) means any person, by site location, whose act or process produces "hazardous waste" identified or listed in 40 CFR Part 261.

Ground water (RCRA and UIC) means water below the land surface in a zone of saturation.

Hazardous substance (NPDES) means any substance designated under 40 CFR Part 116 pursuant to section 311 of CWA.

Hazardous waste (RCRA and UIC) means a hazardous waste as defined in 40 CFR § 261.3.

Hazardous Waste Management facility ("HWM facility") means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of "hazardous waste." A facility may consist of several "treatment," "storage," or "disposal" operational units (for example, one or more landfills, surface impoundments, or combinations of them).

HWM facility (RCRA) means "Hazardous Waste Management facility."

Indirect discharger (NPDES) means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

Injection well (RCRA and UIC) means a "well" into which "fluids" are being injected.

Injection zone (UIC) means a geological "formation," group of formations, or part of a formation receiving fluids through a "well."

In operation (RCRA) means a facility which is treating, storing, or disposing of "hazardous waste."

Interim authorization (RCRA) means approval by EPA of a State hazardous waste program which has met the requirements of § 3006(c) of RCRA and applicable requirements of Part 123, Subpart F.

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."

Major facility means any RCRA, UIC, NPDES, or 404 "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

Manifest (RCRA and UIC) means the shipping document originated and signed by the "generator" which contains the information required by Subpart B of 40 CFR Part 262.

Maximum daily discharge limitation (NPDES) means the highest allowable "daily discharge."

Municipality (NPDES) means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal or 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.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

New discharger (NPDES) means any building, structure, facility, or installation:

(a)(1) From which there is or may be a new or additional "discharge of pollutants" at a "site" at which on October 18, 1972 it had never discharged pollutants; and

(2) Which has never received a finally effective NPDES "permit" for discharges at that site; and

(3) Which is not a "new source."

(b) This definition includes an "indirect discharger" which commences discharging into "waters of the United States." It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a location for which it does not have an existing permit.

New HWM facility (RCRA) means a "Hazardous Waste Management facility" which began operation or for which construction commenced after October 21, 1976.

New injection well (UIC) means a "well" which began injection after a UIC program for the State applicable to the well is approved.

New source (NPDES) means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source; or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means "National Pollutant Discharge Elimination System."

Off-site (RCRA) means any site which is not "on-site."

On-site (RCRA) means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

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 an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this Part and Parts 123 and 124. "Permit" includes RCRA "permit by rule" (§ 122.26), UIC area permit (§ 122.39), NPDES or 404 "general permit" (§§ 122.59 and 123.95), and RCRA, UIC, or 404 "emergency permit" (§§ 122.27, 122.40, and 123.96). Permit does not include RCRA interim status (§ 122.23), UIC authorization by rule (§ 122.37), or any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Permit by rule (RCRA) means a provision of these regulations stating that a "facility or activity" is deemed to have a RCRA permit if it meets the requirements of the provision.

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Phase I (RCRA) means that phase of the Federal hazardous waste management program commencing on the effective date of the last of the following to be initially promulgated: 40 CFR Parts 122, 123, 260, 261, 262, 263, and 265. Promulgation of Phase I refers to promulgation of the regulations necessary for Phase I to begin.

Phase II (RCRA) means that phase of Federal hazardous waste management program commencing on the effective date of the first Subpart of 40 CFR Part 264, Subparts F through R to be initially promulgated. Promulgation of Phase II refers to promulgation of the regulations necessary for Phase II to begin.

Physical construction (RCRA) means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an "HWM facility" to accept "hazardous waste."

Plugging (UIC) means the act or process of stopping the flow of water, oil, or gas in "formations" penetrated by a borehole or "well."

Point source (NPDES and 404) 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.

Pollutant (NPDES and 404) means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) 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 the State determines that the injection or

disposal will not result in the degradation of ground or surface water resources.

[Note.—Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

POTW means "publicly owned treatment works."

Primary industry category (NPDES) means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979); also listed in Appendix A of Part 122.

Privately owned treatment works (NPDES) means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

Process wastewater (NPDES) 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.

Proposed permit (NPDES) means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

Publicly owned treatment works ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality." This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Radioactive waste (UIC) means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2, or exceed the "Criteria for Identifying and Applying Characteristics of Hazardous Waste and for Listing Hazardous Waste" in 40 CFR Part 261, whichever is applicable.

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, 42 U.S.C. § 6901 *et seq.*).

Recommencing discharger (NPDES) means a source which recommences discharge after terminating operations.

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements (for example, 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; 42 U.S.C. § 300f *et seq.*).

Secondary industry category (NPDES) means any industry category which is not a "primary industry category."

Secretary (NPDES and 404) means the Secretary of the Army, acting through the Chief of Engineers.

Section 404 program or *State 404 program* or *404* means an "approved State program" to regulate the "discharge of dredged material" and the "discharge of fill material" under section 404 of the Clean Water Act in "State regulated waters."

Sewage from vessels (NPDES) 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 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 (NPDES) 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 where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the 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 Commonwealth Northern Mariana Islands (except in the case of CWA).

State Director means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the RCRA, SDWA, and CWA programs.

State regulated waters (404) means those "waters of the United States" in which the Corps of Engineers suspends 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 program description as required by § 123.4(h)(1). The Secretary shall retain jurisdiction over the following waters (see CWA section 404(g)(1)):

(a) Waters which are subject to the ebb and flow of the tide;

(b) 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

(c) "Wetlands" adjacent to waters in (a) and (b).

Storage (RCRA) means the holding of "hazardous waste" for a temporary period, at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

Stratum (plural *strata*) (UIC) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Total dissolved solids (UIC and NPDES) means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

Toxic pollutant (NPDES and 404) means any pollutant listed as toxic under section 307(a)(1) of CWA.

Transporter (RCRA) means a person engaged in the off-site transportation of "hazardous waste" by air, rail, highway or water.

Treatment (RCRA) 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 wastes, or so as to recover energy or material resources from the waste, or so as to render such waste non-

hazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved program."

Underground injection (UIC) means a "well injection."

Underground source of drinking water ("USDW") (RCRA and UIC) means an "aquifer" or its portion:

(a)(1) Which supplies drinking water for human consumption; or

(2) In which the ground water contains fewer than 10,000 mg/l "total dissolved solids;" and

(b) Which is not an "exempted aquifer."

USDW (RCRA and UIC) means "underground source of drinking water."

Variance (NPDES) means any mechanism or provision under sections 301 or 316 of CWA or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

Waters of the United States or *Waters of the U.S.* means:

(a) 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;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (1)–(4) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as a disposal area in wetlands) nor resulted from the impoundment of waters of the United States.

Well (UIC) means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection (UIC) 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.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§ 122.4 Application for a permit.

(Applicable to State programs, see § 123.7.)

(a) *Permit application.* Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and in §§ 122.23 (RCRA), 122.38 (UIC), 122.53 (NPDES), and 123.94 (404). Persons currently authorized with interim status under RCRA (§ 122.23) or UIC authorization by rule (§ 122.37) shall apply for permits when required by the Director. Persons covered by RCRA permits by rule (§ 122.26), and NPDES or 404 dischargers covered by general permits under § 122.59 or 123.97, respectively, need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in §§ 122.27 (RCRA), 122.40 (UIC), and 123.96 (404).

(b) *Who applies?* When 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, except that for RCRA only, the owner must also sign the permit application.

(c) *Completeness.* The Director shall not issue a permit under a program before receiving a complete application for a permit under that program except for NPDES and 404 general permits, RCRA permits by rule, or emergency permits. An application for a permit under a program is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA—administered RCRA, UIC, and NPDES programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(d) *Information requirements.* All applicants for RCRA, UIC, or NPDES permits (for State 404 permits see § 123.94) shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in §§ 122.24 and 122.25 (RCRA), 122.38 (UIC), and 122.53 (NPDES)).

(1) The activities conducted by the applicant which require it to obtain permits under RCRA, UIC, NPDES, or PSD.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge or fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, 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 those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(8) A brief description of the nature of the business.

(e) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under §§ 122.4(d), 122.24, and 122.25 (RCRA); 122.38 (UIC); 122.53 (NPDES); and 123.94 (404) for a period of at least 3 years from the date the application is signed.

§ 122.5 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. § 558(c) until the effective date of a new permit (see § 124.15) if:

(1) The permittee has submitted a timely application under §§ 122.25 (RCRA), 122.38 (UIC), or 122.53 (NPDES) which is a complete (under § 122.4(c)) application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee, does not issue a new permit with an effective date under § 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under § 124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.*

(1) An EPA 1 (or, in the case of 404, Corps of Engineers) issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the RCRA, UIC, NPDES or 404 programs may continue either EPA (or Corps of Engineers) or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 122.6 Signatories to permit applications and reports.

(Applicable to State programs, see § 123.7.)

(1) *Applications.* All permit applications, except those submitted for Class II wells under the UIC program (see paragraph (b) of this section), 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) *Reports.* All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under § 122.38 for the UIC program shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraphs (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 this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the 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."

§ 122.7 Conditions applicable to all permits.

(Applicable to State programs, see § 123.7.)

The following conditions apply to all RCRA, UIC, NPDES, and 404 permits. For additional conditions applicable to all permits for each of the programs individually, see sections 122.28 (RCRA), 122.41 (UIC), 122.60 and 122.61 (NPDES) and 123.97 (404). All conditions applicable to all permits, and all additional conditions applicable to all permits for individual programs, shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the appropriate Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Duty to halt or reduce activity.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact

on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems *only* when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the appropriate Act, any substances or parameters at any location.

(j) *Monitoring and records.*

(1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirement.* All applications, reports, or information submitted to the Director shall be signed and certified. (See § 122.6.)

(l) *Reporting requirements.* (1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alternations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the appropriate Act. (See § 122.14; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

§ 122.8 Establishing permit conditions.

(Applicable to State programs, see § 122.7.)

(a) *All programs.* In addition to conditions required in all permits for all programs (§ 122.7), the Director shall establish conditions, as required on a case-by-case basis, in permits for all programs under §§ 122.9 (duration of permits), 122.10(a) (schedules of compliance), 122.11 (monitoring), and for EPA permits only 122.10(b) (alternate schedules of compliance) and 122.12 (considerations under Federal law).

(b) *Individual programs.*

(1) In addition to conditions required in all permits for a particular program (§§ 122.28 for RCRA, 122.41 for UIC, 122.60 and 122.61 for NPDES, and 123.97 for 404), the Director shall establish conditions in permits for the individual programs, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the appropriate Act and regulations.

(2) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an

applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for RCRA, UIC and NPDES permits being processed under Subparts E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional preceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 122.15.

(3) New or reissued permits, and to the extent allowed under § 122.15 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in §§ 122.29 (RCRA), 122.42 (UIC), 122.62 and 122.63 (NPDES), and 123.98 (404).

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 122.9 Duration of permits.

(Applicable to State programs, see § 123.7.)

(a) *NPDES and section 404.* NPDES and section 404 permits shall be effective for a fixed term not to exceed 5 years.

(b) *RCRA.* RCRA permits shall be effective for a fixed term not to exceed 10 years. (See also § 122.30 (interim permits for UIC wells)).

(c) *UIC.* UIC permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. The Director shall review each issued Class II or III well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in §§ 122.15, 122.16, and 122.17.

(d) Except as provided in § 122.5, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(e) The Director may issue any permit for a duration that is less than the full allowable term under this section.

§ 122.10 Schedules of compliance.

(a) *General (applicable to State programs, see § 123.7).* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the appropriate Act and regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible.

(i) *For NPDES,* in addition, schedules of compliance shall require compliance not later than the applicable statutory deadline under the CWA.

(ii) *For UIC,* in addition, schedules of compliance shall require compliance not later than 3 years after the effective date of the permit.

(2) *For NPDES only.* The first NPDES permit issued to a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall not contain a schedule of compliance under this section. See also § 122.66(d)(4).

(3) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year 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.

[Note.—Examples of interim requirements include: (1) submit a complete Step 1 construction grant (for POTWs); (2) let a contract for construction of required facilities; (3) commence construction of required facilities; (4) complete construction of required facilities.]

(4) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(1)(ii) of this section is applicable.

(b) *Alternative schedules of compliance.* A RCRA, UIC, or NPDES permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste for HWM facilities, plugging and abandonment for UIC wells, or termination of direct discharge for NPDES sources) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements, or for NPDES, compliance no later than the statutory deadline.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements, and for NPDES, compliance no later than the statutory deadline;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements, or for NPDES, compliance no later than the statutory deadline.

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

§ 122.11 Requirements for recording and reporting of monitoring results.

(Applicable to State programs, see § 123.7.)

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Parts 264 and 266 (RCRA), Part 146 (UIC), § 122.62 (NPDES), and, when applicable, 40 CFR Part 230 (404). Reporting shall be no less frequent than specified in the above regulations.

§ 122.12 Considerations under Federal law.

Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws. These laws may include:

(a) The *Wild and Scenic Rivers Act,* 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) The *National Historic Preservation Act of 1966,* 16 U.S.C. 470 *et seq.* Section 106 of the Act and implementing regulations (36 CFR Part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act,* 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) The *Coastal Zone Management Act,* 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) The *Fish and Wildlife Coordination Act,* 16 U.S.C. 661 *et seq.*, requires that the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

(f) *Executive orders.* (Reserved.)

(g) *For NPDES only,* the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and the inclusion of EIS-related permit conditions, as provided in § 122.67(c).

§ 122.13 Effect of a permit.

(a) *(Applicable to State programs, see § 123.7(a)).* Except for Class II and III wells under UIC, and except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA for NPDES, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Subtitle C of RCRA, Part C of SWDA, sections 301, 302, 306, 307, 318, 403, and 405 of CWA for NPDES, and sections 301, 307, and 403 of CWA for 404. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.15 and 122.16.

(b) *(Applicable to State programs, see § 123.7(a).)* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 122.14 Transfer of permits.

(Applicable to State programs, see § 122.7.)

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 122.15(b)(2)), or a minor modification made (under § 122.17(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any NPDES permit or UIC permit for a well not injecting hazardous waste may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them and, in the case of UIC permits, the notice demonstrates that the financial responsibility requirements of § 122.42(g) will be met by the new permittee; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under § 122.17. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

§ 122.15 Modification or revocation and reissuance of permits.

(Applicable to State programs, see § 123.7).

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 122.7), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 122.17, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 122.17 for "minor modifications" the

permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits. However, for Class II or III wells under UIC, the following may be causes for revocation and reissuance as well as modification; and the following may be causes for revocation and reissuance as well as modification under any program when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

[Note.—For NPDES, certain reconstruction activities may cause the new source provisions of § 122.67 to be applicable.]

(2) *Information.* The Director has received information. Permits other than for UIC Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For UIC area permits (§ 122.39), NPDES general permits (§ 122.59) and 404 general permits (§ 123.95) this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits other than for UIC Class II or III wells may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated Part 260–266 (RCRA) or Part 146 (UIC) regulation, or a promulgated effluent limitation guideline or EPA approved or promulgated water quality standard (NPDES); and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after **Federal Register** notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see § 124.55(b).

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case shall an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also § 122.17(c) (minor modifications) and paragraph (a)(5)(xi) of this section (NPDES innovative technology).

(5) *For NPDES only,* the Director may modify a permit:

(i) When the permittee has filed a request for a variance under CWA sections 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a), or for "fundamentally different factors" within the time specified in § 122.53, and the Director processes the request under the applicable provisions of §§ 124.61, 124.62, and 124.64.

(ii) When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.62(b)).

(iii) When required by the "reopener" conditions in a permit, which are established in the permit under § 122.62(b) (for CWA toxic effluent limitations) or 40 CFR § 403.10(e) (pretreatment program).

(iv) Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.63(h).

(v) When a discharger is no longer eligible for net limitations, as provided in § 122.63(h)(1)(ii)(B).

(vi) As necessary under 40 CFR § 403.8(e) (compliance schedule for development of pretreatment program).

(vii) Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

(viii) When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(ix) When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under § 122.53(d)(9).

(x) To establish a "notification level" as provided in § 122.62(f).

(xi) To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(6) *For 404 only,* the Director shall modify a permit to reflect toxic effluent standards or prohibitions or water quality standards, under the "reopener" condition of § 123.97(g).

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 122.16, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 122.17(1)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§ 122.14(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) *Facility siting.* For RCRA and UIC, suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

§ 122.16 Termination of permits.

(Applicable to State programs, see § 122.7.)

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(4) *For NPDES and 404 only,* permits may be modified or terminated when 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 (for example, plant closure or termination of discharge by connection to a POTW).

(b) The Director shall follow the applicable procedures in Part 124 or State procedures in terminating any RCRA, UIC, NPDES, or 404 permit under this section.

§ 122.17 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 122.15. Minor modifications may only:

(a) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

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

(e) *For RCRA only,* change the lists of facility emergency coordinators or equipment in the permit's contingency plan.

(f) *For UIC only,*

(1) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, after reviewing information required under §§ 146.16, 146.26 and 146.36, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification.

(2) Change construction requirements approved by the Director pursuant to § 122.42(a) (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this Part and Part 146.

(g) *For NPDES only,*

(1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.66.

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

(h) *For 404 only,* extend the term of a State section 404 permit, so long as the modification does not extend the term of the permit beyond 5 years from its original effective date.

§ 122.18 Noncompliance and program reporting by the Director.

(Applicable to State programs, see § 123.7.)

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters. For purposes of this section only, RCRA permittees shall include RCRA interim status facilities, when appropriate.

(a) *Quarterly reports for RCRA, UIC, and NPDES.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Provide separate lists for RCRA, UIC, and NPDES permittees; the NPDES permittees shall be further subcategorized as non-POTWs, POTWs, and Federal permittes;

(ii) For facilities or activities with permits under more than one program, provide an additional list combining information on noncompliance for each such facility;

(iii) Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.

(iv) For each entry on a list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind under a single program, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements.* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) *Modifications to schedules of compliance.* When a schedule of compliance in the permit has been modified under §§ 122.15 or 122.17 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports.* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) *Deficient reports.* When the required reports provided by the permittee are so deficient as to cause

misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements.* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraphs (a)(2) (i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. (*For NPDES only,* this pattern of noncompliance is based on violations of monthly averages and excludes parameters where there is continuous monitoring.) This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a discharge of a toxic or hazardous substance by an NPDES facility, a fire or explosion at an RCRA facility, or migration of fluids into a USDW.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(3) *For RCRA only,* the Director shall submit, in a manner and form prescribed by the Administrator, quarterly reports concerning noncompliance by transporters (for example, recordkeeping requirements), and by generators that send their wastes to off-site treatment, storage, or disposal facilities.

(b) *Quarterly reports for State 404 programs.* The Director shall submit noncompliance reports for section 404 discharges specified under § 123.6(f)(1)(i) (A)–(E) containing the following information:

(1) Name, location, and permit number of each noncomplying permittee;

(2) A brief description and date of each instance of noncompliance, which should include the following:

(i) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction or any noncompliance with permit conditions; and

(ii) A description of investigations conducted and of any enforcement actions taken or contemplated.

(c) *Annual reports for RCRA, UIC, and NPDES.*

(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor RCRA, UIC, and NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) *For NPDES only,* a separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be submitted in alphabetical order by name and permit number.

(3) *For RCRA only,* in addition to the annual noncompliance report, the Director shall prepare a "program report" which contains information (in a manner and form prescribed by the Administrator) on generators and 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. This summary information shall be reported according to EPA characteristics and lists of hazardous wastes at 40 CFR Part 261.

(4) *For State-administered UIC programs only,* in addition to the annual noncompliance report, the State Director shall:

(i) Submit each year a program report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(A) A detailed description of the State's implementation of its program;

(B) Suggested changes if any to the program description (see § 123.4(f)) which are necessary to more accurately reflect the State's progress in issuing permits;

(C) An updated inventory of active underground injection operations in the State.

(ii) In addition to complying with the requirements of paragraph (c)(4)(i) of this section the State Director shall provide the Administrator within 3 months of the completion of the second full year of State operation of the UIC program a supplemental report containing the information required in 40 CFR Part 146 on corrective actions taken by operators of new Class II wells based upon these regulations.

(d) *Annual reports for State 404 programs.* The State Director shall 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 report 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 (for example, wetlands, rivers, lakes, and other categories which the Director and Regional Administrator may establish);

(2) The number of acres of each of the categories of waters in paragraph (d)(1) of this section which were filled or which received any discharge or dredged material during the year (either by authorized or known unauthorized activities);

(3) The number and nature of permit applications denied; and permits modified, revoked and reissued, or terminated during the year.

(4) The number and nature of permits issued under emergency conditions, as provided in § 123.96;

(5) The approximate number of persons in the State discharging dredged or fill material under general permits and an estimate of the cumulative impacts of these activities.

(e) *Schedule.*

(1) *For all quarterly reports.* On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with RCRA, UIC, NPDES, and State 404 permit requirements by major dischargers (or for 404, other dischargers specified under § 123.6(f)(1)(i)(A)–(E)) in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule:

Quarters Covered by Reports on Noncompliance by Major Dischargers

[Date for completion of reports]	
January, February, and March	May 31 [1]
April, May, and June	Aug. 31 [1]
July, August, and September	Nov. 30 [1]
October, November, and December	Feb. 28 [1]

[1] Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

§ 122.19 Confidentiality of information.

(a) In accordance with 40 CFR Part 2, any information submitted to EPA

pursuant to these regulations may be claimed as confidential 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 treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) *(Applicable to State programs, see § 123.7.)* Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) *For UIC permits,* information which deals with the existence, absence, or level of contaminants in drinking water;

(3) *For NPDES permits,* permit applications and permits; and

(4) *For NPDES and 404 permits,* effluent data.

(c) *(Applicable to State programs, see § 123.7.) For NPDES only,* information required by NPDES application forms provided by the Director under §§ 122.4 and 122.53 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(d) *(Applicable to State programs, see § 122.7.) For RCRA only,*

(1) Claims or confidentiality for permit application information must be substantiated at the time the application is submitted and in the manner prescribed in the application instructions.

(2) If a submitter does not provide substantiation, the Director will notify it by certified mail of the requirement to do so. If the Director does not receive the substantiation within 10 days after the submitter receives the notice, the Director shall place the unsubstantiated information in the public file.

Subpart B—Additional Requirements for Hazardous Waste Programs Under the Resource Conservation and Recovery Act

§ 122.21 Purpose and scope of Subpart B.

(a) *Content of Subpart B.* The regulations in this Subpart set forth the specific requirements for the RCRA permit program. They apply to EPA, and to approved States to the extent set forth in Part 123. Sections of this Subpart which are applicable to States are indicated at the section headings as follows: (Applicable to State RCRA programs, see § 123.7). The regulations in this Subpart supplement the requirements in Part 122, Subpart A, which contains requirements for all programs.

(b) *Authority for this Subpart and other RCRA Subtitle C Regulations.*

(1) Section 3001 of RCRA requires EPA (i) to establish criteria for identifying the characteristics of hazardous waste and for listing hazardous waste, and (ii) using those criteria to identify the characteristics of hazardous waste and list particular wastes considered to be hazardous.

(2) Section 3002 of RCRA requires EPA to establish standards applicable to generators of hazardous waste. Section 3002 also requires establishment of a manifest system to assure that hazardous waste which is transported off-site goes to a permitted treatment, storage, or disposal facility.

(3) Section 3003 of RCRA requires EPA to establish standards applicable to transporters of hazardous waste.

(4) Section 3004 of RCRA requires EPA to establish standards for the location, design, construction, monitoring, and operation of hazardous waste treatment, storage, and disposal facilities.

(5) Section 3005 of RCRA requires EPA to publish regulations requiring each person owning or operating a hazardous waste treatment, storage, or disposal facility to obtain a RCRA permit.

(6) Section 3006 of RCRA requires EPA to publish guidelines to assist States in developing hazardous waste management programs.

(7) Section 3010 of RCRA requires any person who generates or transports hazardous waste, or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste, to notify EPA (or States having approved hazardous waste programs under section 3006 of RCRA) of such activity within 90 days of the promulgation or revision of regulations under section 3001 of RCRA. Section 3010 provides that no hazardous waste subject to regulations under Subtitle C of RCRA may be transported, treated, stored, or disposed of unless the required notification has been given.

(8) The following chart indicates where the regulations for sections 3001 through 3006 and the public notice for section 3010 appear in the **Federal Register.**

Section of RCRA	Coverage	Final regulation	Location
Subtitle C	Overview and definitions	40 CFR Part 260	45 FR 12724; Feb. 26, 1980; and [45 FR ——].
3001	Identification and listing of hazardous waste.	40 CFR Part 261	[—— FR ——]
3002	Generators of hazardous waste.	40 CFR Part 262	45 FR 12724, Feb. 26, 1980.
3003	Transporters of hazardous waste.	40 CFR Part 263	45 FR 12737, Feb. 26, 1980.
3004	Standards for HWM facilities	40 CFR Parts 264, 265, and 266.	[—— FR ——]
3005	Permit requirements for HWM facilities.	40 CFR Parts 122 and 124	These regulations.
3006	Guidelines for State programs.	40 CFR Part 123	These regulations.
3010	Preliminary notification of HW activity.	(Public Notice)	45 FR 12746, Feb. 26, 1980.

(c) *Overview of the RCRA Permit Program.* Not later than 90 days after the promulgation or revision of regulations in 40 CFR Part 261 (identifying and listing hazardous wastes) all generators and transporters of hazardous waste, and all owners or operators of hazardous waste treatment, storage, or disposal facilities must file a notification of that activity under section 3010. Six months after the initial promulgation of the Part 261 regulations, treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited. A RCRA permit application consists of two parts, Part A (see § 122.24) and Part B (see § 122.25). For "existing HWM facilities," the requirement to submit an application is satisfied by submitting only Part A of the permit application until the date the Director sets for submitting Part B of the application. (Part A consists of Forms 1 and 3 of the Consolidated Permit Application Forms.) Timely submission of both notification under section 3010 and Part A qualifies owners and operators of existing HWM facilities for *interim status* under section 3005(e) of RCRA. Facility owners and operators with interim status are treated as having been issued a permit until EPA or a State with interim authorization for Phase II or final authorization under Part 123 makes a final determination on the permit application. Facility owners and operators with interim status must comply with *interim status standards* set forth at 40 CFR Part 265 or with the equivalent provisions of a State program which has received interim or final

authorization under Part 123. Facility owners and operators with interim status are not relieved from complying with other State requirements. For existing HWM facilities the Director shall set a date, giving at least six months notice, for submission of Part B of the application. There is no form for Part B of the application; rather, Part B must be submitted in narrative form and contain the information set forth at § 122.25. Owners or operators of new HWM facilities must submit Part A and Part B of the permit application at least 180 days before physical construction is expected to commence.

(d) *Scope of the RCRA permit requirement.* RCRA requires a permit for the "treatment," "storage," or "disposal" of any "hazardous waste" as identified or listed in 40 CFR Part 261. The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 122.3.

(1) *Specific inclusions (applicable to State RCRA programs, see § 123.7).* Owners and operators of certain facilities require RCRA permits as well as permits under other programs for certain aspects of the facility operation. RCRA permits are required for:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. (See § 122.30.) However, the owner and operator with a UIC permit in a State with an approved or promulgated UIC program, will be deemed to have a RCRA permit for the injection well itself if they comply with the requirements of § 122.26(b) (permit by rule for injection wells).

(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a RCRA permit for that waste if they comply with the requirements of § 122.26(c) (permit by rule for POTWs).

(iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a RCRA permit for ocean disposal from the barge or vessel itself if they comply with the requirements of § 122.26(a) (permit by rule for ocean disposal barges and vessels).

(2) *Specific exclusions.* The following persons are among those who are not required to obtain a RCRA permit:

(i) Generators who accumulate hazardous waste on-site for less than 90 days, as provided in 40 CFR § 262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in 40 CFR § 262.51.

(iii) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this Part by 40 CFR § 261.4 or § 261.5 (small generator exemption).

(iv) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR § 260.10.

(v) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR § 260.10.

§ 122.22 Application for a permit.

(Applicable to State RCRA programs, see § 123.7.)

(a) *Existing HWM facilities.* (1) Not later than six months after the first promulgation of regulations in 40 CFR Part 261 listing and identifying hazardous wastes, all owners and operators of existing hazardous waste treatment, storage, or disposal facilities must submit Part A of their permit application with the Regional Administrator.

(2) At any time after promulgation of Phase II the owner and operator of an existing HWM facility may be required to submit Part B of their permit application. The State Director may require submission of Part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim authorization for Phase II or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing HWM facility may voluntarily submit Part B of the application at any time.

(3) Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status under Part 124.

(b) *New HWM Facilities.* (1) No person shall begin physical construction on a new HWM facility without having submitted Part A and Part B of its permit application and received a finally effective RCRA permit.

(2) An application for a permit for a new HWM facility (including both Part A and Part B) may be filed any time after promulgation of Phase II. The application shall be filed with the Regional Administrator if at the time of application the State in which the new HWM facility is proposed to be located has not received interim authorization for Phase II or final authorization; otherwise it shall be filed with the State Director. All applications must be submitted at least 180 days before physical construction is expected to commence.

(c) *Updating permit applications.* (1) If any owner or operator of a HWM facility has filed Part A of a permit application and has not yet filed Part B, the owner or operator shall file an amended Part A application:

(i) With the Regional Administrator, if the facility is located in a State which has not obtained interim authorization for Phase II or final authorization, within six months after the promulgation of revised regulations under Part 261 listing or identifying additional hazardous wastes, if the facility is treating, storing, or disposing of any of those newly listed or identified wastes.

[Note.—EPA intends to promulgate regulations in June of 1980 listing or designating additional wastes beyond those listed or designated in its initial promulgation of Part 261. The wastes to be listed or designated in June are set forth in an Appendix to the initial promulgation. EPA encourages facilities applying for interim status before that second set of wastes is actually published to list or designate any of the wastes in that set which they are treating, storing, or disposing of. That will avoid the need to extensively update the Part A application when the June 1980 promulgation occurs.]

(ii) With the State Director, if the facility is located in a State which has obtained Phase II interim authorization or final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in that State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of § 122.23 for changes during interim status or the analogous provisions of a State program approved for final authorization or interim authorizaton for Phase II. Revised Part A applications necessary to comply with the provisions of § 122.23 shall be filed with the Regional Administrator if the State in which the facility in question is located does not have Phase II interim authorization or final authorization; otherwise it shall be filed with the State Director.

(2) The owner or operator of a facility who fails to comply with the updating requirements of paragraph (c)(1) of this section does not receive interim status as to the wastes not covered by duly filed Part A applications.

(d) *Reapplications.* Any HWM facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Director. [The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.]

§ 122.23 Interim status.

(a) *Qualifying for interim status.* Any person who owns or operates an "existing HWM facility" shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Notified the Administrator within 90 days from the promulgation or revision of Part 261 as required in Section 3010 of RCRA (this may be done by completing EPA form 8700–12); and

(2) Complied with the requirements of § 122.22 (a) and (c) governing submission of Part A applications;

(3) When EPA determines on examination or reexamination of a Part A application that it fails to meet the standards of these regulations, it may notify the owner or operator that the application is deficient and that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to EPA enforcement for operating without a permit.

(b) *Coverage.* During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

(2) Employ processes not specified in Part A of the permit application; or

(3) Exceed the design capacities specified in Part A of the permit application.

(c) *Changes during interim status.* (1) New hazardous wastes not previously identified in Part A of the permit application may be treated, stored, or disposed of at a facility if the owner or operator submits a revised Part A permit application prior to such a change;

(2) Increases in the design capacity of processes used at a facility may be made if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because of a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities;

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste may be made at a facility or additional processes may be added if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Director approves the change because:

(i) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or

(ii) It is necessary to comply with Federal regulations (including the interim status standards at 40 CFR Part 265) or State or local laws.

(4) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR Part 265, Subpart H (financial requirements), until the new owner or operator has demonstrated to the Director that it is complying with that Subpart. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with that Subpart, the Director shall notify the old owner or operator in writing that it no longer needs to comply with that Part as of the date of demonstration.

(5) In no event shall changes be made to an HWM facility during interim status which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new HWM facility.

(d) *Interim status standards.* During interim status, owners or operators shall comply with the interim status standards at 40 CFR Part 265.

(e) *Grounds for termination of interim status.* Interim status terminates when:

(1) Final administrative disposition of a permit application is made; or

(2) Interim status is terminated as provided in § 122.22(a)(3).

§ 122.24 Contents of Part A.

(Applicable to State RCRA programs, see § 123.7.)

In addition to the information in § 122.4(d), Part A of the RCRA application shall include the following information:

(a) The latitude and longitude of the facility.

(b) The name, address, and telephone number of the owner of the facility.

(c) An indication of whether the facility is new or existing and whether it is a first or revised application.

(d) For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.

(e) For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(f) A description of the processes to be used for treating, storing, and disposing of hazardous waste, and the design capacity of these items.

(g) A specification of the hazardous wastes listed or designated under 40 CFR Part 261 to be treated, stored, or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for such wastes.

§ 122.25 Contents of Part B.

(Applicable to State RCRA programs, see § 123.7.)

Part B of the RCRA application includes the following:

(a) *General information requirements.* The following information is required for all facilities:

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes in accordance with Part 264.

(3) A copy of the waste analysis plan required by § 264.13(b) and, if applicable, § 264.13(c).

(4) A description of the security procedures and equipment required by § 264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by § 264.15(b).

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of § 264.30.

(7) A copy of the contingency plan required by Part 264, Subpart D.

(8) A description of procedures, structures, or equipment used at the facility to,

(i) Prevent uncontrolled reaction of incompatible wastes (for example, procedures to avoid fires, explosions, or toxic gases).

(ii) Prevent hazards in unloading operations (for example, ramps, special forklifts).

(iii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches).

(iv) Prevent contamination of water supplies.

(v) Mitigate effects of equipment failure and power outages.

(vi) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing).

(9) Traffic pattern, volume and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); provide access road surfacing and load bearing capacity; show traffic control signals; provide estimates of traffic volume (number, types of vehicles)).

b. [*Reserved.*]

[Note.—The requirements set forth in § 122.25(a) reflect those permit application requirements related to the initial promulgation of Part 264. Additional permit application requirements including specific design and operating data, financial plans, and site engineering information will be promulgated when the remaining portions of Part 264 are promulgated.]

§ 122.26 Permits by rule.

(Applicable to State RCRA programs, see § 123.7.)

Notwithstanding any other provision of this Part or Part 124, the following shall be deemed to have a RCRA permit if the conditions listed are met:

(a) *Ocean disposal barges or vessels.* The owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal, if the owner or operator:

(1) Has a permit for ocean dumping issued under 40 CFR Part 220 (Ocean Dumping, authorized by the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. § 1420 *et seq.*);

(2) Complies with the conditions of that permit; and

(3) Complies with the following hazardous waste regulations:

(i) 40 CFR § 264.11, Identification number;

(ii) 40 CFR § 264.71, Use of manifest system;

(iii) 40 CFR § 264.72, Manifest discrepancies;

(iv) 40 CFR § 264.73(a) and (b)(1), Operating record;

(v) 40 CFR § 264.75, Annual report; and

(vi) 40 CFR § 264.76, Unmanifested waste report.

(b) *Injection wells.* The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under Part 122, Subpart C or Part 123, Subpart C; and

(2) Complies with the conditions of that permit and the requirements of § 122.45 (requirements for wells managing hazardous waste).

(c) *Publicly owned treatment works.* The owner or operator of a POTW which accepts for treatment hazardous waste, if the owner or operator:

(1) Has an NPDES permit;

(2) Complies with the conditions of that permit; and

(3) Complies with the following regulations:

(i) 40 CFR § 264.11, Identification number;

(ii) 40 CFR § 264.71, Use of manifest system;

(iii) 40 CFR § 264.72, Manifest discrepancies;

(iv) 40 CFR § 264.73 (a) and (b)(1), Operating record;

(v) 40 CFR § 264.75, Annual report;

(vi) 40 CFR § 264.76, Unmanifested waste report; and

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

§ 122.27 Emergency permits.

(Applicable to State RCRA programs, see § 123.7.)

Notwithstanding any other provision of this Part or Part 124, in the event the Director finds an imminent and substantial endangerment to human health or the environment the Director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of hazardous waste for a non-permitted facility or not covered by the permit for a facility with an effective permit. This emergency permit:

(a) May be oral or written. If oral, it shall be followed within five days by a written emergency permit;

(b) Shall not exceed 90 days in duration;

(c) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(d) May be terminated by the Director at any time without process if he or she determines that termination is appropriate to protect human health and the environment;

(e) Shall be accompanied by a public notice published under § 124.11(b) including:

(1) Name and address of the office granting the emergency authorization;

(2) Name and location of the permitted HWM facility;

(3) A brief description of the wastes involved;

(4) A brief description of the action authorized and reasons for authorizing it; and

(5) Duration of the emergency permit; and

(f) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this Part and 40 CFR Parts 264 and 266.

§ 122.28 Additional conditions applicable to all RCRA permits.

(Applicable to State RCRA programs, see § 122.7.)

The following conditions, in addition to those set forth in § 122.7, apply to all RCRA permits:

(a) In addition to § 122.7(a) (duty to comply): the permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit. (See § 122.27.)

(b) In addition to § 122.7(j) (monitoring): the permittee shall maintain records from all ground monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

(c) In addition to § 122.7(l)(1) (notice of planned changes): for a new HWM facility, the permittee may not commence treatment, storage, or disposal of hazardous waste; and for a facility being modified the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility, until:

(1) The permittee has submitted to the Director by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2)(i) The Director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(ii) Within 15 days of the date of submission of the letter in paragraph (c)(1) of this section, the permittee has not received notice from the Director of his or her intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(d) The following shall be included as information which must be reported orally within 24 hours under § 122.7(l)(6):

(1) Information concerning release of any hazardous waste that may cause an

endangerment to public drinking water supplies.

(2) Any information of a release or discharge of hazardous waste, or of a fire or explosion from a HWM facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(i) Name, address, and telephone number of the owner or operator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

The Director may waive the five day written notice requirement in favor of a written report within fifteen days.

(e) The following reports required by Part 264 shall be submitted in addition to those required by § 122.7(l) (reporting requirements):

(1) Manifest discrepancy report: if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a letter report including a copy of the manifest to the Director. (See 40 CFR § 264.72.)

(2) Unmanifested waste report: must be submitted to the Director within 15 days of receipt of unmanifested waste. (See § 264.76.)

(3) Annual report: an annual report must be submitted covering facility activities during the previous calendar year. (See 40 CFR § 264.75.)

(4) [Reserved.]

[Note.—The above reports are required in Part 264 as initially promulgated. Additional reports will be required and added to this section when remaining portions of Part 264 are promulgated.]

§ 122.29 Establishing RCRA permit conditions.

(Applicable to State RCRA programs, see § 123.7.)

In addition to the conditions established under § 122.8(a), each RCRA permit shall include each of the applicable requirements specified in 40 CFR Parts 264 and 266.

§ 122.30 Interim permits for UIC wells.

(Applicable to State programs, see § 123.7.)

The Director may issue a permit under this Part to any Class I UIC well (see § 122.32) injecting hazardous wastes within a State in which no UIC program has been approved or promulgated. Any such permit shall apply and insure compliance with all applicable requirements of 40 CFR Part 264, Subpart R (RCRA standards for wells), and shall be for a term not to exceed two years. No such permit shall be issued after approval or promulgation of a UIC program in the State. Any permit under this section shall contain a condition providing that it will terminate upon final action by the Director under a UIC program to issue or deny a UIC permit for the facility.

Subpart C—Additional Requirements for UIC Programs Under the Safe Drinking Water Act

§ 122.31 Purpose and scope of Subpart C.

(a) *Content of Subpart C.* The regulations in this Subpart set forth the specific requirements for the UIC program. They apply to EPA, and to approved States to the extent set forth in Part 123. Sections of this Subpart which are applicable to States are indicated at the section heading as follows: (Applicable to State UIC programs, see § 123.7). The regulations in this Subpart are supplemental to the requirements in Part 122, Subpart A, which contains requirements for all programs.

(b) *Authority.* (1) Section 1421 of SDWA requires the Administrator to promulgate regulations establishing minimum requirements for effective UIC programs.

(2) 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 an approved State program in a listed State.

(3) Section 1423 of SDWA provides procedures for EPA enforcement of UIC requirements where the State fails to enforce those requirements.

(4) Section 1431 authorizes the Administrator to take action to protect the health of persons when a contaminant which is present in or may enter a public water system may present an imminent and substantial endangerment to the health of persons.

(5) Section 1445 of SDWA authorizes the promulgation of regulations for such recordkeeping, reporting, and monitoring requirements "as the Administrator may reasonably require . . . to assist him in establishing regulations under this title," and 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 . . .."

(6) Section 1450 of SDWA authorizes the Administrator "to prescribe such regulations as are necessary or appropriate to carry out his functions" under SDWA.

(c) *Overview of the UIC program.* A UIC program is necessary in any State listed by EPA under section 1422 of SDWA. Because all States have been listed, all States must submit a UIC program within 270 days after the effective date of these rules and 40 CFR Part 146, unless the Administrator grants an extension, which can be for a period not to exceed an additional 270 days. If a State fails to submit an approvable program, EPA will establish a program for that State. Once a program is established, SDWA provides that all underground injections in listed States are unlawful and subject to penalties unless authorized by a permit or a rule. This Subpart sets forth the requirements governing authorizations by permit or rule and prohibits authorization of certain types of injection. The technical regulations governing these authorizations appear in 40 CFR Part 146.

(d) *Scope of the permit or rule requirement.* The UIC permit program regulates underground injections by five classes of wells (see definition of "well injection," § 122.3). The five classes of wells are set forth in § 122.32. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this Subpart provides that no Class I, II, or III well shall be authorized by permit or rule if it results in movement of fluid into underground sources of drinking water (USDWs) (§ 122.34). The technical requirements of Part 146 are designed to insure that such movement will not occur. No Class V well shall be authorized by permit or rule if it results in the presence of any contaminant in USDWs which may adversely affect the health of persons (§ 122.34). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 122.36). Class V wells will be inventoried and assessed and regulatory action will be established at a later date. In the meantime, if remedial action appears necessary, an individual permit may be required (§ 122.37) or the

Director must require remedial action or closure by order (§ 122.34(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water (see § 123.4(g) for State programs). This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been "identified." The Director may also designate "exempted aquifers" using criteria in Part 146. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Therefore they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures in § 122.35. Aquifers which do not fit the definition of "underground sources of drinking water" are not "exempted aquifers." They are simply not subject to the special protection afforded USDWs.

(1) *Specific inclusions.* The following wells are included among those types of injection activities which are covered by the UIC regulations. (This list is not intended to be exclusive but is for clarification only.)

(i) Any injection well located on a drilling platform inside a State's territorial waters.

(ii) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(iii) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(iv) Any septic tank, cesspool, or other well used by a multiple dwelling, community, or Regional system for the injection of wastes.

(2) *Specific exclusions.* The following are not covered by these regulations:

(i) Injection wells located on a drilling platform or other site that is beyond a State's territorial waters.

(ii) Individual or single family residential waste disposal systems such as domestic cesspools or septic systems.

(iii) Any dug hole which is not used for emplacement of fluids underground.

§ 122.32 Classification of injection wells.

(Applicable to State UIC programs, see § 123.7.)

Injection wells are classified as follows:

(a) *Class I.*

(1) Wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells.

(2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) *Class II.* Wells which inject fluids:

(1) Which are brought to the surface in connection with conventional oil or natural gas production;

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) *Class III.* Wells which inject for extraction of minerals or energy, including:

(1) Mining of sulfur by the Frasch process;

(2) Solution mining of minerals;

(3) In situ combustion of fossil fuel; and

(4) Recovery of geothermal energy.

(d) *Class IV.* Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within one quarter mile of the well contains an underground source of drinking water.

(e) *Class V.* Injection wells not included in Classes I, II, III, or IV.

§ 122.33 Prohibition of unauthorized injection.

(Applicable to State programs, see § 123.7.)

Any UIC program shall prohibit, effective no later than the date of approval (for State programs) or the effective date of regulations establishing the program (for EPA-administered programs) any underground injection, except as authorized by permit or rule issued under this Part and Part 123, as applicable. Any UIC program shall also prohibit the construction of any well required to have a permit under this Part until the permit has been issued.

§ 122.34 Prohibition of movement of fluid into underground sources of drinking water.

(Applicable to State UIC programs, see § 123.7.)

(a) No UIC authorization by permit or rule shall be allowed in the following circumstances:

(1) Where a Class I, II, or III well causes or allows movement of fluid into underground sources of drinking water.

(2) Where a Class IV or V well causes or allows movement of fluid containing any contaminant into underground sources of drinking water, and the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or which may adversely affect the health of persons.

(b) For Class, I, II, and III wells, if any monitoring indicates the movement 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 movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 122.15, or the permit may be terminated under § 122.16 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see § 122.37(a).

(c) For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under 40 CFR Part 142, he or she shall:

(1) Require the injector to obtain an individual permit;

(2) Order the injector to take such actions (including where required closure of the injection well) as may be necessary to prevent the violation; or

(3) Take enforcement action.

(d) Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, he or she may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under paragraph (c) of this section.

(e) Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons.

§ 122.35 Identification of underground sources of drinking water and exempted aquifers.

(Applicable to State UIC programs, see § 123.7.)

(a) The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under paragraph (b) of this section, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an "underground

source of drinking water" in § 122.3. Even if an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in § 122.3.

(b) After notice and opportunity for a public hearing the Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR § 146.04. For State UIC programs, no such designation shall be final until approved by the Administrator as part of the State program. Subsequent to program approval identification of additional exempted aquifers shall be treated as program modifications under § 123.6(b)(8).

§ 122.36 Elimination of certain Class IV wells.

(Applicable to State UIC programs, see § 123.7.)

(a) In addition to the requirement of § 122.45, any UIC program shall prohibit:

(1) The construction of any Class IV well for the injection of hazardous waste directly into an underground source of drinking water;

(2) The injection of hazardous waste directly into an underground source of drinking water through a Class IV well that was not in operation prior to the effective date of this Part;

(3) Any increase in the amount of hazardous waste or change in the type of hazardous waste injected into a well injecting hazardous waste directly into a USDW.

(4) The operation of any Class IV well injecting hazardous waste directly into a USDW after 6 months following approval or promulgation of any UIC program for a State.

§ 122.37 Authorization of underground injection by rule.

(Applicable to State UIC programs, see § 123.7.)

(a) *Types of underground injection which may be authorized by rule.* The Director may authorize underground injections by rule as outlined in this paragraph. Underground injections not authorized by rule or by permit are prohibited (see § 122.33).

(1) Injection into existing Class I, II (except existing enhanced recovery and hydrocarbon storage), and III wells may be authorized by rule for periods up to five years from the date of approval or promulgation of the UIC program. (All wells must be issued permits within the five year period or close down at its end, unless the rule is continued under § 122.38(a).) The rule shall require compliance with applicable requirements of 40 CFR Part 146 as soon as possible but no later than one year after the authorization. Rules authorizing existing Class II and Class III facilities may allow them to continue normal operations until permitted, including construction and operation of new injection wells at the facility site, provided the owner or operator maintains compliance with all applicable requirements.

(2) Injection into existing Class II enhanced recovery and hydrocarbon storage wells may be authorized for the life of the well. The rule shall include compliance schedules for achieving applicable requirements of 40 CFR 146 no later than one year, and with the construction requirements of 40 CFR Part 146 no later than three years, after the promulgation of the rule.

(3) Injection into existing Class IV wells injecting directly into a USDW may be authorized for a period of not more than six months after approval or promulgation of the UIC program. The rule shall require monitoring and reporting as set forth in 40 CFR § 146.44 within 90 days of the authorization.

(4) Injections into Class V wells may be authorized indefinitely, subject to the requirement of paragraphs (b) and (d) of this section and 40 CFR § 146.53. However, the Director must have authority to withdraw the authorization if required under this Part.

(b) *Requirements of rules.* Any rule promulgated by the Director shall apply, and ensure compliance with, the following requirements applicable to permittees, except that the terms "permit" and "permittee" shall be read to include rules and those authorized by rule:

(1) § 122.41(a)—(exemption from rule where authorized by temporary permits);

(2) § 122.41(b)—(retention of records);

(3) § 122.41(d)—(reporting within 24 hours);

(4) § 122.41(e)—(180 days notice of abandonment);

(5) Construction requirements under § 146.12 (Class I), § 146.22 (Class II), and § 146.32 (Class III);

(6) For Class I, II, or III wells, corrective action under § 146.07;

(7) Operating, monitoring, and reporting requirements under § 146.13 (Class I), § 146.23 (Class II), and § 146.33 (Class III);

(8) § 122.42(g)—(Financial responsibility);

(9) Mechanical integrity requirements under § 146.08.

(c) *Requiring a permit.* (1) The Director may require any Class I, II, III, or V injection well authorized by a rule to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:

(i) The injection well is not in compliance with any requirement of the rule;

[Note.—Any underground injection which violates any rule under this section is subject to appropriate enforcement action.]

(ii) The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule:

(iii) The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

(2) For EPA administered programs, the Regional Administrator may require the owner or operator authorized by a rule to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that upon the effective date of the UIC permit the rule no longer applies to the activities regulated under the UIC programs.

(3) Any owner or operator authorized by a rule may request to be excluded from the coverage of the rule by applying for an individual or area UIC permit. The owner or operator shall submit an application under § 122.38 with reasons supporting the request, to the Director. The Director may grant any such request.

(d) *Inventory requirements.* All injection wells covered by rule shall submit inventory information to the Director. Any rule under this section shall provide for the automatic termination of authorization for any well which fails to comply within the time specified in paragraph (c)(3) of this section.

(1) *Contents.* The Director shall require at least the information listed in § 146.52 as part of the inventory.

(2) *Notice.* Upon approval of the UIC program in a State, the Director shall notify owners or operators of injection wells of their duty to submit inventory information. The method of notification selected by the Director must assure that the owners or operators will be

made aware of the inventory requirement.

(3) *Deadlines.* Owners or operators of injection wells must submit inventory information no later than one year after the authorization by rule. The Director need not require inventory information from any facility with interim status under RCRA.

(e) *Assessment of Class V Wells.* The Director shall, within three years of the approval of the program in a State submit a report and recommendations to EPA in compliance with § 146.52(b).

§ 122.38 Application for a permit; authorization by permit.

(Applicable to State UIC programs, see § 123.7.)

(a) *Permit application.* Except as provided in § 122.37 (authorization by rule), all underground injections into Class I, II, or III wells in listed States shall be prohibited unless authorized by permit. Those authorized by a rule under § 122.37 must still apply for a permit under this section unless authorization by rule was for the life of the well. Rules authorizing well injections for which permit applications have been submitted shall lapse for a particular well injection only upon the effective date of the permit or permit denial for that well injection.

(b) *Time to apply.* Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the State UIC program as follows:

(1) For existing injection wells, as expeditiously as practicable and in accordance with the schedule contained in any program description under § 123.4(g), but no later than 4 years from the approval of the UIC program, or as required under § 122.45(b) for wells injecting hazardous waste.

(2) For new injection wells, except new wells covered by an existing area permit under § 122.39(c), a reasonable time before construction is expected to begin. (See also § 122.41(b)).

(c) *Contents of UIC application.* [Reserved.]

§ 122.39 Area permits.

(Applicable to State UIC programs, see § 123.7.)

(a) The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

(1) Described and identified by location in permit application(s), if they are existing wells,

(2) Within the same well field, facility site, reservoir, project, or similar unit in the same State;

(3) Of similar construction;

(4) Of the same class as determined under § 122.32; and

(5) Operated by a single owner or operator.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

(c) The area permit may authorize the permittee to construct and operate new injection wells within the permit area provided:

(1) The permittee notifies the Director no later than the date on which monitoring reports are required to be submitted under § 122.7(l)(4), pursuant to a procedure which shall be specified in the permit, when and where the new well has been or will be drilled;

(2) The additional well satisfies the criteria in paragraph (a) of this section and meets the requirements specified in the permit under paragraph (b) of this section; and

(3) The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

(d) If the Director determines that any well constructed pursuant to paragraph (c) of this section does not satisfy any of the requirements of paragraphs (c)(1) and (c)(2) of this section the Director may modify the permit under § 122.15, terminate under § 122.16, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under § 122.15.

§ 122.40 Emergency permits.

(a) *Coverage.* Notwithstanding any other provision of this Part or Part 124, the Director may temporarily permit a specific underground injection which has not otherwise been authorized by rule or permit if:

(1) An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or

(2) A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and

(i) Timely application for a permit could not practicably have been made; and

(ii) The injection will not result in the movement of fluids into undergound sources of drinking water; or

(3) A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water.

(b) *Requirements for issuance.* (1) Any temporary permit under paragraph (a)(1) of this section shall be for no longer term than required to prevent the hazard.

(2) Any temporary permit under paragraph (a)(2) of this section 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 temporary permit until final action on the application.

(3) Any temporary permit under paragraph (a)(3) of this section shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.

(4) Notice of any temporary permit under this paragraph shall be published in accordance with § 124.11 within 10 days of the issuance of the permit.

(5) The temporary permit under this section may be either oral or written. If oral, it must be followed within 5 calendar days by a written temporary emergency permit.

(6) The Director shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water.

§ 122.41 Additional conditions applicable to all UIC permits.

(Applicable to State UIC programs, see § 123.7.)

The following conditions, in addition to those set forth in § 122.7, apply to all UIC permits and shall be incorporated into all permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or approved State regulations) must be given in the permit.

(a) In addition to § 122.7(a) (duty to comply): the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in a temporary emergency permit under § 122.40.

(b) In addition to § 122.7(j)(2) (monitoring and records): the permittee shall retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures specified under § 122.42(f). The Director may require the owner or

operator to deliver the records to the Director at the conclusion of the retention period.

(c) In addition to § 122.7(l)(1) (notice of planned changes): a new injection well may not commence injection until construction is complete, and

(1) The permittee has submitted notice of completion of construction to the Director; and

(2)(i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(ii) The permittee has not received notice from the Director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in paragraph (c)(1) of this section, in which case prior inspection or review is waived and the permittee may commence injection.

(d) The following shall be included as information which must be reported within 24 hours under § 122.7(l)(5):

(1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW.

(2) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(e) The permittee shall notify the Director at least 180 days before conversion or abandonment of the well.

§ 122.42 Establishing UIC permit conditions.

(Applicable to State programs, see § 123.7.)

In addition to the conditions established under § 122.8(a), each UIC permit shall include conditions meeting the following requirements, when applicable:

(a) *Construction requirements* as set forth in Part 146. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements (see § 122.33). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications (§ 122.17). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.

(b) *Corrective action* as set forth in § 122.44 and § 146.7.

(c) *Operation requirements* as set forth in 40 CFR Part 146; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the Part 146 operating requirements.

(d) *Requirements for wells managing hazardous waste*, as set forth in § 122.45.

(e) *Monitoring and reporting requirements* as set forth in 40 CFR Part 146. The permittee shall be required to identify types of tests and methods used to generate the monitoring data.

(f) *Plugging and abandonment.* Any Class I, II or III permit shall include, and any Class V permit may include, conditions to ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another. Any applicant for a UIC permit shall be required to submit a plan for plugging and abandonment. Where the plan meets the requirements of this paragraph, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the application. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment.

(g) *Financial responsibility.* The permit shall require the permittee to maintain financial responsibility and resources, in the form of performance bonds or other equivalent form of financial assurance approved by the Director, to close, plug, and abandon the underground injection operation in a manner prescribed by the Director. In lieu of individual performance bonds, operators may furnish a bond or other equivalent form of financial guarantee approved by the Director covering all injection wells in any one State.

(h) *Mechanical integrity.* A permit for any Class I, II, or III well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under § 146.08 that the well has mechanical integrity.

(i) *Additional conditions.* The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

§ 122.43 Waiver of requirements by Director.

(a) *When injection does not occur into, through, or above an underground source of drinking water,* the Director may authorize a well with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required in 40 CFR 146 or § 122.42 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(b) *When injection occurs into, through, or above an underground source of drinking water,* but the radius of endangering influence when computed under § 146.06(c) is a negative number, the Director may authorize a well with less stringent requirements for operation, monitoring, and reporting than required in 40 CFR 146 or § 122.42 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(c) When reducing requirements under paragraph (a) or (b) of this section, the Director shall prepare a fact sheet under § 124.9 (or equivalent document under State procedures) explaining the reasons for the action.

§ 122.44 Corrective action.

(Applicable to State UIC programs, see § 123.7.)

(a) *Coverage.* Applicants for Class I, II (other than existing), or III injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone. For such wells which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water ("corrective action"). Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based on the factors in § 146.07) the Director shall require the applicant to revise the plan, prescribe a

plan for corrective action as a condition of the permit under paragraph (b) of this section, or deny the application. The Director may disregard the provisions of § 146.06 (area of review) and § 146.07 (corrective action) when reviewing an application to permit an existing Class II well.

(b) *Requirements*—(1) *Existing injection wells.* Any permit issued for an existing injection well (other than Class II) requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (a) of this section to be completed as soon as possible.

(2) *New injection wells.* No permit for a new injection well may authorize injection until all required corrective action has been taken.

(3) *Injection pressure limitation.* The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

§ 122.45 Requirements for wells injecting hazardous waste.

(Applicable to State UIC programs, see § 123.7.)

(a) *Applicability.* The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any class of well to inject hazardous wastes accompanied by a manifest. (See also § 122.36.)

(b) *Authorization.* The owner or operator of any well that is used to inject hazardous wastes accompanied by a manifest or delivery document shall apply for authorization to inject as specified in § 122.38 within 6 months after the approval of an applicable State program.

(c) *Requirements.* In addition to requiring compliance with the applicable requirements of this Part and 40 CFR Part 146, Subparts B–F, the Director shall, for each facility meeting the requirements of paragraph (b) of this section, require that the owner or operator comply with the following:

(1) *Notification.* The owner or operator shall comply with the notification requirements of Section 3010 of Pub. L. 94–580.

(2) *Identification number.* The owner or operator shall comply with the requirements of 40 CFR § 264.11.

(3) *Manifest system.* The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 40 CFR § 264.71.

(4) *Manifest discrepancies.* The owner or operator shall comply with 40 CFR § 264.72.

(5) *Operating record.* The owner or operator shall comply with 40 CFR § 264.73(a), (b)(1), and (b)(2).

(6) *Annual report.* The owner or operator shall comply with 40 CFR § 264.75.

(7) *Unmanifested waste report.* The owner or operator shall comply with 40 CFR § 264.75.

(8) *Personnel training.* The owner or operator shall comply with the applicable personnel training requirements of 40 CFR § 264.16.

(9) *Certification of closure.* When abandonment is completed, the owner or operator must submit to the Director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in § 122.42(f).

(d) *Additional requirements for Class IV wells.* [Reserved].

Subpart D—Additional Requirements for National Pollutant Discharge Elimination System Programs Under the Clean Water Act

§ 122.51 Purpose and scope of Subpart D.

(a) *Content of Subpart D.* The regulations in this Subpart contain the specific requirements for the NPDES permit program. They apply to EPA, and to approved States to the extent set forth in Part 123. Sections of this Subpart which are applicable to States are indicated at the section heading as follows: (applicable to State NPDES programs, see § 123.7). The regulations in this Subpart are supplemental to the requirements in Part 122, Subpart A, which apply to all programs.

(b) *Authority.* (1) 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."

(2) 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 this 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 this Act."

(3) Section 318(a) of CWA provides that "The Administrator is authorized, after public hearings, to permit the discharge of 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."

(4) 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 sewage 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."

(5) 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.

(6) Section 304(i) of CWA provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from dischargers in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(7) 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."

(8) Section 101(e) of CWA 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."

(c) *Scope of the NPDES permit requirement.* The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant," "point source" and

"waters of the United States" are defined in § 122.3.

(1) *Specific inclusions.* The following are point sources requiring NPDES permits for discharges:

(i) Concentrated animal feeding operations as defined in § 122.54;

(ii) Concentrated aquatic animal production facilities as defined in § 122.55;

(iii) Discharges into aquaculture projects as set forth in § 122.56;

(iv) Discharges from separate storm sewers as set forth in § 122.57; and

(v) Silvicultural point sources as defined in § 122.58.

(2) *Specific exclusions.* The following discharges do not require NPDES permits:

(i) 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 used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when 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.

(ii) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.

(iii) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also § 122.10(c).) This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

(iv) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR § 1510 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR § 153.10 (e) (Pollution by Oil and Hazardous Substances).

(v) Any introduction of pollutants from non-point-source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.54, discharges from concentrated aquatic animal production facilities as defined in § 122.55, discharges to aquaculture projects as defined in § 122.56, and discharges from silvicultural point sources as defined in § 122.58.

(vi) Return flows from irrigated agriculture.

(vii) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 122.62(m).

§ 122.52 Prohibitions.

(Applicable to State NPDES programs, see § 123.7.)

No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;

(b) When 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 § 123.76;

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(e) When, 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 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) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to made a reasonable judgment whether the discharge complies with them.

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by section 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutant load allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

§ 122.53 Application for a permit.

(Applicable to State NPDES programs except for paragraphs (b), (c) and (h); see § 123.7.)

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under § 122.59, excluded under § 122.51, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.62(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR § 125.102) to the Director in accordance with § 122.4, paragraphs (b) through (h) of this section, and Part 124.

(b) *Time to apply.* Any 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 Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (h).

(c) *Duty to reapply.* (1) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(2) All other permittees with currently effective permits shall submit a new application in accordance with the table below:

Permit expires	Application requirement	Deadline for submission
On or before Nov. 30, 1980.	(1) If applicant has submitted new application before April 30, 1980, new application[1] is not required.	Not applicable.
	(2) If applicant has not submitted new application before April 30, 1980, applicant must submit new application[1].	Date on which permit expires.[2]
Dec. 1, 1980–May 31, 1981.	New application[1]	90 days before permit expires.[2,3]
On or after June 1, 1981.	New application[1]	180 days before permit expires.[3]

[1]The new application requirements are set forth in § 122.4(d) and in paragraphs (d) and (e) of this section. Applicants for EPA-issued permits must use Forms 1 and either 2b or 2c of EPA's consolidated permit application forms to apply under those sections.

[2]Applicants may request additional time for the submission of information required by paragraphs (d) (7), (9) and (10) of this section. The request must be in writing and must state the reasons this information could not be submitted on time. Based upon this request, the Director may extend the time to submit all or some of this information up to six months beyond the deadline for submission or June 30, 1981, whichever is earlier.

[3]The Director may grant permission to submit an application later than this date, but no later than the expiration date of the permit.

(d) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits shall provide the following information to the Director, using application forms provided by the Director:

(1) *Outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(2) *Line drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (d)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower".) For a privately owned treatment works, this information shall include the identity of each user of the treatment works.

(4) *Intermittent flows.* If any of the discharges described in paragraph (d)(3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(5) *Maximum production.* If an effluent guideline promulgated under section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by § 122.63(b)(2).

(6) *Improvements.* If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this subparagraph. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (d)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(i)(A) Every applicant must report quantitative data for every outfall for the followng pollutants:

(*1*) Biochemical Oxygen Demand (BOD_5)

(*2*) Chemical Oxygen Demand

(*3*) Total Organic Carbon

(*4*) Total Suspended Solids

(*5*) Ammonia (as N)

(*6*) Temperature (both winter and summer)

(*7*) pH

(B) At the applicant's request, the Director may waive the reporting requirements for one or more of the pollutants listed in paragraph (d)(7)(i)(A) of this section.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (d)(8) of this section. Table II of Appendix D lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromotography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(B) The pollutants listed in Table III of Appendix D (the toxic metals, cyanide, and total phenols).

(iii) Each applicant must report for each outfall quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:

(A) All pollutants listed in Table II or Table III of Appendix D (the toxic pollutants) for which quantitative data is not otherwise required under paragraph (d)(7)(ii) of this section except that an applicant qualifying as a small business under paragraph (d)(8) of this

section is not required to analyze for the pollutants listed in Table II of Appendix D (the organic toxic pollutants).

(B) All pollutants in Table IV of Appendix D (certain conventional and nonconventional pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D (certain hazardous substances and asbestos) is discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) *Small business exemption.* An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraphs (d)(7)(ii)(A) or (d)(7)(iii)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D (the organic toxic pollutants):

(i) For coal mines, a probable total annual production of less than 100,000 tons per year.

(ii) For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant does or expects that it will during the next 5 years use or manufacture as an intermediate or final product or byproduct.

(10) *Potential discharges.* A description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two times the values reported in paragraph (d)(7) of this section over the next 5 years.

(11) *Biological toxicity tests.* An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(12) *Contract analyses.* If a contract laboratory or consulting firm performed any of the analyses required by paragraph (d)(7) of this section, the identity of each laboratory or firm and the analyses performed.

(13) *Additional information.* In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the discharges of the facility and to determine whether to issue an NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(e) Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations (defined in § 122.54) and concentrated aquatic animal production facilities (defined in § 122.55) shall provide the following information to the Director, using the application form provided by the Director:

(1) For concentrated animal feeding operations:

(i) The type and number of animals in open confinement and housed under roof.

(ii) The number of acres used for confinement feeding.

(iii) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

(i) The maximum daily and average monthly flow from each outfall.

(ii) The number of ponds, raceways, and similar structures.

(iii) The name of the receiving water and the source of intake water.

(iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(v) The calendar month of maximum feeding and the total mass of food fed during that month.

(f) *Application requirements for new and existing POTWs.* [Reserved.]

(g) *Application requirements for new sources and new dischargers.* (Reserved.)

(h) *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) 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 § 122.66, 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 Adminstrator 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 paragraph (h)(2)(i) of this section.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of the new source determination under paragraph (h)(2) of this section. If the Regional Administrator has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of 40 CFR Part 6.600 *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.

(i) *Variance requests by non-POTWs.* A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) *Fundamentally different factors.* 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 § 124.10. The request shall explain how the requirements of § 124.13 and 40 CFR Part 125, Subpart D have been met.

(2) *Non-conventional pollutants.* 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, when those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a section 301(c) or section 301(g) modification or both. This request 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; and

(ii) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met.

(iii) Requests for variance from effluent limitations not based on effluent limitation guidelines, need only comply with paragraph (i)(2)(ii) of this section and need not be preceded by an initial request under paragraph (i)(2)(i) of this section.

(3) *Delay in construction of POTW.* 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 POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under paragraph (j)(2) of this section, whichever is later, but in no event may this date have been later than December 25, 1978. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

(5) *Water quality related effluent limitations.* 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 § 124.10 on the permit from which the modification is sought.

(6) *Thermal discharges.* 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, except that if thermal effluent limitations are established under CWA section 402(a)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under § 124.10. A copy of the request as required under 40 CFR Part 125, Subpart H, shall be sent simultaneously to the appropriate State or interstate certifying agency as required under 40 CFR Part 125. (See § 124.65 for special procedures for section 316(a) thermal variances.)

(j) *Variance requests by POTWs.* A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) *Discharges into marine waters.* A preliminary request for a modification under CWA section 301(h) of 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 request must be submitted in accordance with the filing requirements of 40 CFR Part 125, Subpart G, after that Subpart is promulgated, and shall demonstrate that all the requirements of 40 CFR Part 125, Subpart G have been met. (See § 124.64 for special rules for CWA section 301(h) modifications.)

(2) *Delay in construction.* An extension under CWA section 301(i)(1) of the statutory deadlines in CWA sections 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before June 26, 1978.

(3) *Water quality based effluent limitation.* A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(k) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs (i) and (j) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under paragraphs (i)(2)(ii) or (i)(2)(iii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

§ 122.54 Concentrated animal feeding operations.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Permit requirement.* 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.

(2) 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.

(3) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Appendix B, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is 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 relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in Appendix B shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

§ 122.55 Concentrated aquatic animal production facilities.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definition.* "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(i) The location and quality of the receiving waters of the United States;

(ii) The holding, feeding, and production capacities of the facility;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

§ 122.56 Aquaculture projects.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Permit requirement.* 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 permittee or permit applicant 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, and be harvested within a defined geographic area.

§ 122.57 Separate storm sewers.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Permit requirement.* Separate storm sewers, as defined in this section are point sources subject to the NPDES permit program. Separate storm sewers may be permitted either individually or under a general permit (see § 122.59). 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 or operators of these 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.

(b) *Definition.* (1) "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

(i) Located in an urbanized areas as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(ii) Not located in an urbanized area but designated under paragraph (c) of this section.

(2) Except as provided in paragraph (b)(3) of this section, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the Director under paragraph (c) of this section is not considered a point source and is not subject to the provisions of this section.

(3) Conveyances which discharge 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 are point sources that must obtain NPDES permits but are not separate storm sewers.

(4) Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether 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) The Director determines that a storm sewer is a significant contributor of pollution to the waters of the United States. In making this determination the Director shall consider the following factors:

(i) The location of the discharge with respect to waters of the United States;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

§ 122.58 Silvicultural activities.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Permit requirement.* 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. 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, or road construction and maintenance from which there is natural runoff. 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 and Part 123, Subpart E).

(2) "Rock crushing and gravel washing facilities" means facilties which process crushed and broken stone, gravel, and riprap (see 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held 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, including the effluent limitations guidelines).

§ 122.59 General permits.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Coverage.* The Director may issue a general permit in accordance with the following:

(1) *Area.* The general permit shall be written to cover a category of discharges described in the permit under paragraph (a)(2) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

(i) Designated planning areas under sections 208 and 303 of CWA;

(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 designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(vii) Any other appropriate division or combination of boundaries.

(2) *Sources.* The general permit shall be written to regulate, within the area described in paragraph (a)(1) of this section, either:

(i) Separate storm sewers; or

(ii) A category of point sources other than separate storm sewers if the sources all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes;

(C) Require the same effluent limitations or operating conditions;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) *Administration.*—(1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.76 for States and § 124.58 for EPA.

(2) *Requiring an individual permit.* (i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this subparagraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharge(s) is a significant contributor of pollution as determined by the factors set forth at § 122.57(c)(2);

(B) The discharger is not in compliance with the conditions of the general NPDES permit;

(C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(D) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(E) A Water Quality Management plan containing requirements applicable to such point sources is approved; or

(F) The requirements of paragraph (a) of this section are not met.

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(2)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by 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 an application under § 122.53, with reasons supporting the request, to the Director no later than 90 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. The request shall be processed under Part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

§ 122.60 Additional conditions applicable to all NPDES Permits.

(Applicable to State NPDES programs, see § 123.7.)

The following conditions, in addition to those set forth in § 122.7, apply to all NPDES permits:

(a) In addition to § 122.7(a) (duty to comply):

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates a permit

condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $100,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) In addition to § 122.7(c) (duty to halt or reduce activity), upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.

(c) In addition to § 122.7(j) (monitoring):

(1) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(2) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit 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.

(d) In addition to § 122.7(k) (signatories): the Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance 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.

(e) In addition to § 122.7(l)(3) (monitoring reports):

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(f)(1) The following shall be included as information which must be reported within 24 hours under § 122.7(l)(5) (24-hour reporting):

(i) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.60(g) below.)

(ii) Any upset which exceeds any effluent limitation in the permit.

(iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.62(g).)

(2) The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) *Bypass*—(1) *Definitions.* (i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes 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) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (g)(3) and (g)(4) of this section.

(3) *Notice.*—(i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (f) of this section (24-hour notice).

(4) *Prohibition of bypass.* (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (g)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (g)(4)(i) of this section.

(h) *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 constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (h)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(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 properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (f) of this section (24-hour notice).

(iv) The permittee complied with any remedial measures required under § 122.7(d).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

§ 122.61 Additional conditions applicable to specified categories of NPDES permits.

(Applicable to state NPDES programs, see § 123.7.)

The following conditions, in addition to those set forth in § 122.7 and § 122.60, apply to all NPDES permits within the categories specified below:

(a) *Existing manufacturing, commercial, mining, and silvicultural dischargers.* In addition to the reporting requirements under § 122.7(l) and § 122.60, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

(i) One hundred micrograms per liter (100 μg/1);

(ii) Two hundred micrograms per liter (200 μg/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/1) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/1) for antimony;

(iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with §122.53(d)(7) or § 122.53(d)(10); or

(iv) The level established by the Director in accordance with § 122.62(f).

(2) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under § 122.53(d)(9).

(b) *Publicly owned treatment works.* All POTWs must provide adequate notice to the Director of the following:

(1) 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

(2) 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.

(3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

§ 122.62 Establishing NPDES permit conditions.

(Applicable to State NPDES programs, see § 123.7.)

In addition to the conditions established under § 122.8(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a) *Technology-based effluent limitations and standards* based on effluent limitations and standards promulgated under section 301 of CWA or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or on a combination of the two, in accordance with § 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.67(d) (protection period).

(b) *Other effluent limitations and standards* under sections 301, 302, 303, 307, 318, and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the 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. See also § 122.60(a).

(c) *Reopener clause:* for any discharger within a primary industry category (see Appendix A), requirements under section 307(a)(2) of CWA as follows:

(1) *On or before June 30, 1981:* (i) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that 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 revoked and reissued to conform to that effluent standard or limitation.

(ii) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the **Federal Register** that the limitations are "approved" for the purpose of this regulation.)

(2) *After June 30, 1981,* any permit issued 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. These permits need not incorporate the clause required by paragraph (c)(1) of this section.

(3) The Director shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (c)(1) of this section to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) *Water quality standards and State requirements:* any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA 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 which meet the requirements of § 124.53 when EPA is the permit issuing authority; however, if a State certification is stayed by a court of competent jurisdiction or appropriate State board or agency, EPA shall include conditions in the permit which may be necessary to meet EPA's obligation under section 301(b)(1)(C) of CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule 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 any other requirements, 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, when EPA is the permit issuing authority (see § 122.66).

(e) *Toxic pollutants:* limitations established under paragraphs (a), (b), or

(d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 122.56(b)(1)(i).

(1) Limitations must control all toxic pollutants which:

(i) The Director determines (based on information reported in a permit application under § 122.53(d) (7) or (10) or in a notification under § 122.61(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c); or

(ii) The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

(f) *Notification level:* a "notification level" which exceeds the notification level of § 122.61(a)(1) (i), (ii), or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).

(g) *Twenty-four hour reporting:* Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.60(f)(3) (24-hour reporting) shall be listed as such in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) *Durations* for permits, as set forth in §§ 122.9(a) and 122.64.

(i) *Monitoring requirements:* In addition to § 122.11, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate; including pollutants in internal waste streams under § 122.63(i); pollutants in intake water for net limitations under § 122.63(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.63(e); and pollutants subject to notification requirements under § 122.61(a).

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that Part, and according to a test procedure specified in the permit for pollutants with no approved methods.

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(j) *Pretreatment program for POTWs.* Requirements for POTWs to:

(1) 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.

(2) Submit 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. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403.

(k) *Best management practices* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary 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 intent of CWA.

(l) *Reissued permits:*

(1) Except as provided in paragraph (l)(2) of this section when 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 § 122.15).

(2) When 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:

(i) 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 renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);

(ii) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent limitations guideline;

(iii) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of CWA);

(iv) 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 § 122.15; or

(v) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(m) *Privately owned treatment works.* For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this Part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) *Grants.* Any conditions imposed in grants made by the Administrator to POWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) *Sewage sludge.* Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly

owned treatment works, in accordance with any applicable regulations.

(p) *Coast Guard.* When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) *Navigation.* Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.58.

§ 122.63 Calculating NPDES permit conditions.

(Applicable to State NPDES programs, see § 123.7.)

(a) *Outfalls and discharge points.* All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.62(k)(2) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

(b) *Production-based limitations.* (1) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(2) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(c) *Metals.* All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal (that is, the sum of the dissolved and suspended fractions of the metal) unless:

(1) An applicable effluent standard or limitation has been promulgated under CWA and 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 § 125.3, 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.

(d) *Continuous discharges.* For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable 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.

(e) *Non-continuous discharges.* Discharges which are not continuous, as defined in § 122.3, shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (for example, 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 (for example, not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (1/4 kilogram) of zinc in any discharge).

(f) *Mass limitations.* (1) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

(i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) *Pollutants in intake water.* Except as provided in paragraph (h) of this section, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(h) *Net limitations.* (1) Upon request of the discharger, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, 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 40 CFR Subchapter N 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:

(A) The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments; and

(B) The permittee to notify the Director if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under § 122.15.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after 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 pollutants 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 to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor shall effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(i) *Internal waste streams.* (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the

monitoring required by § 122.62(i) shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(j) *Disposal of pollutants into wells, into POTWs, or by land application.* Permit limitations and standards shall be calculated as provided in § 122.65.

§ 122.64 Duration of certain NPDES permits.

(Applicable to State NPDES programs, see § 123.7.)

(a) On or before June 30, 1981, any permit issued to a discharger in a primary industry category (see Appendix A):

(1) Shall meet one of the following conditions:

(i) Expire on June 30, 1981;

(ii) Incorporate effluent standards and limitations applicable to the discharger which have been promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of CWA; or

(iii) Incorporate the "reopener clause" required by § 122.62(c)(1), and effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of CWA.

(2) Shall not be written to expire after June 30, 1981 unless the discharger has submitted to the Director the information required by § 122.53(d)(7)(ii).

(b) After June 30, 1981 a permit may be issued for the full term if the permit includes 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.

(c) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (b) of this section 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 permit based on that determination is formulated.

§ 122.65 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

(Applicable to State NPDES programs, see § 123.7.)

(a) When part of a discharger's process wastewater 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 standards and limitations 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 (a)(1) of this section, 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.

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) of this section shall not apply to the extent that 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, land application, or disposal into POTWs.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under § 122.7, § 122.8, § 122.60, § 122.61, and § 122.62.

§ 122.66 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3.

(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 source or a new discharger.

(4) "Site" is defined in § 122.3;

(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, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria for new source determination.* (1) The following construction activities result in a new source:

(i) Construction of a source on a site at which no other source is located, or

(ii) Construction on a site at which another source is located of a building, structure, facility, or installation from which there is or may be a discharge of pollutants if:

(A) the process or production equipment that causes the discharge of pollutants from the existing source is totally replaced by this construction, or

(B) the construction results in a change in the nature or quantity of pollutants discharged.

(2) Construction on a site at which an existing source is located results in a modification subject to § 122.15 rather than a new source if the construction does not create a new building, structure, facility, or installation from which there is or may be a discharge of pollutants but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under § 122.3 has commenced if the owner or operator has: (i) Begun, or caused to begin as part of a continous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(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 the paragraph.

(c) *Requirement for an Environmental Impact Statement.* (1) The issuance of an NPDES permit to 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 Part 6, Subpart F. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 122.53(h) (special provisions for applications from new sources) and 40 CFR Part 6, Subpart F;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) An EIS prepared under this paragraph shall include a recommendation either to issue or deny the permit.

(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, if any, which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue, condition, 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 or finding of no significant impact.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before final Agency action in issuing 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 or irreversible adverse environmental impact. The provisions of any agreement entered into under this paragraph shall be incorporated as conditions of the NPDES permit when it is issued.

(ii) No on-site construction of a new source for which an EIS is not required shall commence until 30 days after issuance of a finding of no significant impact, unless the construction is determined by the Regional Administrator not to 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 paragraph (c)(4) of this section. If onsite 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.* (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.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may 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 soonest ending 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 nonconstruction-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.

(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; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply 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 except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permit before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions.

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Appendix A to Part 122—NPDES Primary Industry Categories

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2) (A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§ 122.62 and 122.64.

Industry Category

Adhesives and Sealants
Aluminum Forming
Auto and Other Laundries
Battery Manufacturing
Coal Mining
Coil Coating
Copper Forming
Electrical and Electronic Components

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 Mining
Organic Chemicals Manufacturing
Paint and Ink Formulation
Pesticides
Petroleum Refining
Pharmaceutical Preparations
Photographic Equipment and Supplies
Plastics Processing
Plastic and Synthetic Materials Manufacturing
Porcelain Enameling
Printing and Publishing
Pulp and Paper Mills
Rubber Processing
Soap and Detergent Manufacturing
Steam Electric Power Plants
Textile Mills
Timber Products Processing

Appendix B to Part 122—Criteria for Determining a Concentrated Animal Feeding Operation (§ 122.54)

An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.54 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

(1) 1,000 slaughter and feeder cattle,

(2) 700 mature dairy cattle (whether milked or dry cows),

(3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 500 horses,

(5) 10,000 sheep or lambs,

(6) 55,000 turkeys,

(7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 30,000 laying hens or broilers (if the facility has a liquid manure handling system),

(9) 5,000 ducks, or

(10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

(1) 300 slaughter or feeder cattle,

(2) 200 mature dairy cattle (whether milked or dry cows),

(3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 150 horses,

(5) 3,000 sheep or lambs,

(6) 16,500 turkeys,

(7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(9) 1,500 ducks, or

(10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the United States 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.

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.

The term "manmade" means constructed by man and used for the purpose of transporting wastes.

Appendix C to Part 122—Criteria for Determining a Concentrated Aquatic Animal Production Facility (§ 122.55)

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 122.55 if it contains, grows, or holds aquatic animals in either of the following categories.

(a) 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:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) 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:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 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 *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

Appendix D to Part 122—*NPDES Permit Application Testing Requirments (§ 122.53).*

Table I.—*Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers*

Industrial category	GC/MS fraction [1]			
	Volatile	Acid	Base/neutral	Pesticide
Adhesives and Sealants	(*)	(*)	(*)	
Aluminum Forming	(*)	(*)	(*)	
Auto and Other Laundries	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)		(*)	
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	
Copper Forming	(*)	(*)	(*)	
Electric and Electronic Components	(*)	(*)	(*)	(*)

Table I.—*Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers*—Continued

Industrial category	GC/MS fraction [1]			
	Volatile	Acid	Base/neutral	Pesticide
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 Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)			
Porcelain Enameling	(*)		(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	
Soap and Detergent Manufacturing	(*)	(*)	(*)	
Steam Electric Power Plants	(*)	(*)	(*)	
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

[1] The toxic pollutants in each fraction are listed in Table II.
(*) Testing required.

Table II *Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC/MS).*

Volatiles

1V acrolein
2V acrylonitrile
3V benzene
4V bis (chloromethyl) ether
5V bromoform
6V carbon tetrachloride
7V chlorobenzene
8V chlorodibromomethane
9V chloroethane
10V 2-chloroethylvinyl ether
11V chloroform
12V dichlorobromomethane
13V dichlorodifluoromethane
14V 1,1-dichloroethane
15V 1,2-dichloroethane
16V 1,1-dichloroethylene
17V 1,2-dichloropropane
18V 1,2-dichloropropylene
19V ethylbenzene
20V methyl bromide
21V methyl chloride
22V methylene chloride
23V 1,1,2,2-tetrachloroethane
24V tetrachloroethylene
25V toluene
26V 1,2-trans-dichloroethylene
27V 1,1,1-trichloroethane
28V 1,1,2-trichloroethane
29V trichloroethylene
30V trichlorofluoromethane
31V vinyl chloride

Acid Compounds

1A 2-chlorophenol
2A 2,4-dichlorophenol
3A 2,4-dimethylphenol
4A 4,6-dinitro-o-cresol
5A 2,4-dinitrophenol
6A 2-nitrophenol
7A 4-nitrophenol
8A p-chloro-m-cresol
9A pentachlorophenol
10A phenol
11A 2,4,6-trichlorophenol

Base/Neutral

1B acenaphthene
2B acenaphthylene
3B anthracene
4B benzidine
5B benzo(a)anthracene
6B benzo(a)pyrene
7B 3,4-benzofluoranthene
8B benzo(ghi)perylene
9B benzo(k)fluoranthene
10B bis(2-chloroethoxy)methane
11B bis(2-chloroethyl)ether
12B bis(2-chloroisopropyl)ether
13B bis(2-ethylhexyl)phthalate
14B 4-bromophenyl phenyl ether
15B butylbenzyl phthalate
16B 2-chloronaphthalene
17B 4-chlorophenyl phenyl ether
18B chrysene
19B dibenzo(a,h)anthracene
20B 1,2-dichlorobenzene
21B 1,3-dichlorobenzene
22B 1,4-dichlorobenzene
23B 3,3'-dichlorobenzidine
24B diethyl phthalate
25B dimethyl phthalate
26B di-n-butyl phthalate
27B 2,4-dinitrotoluene
28B 2,6-dinitrotoluene
29B di-n-octyl phthalate
30B 1,2-diphenylhydrazine (as azobenzene)
31B fluoranthene
32B fluorene
33B hexachlorobenzene
34B hexachlorobutadiene
35B hexachlorocyclopentadiene
36B hexachloroethane
37B indeno(1,2,3-cd)pyrene
38B isophorone
39B naphthalene
40B nitrobenzene
41B N-nitrosodimethylamine
42B N-nitrosodi-n-propylamine
43B N-nitrosodiphenylamine
44B phenanthrene
45B pyrene
46B 1,2,4-trichlorobenzene

Pesticides

1P aldrin
2P α-BHC
3P β-BHC
4P γ-BHC
5P δ-BHC
6P chlordane
7P 4,4'-DDT
8P 4,4'-DDE
9P 4,4'-DDD
10P dieldrin
11P α-endosulfan
12P β-endosulfan
13P endosulfan sulfate
14P endrin
15P endrin aldehyde
16P heptachlor
17P heptachlor epoxide
18P PCB-1242
19P PCB-1254
20P PCB-1221
21P PCB-1232
22P PCB-1248
23P PCB-1260
24P PCB-1016
25P toxaphene

Table III *Other Toxic Pollutants: Metals, Cyanide, and Total Phenols.*

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

Table IV *Conventional and Nonconventional Pollutants Required to be Tested by Existing Dischargers if Expected to be Present.*

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total
Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

Table V *Toxic Pollutants and Hazardous Substances Required to be Identified by Existing Dischargers if Expected to be Present.*

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxy acetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethanolamine
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfanate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)
TDE (Tetrachlorodiphenylethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofon
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl Acetate
Xylene
Xylenol
Zirconium

PART 123—STATE PROGRAM REQUIREMENTS

Subpart A—General Program Requirements

Sec.
123.1 Purpose and scope.
123.2 Definitions.
123.3 Elements of a program submission.
123.4 Program description.
123.5 Attorney General's statement.
123.6 Memorandum of Agreement with Regional Administrator.
123.7 Requirements for permitting.
123.8 Requirements for compliance evaluation programs.
123.9 Requirements for enforcement authority.
123.10 Sharing of information.
123.11 Coordination with other programs.
123.12 Approval process.
123.13 Procedures for revision of State programs.
123.14 Criteria for withdrawal of State programs.
123.15 Procedures for withdrawal of State programs.

Subpart B—Additional Requirements for State Hazardous Waste Programs

123.31 Purpose and scope.
123.32 Consistency.
123.33 Requirements for identification and listing of hazardous wastes.
123.34 Requirements for generators of hazardous wastes.
123.35 Requirements for transporters of hazardous wastes.
123.36 Requirements for hazardous waste management facilities.
123.37 Requirements with respect to permits and permit applications.
123.38 EPA review of State permits.
123.39 Approval process.

Subpart C—Additional Requirements for State UIC Programs

123.51 Purpose and scope.
123.52 Requirement to obtain a permit.
123.53 Progress reports.
123.54 Approval process.
123.55 Procedures for withdrawal of State UIC programs.

Subpart D—Additional Requirements for State Programs Under the National Pollutant Discharge Elimination System

123.71 Purpose and scope.
123.72 Control of disposal of pollutants into wells.
123.73 Receipt and use of Federal information.
123.74 Transmission of information to EPA.
123.75 EPA review of and objections to State permits.
123.76 Prohibition.
123.77 Approval process.

Subpart E—Additional Requirements for State Programs Under Section 404 of the Clean Water Act

123.91 Purpose and scope.
123.92 Activities not requiring permits.
123.93 Prohibitions.
123.94 Permit application.
123.95 General permits.
123.96 Emergency permits.
123.97 Additional conditions applicable to all 404 permits.
123.98 Establishing 404 permit conditions.
123.99 Memorandum of Agreement with the Secretary.
123.100 Transmission of information to EPA and other Federal agencies.
123.101 EPA review of and objections to State permits.
123.102 Coordination requirements.
123.103 Enforcement authority.
123.104 Approval process.

Subpart F—Requirements for Interim Authorization of State Hazardous Waste Programs

123.121 Purpose and scope.
123.122 Schedule.
123.123 Elements of a program submission.
123.124 Program description.
123.125 Attorney General's statement.
123.126 Memorandum of agreement.
123.127 Authorization plan.
123.128 Program requirements for interim authorization for Phase I.
123.129 Additional program requirements for interim authorization for Phase II.
123.130 Interstate movement of hazardous waste.
123.131 Progress reports.
123.132 Sharing of information.
123.133 Coordination with other programs.
123.134 EPA review of State permits.
123.135 Approval process.
123.136 Withdrawal of State programs.
123.137 Reversion of State programs.

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—General Program Requirements

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under the following statutes and the requirements State programs must meet to be approved by the Administrator under:

(1) Section 3006(b) (hazardous waste-final authorization) and section 3006(c) (hazardous waste-interim authorization) of RCRA;

(2) Section 1422 (underground injection control—UIC) of SDWA;

(3) Sections 318, 402, and 405 (National Pollutant Discharge Elimination System—NPDES) of CWA; and

(4) Section 404 (dredged or fill material) of CWA.

(b) Subpart A contains requirements applicable to all programs listed in paragraph (a) except hazardous waste programs operating under interim authorization. All requirements applicable to hazardous waste programs operating under interim authorization are contained in Subpart F. (References in this subpart to "programs under this Part" do not refer to hazardous waste programs operating under interim authorization.) Subpart A includes the elements which must be part of submissions to EPA for program approval, the substantive provisions which must be present in State programs for them to be approved, and the procedures EPA will follow in approving, revising, and withdrawing State programs. Subpart B contains additional requirements for States seeking final authorization under RCRA. Subpart C contains additional requirements for State UIC programs. Subpart D specifies additional requirements for State NPDES programs. Subpart E specifies additional requirements for State section 404 programs.

(c) State submissions for program approval must be made in accordance with the procedures set out in Subpart A and, in the case of State 404 programs with the procedures set out in Subpart E. (Submissions for interim authorization shall be made in accordance with Subpart F.) This includes developing and submitting to EPA a program description (§ 123.4), an Attorney General's statement (§ 123.5), a Memorandum of Agreement with the Regional Administrator (§ 123.6) and with the Secretary in the case of section 404 programs (§ 123.99).

(d) The substantive provisions which must be included in State programs for them to be approved include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. The requirements are found both in Subpart A (§§ 123.7 to 123.11) and in the program specific subparts. Many of the requirements for State programs are made applicable to States by cross-referencing other EPA regulations. In particular, many of the provisions of Parts 122 and 124 are made applicable to States by the references contained in § 123.7.

(e) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this Part, the appropriate Act and any comments received.

(f) The Administrator shall approve State programs which conform to the applicable requirements of this Part.

(g) 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.

(h) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(i) States are encouraged to consolidate their permitting activities. While approval of State programs under this Part will facilitate such consolidation, these regulations do not require consolidation. Each of the four programs under this Part may be applied for and approved separately.

(j) Partial State programs are not allowed under NPDES, 404, or RCRA (for programs operating under final authorization). However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability 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), when the State program is unable to regulate activities on Indian lands within the State. EPA, or in the case of section 404 programs the Secretary, will administer the program on Indian lands if the State does not seek this authority.

[Note.—States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(k) Except as provided in § 123.32, 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. Where an approved State program has a greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

[Note.—For example, when a State requires permits for discharges into publicly owned treatment works, these permits are not NPDES permits. Also, State assumption of the section 404 program is limited to certain waters, as provided in § 123.91(c). The Federal program operated by the Corps of Engineers continues to apply to the remaining waters in the State even after program approval. However, this does not restrict States from regulating discharges of dredged or fill materials into those waters over which the Secretary retains section 404 jurisdiction.]

§ 123.2 Definitions.

The definitions in Part 122 apply to all subparts of this Part, including Subpart F.

§ 123.3 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 123.4, describing how the State intends to carry out its responsibilities under this Part;

(3) An Attorney General's statement as required by § 123.5;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 123.6, and, in the case of State section 404 programs, a Memorandum of Agreement with the Secretary as required by § 123.99;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(6) The showing required by § 123.39(c) (RCRA programs only) and § 123.54(b) (UIC programs only) of the State's public participation activities prior to program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under the appropriate Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

§ 123.4 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(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, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. In the case of State RCRA programs, such a designation is mandatory (see paragraph (f)(4) of this section). When 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 carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information, except that State NPDES programs are required to use standard Discharge Monitoring Reports (DMR). The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms. State section 404 application forms must include the information required by § 123.94 and State section 404 permit forms must include the information and conditions required by § 123.97.

[Note.—States are encouraged to use uniform national forms established by the

Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(e) A complete description of the State's compliance tracking and enforcement program.

(f) *State RCRA programs only.* In the case of State RCRA programs, the program description shall also include:

(1) A description of the State manifest tracking system, and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(2) An estimate of the number of the following:

(i) Generators;

(ii) Transporters: and

(iii) On- and off-site storage, treatment and disposal facilities, and a brief description of the types of facilities and an indication of the permit status of these facilities.

(3) If available, an estimate of the annual quantities of hazardous wastes:

(i) Generated within the State;

(ii) Transporters; and

State; and

(iii) Stored, treated, or disposed of within the State:

(A) on-site; and

(B) off-site.

(4) When 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.

(g) *State UIC programs only.* In the case of a submission for approval of a State UIC program the State's program description shall also include:

(1) A schedule for issuing permits within five years after program approval to all injection wells within the State which are required to have permits under this Part and Part 122;

(2) The priorities (according to criteria set forth in 40 CFR § 146.09) for issuing permits, including the number of permits in each class of injection well which will be issued each year during the first five years of program operation;

(3) A description of how the Director will implement the mechanical integrity testing requirements of 40 CFR § 146.08, including the frequency of testing that will be required and the number of tests that will be reviewed by the Director each year;

(4) A description of the procedure whereby the Director will notify owners and operators of injection wells of the requirement that they apply for and obtain a permit. The notification required by this paragraph shall require applications to be filed as soon as possible, but not later than four years after program approval for all injection wells requiring a permit;

(5) A description of any rule under which the Director proposes to authorize injections, including the text of the rule;

(6) For any existing enhanced recovery and hydrocarbon storage wells which the Director proposes to authorize by rule, a description of the procedure for reviewing the wells for compliance with applicable monitoring, reporting, construction, and financial responsibility requirements of §§ 122.41 and 122.42, and 40 CFR Part 146;

(7) A description of and schedule for the State's program to establish and maintain a current inventory of injection wells which must be permitted under State law;

(8) Where the Director has designated underground sources of drinking water in accordance with § 122.35(a), a description and identification of all such designated sources in the State;

(9) A description of aquifers, or parts thereof, which the Director has identified under § 122.35(b) as exempted aquifers, and a summary of supporting data;

(10) A description of and schedule for the State's program to ban Class IV wells prohibited under § 122.36; and

(11) A description of and schedule for the State's program to establish an inventory of Class V wells and to assess the need for a program to regulate Class V wells.

(h) *State 404 programs only.* In the case of a submission for approval of a section 404 program the State's program description shall also include:

(1) A description of State regulated waters.

[Note.—States should obtain from the Secretary an identification of those waters of the U.S. within the State over which the Corps of Engineers retains authority under section 404(g) of CWA.]

(2) A categorization, by type and quantity, of discharges within the State, and an estimate of the number of discharges within each category for which the discharger must file for a permit.

(3) An estimate of the number and percent of activities within each category for which the State has already issued a State permit regulating the discharge.

(4) In accordance with § 123.92(a)(6), a description of 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.

(5) A description of how the State section 404 agency(ies) will interact with other State and local agencies.

(6) A description of how the State will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

(7) Where more than one agency within a State has responsibility for administering the State program:

(i) A memorandum of understanding among all the responsible State agencies which establishes:

(A) Procedures for obtaining and exchanging information necessary for each agency to determine and assess the cumulative impacts of all activities authorized under the State program;

(B) Common reporting requirements; and

(C) Any other appropriate procedures not inconsistent with section 404 of CWA or these regulations;

(ii) A description of procedures for coordinating compliance monitoring and enforcement, distributing among the responsible agencies information received from applicants and permittees, and issuing reports required by section 404 of CWA or these regulations.

(8) Where several State 404 permits are required for a single project, a description of procedures for:

(i) Ensuring that all the necessary State 404 permits are issued before any of the permits go into effect; and

(ii) Concurrent processing and, where appropriate, joint processing of all of the necessary State 404 permits.

§ 123.5 Attorney General's statement.

(a) Any State that seeks to administer a program under 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 an 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 the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. 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.

[Note.—EPA will supply States with an Attorney General's statement format on request.]

(b) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

(c) *State NPDES programs only.* In the case of State NPDES programs, the Attorney General's statement shall certify that the State has adequate legal authority to issue and enforce general permits if the State seeks to implement the general permit program under § 122.59.

(d) *State section 404 programs only.*

(1) In the case of State section 404 programs the State Attorney General's statement shall contain an analysis of State law regarding the prohibition on taking private property without just compensation, including any applicable judicial interpretations, and an assessment of the effect such law will have on the successful implementation of the State's regulation of the discharge of dredged or fill material.

(2) In the case of State section 404 programs, where more than one agency has responsibility for administering the State program, the Attorney General's Statement shall include certification that each agency has full authority to administer the program within its category of jurisdiction and that the State as a whole has full authority to administer a complete State section 404 program.

§ 123.6 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

[Note.—For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

[Note.—The nature and basis of EPA review of State permits and permit applications differs among the programs governed by this Part. See §§ 123.38 (RCRA), 123.75 (NPDES) and 123.101 (404).]

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall implement the requirements of § 123.74 (NPDES programs only) and § 123.100 (404 programs only).

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When 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. See § 124.4.

[Note.—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 (but not required) to consider steps to coordinate or consolidate their own permit programs and activities.]

(6) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program grant 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 through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note.—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. However, 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.]

(d) *State RCRA prorgrams only.* In the case of State RCRA programs the Memorandum of Agreement shall also provide that:

(1) EPA may conduct compliance inspections of all generators, transporters, and HWM facilities in each year for which the State is operating under final authorization. The Regional Administrator and the State Director may agree to limitations on compliance inspections of generators, transporters, and non-major HWM facilities.

(2) No limitations on EPA compliance inspections of generators, transporters, or non-major HWM facilities under paragraph (d)(1) of this section shall restrict EPA's right to inspect any generator, transporter, or HWM facility which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(3) The State Director shall promptly forward to EPA 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 of and comment on draft permits and/or permit applications for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(4) The Regional Administrator shall promptly forward to the State Director information obtained prior to program approval in notifications provided under

section 3010(a) of RCRA. The Regional Administrator and the State Director shall agree on procedures for the assignment of EPA identification numbers for new generators, transporters, treatment, storage, and disposal facilities.

(5) The State Director shall review all permits issued under State law prior to the date of program approval and modify or revoke and reissue them to require compliance with the requirements of this Part. The Regional Administrator and the State Director shall establish a time within which this review must take place.

(e) *State NPDES programs only.* In the case of State NPDES programs the Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits 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" of permits, no waiver of review may be granted for the following discharges:

(1) Discharges into the territorial sea;

(2) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(3) Discharges proposed to be regulated by general permits (see § 122.59);

(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 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 of non-process wastewater may be waived regardless of flow.

(f) *State section 404 programs only.* (1) In the case of State section 404 programs, the Memorandum of Agreement with the Regional Administrator shall also specify:

(i) The categories (including any class, type, or size within such categories) of discharges for which EPA will waive review of State-issued permit applications, draft permits, and draft general permits. While the Regional Administrators 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:

(A) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(B) Major discharges;

(C) Discharges into critical areas established under State or Federal law including fish and wildlife sanctuaries or refuges, National and historical monuments, wilderness areas and preserves, National and State parks, components of the National Wild and Scenic Rivers system, the designated critical habitat of threatened or endangered species, and sites identified or proposed under the National Historic Preservation Act;

(D) Discharges proposed to be regulated by general permits; or

(E) Discharges known or suspected to contain toxic pollutants in toxic amounts under section 307(a)(1) of CWA or hazardous substances in reportable quantities under section 311 of CWA.

(ii) A definition of major discharges.

(2) In the case of State section 404 programs, where more than one agency within a State has responsibility for administering the program, all of the responsible agencies shall be parties to the Memorandum of Agreement.

(g) *State NPDES and Section 404 programs only.* Whenever a waiver is granted under paragraphs (e) or (f)(1) of this section, the Memorandum of Agreement shall contain:

(1) A statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination; and

(2) A statement that the State shall supply EPA and, in the case of State section 404 programs, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Servcie (unless receipt is waived in writing), with copies of final permits.

§ 123.7 Requirements for permitting.

(a) All State programs under this Part must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) § 122.4—(Application for a permit), except in the case of § 122.4(d) for State section 404 programs;

(2) § 122.6—(Signatories);

(3) § 122.7—(Applicable permit conditions);

(4) § 122.8—(Establishing permit conditions);

(5) § 122.9—(Duration);

(6) § 122.10(a)—(Schedules of compliance);

(7) § 122.11—(Monitoring requirements);

(8) § 122.13 (a) and (b)—(Effect of permit);

(9) § 122.14—(Permit transfer);

(10) § 122.15—(Permit modification);

(11) § 122.16—(Permit termination);

(12) § 122.18—(Noncompliance reporting);

(13) § 122.19 (b)–(d)—(Confidential information);

(14) § 124.3(a)—(Application for a permit);

(15) § 124.5 (a), (c), (d), and (f)—(Modification of permits), except as provided in § 123.100(b)(2) for State section 404 programs;

(16) § 124.6 (a), (c), (d), and (e)—(Draft permit), except as provided in § 123.100(b)(2) for State section 404 programs;

(17) § 124.8—(Fact sheets), except as provided in § 123.100(b)(2) for State section 404 programs;

(18) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);

(19) § 124.11—(Public comments and requests for hearings);

(20) § 124.12(a)—(Public hearings); and

(21) § 124.17 (a) and (c)—(Response to comments).

[Note.—States need not implement provisions identical to the above listed provisions or the provisions listed in §§ 123.7 (b)–(d). Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

State programs may, if they have adequate legal authority, implement any of the provisions of Parts 122 and 124. See, for example, § 122.5(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

(b) *State RCRA programs only.* Any State hazardous waste program shall have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) § 122.21(d)(2)—(Specific inclusions);

(2) § 122.22—(Application for a permit);
(3) § 122.24—(Contents of Part A);
(4) § 122.25—(Contents of Part B);

[Note.—States need not use a two part permit application process. The State application process must, however, require information in sufficient detail to satisfy the requirements of §§ 122.24 and 122.25.]

(5) § 122.26—(Permit by rule);
(6) § 122.27—(Emergency permits);
(7) § 122.28—(Additional permit conditions);
(8) § 122.29—(Establishing permit conditions); and
(9) § 122.30—(Interim permits for UIC wells).

(c) *State UIC programs only.* State UIC programs shall have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:
(1) § 122.32—(Classification of injection wells);
(2) § 122.33—(Prohibition of unauthorized injection);
(3) § 122.34—(Prohibition of movement of fluids into underground sources of drinking water);
(4) § 122.35—(Identification of underground sources of drinking water and exempted aquifers);
(5) § 122.36—(Elimination of Class IV wells);
(6) § 122.37—(Authorization by rule);
(7) § 122.38—(Authorization by permit);
(8) § 122.39—(Area permits);
(9) § 122.41—(Additional permit conditions);
(10) § 122.42—(Establishing permit conditions);
(11) § 122.44—(Corrective action); and
(12) § 122.45—(Requirements for wells managing hazardous wastes).

(d) *State NPDES programs only.* State NPDES programs shall have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:
(1) § 122.52—(Prohibitions);
(2) § 122.53 (a), (d)–(g) and (i)–(k)—(Application for a permit);
(3) § 122.54—(Concentrated animal feeding operations);
(4) § 122.55—(Concentrated aquatic animal production facilities);
(5) § 122.56—(Aquaculture projects);
(6) § 122.57—(Separate storm sewers);
(7) § 122.58—(Silviculture);
(8) § 122.59—(General permits), *provided that* States which do not seek to implement the general permit program under § 122.59 need not do so;
(9) § 122.60—(Conditions applicable to all permits);
(10) § 122.61—(Conditions applicable to specified categories of permits);
(11) § 122.62—(Establishing permit conditions);
(12) § 122.63—(Calculating NPDES conditions);
(13) § 122.64—(Duration of permit);
(14) § 122.65—(Disposal into wells);
(15) § 124.56—(Fact sheets);
(16) § 124.57(a)—(Public notice);
(17) § 124.59—(Comments from government agencies);
(18) Subparts A, B, C, D, H, I, J, K and L of Part 125; and
(19) 40 CFR Parts 129, 133, and Subchapter N.

[Note.—For example, a State may impose more stringent requirements in an NPDES program by omitting the upset provision of § 122.60 or by requiring more prompt notice of an upset.]

(e) *State NPDES and 404 programs only.* (1) State NPDES and 404 permit programs shall have an approved continuing planning process under 40 CFR § 35.1500 and shall assure that the approved planning process is at all times consistent with CWA.

(2) State NPDES and 404 programs 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.

(i) For the purposes of this paragraph:

(A) "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.

(B) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 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.

(C) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(D) "Income" includes retirement benefits, consultant fees, and stock dividends.

(ii) For the purposes of this subparagraph, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

§ 123.8 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information 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 Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to

regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before 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.

(e) *State NPDES programs only.* State NPDES compliance evaluation programs shall have procedures and ability for:

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits and a schedule of reports required to be submitted by permittees 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 priorities for further substantive technical evaluation;

(3) When warranted, conducting a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;

(4) Maintaining a management information system which supports the compliance evaluation activities of this Part; and

(5) Inspecting the facilities of all major dischargers at least annually.

§ 123.9 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

[Note.—This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering 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 conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) *State RCRA programs only.* (A) Civil penalties shall be recoverable for any program violation in at least the amount of $10,000 per day.

(B) Criminal remedies shall be obtainable against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of program compliance. Criminal fines shall be recoverable in at least the amount of $10,000 per day for each violation, and imprisonment for at least six months shall be available.

(ii) *State UIC programs only.* (A) For all wells except Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of $2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of $1,000 per day.

(B) Criminal fines shall be recoverable in at least the amount of $5,000 per day against any person who willfully violates any program requirement, or, for Class II wells, pipeline (production) severance shall be imposable against any person who willfully violates any program requirement.

(iii) *State NPDES and section 404 programs only.* (A) Civil penalties shall be recoverable for the violation of any NPDES or section 404 permit condition; any NPDES or section 404 filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Director. Such penalties shall be assessable in at least the amount of $5,000 per day for each violation.

(B) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any NPDES or section 404 permit condition; or any NPDES or section 404 filing requirement. Such fines shall be assessable in at least the amount of $10,000 per day for each violation.

[Note.—States which provide criminal remedies based on "criminal negligence," "gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(iii)(B) of this section.]

(C) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any NPDES or section 404 form, in any notice or report required by an NPDES or section 404 permit, or who knowingly renders inaccurate any moitoring device or method required to be maintained by the Director. Such fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

[Note.—In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) 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.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, 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.

[Note.—For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under paragraph (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. If such 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 warrant. In the case of a penalty for a 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, defiance, 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).

[Note.—In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.8(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

§ 123.10 Sharing of information.

(a) Any information obtained or used in the administration of 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 section. 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 shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 123.11 Coordination with other programs.

(a) Issuance of State permits under this Part may be coordinated with issuance of RCRA, UIC, NPDES, and 404 permits whether they are controlled by the State, EPA, or the Corps of Engineers. See § 124.4.

(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 (40 CFR Part 255) as responsible for the development and implementation of State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 123.12 Approval process.

The process for EPA approval of State programs is set out in §§ 123.39 (RCRA), 123.54 (UIC), 123.77 (NPDES), and 123.104 (404).

§ 123.13 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. 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 EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA 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 the **Federal Register** and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this Part and of the appropriate Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the **Federal Register.** Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.4(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) *State RCRA programs only.* All new programs must comply with these regulations immediately upon approval. Any approved program which requires revision because of a modification to this Part or to 40 CFR Parts 122, 124, 260, 261, 262, 263, 264, 265 or 266 shall be so revised within one year of the date of promulgation of such regulation, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within two years.

(f) *State UIC programs only.* The State shall submit the information required under paragraph (b)(1) of this section within 270 days of any amendment to this Part or 40 CFR Parts 122, 124, or 146 which revises or adds any requirement

respecting an approved State UIC program.

(g) *State NPDES programs only.* All new programs must comply with these regulations immediately upon approval. Any approved State section 402 permit program which requires revision to conform to this Part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within 2 years, except that revision of State programs to implement the requirements of 40 CFR Part 403 (pretreatment) shall be accomplished as provided in 40 CFR § 403.10. In addition, approved States shall submit, within 6 months, copies of their permit forms for EPA review and approval. Approved States shall also assure that permit applicants, other than POTWs, either (1) whose permits expire after November 30, 1980 or (2) whose permits expire before November 30, 1980 and who have not reapplied for a permit prior to April 30, 1980, submit, as part of their application, the information required under §§ 122.4(d) and 122.53 (d) or (e), as appropriate.

(h) *State section 404 programs only.* The Regional Administrator shall consult with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service regarding any substantial program revision, and shall consider their recommendations prior to approval of any such revision.

§ 123.14 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when 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) When 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; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When 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; or

(iii) Failure to comply with the public participation requirements of this Part.

(3) When 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 adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.6.

§ 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 (or the Secretary in the case of section 404 programs) (such as permits, permit files, compliance files, reports, permit applications) 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, other regulated persons 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 § 123.55.

(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 as set forth in § 123.14. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether 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 hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of "Act," "Administrative Law Judge," "Hearing," "Hearing Clerk," and "Presiding Officer" in 40 CFR § 22.03 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 of 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 40 CFR Part 22 (Consolidated Rules of Practice) are applicable to proceedings under this paragraph:

(i) § 22.02—(use of number/gender);

(ii) § 22.04(c)—(authorities of Presiding Officer);

(iii) § 22.06—(filing/service of rulings and orders);

(iv) § 22.07(a) and (b)—*except 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) § 22.08—*however,* substitute "order commencing proceedings" for "complaint"—(Ex Parte contacts);

(vi) § 22.09—(examination of filed documents);

(vii) § 22.11(a), (c) and (d), *however,* motions to intervene must be filed within 15 days from the date the notice

of the Administrator's order is first published—(intervention);

(viii) § 22.16 *except that*, service shall be in accordance with paragraph (b)(4) of this section, the first sentence in § 22.16(c) shall be deleted, and, the word "recommended" shall be substituted for the word "initial" in § 22.16(c)—(motions);

(ix) § 22.19(a), (b) and (c)—(prehearing conference);

(x) § 22.22—(evidence);

(xi) § 22.23—(objections/offers of proof);

(xii) § 22.25—(filing the transcript); and

(xiii) § 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, and 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 in the Office of the Hearing Clerk, upon payment of costs. 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, at the discretion of the Presiding Officer, be permitted to make a limited appearance by making an oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(6) *Rights of parties.* All parties to the proceeding may:

(i) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(ii) 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, and reply briefs, the Presiding Officer shall evaluate the record before him/her, 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 supporting brief.

(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 and regulations 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 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 appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes 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, nor does it affect the validity of actions by the State prior to withdrawal.

Subpart B—Additional Requirements for State Hazardous Waste Programs

§ 123.31 Purpose and scope.

(a) This Subpart specifies additional requirements a State program must meet in order to obtain final authorization under section 3006(b) of RCRA. All of the requirements a State program must meet in order to obtain interim authorization under section 3006(c) of RCRA are specified in Subpart F.

(b) States approved under this Subpart are authorized to administer and enforce their hazardous waste program in lieu of the Federal program.

(c) States may apply for final authorization at any time after the initial promulgation of Phase II. State programs under final authorization may not take effect until the effective date of Phase II.

(d) States operating under interim authorization may apply for and receive final authorization as specified in paragraph (c) of this section. Notwithstanding approval under Subpart F, such States must meet all the requirements of Subpart A and this subpart in order to qualify for final authorization.

(e) States need not have been approved under Subpart F in order to qualify for final authorization.

§ 123.32 Consistency.

To obtain approval, a State program must be consistent with the Federal program and State programs applicable in other States and in particular must comply with the provisions below. For purposes of this section the phrase "State programs applicable in other States" refers only to those State hazardous waste programs which have received final authorization under this Part.

(a) Any aspect of the State program which unreasonably 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 authorized to operate under the Federal or an approved State program shall be deemed inconsistent.

(b) Any aspect of State law or of the State program which has no basis in human health or environmental protection and which acts as a prohibition on the treatment, storage or disposal of hazardous waste in the State may be deemed inconsistent.

(c) If the State manifest system does not meet the requirements of this Part, the State program shall be deemed inconsistent.

§ 123.33 Requirements for identification and listing of hazardous wastes.

The State program must control all the hazardous wastes controlled under 40 CFR Part 261 and must adopt a list of hazardous wastes and a set of characteristics for identifying hazardous wastes equivalent to those under 40 CFR Part 261.

§ 123.34 Requirements for generators of hazardous wastes.

(a) The State program must cover all generators covered by 40 CFR Part 262. States must require new generators to contact the State and obtain an EPA identification number before they perform any activity subject to regulation under the approved State hazardous waste program.

(b) The State shall have authority to require and shall require all generators to comply with reporting and recordkeeping requirements equivalent to those under 40 CFR §§ 262.40 and 262.41. States must require that generators keep these records at least 3 years.

(c) The State program must require that generators who accumulate hazardous wastes for short periods of time prior to shipment off-site do so in containers meeting DOT shipping requirements under 49 CFR Parts 173, 178 and 179 or accumulate such wastes in tanks in accordance with State storage standards authorized by EPA under the approved State program.

(d) The State program must require that generators comply with requirements that are equivalent to the requirements for the packaging, labeling, marking, and placarding of hazardous waste under 40 CFR §§ 262.30 to 262.33, and are consistent with relevant DOT regulations under 49 CFR Parts 172, 173, 178 and 179.

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR § 262.50, except that advance notification of international shipments, as required by 40 CFR § 262.50(b)(1), shall be filed with the Administrator. The State may require that a copy of such advance notice be filed with the State Director, or may require equivalent reporting procedures.

[Note.—Such notices shall be mailed to Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A–107), U.S. Environmental Protection Agency, Washington, D.C. 20460.]

(f) The State must require that all generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site:

(1) Use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery, and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved State program or the Federal program;

(2) Initiate the manifest and designate on the manifest the storage, treatment, or disposal facility to which the waste is to be shipped;

(3) Ensure that all wastes offered for transport are accompanied by the manifest, except in the case of shipments by rail or water specified in 40 CFR §§ 262.23(c) and 263.20(e). The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR §§ 262.23(c) and 263.20(e).

(4) Investigate instances where manifests have not been returned by the owner or operator of the designated facility and report such instances to the State in which the shipment originated.

(g) In the case of interstate shipments for which the manifest has not been returned, the State program must provide for notification to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to EPA in the case of unauthorized States).

(h) The State must follow the Federal manifest format (40 CFR § 262.21) and may supplement the format to a limited extent subject to the consistency requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.).

§ 123.35 Requirements for transporters of hazardous wastes.

(a) The State program must cover all transporters covered by 40 CFR Part 263. New transporters must be required to contact the State and obtain an EPA identification number from the State before they accept hazardous waste for transport.

(b) The State shall have the authority to require and shall require all transporters to comply with recordkeeping requirements equivalent to those found at 40 CFR § 263.22. States must require that records be kept at least 3 years.

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR § 263.20(e), and to deliver wastes only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR § 263.20(e).

(d) For hazardous wastes that are discharged in transit, the State program must require that transporters notify appropriate State, local, and Federal agencies of such discharges, and clean up such wastes, or take action so that such wastes do not present a hazard to human health or the environment. These requirements shall be equivalent to those found at 40 CFR §§ 263.30 and 263.31.

§ 123.36 Requirements for hazardous waste management facilities.

The State shall have standards for hazardous waste management facilities which are equivalent to 40 CFR Parts 264 and 266. These standards shall include:

(a) Technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, and land treatment facilities;

(b) Financial responsibility during facility operation;

(c) Preparedness for and prevention of discharges or releases of hazardous waste; contingency plans and emergency procedures to be followed in the event of a discharge or release of hazardous waste;

(d) Closure and post-closure requirements including financial requirements to ensure that money will be available for closure and post-closure monitoring and maintenance;

(e) Groundwater monitoring;

(f) Security to prevent unauthorized access to the facility;

(g) Facility personnel training;

(h) Inspections, monitoring, recordkeeping, and reporting;

(i) Compliance with the manifest system, including the requirement that facility owners or operators return a signed copy of the manifest to the generator to certify delivery of the hazardous waste shipment;

(j) Other requirements to the extent that they are included in 40 CFR Parts 264 and 266.

§ 123.37 Requirements with respect to permits and permit applications.

(a) State law must require permits for owners and operators of all hazardous waste management facilities required to obtain a permit under 40 CFR Part 122 and prohibit the operation of any hazardous waste management facility without such a permit, *except that* States may, if adequate legal authority exists, authorize owners and operators of any facility which would qualify for interim status under the Federal program to remain in operation until a final decision is made on the permit application. Where State law authorizes such continued operation it shall require compliance by owners and operators of such facilities with standards at least as stringent as EPA's interim status standards at 40 CFR Part 265.

(b) The State must require all new HWM facilities to contact the State and obtain an EPA identification number before commencing treatment, storage, or disposal of hazardous waste.

(c) All permits issued by the State shall require compliance with the standards adopted by the State under § 123.36.

(d) All permits issued under State law prior to the date of approval of final authorization shall be reviewed by the State Director and modified or revoked and reissued to require compliance with the requirements of this Part.

§ 123.38 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits as provided in the Memorandum of Agreement under § 123.6.

(b) Where EPA indicates, in a comment, that issuance of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

(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 conditions which the permit would include if it were issued by the Regional Administrator).

(c) A copy of any comment shall be sent to the permit applicant by the Regional Administrator.

(d) The Regional Administrator shall withdraw such a comment when satisfied that the State has met or refuted his or her concerns.

(e) Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the following conditions:

(1) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition of that permit.

(2) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the grounds that the permittee is not complying with a condition that the Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

(3) The Regional Administrator may not take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition necessary to implement approved State program requirements unless the Regional Administrator stated in commenting on the permit application or draft permit that that condition was necessary.

(4) The Regional Administrator may take action under section 7003 of RCRA against a permit holder at any time whether or not the permit holder is complying with permit conditions.

§ 123.39 Approval process.

(a) 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;

(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 time interested members of the public may 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. 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;

(6) Briefly outline the fundamental aspects of the State program; and

(7) Identify a person that an interested member of the public may contact with any questions.

(b) If the proposed State program is substantially modified after the public comment period provided in paragraph (a)(4) of this section, the State shall, prior to submitting its program to the Administrator, provide an opportunity for further public comment in accordance with the procedures of paragraph (a) 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.

(c) After complying with the requirements of paragraphs (a) and (b) of this section the State may submit, in accordance with § 123.3, a proposed program to EPA for approval. Such formal submission may only be made after the date of promulgation of Phase II. The program submission shall include copies of all written comments received by the State, a transcript, recording, or summary of any public hearing which was held by the State, and 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.

(d) Within 90 days from the date of receipt of a complete program submission for final authorization, the Administrator shall make a tentative determination as to whether or not he expects to grant authorization to the State program. 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 paragraph (a)(1) of this section. Notice of the tentative determination of authorization shall also:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the tentative determination of authorization. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient

public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission and the tentative determination; and

(3) Note the availability of the State submission for inspection and copying by the public.

(e) Within 90 days of the notice given pursuant to paragraph (d) 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 will grant final authorization only after the effective date of Phase II. The Administrator shall give notice of this final determination in the Federal Register and in acccordance with paragraph (a)(1) of this section. The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

Subpart C—Additional Requirements for State UIC Programs

§ 123.51 Purpose and scope.

(a) This Subpart describes additional substantive and procedural requirements for State UIC programs authorized under section 1422 of SDWA.

(b) States 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. 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.

[Note.—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.]

(d) If a State can demonstrate to EPA's satisfaction that there are no underground injections within the State for one or more classes of injection wells (other than Class IV wells) subject to SDWA and that such injections cannot legally occur in the State until the State has developed an approved program for those classes of injections, the State need not submit a program to regulate those injections and a partial program may be approved. The demonstration of legal prohibition shall be made by either explicitly banning new injections of the class not covered by the State program or providing a certification from the State Attorney General that such new injections cannot legally occur until the State has developed an approved program for that class. The State shall submit a program to regulate both those classes of injections for which a demonstration is not made and Class IV wells.

(e) When a State UIC program is fully approved by EPA to regulate all classes of injections, 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. States which have partially approved programs have authority to enforce any violation of the approved portion of their program. EPA retains authority to enforce violations of State underground injection control programs, 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.

§ 123.52 Requirement to obtain a permit.

States may authorize certain well injections by rule rather than by permit. Any authorization by rule shall comply with § 122.37.

§ 123.53 Progress reports.

States shall submit to the Administrator 6 months after the date of promulgation of these regulations 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 Administrator may prescribe the manner and form of the report.

§ 123.54 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 and to any other persons whom the agency has reason to believe are interested;

(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 may 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) Identify a person that an interested member of the public may contact for further information.

(b) After complying with the requirements of paragraph (a) of this section any State may submit a proposed UIC program under section 1422 of SDWA and § 123.3 of this Part to EPA for approval. Such a submission shall include a showing of compliance with paragraph (a) of this section, copies of all written comments received by the State, a transcript, recording or summary of any public hearing which was held by the State, and 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. A copy of the responsiveness summary shall be sent to those who testified at the hearing, and others upon request.

(c) After determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission in the Federal Register and in accordance with paragraph (a)(1) of this section. Such notice shall:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the hearing. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State submission for inspection and copying by the public.

(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 taking into account any comments submitted. The Administrator shall give notice of this rule in the **Federal Register** and in accordance with paragraph (a)(1) of this section. If the Administrator determines not to approve the State program or to approve it only in part, the notice shall include a concise statement of the reasons for this determination. 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. The responsiveness summary shall be sent to those who testified at the public hearing, and to others upon request.

§ 123.55 Procedures for withdrawal of State UIC programs.

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. Notice of such public hearing shall be published in the **Federal Register** and in enough of the largest newspapers in the State to attract statewide attention, and mailed to persons on appropriate State and EPA mailing lists. 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 persons shall be given opportunity to make written or oral presentations on the State's program at the public hearing.

(c) *Notice to State of Findings.* Wherein 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.

Subpart D—Additional Requirements for State NPDES Programs

§ 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 prohibit (except as provided in § 122.51(c)(2)) all point source discharges of pollutants, all discharges into aquaculture projects, and all 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, except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.3 before EPA will begin formal review.

(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, with the consent of the State, retain jurisdiction until the matter is resolved.

§ 123.72 Control of disposal of pollutants into wells.

State law must provide authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State 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 conditions. A program approved under section 1422 of SDWA satisfies the requirements of this section.

[**Note.**—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.]

§ 123.73 Receipt and use of Federal information.

Upon approving a State permit program, EPA shall send to the State agency administering the permit program 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. When 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.

§ 123.74 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. Proposed permits shall be prepared by State agencies unless agreement to the contrary has been reached under § 123.75(j). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of all complete permit applications received by the State Director, except those for which permit review has been waived under § 123.6(e). The State shall supply EPA with copies of permit applications for which permit review has been waived whenever requested by EPA;

(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 or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under § 123.6(e). The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) The State shall transmit a copy of each draft general permit or proposed general permit, except those for separate storm sewers, to the EPA Deputy Assistant Administrator for Water Enforcement at the same time the draft general permit or proposed general permit is transmitted to the Regional Administrator under paragraph (a)(2) of this section.

(c) The State program shall provide for transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.61(b) 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 of a draft permit and a summary of any significant comments presented at any hearing on any draft permit, except those comments regarding permits for which permit review has been waived under § 123.6(e) and for which EPA has not otherwise requested receipt, 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 objecting to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice.

(d) 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.

§ 123.75 EPA review of and objections to State permits.

(a)(1) The Memorandum of Agreement shall provide a period of time (up to 90 days from receipt of proposed permits) in which the Regional Administrator may make general comments upon, objections to, or recommendations with respect to proposed permits. EPA reserves the right to take 90 days to supply specific grounds for objection, notwithstanding any shorter period specified in the Memorandum of Agreement, when a general objection is field within the review period specified in the Memorandum of Agreement. The Regional Administrator shall send a copy of any comment, objection or recommendation to the permit applicant.

(2) In the case of general permits, EPA shall have 90 days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the proposed general permit, and is not bound by any shorter time limits set by the Memorandum of Agreement for general comments, objections or recommendations. The EPA Deputy Assistant Administrator for Water Enforcement may comment upon, object to, or make recommendations with respect to proposed general permits, except those for separate storm sewers, on EPA's behalf.

(b)(1) Within the period of time provided under the Memorandum of Agreement for making general comments upon, objections to or recommendations with respect to proposed permits, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section for proposed general permits). This notification shall set forth in writing the general nature of the objections.

(2) Within 90 days following receipt of a proposed permit to which he or she has objected under paragraph (b)(1) of this section, 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 Regional Administrator or the EPA Deputy Assistant Administrator for Water Enforcement, shall 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 thereunder that support the objection), and

(ii) The actions that must be taken by the State Director to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator).

[Note.—Paragraphs (a) and (b) of this section, in effect, modify 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, when an agreement provides for an EPA review period of less than 90 days, EPA must file a general objection, in accordance with paragraph (b)(1) of this section, within the time specified in the agreement. This general objection must be followed by a specific objection within the 90-day period. This modification to MOA's allows EPA to provide detailed information concerning acceptable permit conditions, as required by section 402(d) of CWA. To avoid possible confusion, MOA's should be changed to reflect this arrangement.]

(c) The Regional Administrator's objection to the issuance of a proposed permit 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;

[Note.—For example, the Regional Administrator may object to a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines.]

(2) In the case of a 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; 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.

(d) 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 § 123.74;

(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 § 123.74, 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 interested persons an opportunity to comment on the basis for the objection;

(e) 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. A public hearing in accordance with the procedures of §§ 124.12 (c) and (d) shall be held, and public notice provided in accordance with § 124.10, whenever requested by the State or the interstate agency which proposed the permit or if warranted by significant public interest based on requests received.

(f) A public hearing held under paragraph (e) of this section shall be conducted by the Regional Administrator, and, at the Regional Administrator's discretion, with the assistance of an EPA panel designated by the Regional Administrator, in an orderly and expeditious manner.

(g) Following 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.

(h)(1) If no public hearing is held under paragraph (e) of this section and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection, the Regional Administrator may issue the permit in accordance with Parts 121, 122, and 124 of this chapter and any other guidelines and requirements of CWA.

(2) If a public hearing is held under paragraph (e) of this section, the Regional Administrator does not withdraw the objection, 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 (g) of this section, the Regional Administrator may issue the permit in accordance with Parts 121, 122, and 124 of this chapter and any other guidelines and requirements of CWA.

(3) Exclusive authority to issue the permit passes to EPA when the times set out in this paragraph expire.

(i) In the case of proposed general permits for discharges other than from separate storm sewers insert "or the EPA Deputy Assistant Administrator for Water Enforcement" after "Regional Administrator" whenever it appears in paragraphs (c)–(h) of this section.

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.6, to review draft permits rather than proposed permits. In such a case, a proposed permit need not be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.

§ 123.76 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.75.

§ 123.77. 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 persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State. The 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**. The Regional Administrator shall suspend the issuance of permits by EPA 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 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 CWA (regulating discharges of dredged or fill material). Because EPA does not operate the section 404 program, the permit requirements in Parts 122 and 124 are relevant to section 404 programs only to the extent they are made applicable to State section 404 programs in § 123.7(a). Additional permit application and processing requirements applicable to State 404 programs are set out in this Subpart.

(b) The requirements for State section 404 programs 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 § 123.92, the State program must regulate all discharges of dredged or fill material into State regulated waters. State section 404 programs are limited under section 404(g)(1) of CWA to coverage of such State regulated waters. See the definition of "State regulated waters" in § 122.3.

(d) 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. If the Secretary has retained jurisdiction and if a 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.

§ 123.92 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 subpart:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been coverted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii)(A) *Cultivating* means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) *Harvesting* means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(*1*) *Minor Drainage* means:

(*i*) The discharge or dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.);

(*ii*) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(*iii*) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species;

[Note.—The provisions of paragraphs (a)(1)(iii)(C)(*1*)(*ii*) and (*iii*) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (*e.g.*, the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.]

(*iv*) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within

one year of formation of such blockages in order to be eligible for exemption.

(2) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) *Plowing* means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing, and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of spoil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing will never involve a discharge of dredged or fill material.

(E) *Seeding* means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. A simple connection of an irrigation return or supply ditch to waters of the U.S. and related bank stabilization measures are included within this exemption. Where a trap, weir, groin, wall, jetty or other structure within waters of the U.S., which will result in significant discernable alterations to flow or circulation, is constructed as part of the connection, such construction requires a 404 permit.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of CWA which meets the requirements of sections 208(b)(4) (B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the State's approved program description pursuant to the requirements of § 123.4(h)(4), and shall also include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1)–(6) of this section contains any toxic pollutant listed under section 307 of CWA such discharge shall be subject to any applicable toxic effluent standard or

prohibition, and shall require a permit under the State program.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a) (1)–(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation *may* be impaired by such alteration.

[Note.—For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill materials into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.]

(d) Federal projects which qualify under the criteria contained in section 404(r) of CWA (Federal projects authorized by Congress where an EIS has been submitted to Congress prior to authorization or an appropriation) are exempt from State section 404 permit requirements, but may be subject to other State or Federal requirements.

§123.93 Prohibitions.

No permit shall be issued by the State Director in the following circumstances:

(a) When the 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) When the Regional Administrator has objected to issuance of the permit under section 404(j) of CWA and the objection has not been resolved.

(c) When, 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) When 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, and the discharge would fail to comply with the Administrator's actions under that authority.

§ 123.94 Permit application.

(a) *Publicity and preapplication consultation.* The State Director shall 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. The State Director is encouraged to include preapplication consultation as part of this program to assist applicants in understanding the requirements of the environmental guidelines issued under section 404(b)(1) of CWA (40 CFR Part 230) and in fulfilling permit application requirements.

(b) *Application for permit.* Except when an activity is authorized by a general permit under § 123.95 or is exempt from the requirement to obtain a permit under § 123.92, 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. State application forms are subject to EPA review and approval.

(c) *Content of Application.* A complete application shall include the following information:

(1) A complete description of the proposed activity including:

(i) Name, address, and phone number of the applicant; the names, addresses, and phone numbers of owners of properties adjacent to the site; and, if appropriate, the location and dimensions of adjacent structures;

(ii) A description of 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; and the extent (in acres) of the area of waters of the United States to be filled or used for disposal;

(iii) The purpose and intended use of the proposed activity (including whether it is water-dependent); a description of the use of any structures to be erected on the fill; and a schedule for the proposed activity;

(iv) A list of the approvals required by other Federal, interstate, State and local agencies for the activity, including all approvals or denials received; and

(v) A vicinity map identifying the proposed disposal site and the local jurisdiction closest to the disposal site.

(2) Information about the disposal site needed to evaluate compliance with 40 CFR Part 230, including the following:

(i) A description of known alternatives to the proposed discharge, including alternative disposal sites, construction methods, methods of discharge, and reasons for rejecting the alternatives;

(ii) A description of special aquatic sites, public use areas, wildlife refuges, and public water supply intakes in the affected or adjacent areas that may require special protection or preservation;

(iii) Plants, fish, shellfish, and wildlife in the disposal site which may be dependent on water quality and quantity;

(iv) Uses of the disposal site which might affect human health and welfare; and

(v) A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the discharge. Guidelines for minimizing the adverse effects of discharges of dredged or fill material are found in 40 CFR Part 230.

[Note.—The State shall provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required under this paragraph. The level of detail shall be reasonably commensurate with the type and size of discharge, proximity to critical areas, likelihood of presence of long-lived toxic chemical substances, and degree of environmental degradation.]

(3) One original set of drawings and maps, or one set of drawings and maps of reproducible quality, including:

(i) A map showing the following in plan view:

(A) Location of the activity site including latitude, 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 the closest practicable access to the site;

(E) North arrow;

(F) Arrows showing flow and circulation patterns;

(G) Existing shorelines or ordinary high watermark;

(H) Location of known wetlands;

(I) Water depths and bottom configuration around the project;

(J) Delineation of disposal site;

(K) Size-relationship between the proposed disposal site and affected waters (*e.g.*, a ¼ acre fill in a 15-acre wetland);

(L) Location of previously used dredged material disposal sites with remaining capacity in the vicinity of the

project. The map must indicate retention levees, weirs, and any other devices for retaining dredged or fill materials; and

(M) 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.

(ii) A cross-sectional view of the proposed project showing the following:

(A) Water elevations;

(B) Water depths at waterward face of proposed work, or if dredging is proposed, showing dredging grade;

(C) Cross-section of fill;

(D) Elevation of spoil areas;

(E) Location of wetlands; and

(F) Delineation of disposal site.

(iii) Notes on all maps or drawings submitted, including:

(A) A list of names of adjacent property owners whose property also adjoins the water and who are not shown in the plan view;

(B) 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, State and nearest incorporated municipality; name of applicant; number of the sheet and the total number of sheets in set; and date the drawing was prepared; and

(C) Graphic or numerical scale.

§ 123.95 General permits.

(a) *Coverage.* The State Director may issue a general permit for similar activities as specified in paragraph (b)(1) of this section within a defined geographic area as specified in paragraph (b)(2) of this section, if he or she determines that the regulated activities will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effects on the environment.

(b) *Conditions.* In addition to §§ 122.7 and 123.97, and the applicable requirements of § 123.98, each general permit shall contain conditions as follows:

(1) *Activities:* A specific description of the type(s) of activities which are authorized, including limitations for any single operation, to ensure that the requirements of paragraph (a) of this section are satisfied. At a minimum, these limitations shall include:

(i) The maximum quantity of material that may be discharged;

(ii) The type(s) of material that may be discharged;

(iii) The depth of fill permitted;

(iv) The maximum extent to which an area may be modified; and

(v) The size and type of structures that may be constructed.

(2) *Area:* A precise description of the geographic area to which the general permit applies, including, when appropriate, limitations on the types of waters or wetlands where operations may be conducted, to ensure that the requirements of paragraph (a) of this section are satisfied.

(3) *Notice:* The permit shall contain a requirement that no activity is authorized under the general permit unless the Director receives notice at least 30 days in advance of the date when the proposed activity is to commence. The Director may require any information in the notice necessary to determine whether the conditions of the general permit will be satisfied. If within 15 days of the date of submission of the notice the owner or operator has not been informed by the State Director of his or her intent to require an individual permit application, the owner or operator may commence operations under the general permit.

(c) *Requiring an individual permit.*

(1) Upon receiving notice under paragraph (b)(3) of this section, the State Director may require, at his discretion, that the owner or operator apply for an individual permit. Cases where an individual permit may be required include:

(i) The activity has more than a minimal adverse environmental effect;

(ii) The cumulative effects on the environment of the authorized activities are more than minimal; or

(iii) The discharger is not in compliance with the conditions of the general permit.

(2) When the State Director notifies the owner or operator within 15 days of receipt of notice under paragraph (b)(3) of this section that an individual permit application is required for that activity, the activity shall not be authorized by the general permit.

(3) The Director may require any person authorized under a general permit to apply for an individual permit.

§ 123.96 Emergency permits.

(a) *Coverage.* Notwithstanding any other provision of this Part or Part 124, the State Director may temporarily permit a specific dredge or fill activity if:

(1) An unacceptable hazard to life or severe loss of property will occur if an emergency permit is not granted; and

(2) The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this Part and Part 124.

(b) *Requirements for issuance.* (1) The emergency permit shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of §§ 122.7, 123.97 and 123.98.

(2) Any emergency permit shall be limited in duration to the time required to complete the authorized emergency action, not to exceed 90 days.

(3) The emergency permit must have a condition requiring restoration of the disposal site (for example, removal of fill, steps to prevent erosion). If more than 90 days from issuance is necessary to complete restoration, the permit may be extended for this purpose only.

(4) The emergency permit may be oral or written. If oral, it must be followed within five days by a written emergency permit.

(5) Notice of the emergency permit shall be published and public comments received in accordance with applicable requirements of §§ 124.10 and 124.11 as soon as possible but no later than 10 days after the issuance date.

(6) The emergency permit may be terminated at any time without process if the State Director determines that termination is appropriate to protect human health or the environment.

§ 123.97 Additional conditions applicable to all 404 permits.

The following conditions, in addition to those set forth in § 122.7, apply to all 404 permits:

(a) The permittee need not comply with the conditions of this permit to the extent and for the duration that such noncompliance is authorized in an emergency permit. (See § 123.96.)

(b) Activities are not conducted under the authority of this permit if they are not specifically identified and authorized in this permit.

(c) The permittee shall maintain the authorized work area in good condition and in accordance with the requirements contained in this permit.

(d) If any applicable water quality standards are revised or modified, or if a toxic effluent standard or prohibition under CWA section 307(a) is established for a pollutant present in the permittee's discharge and is more stringent than any limitation in the permit, the permit shall be promptly modified to conform to the standard, limitation or prohibition.

§ 123.98 Establishing 404 permit conditions.

In addition to the conditions established under § 122.8(a), each 404 permit shall include conditions meeting the following requirements, when applicable:

(a) *Identification.* A specific identification and description of the authorized activity, including:

(1) The name and address of the permittee and the permit application identification number;

(2) The use or purpose of the discharge;

(3) The type and quantity of the materials to be discharged;

(4) Any structures proposed to be erected on fill material; and

(5) The location and boundaries of the discharge site(s), including a detailed sketch and the name and a description of affected State regulated waters.

(b) *Environmental guidelines.* Provisions ensuring that the discharge will be conducted in compliance with the environmental guidelines issued under section 404(b)(1) of CWA (40 CFR Part 230), including conditions to ensure that the discharge will be conducted in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of the waters of the United States, such as requirements for restoration or mitigation.

(c) *Water quality standards.* Any requirements necessary to comply with water quality standards established under applicable Federal or State law. If an applicable water quality standard is promulgated after the permit is issued, it shall be modified as provided in § 123.97(d).

(d) *Toxic effluent guidelines or prohibitions.* Requirements necessary to comply with any applicable toxic effluent standard or prohibition under section 307(a) of CWA or applicable State or local law. If an applicable toxic effluent standard or prohibition is promulgated after the permit is issued, it shall be modified as provided in § 123.97(d).

(e) *Best Management Practices.* Applicable BMPs approved by a Statewide CWA section 208(b)(4) agency as provided in the agreement described in § 123.102(a)(1).

(f) *General permits.* Any conditions necessary for general permits as required under § 123.95.

(g) *Commencement of work.* A specific date on which the permit shall automatically expire, unless previously revoked and reissued or modified or continued, if the authorized work has not been commenced.

§ 123.99 Memorandum of Agreement with the Secretary.

Before a State program is approved under this Part, the State shall enter into a Memorandum of Agreement with the Secretary. Where more than one agency within a State has responsibility for administering the State program, all of the responsible agencies shall be parties to the Memorandum of Agreement. The Memorandum of Agreement shall include:

(a) A description of State regulated waters, as identified by the Secretary.

(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, provided such procedures satisfy the requirements of this Part.

(c) An identification of those general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce upon receiving approval of its program and a plan for transferring responsibility for these permits to the State, including procedures for the prompt transmission from the Secretary to the State Director of relevant information not already in the possession of the State Director including support files for permit issuance, compliance reports and records of enforcement actions. In many instances States will lack the authority to directly administer permits issued by the Federal government. However, procedures authorized under State law may be established to transfer responsibility for these permits.

(d) Procedures whereby the Secretary will, upon program approval, transfer to the State pending section 404 permit applications and other relevant information, not already in the possession of the State Director.

(e) 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.

(f) A provision 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.

(g) Those classes or categories, if any, of proposed State permits for which the Secretary waives the right to review.

(h) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[Note.—For example, where a 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.]

§ 123.100 Transmission of information to EPA and other Federal agencies.

(a) The Memorandum of Agreement under § 123.6 shall provide for the following:

(1) Prompt transmission to the Regional Administrator (by certified mail) and to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of a copy of all complete permit applications received by the State Director, except those for which permit review has been waived under § 123.6(f)(1)(i). The State shall supply EPA, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service with copies of permit applications for which permit reivew has been waived whenever requested by such agencies. Where State law requires preparation of an environmental impact statement (EIS) or similar document, and such EIS or other document is available, the EIS or other document shall accompany the permit application when transmitted to the Regional Administrator.

(2) Prompt transmission to the Regional Administrator (by certified mail) and to the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of notice of every action taken by the State agency related to the consideration of any permit application, including a copy of each draft permit prepared, and any conditions, requirements, or documents which are related to the draft permit or which affect the authorization of the draft permit. A draft permit shall be prepared by the State and transmitted to EPA:

(i) At the time of transmission of the complete permit application, for discharges listed in § 123.6(f)(1)(i)(A)–(E);

(ii) Upon request of EPA in accordance with § 123.101(e)(3), for discharges not listed in § 123.6(f)(1)(i)(A)–(E), unless EPA has waived review under § 123.6(f)(1)(i).

(3) Prompt transmission to the Regional Administrator, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of a copy of each draft general permit. A draft general permit shall be prepared by the State whenever the State intends to issue a general permit.

(4) Transmission to the Regional Administrator, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service of a copy of every issued permit following issuance, along with any and all conditions and requirements.

(b)(1) State section 404 programs shall comply with the draft permit requirements of §§ 124.6 (a), (c), (d), and (e) and 124.8 for those discharges which require a draft permit under paragraph (a)(2) of this section and for those discharges to be regulated by general permits. For discharges which require a draft permit under paragraph (a)(2) of this section, public review and EPA review, under § 123.101, shall be based on the permit application and the draft permit. For discharges to be regulated by general permits, public review and EPA review shall be based on the draft general permit.

(2) For all other discharges, public review and EPA review, if not waived under § 123.6(f)(1)(i), shall be based on the permit application. For these discharges, States need not comply with §§ 124.6 (a), (c), (d), and (e) or 124.8.

§ 123.101 EPA review of and objections to State permits.

(a) The Memorandum of Agreement shall provide that the Regional Administrator may comment upon, object to, or make recommendations with respect to permit applications, draft permits (if prepared under § 123.100), or draft general permits within 90 days of receipt. If the Regional Administrator intends to comment upon, object to, or make recommendations with respect to a permit application, draft permit, or draft general permit, he or she shall notify the State Director of his or her intent within 30 days of receipt. The Regional Administrator may notify the State within 30 days of receipt that there is no comment but reserve the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing. The Regional Administrator shall send a copy of any comment, objection, or recommendation to the permit applicant.

(b) Within 90 days following receipt of a permit application, draft permit or draft general permit for which the Regional Administrator has provided notification under paragraph (a) of this section, the Regional Administrator may object to permit issuance. In order to object, the Regional Administrator shall set forth in writing and transmit to the State Director:

(1) A statement of the reason(s) for the objection (including the section of CWA or regulations thereunder that support the objection); and

(2) 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).

(c) When the State Director has received an objection to a permit application, draft permit, or draft general permit under this section and has taken the steps required by the Regional Administrator to eliminate the objection, a revised permit shall be prepared and 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.

(d) Any objection under this section must be based upon one or more of the following grounds:

(1) The permit application, draft permit, or draft general permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

(2) In the case of any permit application 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 (see § 123.102(c));

(3) The procedures followed in connection with processing the permit failed in a material respect to comply with procedures required by CWA, by this Part, by other regulations and guidelines thereunder, or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the draft permit or draft general permit misinterprets CWA or any guidelines or regulations thereunder, or misapplies them to the facts;

(5) Any provisions of the permit application, draft permit, or draft general 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 40 CFR Part 230, or by the draft permit or draft general permit;

(6) The information contained in the permit application is insufficient to judge compliance with 40 CFR Part 230; or

(7) 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.

(e) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (d) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to §§ 123.100 and 123.102.

(2) Shall, if the information provided is inadequate to determine whether the permit application, draft permit, or draft general 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, including a supplemented application, that the Regional Administrator determines are necessary for review. This request shall be made within 30 days of receipt of the State submittal under § 123.100. It shall constitute an interim objection to the issuance of the permit, and the period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall be suspended from the date of the request and shall resume when the Regional Administrator has received such record or other information requested.

(3) May, in the case of discharges for which a draft permit is not automatically required under § 123.100(a)(2)(i), request within 30 days of receipt of the permit application that the State Director prepare a draft permit under § 123.100(a)(2)(ii). The draft permit shall be submitted to EPA and other Federal agencies, as required under § 123.100(a)(2). When a draft permit is prepared under this subparagraph, Federal and public review shall recommence under § 123.100(b)(1). The Regional Administrator's period for review shall begin upon receipt of the draft permit.

[Note.—It is anticipated that draft permits will be requested only in exceptional and/or complex cases.]

(4) May, at his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to interested persons an opportunity to comment on the basis for the objection.

(f) 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. A public hearing in accordance with the procedures of §§ 124.12 (c) and (d) shall be held, and public notice provided in accordance with § 124.10, whenever requested by the State issuing the permit, or if warranted by significant public interest based on requests received.

(g) A public hearing held under paragraph (f) of this section shall be conducted by the Regional

Administrator, and, at the Regional Administrator's discretion, with the assistance of an EPA panel designated by the Regional Administrator, in an orderly and expeditious manner.

(h) Following 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.

(i)(1) If no public hearing is held under paragraph (f) of this section and the State does not resubmit a permit revised to meet the Regional Administrator's objection or notify EPA of its intent to deny the permit within 90 days of receipt of the objection, the Secretary may issue the permit in accordance with the guidelines and regulations of CWA.

(2) If a public hearing is held under paragraph (f) of this section, the Regional Administrator does not withdraw the objection, and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection or notify EPA of its intent to deny the permit within 30 days of the date of the Regional Administrator's notification under paragraph (h) of this section, the Secretary may issue the permit in accordance with the guidelines and regulations of CWA.

§ 123.102 Coordination requirements.

(a) *General coordination.* (1) If the State has a Statewide CWA section 208(b)(4) regulatory program, the State Director shall develop an agreement with the agency designated to administer such program. The agreement shall include:

(i) A definition of the activities to be regulated by each program;

(ii) Arrangements providing the agencies an opportunity to comment on prospective permits, BMPs, and other relevant actions; and

(iii) Arrangements incorporating BMPs developed by the section 208(b)(4) program into section 404 permits, where appropriate.

(2) Where a CWA section 208(b)(4) program has been approved under section 208(b)(4)(C), no permit shall be required for activities for which the Administrator has approved BMPs under such approved program except as provided in §§ 123.92 (b) and (c). Until such section 208(b)(4) program has been approved by the Administrator, a person proposing to discharge must obtain an individual permit or comply with a general permit.

(3) The State Director shall consult with any State agency(ies) with jurisdiction over fish and wildlife resources.

(b) *Coordination with other Federal and Federal-State review processes.* State section 404 programs shall assure coordination of State section 404 permits with Federal and Federal-State water related planning and review processes.

(1) The State Director shall assure that the impact of proposed discharges will be consistent with the Wild and Scenic Rivers Act when the proposed discharge could affect portions of rivers designated wild, recreational, scenic, or under consideration for such designation.

(2) Agencies with jurisdiction over Federal and Federal-State water related planning and review processes, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, shall notify the Regional Administrator that they wish to comment on a permit application, draft permit, or draft general permit within 20 days of receipt by the Regional Administrator of the permit application, draft permit, or draft general permit. Such agencies should submit their evaluation and comments to the Regional Administrator within 50 days of receipt by the Regional Administrator of the permit application, draft permit, or draft general permit. The Regional Administrator may allow any such agency up to an additional 30 days to submit comments, upon request of such agency.

(3) All comments from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service on permit applications, draft permits, and draft general permits shall be considered by the Regional Administrator. If the Regional Administrator does not adopt a recommendation of any such agency, he shall consult with that agency. The final decision to object or to require permit conditions shall be made by the Regional Administrator.

(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.

[Note.—States are encouraged to receive and use information developed by the U.S. Fish and Wildlife Service as part of the National Wetlands Inventory as it becomes available.]

§ 123.103 Enforcement authority.

In addition to meeting the requirements of § 123.9, State section 404 programs shall include procedures which enable the State Director to immediately and effectively halt or remove any unauthorized discharges of dredged or fill material, including the authority to issue a cease and desist order, interim protective order, or restoration order to any person responsible for, or involved in, an unauthorized discharge.

§ 123.104 Approval process.

(a) Within 10 days of receipt of a complete State section 404 program submission under § 123.3, 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 persons on appropriate State, EPA, Corps of Engineers, U.S. Fish and Wildlife Service, and National Marine Fisheries Service 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 of the hearing 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 90 days of receipt of a complete program submission under § 123.3, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service shall

submit any comments on the State program.

(d) 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. The Administrator shall respond individually to comments received from the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(e) 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 and not identified in the program description under § 123.4(h)(1) as State regulated waters.

(f) 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 F—Requirements for Interim Authorization of State Hazardous Waste Programs

§ 123.121 Purpose and scope.

(a) This subpart specifies all of the requirements a State program must meet in order to obtain interim authorization under section 3006(c) of RCRA. The requirements a State program must meet in order to obtain final authorization under section 3006(b) of RCRA are specified in Subparts A and B.

(b) Interim authorization of State programs under this Subpart may occur in two phases. The first phase (Phase I) allows States to administer a hazardous waste program in lieu of and corresponding to that portion of the Federal program which covers identification and listing of hazardous waste (40 CFR Part 261), generators (40 CFR Part 262) and transporters (40 CFR Part 263) of hazardous wastes, and establishes preliminary (interim status) standards for hazardous waste treatment, storage and disposal facilities (40 CFR Part 265). The second phase (Phase II) allows States with interim authority for Phase I to establish a permit program for hazardous waste treatment, storage and disposal facilities in lieu of and corresponding to the Federal hazardous waste permit program (40 CFR Parts 264 and 266). States may apply for interim authorization either sequentially (application for interim authorization for Phase I followed by an amendment of that application for Phase II) or all at once (application for interim authorization for both Phases I and II at the same time) as long as they adhere to the schedule in § 123.122.

(c) The Administrator shall approve a State program which meets the applicable requirements of this Subpart.

(d) Upon approval of a State program for Phase II, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(e) Any State program approved by the Administrator under this Subpart shall at all times be conducted in accordance with this Subpart.

(f) Lack of authority to regulate activities on Indian lands does not impair a State's ability to obtain interim authorization under this Subpart. EPA will administer the program on Indian lands if the State does not seek this authority.

[Note.—States are advised to contact the United States Department of Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(g) Nothing is this Subpart precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Subpart.

(2) Operating a program with a greater scope of coverage than that required under this Subpart. Where an approved program has a greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

§ 123.122 Schedule.

(a) Interim authorization for Phase I shall not take effect until Phase I commences. Interim authorization for Phase II shall not take effect until Phase II commences.

(b) Interim authorization may extend for a 24-month period from the commencement of Phase II. At the end of this period all interim authorizations automatically expire and EPA shall administer the Federal program in any State which has not received final authorization.

(c) A State may apply for interim authorization at any time prior to expiration of the 6th month of the 24-month period beginning with the commencement of Phase II.

(1) States applying for interim authorization prior to the promulgation of Phase II shall apply only for interim authorization for Phase I.

(2) States applying for interim authorization after the promulgation of Phase II but before the commencement of Phase II may apply either for interim authorization for both Phase I and Phase II or only for interim authorization for Phase I.

(3) States applying for interim authorization after the commencement of Phase II shall apply for interim authorization for both Phase I and Phase II, unless they have already applied for interim authorization for Phase I.

(4) States which have received interim authorization for Phase I shall amend their original submission to meet the requirements for interim authorization for Phase II not later than 6 months after the effective date of Phase II.

(d) No State may apply for interim authorization for Phase II unless it has received interim authorization for Phase I or is simultaneously applying for interim authorization for both Phase I and Phase II.

§ 123.123 Elements of a program submission.

(a) States applying for interim authorization shall submit at least three copies of a program submission to EPA containing the following:

(1) A letter from the Governor of the State requesting State program approval;

(2) A complete program description, as required by § 123.124, describing how the State intends to carry out its responsibilities under this subpart;

(3) An Attorney General's statement as required by § 123.125;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 123.126;

(5) An authorization plan as required by § 123.127;

(6) Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If a State's submission is found to be complete, EPA's formal review of the proposed State program shall be deemed to have begun on the date of receipt of the State's submission. See § 123.135. If a State's submission is found to be incomplete, formal review shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the formal review period, the formal review period shall recommence upon receipt of the revised submission.

(d) States simultaneously applying for interim authorization for both Phase I and Phase II shall prepare a single submission.

(e) States applying for interim authorization for Phase II shall amend their submission for interim authorization for Phase I as specified in §§ 123.124 to 123.127.

§ 123.124 Program description.

Any State that wishes to administer a program under this Subpart shall submit to the Regional Administrator a complete description of the program it proposes to administer in lieu of the Federal program under State law. A State applying only for interim authorization for Phase II shall amend its program description for interim authorization for Phase I as necessary to reflect the program it proposes to administer to meet the requirements for interim authorization for Phase II. The program description shall include:

(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 the program, each agency must have Statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and one of the agencies must 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 section 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, occupations, and general duties of the employees. 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, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures, and any State appellate review procedures.

[Note.—States applying only for interim authorization for Phase I need describe permitting procedures only to the extent they will be utilized to assure compliance with standards substantially equivalent to 40 CFR Part 265.]

(d) Copies of the forms and the manifest format the State intends to use in its program. Forms used by the State need not be identical to the forms used by EPA, but should require the same basic information. If the State chooses to use uniform national forms it should so note.

(e) A complete description of the State's compliance monitoring and enforcement program.

(f) A description of the State manifest system if the State has such a system and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

(1) Generators;

(2) Transporters; and

(3) On- and off-site treatment, storage and disposal facilities including a brief description of the types of facilities and an indication, if applicable, of the permit status of these facilities.

§ 123.125 Attorney General's statement.

(a) Any State seeking to administer a program under this Subpart 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 § 123.124 and to meet the applicable requirements of this Subpart. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. Except as provided in § 123.128(d), the State Attorney General or independent legal counsel must certify that the enabling legislation for the program for Phase I was in existence within 90 days of the promulgation of Phase I. In the case of a State applying for interim authorization for Phase II, the State Attorney General or independent legal counsel must certify that the enabling legislation for the program for Phase II was in existence within 90 days of the promulgation of Phase II. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be lawfully adopted at the time the statement is signed and shall be fully effective by the time the program is approved. 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. In the case of a State applying only for interim authorization for Phase II, the Attorney General's statement submitted for interim authorization for Phase I shall be amended and recertified to demonstrate adequate authority to carry out all the requirements of this Subpart.

(b)(1) In the case of a State applying only for interim authorization for Phase I, the Attorney General's statement shall certify that the authorization plan under § 123.127(a), if carried out, would provide the State with enabling authority and regulations adequate to meet the requirements for final authorization contained in Phase I.

(2) In the case of a State applying for interim authorization for Phase II, the Attorney General's statement shall certify that the authorization plan under § 123.127(b), if carried out, would provide the State with enabling authority and regulations adequate to meet all the requirements for final authorization.

(c) Where a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 123.126 Memorandum of Agreement.

(a) The State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA). In addition to meeting the requirements of paragraph (b) of this section, and, if applicable, paragraph (c) of this section, 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 subpart. No Memorandum of Agreement shall be approved which contains provisions which restrict EPA's statutory oversight responsibility. In the case of a State applying for interim authorization for

Phase II, the Memorandum of Agreement shall be amended and re-executed to include the requirements of paragraph (c) of this section and any revisions to the requirements of paragraph (b) of this section.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of information obtained in notifications made pursuant to section 3010 of RCRA and received by EPA prior to the approval of the State program, EPA identification numbers for new generators, transporters, and treatment, storage, and disposal facilities, and any other information relevant to effective program operation not already in the possession of the State Director (e.g., pending permit applications, compliance reports, etc.).

(2) Provisions specifying the frequency and content of reports, documents, and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports when appropriate.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(5) A provision allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities during interim authorization. The Regional Administrator and the State Director may agree to limitations regarding compliance inspections of generators, transporters, and non-major HWM facilities.

(6) A provision that no limitations on EPA compliance inspections of generators, transporters, and non-major HWM facilities under paragraph (b)(5) of this section shall restrict EPA's right to inspect any HWM facility, generator, or transporter which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(7) A provision delineating respective State and EPA responsibilities during the interim authorization period.

(c) In the case of a State applying for interim authorization for Phase II, the Memorandum of Agreement shall also include the following:

(1) Provisions for prompt transfer from EPA to the State of pending permit applications and support files for permit issuance. 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. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications and draft permits that the State Director will send to the Regional Administrator for review and comment. The State Director shall promptly forward to EPA copies of permit applications and draft permits for all major HWM facilities. The Regional Administrator and the State Director may agree to limitations regarding review of and comment on permit applications and draft permits for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(3) Where appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits under different programs, from both EPA and the State.

§ 123.127 Authorization plan.

The State must submit an "authorization plan" which shall describe the additions and modifications necessary for the State program to qualify for final authorization as soon as practicable, but no later than the end of the interim authorization period. This plan shall include the nature of and schedules for any changes in State legislation and regulations; resource levels; actions the State must take to control the complete universe of hazardous waste listed or designated under section 3001 of RCRA as soon as possible; the manifest and permit systems; and the surveillance and enforcement program which will be necessary in order for the State to become eligible for final authorization.

(a) In the case of a State applying only for interim authorization for Phase I, the authorization plan shall describe the additions and modifications necessary for the State program to meet the requirements for final authorization contained in Phase I.

(b) In the case of a State applying for interim authorization for Phase II, the authorization plan under paragraph (a) of this section shall be amended to describe the further additions and modifications necessary for the State program to meet all the requirements for final authorization.

§ 123.128 Program requirements for interim authorization for Phase I.

The following requirements are applicable to States applying for interim authorization for Phase I. If a State does not have legislative authority or regulatory control over certain activities that do not occur in the State, the State may be granted interim authorization for Phase I provided the State authorization plan under § 123.127 provides for the development of a complete program as soon as practicable after receiving interim authorization.

(a) *Requirements for identification and listing of hazardous waste.* The State program must control a universe of hazardous wastes generated, transported, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program under 40 CFR Part 261.

(b) *Requirements for generators of hazardous waste.* (1) This paragraph applies unless the State comes within the exceptions described under paragraph (d) of this section.

(2) The State program must cover all generators of hazardous wastes controlled by the State.

(3) The State shall have the authority to require and shall require all generators covered by the State program to comply with reporting and recordkeeping requirements substantially equivalent to those found at 40 CFR §§ 262.40 and 262.41.

(4) The State program must require that generators who accumulate hazardous wastes for short periods of time prior to shipment do so in a manner that does not present a hazard to human health or the environment.

(5) The State program shall provide requirements respecting international shipments which are substantially equivalent to those at 40 CFR § 262.50, except that advance notification of international shipment, as required by 40 CFR § 262.50(b)(1), shall be filed with the Administrator. The State may require that a copy of such advance notice be filed with the State Director, or may require equivalent reporting procedures.

[Note.—Such notices shall be mailed to Hazardous Waste Export, Division for

Oceans and Regulatory Affairs (A–107), U.S. Environmental Protection Agency, Washington, D.C. 20460.]

(6) The State program must require that such generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are designated for delivery, and, in the case of intrastate shipments, are delivered only to facilities that are authorized to operate under an approved State program or the Federal program.

(7) The State manifest system must require that:

(i) The manifest itself identify the generator, transporter, designated facility to which the hazardous waste will be transported, and the hazardous waste being transported;

(ii) The manifest accompany all wastes offered for transport, except in the case of shipments by rail or water specified in §§ 262.23(c) and 263.20(e); and

(iii) Shipments of hazardous waste that are not delivered to a designated facility are either identified and reported by the generator to the State in which the shipment originated or are independently identified by the State in which the shipment originated.

(8) In the case of interstate shipments for which the manifest has not been returned, the State program must provide for notification to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to EPA in the case of unauthorized States).

(c) *Requirements for transporters of hazardous wastes.* (1) This paragraph applies unless the State comes within the exceptions described under paragraph (d) of this section.

(2) The State program must cover all transporters of hazardous waste controlled by the State.

(3) The State shall have the authority to require and shall require all transporters covered by the State program to comply with recordkeeping requirements substantially equivalent to those found at 40 CFR § 263.22.

(4) The State program must require such transporters of hazardous waste to use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are delivered only to facilities that are authorized under an approved State program or the Federal program.

(5) The State program must require that transporters carry the manifest with all shipments, except in the case of shipments by rail or water specified in 40 CFR § 263.20(e).

(6) For hazardous wastes that are discharged in transit, the State program must require that transporters notify appropriate State, local, and Federal agencies of the discharges, and clean up the wastes or take action so that the wastes do not present a hazard to human health or the environment. These requirements shall be substantially equivalent to those found at 40 CFR §§ 263.30 and 263.31.

(d) *Limited exceptions from generator, transporter, and related manifest requirements.* A State applying for interim authorization for Phase I which meets all the requirements for such interim authorization except that it does not have statutory or regulatory authority for the manifest system or other generator or transporter requirements discussed in paragraphs (b) and (c) of this section may be granted interim authorization, if the State authorization plan under § 123.127 delineates the necessary steps for obtaining this authority no later than the end of the interim authorization period under § 123.122(b). A State may apply for interim authorization to implement the manifest system and other generator and transporter requirements if the enabling legislation for that part of the program was in existence within 90 days of the promulgation of Phase I. If such application is made, it shall be made as part of the State's submission for interim authorization for Phase II. Until the State manifest system and other generator and transporter requirements are approved by EPA, all Federal requirements for generators and transporters (including use of the Federal manifest system) shall apply in such States and enforcement responsibility for that part of the program shall remain with the Federal Government. The universe of wastes for which these Federal requirements apply shall be the universe of wastes controlled by the State under paragraph (a) of this section.

(e) *Requirements for hazardous waste treatment, storage, and disposal facilities.* States must have standards applicable to HWM facilities which are substantially equivalent to 40 CFR Part 265. State law shall prohibit the operation of facilities not in compliance with such standards. These standards shall include:

(1) Preparedness for and prevention of releases of hazardous waste controlled by the State under paragraph (a) of this section and contingency plans and emergency procedures to be followed in the event of a release of such hazardous waste;

(2) Closure and post-closure requirements;

(3) Groundwater monitoring;

(4) Security to prevent unknowing and unauthorized access to the facility;

(5) Facility personnel training;

(6) Inspection, monitoring, recordkeeping, and reporting;

(7) Compliance with the manifest system including the requirement that the facility owner or operator or the State in which the facility is located must return a copy of the manifest to the generator or to the State in which the generator is located indicating delivery of the waste shipment; and

(8) Other facility standards to the extent that they are included in 40 CFR Part 265, except that Subpart R (standards for injection wells) may be included in the State standards at the State's option.

(f) *Requirements for enforcement authority.* (1) Any State agency administering a program under this Subpart shall have the following authority to remedy violations of State program requirements:

(i) Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

(ii) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including, where appropriate, permit conditions, without the necessity of a prior revocation of the permit; and

(iii) For any program violation, to assess or sue to recover in court civil penalties in at least the amount of $1000 per day or to seek criminal fines in at least the amount of $1000 per day.

(2) Any State agency administering a program under this Subpart shall provide for public participation in the State enforcement process by providing either:

(i) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraph (f)(1) of this section by any citizen having an interest which is or may be adversely affected; or

(ii) Assurance that the State agency or enforcement authority will:

(A) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in paragraph (g)(2)(iv) of this section;

(B) Not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation; and

(C) Publish and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(g) *Requirements for compliance evaluation programs.* (1) A State program under this Subpart shall have procedures for receipt, evaluation, recordkeeping, and investigation for possible enforcement of all required notices and reports.

(2) A State program shall have independent inspection and surveillance authority and procedures to determine compliance or noncompliance with applicable program requirements. This shall include:

(i) The capability to make comprehensive surveys of any activities subject to the State Director's authority in order to identify persons subject to regulation who have failed to comply with program requirements;

(ii) A program for periodic inspections of the activities subject to regulation;

(iii) The capability to investigate evidence of violations of applicable program and permit requirements; and

(iv) Procedures for receiving and ensuring proper consideration of information 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.

(3) The State officers engaged in compliance evaluation activities shall have authority to enter any conveyance, vehicle, facility, or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, monitor, or otherwise investigate compliance with the State program. States whose law requires a search warrant prior to entry conform with this requirement.

(4) 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.

§ 123.129 Additional program requirements for interim authorization for Phase II.

In addition to the requirements of § 123.128, the following requirements are applicable to States applying for interim authorization for Phase II.

(a) State programs must have standards applicable to hazardous waste management facilities that provide substantially the same degree of human health and environmental protection as the standards promulgated under 40 CFR Parts 264 and 266.

(b) State programs shall require a permit for owners and operators of those hazardous waste treatment, storage, and disposal facilities which handle any waste controlled by the State under § 123.128(a) and for which a permit is required under 40 CFR Part 122. The State program shall prohibit the operation of such facilities without a permit, provided States may authorize owners and operators of facilities which would qualify for interim status under the Federal program (if State law so authorizes) to remain in operation pending permit action. Where State law authorizes such continued operation it shall require compliance by owners and operators of such facilities with standards substantially equivalent to EPA's interim status standards under 40 CFR Part 265.

(c) All permits issued by the State under this section shall require compliance with the standards adopted by the State in accordance with paragraph (a) of this section.

(d) State programs shall have requirements for permitting which are substantially equivalent to the provisions listed in §§ 123.7(a) and (b).

(e) No permit may be issued by a State with interim authorization for Phase II with a term greater than ten years.

§ 123.130 Interstate movement of hazardous waste.

(a) If a waste is transported from a State where it is listed or designated as hazardous under the program applicable in that State, whether that is the Federal program or an approved State program, into a State with interim authorization where it is not listed or designated, the waste must be manifested in accordance with the laws of the State where the waste was generated and must be treated, stored, or disposed of as required by the laws of the State into which it has been transported.

(b) If a waste is transported from a State with interim authorization where it is not listed or designated as hazardous into a State where it is listed or designated as hazardous under the program applicable in that State, whether that is the Federal program or an approved State program, the waste must be treated, stored, or disposed of in accordance with the law applicable in the State into which it has been transported.

(c) In all cases of interstate movement of hazardous waste, as defined by 40 CFR Part 261, generators and transporters must meet DOT requirements in 49 CFR Parts 172, 173, 178, and 179 (e.g., for shipping paper, packaging, labeling, marking, and placarding).

§ 123.131 Progress reports.

The State Director shall submit a semi-annual progress report to the EPA Regional Administrator within 4 weeks of the date 6 months after Phase I commences, and at 6-month intervals thereafter until the expiration of interim authorization. The reports shall briefly summarize, in a manner and form prescribed by the Regional 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.

§ 123.132 Sharing of information.

(a) Any information obtained or used in the administration of 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 Subpart. 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 shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs in order to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs in order to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 123.133 Coordination with other programs.

(a) Issuance of State permits under this Part may be coordinated, as provided in Part 124, with issuance of NPDES, 404, and UIC permits whether they are controlled by the State, EPA, or the Corps of Engineers.

(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 (40 CFR Part 255) as responsible for the development and implementation of

State solid waste management plans under section 4002(b) of RCRA (40 CFR Part 256).

§ 123.134 EPA review of State permits.

(a) The Regional Administrator may comment on permit applications and draft permits as provided in the Memorandum of Agreement under § 123.126.

(b) Where EPA indicates, in a comment, that issuance of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

(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 conditions which the permit would include if it were issued by the Regional Administrator).

(c) A copy of any comment shall be sent to the permit applicant by the Regional Administrator.

(d) The Regional Administrator shall withdraw such comment when satisfied that the State has met or refuted his or her concerns.

(e) Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of Part 124, Subpart E or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the following conditions:

(1) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition of that permit.

(2) The Regional Administrator may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit at any time on the ground that the permittee is not complying with a condition that the Regional Administrator in commenting on the permit application or draft permit stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

(3) The Regional Administrator may not take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition necessary to implement approved State program requirements unless the Regional Administrator stated in commenting on the permit application or draft permit that that condition was necessary.

(4) The Regional Administrator may take action under section 7003 of RCRA against a permit holder at any time whether or not the permit holder is complying with the permit conditions.

§ 123.135 Approval process.

(a) Within 30 days of receipt of a complete program submission for interim authorization, the Regional Administrator shall:

(1) Issue notice in the **Federal Register** and in accordance with § 123.39(a)(1) of a public hearing on the State's application for interim authorization. Such public hearing will be held by EPA no earlier than 30 days after notice of the hearing, provided that if significant 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. The State shall participate in any public hearing held by EPA.

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State's submission for inspection and copying by the public. The State submission shall, at a minimum, be available in the main office of the lead State agency and in the EPA Regional Office.

(b) Within 90 days of the notice in the **Federal Register** required by paragraph (a)(1) 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 will give notice of this final determination in the **Federal Register** and in accordance with § 123.39(a)(1). The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

(c) Where a State has received interim authorization for Phase I the same procedures required in paragraphs (a) and (b) of this section shall be used in determining whether this amended program submission meets the requirements of the Federal program.

§ 123.136 Withdrawal of State programs.

(a) The criteria and procedures for withdrawal set forth in §§ 123.14 and 15 apply to this section.

(b) In addition to the criteria in § 123.14, a State program may be withdrawn if a State which has obtained interim authorization fails to meet the schedule for or accomplish the additions or revisions of its program set forth in its authorization plan.

§ 123.137 Reversion of State programs.

(a) A State program approved for interim authorization for Phase I shall terminate on the last day of the 6th month after the effective date of Phase II and EPA shall administer and enforce the Federal program in the State commencing on that date if the State has failed to submit by that date an amended submission pursuant to § 123.122(c)(4).

(b) A State program approved for interim authorization for Phase I shall terminate and EPA shall administer and enforce the Federal program in the State if the Regional Administrator determines pursuant to § 123.135(c) that a program submission amended pursuant to § 123.122(c)(4) does not meet the requirements of the Federal program.

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

Sec.

124.1 Purpose and scope.
124.2 Definitions.
124.3 Application for a permit.
124.4 Consolidation of permit processing.
124.5 Modification, revocation and reissuance, or termination of permits.
124.6 Draft permit.
124.7 Statement of basis.
124.8 Fact sheet.
124.9 Administrative record for draft permits when EPA is the permitting authority.
124.10 Public notice of permit actions and public comment period.
124.11 Public comments and requests for public hearings.
124.12 Public hearings.
124.13 Obligation to raise issues and provide information during the public comment period.
124.14 Reopening of the public comment period.
124.15 Issuance and effective date of permit.
124.16 Stays of contested permit conditions.
124.17 Response to comments.
124.18 Administrative record for final permit when EPA is the permitting authority.
124.19 Appeal of RCRA, UIC and PSD permits.
124.20 Computation of time.
124.21 Effective date of Part 124.

Subpart B—Specific Procedures Applicable to RCRA Permits [reserved]

Subpart C—Specific Procedures Applicable to PSD Permits

124.41 Definitions applicable to PSD permits.
124.42 Additional procedures for PSD permits affecting Class I areas.

Subpart D—Specific Procedures Applicable to NPDES Permits

124.51 Purpose and scope.
124.52 Permits required on a case-by-case basis.

124.53 State certification.
124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.
124.55 Effect of State certification.
124.56 Fact sheets.
124.57 Public notice.
124.58 Special procedures for EPA-issued general permits for point sources other than separate storm sewers.
124.59 Conditions requested by the Corps of Engineers and other government agencies.
124.60 Issuance and effective date and stays of NPDES permits.
124.61 Final environmental impact statement.
124.62 Decision on variances.
124.63 Procedures for variances when EPA is the permitting authority.
124.64 Appeals of variances.
124.65 Special procedures for discharge into marine waters under section 301(h).
124.66 Special procedures for decisions on thermal variances under section 316(a).

Subpart E—Evidentiary Hearing for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

124.71 Applicability.
124.72 Definitions.
124.73 Filing and submission of documents.
124.74 Requests for evidentiary hearing.
124.75 Decision on request for a hearing.
124.76 Obligation to submit evidence and raise issues before a final permit is issued.
124.77 Notice of hearing.
124.78 *Ex parte* communications.
124.79 Additional parties and issues.
124.80 Filing and service.
124.81 Assignment of Administrative Law Judge.
124.82 Consolidation and severance.
124.83 Prehearing conferences.
124.84 Summary determination.
124.85 Hearing procedure.
124.86 Motions.
124.87 Record of hearings.
124.88 Proposed findings of fact and conclusions; brief.
124.89 Decisions.
124.90 Interlocutory appeal.
124.91 Appeal to the Administrator.

Subpart F—Non-Adversary Panel Procedures

124.111 Applicability.
124.112 Relation to other Subparts.
124.113 Public notice of draft permits and public comment period.
124.114 Request for hearing.
124.115 Effect of denial of or absence of request for hearing.
124.116 Notice of hearing.
124.117 Request to participate in hearing.
124.118 Submission of written comments on draft permit.
124.119 Presiding Officer.
124.120 Panel hearing.
124.121 Opportunity for cross-examination.
124.122 Record for final permit.
124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
124.124 Recommended decision.
124.125 Appeal from or review of recommended decision.
124.126 Final decision.
124.127 Final decision if there is no review.
124.128 Delegation of authority; time limitations.

Appendix A to Part 124—Guide to Decisionmaking under Part 124.

Authority: Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq;* Safe Drinking Water Act, 42 U.S.C. § 300(f) *et seq;* Clean Water Act, 33 U.S.C. § 1251 *et seq;* and Clean Air Act, 42 U.S.C. § 1857 *et seq.*

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This Part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" other than RCRA and UIC "emergency permits" (see §§ 122.27 and 122.40) and RCRA "permits by rule" (§ 122.26). The latter kinds of permits are governed by Subpart A of Part 122. RCRA interim status and UIC authorization by rule are not "permits" and are covered by specific provisions in Subpart A of Part 122. This Part also does not apply to permits issued, modified, revoked and reissued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR Parts 320–327.

(b) Part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these regulations. Subparts B through F supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B is reserved for specific procedural requirements for RCRA permits. There are none of these at present but they may be added in the future. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when Subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the "initial licensing" provisions of the Administrative Procedure Act (APA), can be used instead of Subparts A through E in appropriate cases.

(c) Part 124 offers an opportunity for three kinds of hearings: a public hearing under Subpart A, an evidentiary hearing under Subpart E, and a panel hearing under Subpart F. This chart describes when these hearings are available for each of the five permit programs.

Hearings Available Under This Part

Programs	Subpart (A) Public hearing	Subpart (E) Evidentiary hearing	Subpart (F) Panel hearing
RCRA	On draft permit, at Director's discretion or on request (§ 124.12).	(1) Permit termination (RCRA section 3008) (2) With NPDES evidentiary hearing (§ 124.74(b)(2))	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
UIC	On draft permit, at Director's discretion or on request (§ 124.12).	With NPDES evidentiary hearing (§ 124.74(b)(2))	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i).
PSD	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(c))	When consolidated with NPDES draft permit processed under Subpart F if RA determines that CAA one year deadline will not be violated.
NPDES (other than general permit)	On draft permit, at Director's discretion or on request (§ 124.12).	(1) On request to challenge any permit condition or variance (§ 124.74). (2) At RA's discretion for any 301(h) request. (§ 124.64(b)).	(1) At RA's discretion when first decision on permit or variance request (§ 124.111). (2) At RA's discretion when request for evidentiary hearing is granted under § 124.75(a)(2). (§§ 124.74(c)(8) and 124.111(a)(2)). (3) At RA's discretion for any 301(h) request (§ 124.64(b)).
NPDES (general permit)	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71)(a)	At RA's discretion in lieu of public hearing (§ 124.111(a)(3)).
404	On draft permit or on application when no draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71)	Not available (§ 124.111).

(d) This Part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This Part also allows consolidated permits to be subject to a single public hearing under § 124.12, a single evidentiary hearing under § 124.75, or a single non-adversary panel hearing under § 124.120. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

(e) Certain procedural requirements set forth in Part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs. These requirements are listed in § 123.7 and signaled by the following words at the end of the appropriate Part 124 section or paragraph heading: (*applicable to State programs, see § 123.7*). Part 124 does not apply to PSD permits issued by an approved State.

(f) To coordinate decisionmaking when different permits will be issued by EPA and approved State programs, this Part allows applications to be jointly processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the Memorandum of Agreement developed under § 123.6.

§ 124.2 Definitions.

(a) The definitions in Part 122 apply to this Part except for PSD permits which are governed by the definitions in § 124.41.

(b) For the purposes of Part 124, the term "Director" means the State Director or Regional Administrator and is used when the accompanying provision is required of EPA administered programs and of State programs under § 123.7. The term "Regional Administrator" is used when the accompanying provision applies exclusively to EPA-issued permits and is not applicable to State programs under § 123.7. While States are not required to implement these latter provisions, they are not precluded from doing so, notwithstanding use of the term "Regional Administrator."

(c) The term "formal hearing" means any evidentiary hearing under Subpart E or any panel hearing under Subpart F but does not mean a public hearing conducted under § 124.12.

§ 124.3 Application for a permit.

(a) (*Applicable to State programs, see § 123.7*). (1) Any person who requires a permit under the RCRA, UIC, NPDES, or PSD programs shall complete, sign, and submit to the Director an application for each permit required under §§ 122.21 (RCRA), 122.31 (UIC), 40 CFR 52.21 (PSD), and 122.51 (NPDES). Applications are not required for RCRA permits by rule (§ 122.26), underground injections authorized by rule (§ 122.37), NPDES general permits (§ 122.59) and 404 general permits (§ 123.95).

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 122.4, 122.22 (RCRA), 122.38 (UIC), 40 CFR 52.21 (PSD), and 122.53 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of § 122.6.

(b) In the case of a PSD permit issued to a facility or activity which 40 CFR § 52.21(k) exempts from the requirements of § 52.21 (l), (n), and (p), no proceedings under this Part shall be held to the extent that the Regional Administrator determines that proceedings providing the public with at least as much participation as this Part in the material determinations involved have already been held in the process of granting construction approval under the applicable State implementation plan. The Regional Administrator shall briefly document that finding and make it available to any member of the public upon request. The Regional Administrator shall prepare a draft permit under § 124.6 and follow the applicable procedures under this Part to the extent he or she is unable to make a finding under this subparagraph.

(c) The Regional Administrator shall review for completeness every application for an EPA-issued permit. Each application for an EPA-issued permit submitted by a new HWM facility, a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger should be reviewed for completeness by the Regional Administrator within 30 days of its receipt. Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source, the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information. The Regional Administrator shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision including RCRA section 3008, SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k).

(e) If the Regional Administrator decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled.

(f) The effective date of an application is the date on which the Regional Administrator notifies the applicant that the application is complete as provided in paragraph (c) of this section.

(g) For each application from a major new HWM facility, major new UIC injection well, major NPDES new source, or major NPDES new discharger, the Regional Administrator shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. (This paragraph does not apply to PSD permits.) The schedule shall specify target dates by which the Regional Administrator intends to:

(1) Prepare a draft permit;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing;

(4) Issue a final permit; and

(5) In the case of an NPDES permit, complete any formal proceedings under Subparts E or F.

§ 124.4 Consolidation of permit processing.

(a)(1) Whenever a facility or activity requires a permit under more than one statute covered by these regulations, processing of two or more applications for those permits may be consolidated. The first step in consolidation is to prepare each draft permit at the same time.

(2) Whenever draft permits are prepared at the same time, the statements of basis (required under § 124.7 for EPA-issued permits only) or fact sheets (§ 124.8), administrative records (required under § 124.9 for EPA-issued permits only), public comment periods (§ 124.10), and any public hearings (§ 124.12) on those permits should also be consolidated. The final permits may be issued together. They need not be issued together if in the judgment of the Regional Administrator or State Director(s), joint processing would result in unreasonable delay in the issuance of one or more permits.

(b) Whenever an exisiting facility or activity requires additional permits under one or more of the statutes covered by these regulations, the permitting authority may coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously. Processing of the subsequent applications for renewal permits may then be consolidated.

(c) Processing of permit applications under paragraphs (a) or (b) of this section may be consolidated as follows:

(1) The Director may consolidate permit processing at his or her discretion whenever a facility or activity requires all permits either from EPA or from an approved State.

(2) The Regional Administrator and the State Director(s) may agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State.

(3) Permit applicants may recommend whether or not the processing of their applications should be consolidated.

(d) Whenever permit processing is consolidated and the Regional Administrator invokes the "initial licensing" provisions of Subpart F for an NPDES, RCRA, or UIC permit, any permit(s) with which that NPDES, RCRA or UIC permit was consolidated shall likewise be processed under Subpart F.

(e) Except with the written consent of the permit applicant, the Regional Administrator shall not consolidate processing a PSD permit with any other permit under paragraphs (a) or (b) of this section or process a PSD permit under Subpart F as provided in paragraph (d) of this section when to do so would delay issuance of the PSD permit more than one year from the effective date of the application under § 124.3(f).

§ 124.5 Modification, revocation and reissuance, or termination of permits.

(a) (*Applicable to State programs, see § 123.7*). Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 122.15 or 122.16. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Administrator by a letter briefly setting forth the relevant facts. The Administrator may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Administrator takes no action on the letter within 60 days after receiving it. This informal appeal is, under 5 U.S.C. § 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination.

(c) (*Applicable to State programs, see § 123.7*). (1) If the Director tentatively decides to modify or revoke and reissue a permit under § 122.15, he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Minor modifications" as defined in § 122.17 are not subject to the requirements of this section.

(d) (*Applicable to State programs, see § 123.7*). If the Director tentatively decides to terminate a permit under § 122.16, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6. In the case of EPA-issued permits, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under § 123.6(b)(1).

(e) When EPA is the permitting authority, all draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in § 124.9.

(f) (*Applicable to State programs, see § 123.7*). Any request by the permittee for modification to an existing 404 permit (other than a request for a minor modification as defined in § 122.17) shall be treated as a permit application and shall be processed in accordance with all requirements of § 124.3.

(g)(1) [Reserved for PSD Modification Provisions]

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(s). Applications for rescission shall be

processed under § 52.21(w) and are not subject to this Part.

§ 124.6 Draft permits.

(a) (*Applicable to State programs, see § 123.7*). Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit (except in the case of State section 404 permits for which no draft permit is required under § 123.100) or to deny the application.

(b) If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See § 124.6(e). If the Director's final decision (§ 124.15) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (d) of this section.

(c) (*Applicable to State programs, see § 123.7*). If the Director tentatively decides to issue an NPDES or 404 general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) (*Applicable to State programs, see § 123.7*). If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:

(1) All conditions under §§ 122.7 and 122.8 (except for PSD permits);

(2) All compliance schedules under § 122.10 (except for PSD permits);

(3) All monitoring requirements under § 122.11 (except for PSD permits); and

(4) For:

(i) RCRA permits, standards for treatment, storage, and/or disposal and other permit conditions under § 122.28;

(ii) UIC permits, permit conditions under § 122.42;

(iii) PSD permits, permit conditions under 40 CFR § 52.21;

(iv) 404 permits, permit conditions under §§ 123.97 and 123.98;

(v) NPDES permits, effluent limitations, standards, prohibitions and conditions under §§ 122.60 and 122.61, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

(e) (*Applicable to State programs, see § 123.7*). All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (§ 124.7) or fact sheet (§ 124.8), and shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11). The Regional Administrator shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15) and respond to comments (§ 124.17). For RCRA, UIC or PSD permits, an appeal may be taken under § 124.19 and, for NPDES permits, an appeal may be taken under § 124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under § 124.8.

§ 124.7 Statement of basis.

EPA shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

§ 124.8 Fact sheet.

(*Applicable to State programs, see § 123.7.*)

(a) A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every 404 and NPDES general permit (§§ 123.95 and 122.59), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), 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 principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit;

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9 (for EPA-issued permits);

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under § 124.10 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 final decision.

(7) Name and telephone number of a person to contact for additional information.

(8) For NPDES permits, provisions satisfying the requirements of § 124.56.

§ 124.9 Administrative record for draft permits when EPA is the permitting authority.

(a) The provisions of a draft permit prepared by EPA under § 124.6 shall be based on the administrative record defined in this section.

(b) For preparing a draft permit under § 124.6, the record shall consist of:

(1) The application, if required, and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis (§ 124.7) or fact sheet (§ 124.8);

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) For NPDES new source draft permits only, any environmental assessment, environmental impact statement (EIS), finding of no significant impact, or environmental information document and any supplement to an EIS that may have been prepared. NPDES permits other than permits to new sources as well as all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.

(c) Material readily available at the issuing Regional Office or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This section applies to all draft permits when public notice was given

after the effective date of these regulations.

§ 124.10 Public notice of permit actions and public comment period.

(a) *Scope.*

(1) The Director shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under § 124.6(b);

(ii) [*Applicable to State programs, see § 123.7*]. A draft permit has been prepared under § 124.6(d);

(iii) [*Applicable to State programs, see § 123.7*]. A hearing has been scheduled under § 124.12, Subpart E, or Subpart F;

(iv) An appeal has been granted under § 124.19(c);

(v) [*Applicable to State programs, see § 123.7*]. A State section 404 application has been received in cases when no draft permit will be prepared (see § 123.100); or

(vi) An NPDES new source determination has been made under § 122.66.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit action.

(b) *Timing* [*applicable to State programs, see § 123.7*]. (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR Part 6, Subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) *Methods (applicable to State programs, see § 123.7).* Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

(i) The applicant (except for NPDES and 404 general permits when there is no applicant);

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity (including EPA when the draft permit is prepared by the State);

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected States;

(iv) For NPDES and 404 permits only, any State agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

(v) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;

(vi) For 404 permits only, any reasonably ascertainable owner of property adjacent to the regulated facility or activity and 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;

(vii) For PSD permits only, affected State and local air pollution control agencies, the chief executives of the city and county where the major stationary source or major modification would be located, any comprehensive regional land use planning agency and any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the regulated activity;

(viii) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

(2) For major permits and NPDES and 404 general permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES general permits, in the **Federal Register**;

[Note.—The Director is encouraged to provide as much notice as possible of the NPDES or 404 draft general permit to the facilities or activities to be covered by the general permit.]

(3) When the program is being administered by an approved State, in a manner constituting legal notice to the public under State law; *and*

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) *Contents (applicable to State programs, see § 123.7).* (1) *All public notices.* All public notices issued under this Part shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES and 404 draft general permits under §§ 122.59 and 123.95;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES or 404 general permits when there is no application.

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and

(v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

(vi) For EPA-issued permits, the location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record.

(vii) For NPDES permits only, a general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map

or description of the permit area. For EPA-issued NPDES permits only, if the discharge is from a new source, a statement as to whether an environmental impact statement will be or has been prepared.

(viii) For 404 permits only,

(A) The purpose of the proposed activity (including, in the case of fill material, activities intended to be conducted on the fill), a description of the type, composition, and quantity of materials to be discharged and means of conveyance; and any proposed conditions and limitations on the discharge;

(B) The name and water quality standards classification, if applicable, of the receiving waters into which the discharge is proposed, and a general description of the site of each proposed discharge and the portions of the site and the discharges which are within State regulated waters;

(C) A description of the anticipated environmental effects of activities conducted under the permit;

(D) References to applicable statutory or regulatory authority; and

(E) Any other available information which may assist the public in evaluating the likely impact of the proposed activity upon the integrity of the receiving water.

(ix) Any additional information considered necessary or proper.

(2) *Public notices for hearings.* In addition to the general public notice described in paragraph (d)(1) of this section, the public notice of a hearing under § 124.12, Subpart E, or Subpart F shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing;

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(iv) For 404 permits only, a summary of major issues raised to date during the public comment period.

(e) *(Applicable to State programs, see § 123.7).* In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any).

§ 124.11 Public comments and requests for public hearings.

(Applicable to State programs, see § 123.7.)

During the public comment period provided under § 124.10, any interested person may submit written comments on the draft permit or the permit application for 404 permits when no draft permit is required (see § 123.100) and may request a public hearing, if no hearing has already been scheduled. 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 making the final decision and shall be answered as provided in § 124.17.

§ 124.12 Public hearings.

(a) *(Applicable to State programs, see § 123.7.)* The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The Director also may hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. Public notice of the hearing shall be given as specified in § 124.10.

(b) Whenever a public hearing will be held 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.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) At his or her discretion, the Regional Administrator may specify that RCRA and UIC permits be processed under the procedures in Subpart F.

§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period (including any public hearing) under § 124.10. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days will often be necessary in complicated proceedings to give commenters a reasonble opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they should be freely established under § 124.10 to the extent they appear necessary.)

§ 124.14 Reopening of the public comment period.

(a) If any data information or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Regional Administrator may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under § 124.6;

(2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under § 124.8 and reopen the comment period under § 124.14; or

(3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.

(c) For RCRA, UIC, or NPDES permits, the Regional Administrator may also, in the circumstances described above, elect to hold further proceedings under Subpart F. This decision may be combined with any of the actions enumerated in paragraph (a) of this section.

(d) Public notice of any of the above actions shall be issued under § 124.10.

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision. The Regional Administrator shall notify the applicant and each person who has

submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, or PSD permit or for contesting a decision on an NPDES permit or a decision to terminate a RCRA permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision shall become effective 30 days after the service of notice of the decision under paragraph (a) of this section, unless:

(1) A later effective date is specified in the decision; or

(2) Review is requested under § 124.19 (RCRA, UIC, and PSD permits) or an evidentiary hearing is requested under § 124.74 (NPDES permit and RCRA permit terminations); or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

§ 124.16 Stays of contested permits conditions.

(a) *Stays.* (1) If a request for review of a RCRA or UIC permit under § 124.19 or an NPDES permit under § 124.74 or § 124.114 is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in an evidentiary hearing on an NPDES permit under §§ 124.74, 124.82 or 124.114, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. (No stay of a PSD permit is available under this section.) If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action. See also § 124.60.

(2) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities, injection wells, and sources shall be identified by the Regional Administrator. All other provisions of the permit for the existing facility, injection well, or source shall remain fully effective and enforceable.

(b) *Stays based on cross effects.* (1) A stay may be granted based on the grounds that an appeal to the Administrator under § 124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has been appealed to the Administrator and he or she has accepted each appeal.

(2) No stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director.

(c) Any facility or activity holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under § 124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

§ 124.17 Response to comments.

(a) *(Applicable to State programs, see § 123.7).* At the time that any final permit decision is issued under § 124.15, the Director shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or 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 decision as defined in § 124.18. 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 materials to the administrative record.

(c) *(Applicable to State programs, see § 123.7).* The response to comments shall be available to the public.

§ 124.18 Administrative record for final permit when EPA is the permitting authority.

(a) The Regional Administrator shall base final permit decisions under § 124.15 on 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 § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) For NPDES new source permits only, any final environmental impact statement and any supplement to the final EIS;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA, UIC, PSD, and NPDES permits when the draft permit was subject to the administrative record requirements of § 124.9 and to all NPDES permits when the draft permit was included in a public notice after October 12, 1979.

(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 § 124.17 ("Response to comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any

issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the 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 an important policy consideration which the Administrator should, in his or her discretion, review.

(b) The Administrator may also decide on his or her initiative to review any condition of any RCRA, UIC, or PSD permit issued under this Part. The Administrator must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(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 conditions of the final permit decision become final agency action. Public notice of any grant of review by the Administrator under paragraph (a) or (b) of this section shall be given as provided in §124.10. Public 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 only to the person(s) requesting review.

(d) The Administrator may defer consideration of an appeal of a RCRA or UIC permit under this section until the completion of formal proceedings under Subpart E or F relating to an NPDES permit issued to the same facility or activity upon concluding that:

(1) The NPDES permit is likely to raise issues relevant to a decision of the RCRA or UIC appeals;

(2) The NPDES permit is likely to be appealed; and

(3) Either: (i) The interests of both the facility or activity and the public are not likely to be materially adversely affected by the deferral; or

(ii) Any adverse effect is outweighed by the benefits likely to result from a consolidated decision on appeal.

(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 agency action.

(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 or denied by EPA and agency review procedures are exhausted. A final permit decision shall be issued by the Regional Administrator: (i) When the Administrator issues notice to the parties that review has been denied; (ii) when the Administrator issues a decision on the merits of the appeal and the decision does not include a remand of 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 to exhaust administrative remedies.

(2) Notice of any final agency action regarding a PSD permit shall promptly be published in the Federal Register.

§ 124.20 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

§ 124.21 Effective date of Part 124.

(a) Except for paragraphs (b) and (c) of this section, Part 124 will become effective July 18, 1980. Because this effective date will precede the processing of any RCRA or UIC permits, Part 124 will apply in its entirety to all RCRA and UIC permits.

(b) All provisions of Part 124 pertaining to the RCRA program will become effective on November 19, 1980.

(c) All provisions of Part 124 pertaining to the UIC program will become effective July 18, 1980, but shall not be implemented until the effective date of 40 CFR Part 146.

(d) This Part does not significantly change the way in which NPDES permits are processed. Since October 12, 1979, NPDES permits have been the subject to almost identical requirements in the revised NPDES regulations which were promulgated on June 7, 1979. See *44 FR 32948*. To the extent this Part changes the revised NPDES permit regulations, those changes will take effect as to all permit proceedings in progress on July 3, 1980.

(e) This Part also does not significantly change the way in which PSD permits are processed. For the most part, these regulations will also apply to PSD proceedings in progress on July 18, 1980. However, because it would be disruptive to require retroactively a formal administrative record for PSD permits issued without one, §§ 124.9 and 124.18 will apply to PSD permits for which draft permits were prepared after the effective date of these regulations.

Subpart B—Specific Procedures Applicable to RCRA Permits [Reserved]

Subpart C—Specific Procedures Applicable to PSD Permits

§ 124.41 Definitions applicable to PSD permits.

Whenever PSD permits are processed under this Part, the following terms shall have the following meanings:

"Administrator," "EPA," and "Regional Administrator" shall have the meanings set forth in § 122.3, except when EPA has delegated authority to administer those regulations to another agency under the applicable subsection of 40 CFR § 52.21, the term "EPA" shall mean the delegate agency and the term "Regional Administrator" shall mean the chief administrative officer of the delegate agency.

"Application" means an application for a PSD permit.

"Appropriate Act and Regulations" means the Clean Air Act and applicable regulations promulgated under it.

"Approved program" means a State implementation plan providing for issuance of PSD permits which has been approved by EPA under the Clean Air Act and 40 CFR Part 51. An "approved State" is one administering an "approved program." "State Director" as used in § 124.4 means the person(s) responsible for issuing PSD permits under an approved program, or that person's delegated representative.

"Construction" has the meaning given in 40 CFR § 52.21.

"Director" means the Regional Administrator.

"Draft permit" shall have the meaning set forth in § 122.3.

"Facility or activity" means a "major PSD stationary source" or "major PSD modification."

"Federal Land Manager" has the meaning given in 40 CFR § 52.21.

"Indian Governing Body" has the meaning given in 40 CFR § 52.21.

"Major PSD modification" means a "major modification" as defined in 40 CFR § 52.21.

"Major PSD stationary source" means a "major stationary source" as defined in 40 CFR § 52.21(b)(1).

"Owner or operator" means the owner or operator of any facility or activity

subject to regulation under 40 CFR § 52.21 or by an approved State.

"Permit" or "PSD permit" means a permit issued under 40 CFR § 52.21 or by an approved State.

"Person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.

"Regulated activity" or "activity subject to regulation" means a "major PSD stationary source" or "major PSD modification."

"Site" means the land or water area upon which a "major PSD stationary source" or "major PSD modification" is physically located or conducted, including but not limited to adjacent land used for utility systems; as repair, storage, shipping or processing areas; or otherwise in connection with the "major PSD stationary source" or "major PSD modification."

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 124.42 Additional procedures for PSD permits affecting Class I areas.

(a) The Regional Administrator shall provide notice of any permit application for a proposed major PSD stationary source or major PSD modification the emissions from which would affect a Class I area to the Federal Land Manager, and the Federal official charged with direct responsibility for management of any lands within such area. The Regional Administrator shall provide such notice promptly after receiving the application.

(b) Any demonstration which the Federal Land Manager wishes to present under 40 CFR § 52.21(q)(3), and any variances sought by an owner or operator under § 52.21(q)(4) shall be requested in writing, together with any necessary supporting analysis, by the end of the public comment period under §§ 124.10 or 124.118. (40 CFR § 52.21(q)(3) provides for denial of a PSD permit to a facility or activity when the Federal Land Manager demonstrates that its emissions would adversely affect a Class I area even though the applicable increments would not be exceeded. 40 CFR § 52.21(q)(4) conversely authorizes EPA, with the concurrence of the Federal Land Manager and State responsible, to grant certain variances from the otherwise applicable emission limitations to a facility or activity whose emissions would affect a Class I area.)

(c) Variances authorized by 40 CFR § 52.21(q)(5) through (q)(7) shall be handled as specified in those subparagraphs and shall not be subject to this Part. Upon receiving appropriate documentation of a variance properly granted under any of these provisions, the Regional Administrator shall enter the variance in the administrative record. Any decisions later made in proceedings under this Part concerning that permit shall be consistent with the conditions of that variance.

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 ordinarily will be made during the permit issuance process. Variances and other changes in permit conditions ordinarily will be decided through the same notice-and-comment and hearing procedures 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 (§ 122.54), concentrated aquatic animal production facilities (§ 122.55), separate storm sewers (§ 122.57), and certain other facilities covered by general permits (§ 122.59) that do not generally require an individual 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 is required under this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.53 within 60 days of notice. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

§ 124.53 State certification.

(a) Under CWA section 401(a)(1), 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) Applications received without a State certification shall be forwarded by the Regional Administrator 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 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 State will be deemed to have waived its right to certify unless that right is exercised within a specified reasonable time not to exceed 60 days from the date the draft permit is mailed to the certifying State agency unless the Regional Administrator finds that unusual circumstances require a longer time.

(d) State certification shall be granted or denied within the reasonable time specified under paragraph (c)(3) of this section. The State shall send a notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(e) State certification shall be in writing and shall include:

(1) Conditions which are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law;

(2) When the State certifies a draft permit instead of a permit application, any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition; and

(3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process.

§ 124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.

(a) When an application for a permit incorporating a variance request under CWA section 301(h) is submitted to a State, the appropriate State official shall either:

(1) Deny the request for the CWA section 301(h) variance (and so notify the applicant and EPA) and, if the State is an approved NPDES State and the permit is due for reissuance, process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of § 124.53 to the Regional Administrator.

(b) When EPA issues a tentative decision on the request for a variance under CWA section 301(h), and no certification has been received under paragraph (a) of this section, the Regional Administrator shall forward the tentative decision 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) of this section within such reasonable time, certification shall be waived and the State shall be deemed to have concurred in the issuance of a CWA section 301(h) variance.

(c) Any certification provided by a State under paragraph (a)(2) of this section shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the permit incorporating a section 301(h) variance subject to any conditions specified therein by the State. CWA section 301(h) certification and concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process; States must specify any conditions required by State law, including water quality standards, in the initial certification.

§ 124.55 Effect of State certification.

(a) When certification is required under CWA section 401(a)(1) no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates the requirements specified in the certification under § 124.53 (d)(1) and (2).

(b) If there is a change in the State law or regulation upon which a certification is based, or if a court of competent jurisdiction or appropriate State board or agency 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 before final agency action on the permit, the permit shall be consistent with the 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 on request of the permittee only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency.

(c) A State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition. The Regional Administrator shall disregard any such certification conditions, and shall consider those conditions or denials as waivers of certification.

(d) A condition in a draft permit may be changed during agency review in any manner consistent with a certification meeting the requirements of § 124.53(d). No such changes shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the procedures in this Part.

(f) Nothing in this section shall affect EPA's obligation to comply with § 122.12. See CWA section 301(b)(1)(C).

§ 124.56 Fact sheets.

(Applicable to State programs, see § 123.7.)

In addition to meeting the requirements of § 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under § 122.52 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.62(e);

(ii) Limitations on internal wastestreams under § 122.63(i); or

(iii) Limitations on indicator pollutants under § 125.3(g).

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users under § 122.62(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge described in the application; and

(d) For EPA-issued NPDES permits, the requirements of any State certification under § 124.53.

§ 124.57 Public notice.

(a) *Section 316(a) requests (applicable to State programs, see § 123.7).* In addition to the information required under § 124.10(d)(1), public notice of an NPDES draft permit for a discharge where a CWA section 316(a) request has been filed under § 122.53(i) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA sections 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306; and

(2) A statement that a section 316(a) request 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 request.

(3) If the applicant has filed an early screening request under § 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

(b) *Evidentiary hearings under Subpart E.* In addition to the information required under § 124.10(d)(2), public notice of a hearing under Subpart E shall 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) A statement of the following procedures:

(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 the 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 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 decision.

(c) *Non-adversary panel procedures under Subpart F.* (1) In addition to the information required under § 124.10(d)(2), mailed public notice of a draft permit to be processed under Subpart F shall include a statement that any hearing shall be held under Subpart F (panel hearing).

(2) Mailed public notice of a panel hearing under Subpart F shall include:

(i) 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;

(ii) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(iii) The due date for filing a written request to participate in the hearing under § 124.117; and

(iv) The due date for filing comments under § 124.118.

§ 124.58 Special procedures for EPA-issued general permits for point sources other than separate storm sewers.

(a) The Regional Administrator shall send a copy of the draft general permit and the administrative record to the Deputy Assistant Administrator for Water Enforcement during the public comment period.

(b) The Deputy Assistant Administrator for Water Enforcement shall have 30 days from receipt of the draft general permit, or shall have until the end of the public comment period, whichever is later, to comment upon, object to, or make recommendations with respect to the draft general permit.

(c) If the Deputy Assistant Administrator for Water Enforcement objects to a draft general permit within the period specified in paragraph (b) of this section, the Regional Administrator shall not issue the final general permit until the Deputy Assistant Administrator for Water Enforcement concurs in writing with the conditions of the general permit.

§ 124.59 Conditions requested by the Corps of Engineers and other government agencies.

(*Applicable to State programs, see § 123.7.*)

(a) If during the comment period for an NPDES draft permit, 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 advised 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. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall considered stayed in the NPDES permit for the duration of that stay.

(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 § 122.12 and of the 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 and stays of NPDES permits.

In addition to the requirements of § 124.15, the following provisions apply to NPDES permits and to RCRA or UIC permits to the extent those permits may have been consolidated with an NPDES permit in a formal hearing:

(a)(1) If a request for a formal hearing is granted under §124.75 or § 124.114 regarding the initial permit issued for a new source, a new discharger, or a recommencing discharger, or if a petition for review of the denial of a request for a formal hearing with respect to such a permit is timely filed with the Administrator under § 124.91, the applicant shall be without a permit pending final Agency action under § 124.91.

(2) Wherever a source subject to this paragraph has received a final permit under § 124.15 which is the subject of a hearing request under § 124.74 or a formal hearing under § 124.75, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin operation before final agency action if it complies with all conditions of that final permit during the period until final agency action. The Presiding Officer may grant such a motion in any case where no party opposes it, or, if a party opposes the motion, where the source demonstrates that (i) it is likely to prevail on the merits; (ii) irreparable harm to the environment will not result pending final agency action if it is allowed to commence operations before final agency action; and (iii) the public interest requires that the source be allowed to commence operations. All the conditions of any permit covered by that order shall be fully effective and enforceable.

(b) The Regional Administrator, at any time prior to the rendering of an initial decision in a formal hearing on a permit, may withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing 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 this section shall remain in effect.

(c)(1) If a request for a formal hearing is granted in whole or in part under § 124.75 regarding a permit for an existing source, or if a petition for review of the denial of a request for a formal hearing with respect to that permit is timely filed with the Administrator under § 124.91, the force and effect of the contested conditions of the final permit shall be stayed. The Regional Administrator shall notify, in accordance with § 124.75, the discharger and all parties of the uncontested conditions of the final permit that are enforceable obligations of the discharger.

(2) When 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) When a combination of technologies is contested, but a portion of the combination is not contested, that portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) Uncontested conditions, if inseverable from a contested condition, shall be considered contested.

(5) Uncontested conditions shall become enforceable 30 days after the date of notice under paragraph (c)(1) of this section granting the request. If, however, a request for a formal hearing on a condition was denied and the denial is appealed under § 124.91, then that 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.

(6) Uncontested conditions shall include:

(i) Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures;

(ii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iii) When 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 that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and

(iv) Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

(d) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (c)(1) of this section it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(e) When a formal 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 fully enforceable and effective until final agency action under § 124.91. (See § 122.5) Upon written request from the applicant, the Regional Administrator may delete requirements from the existing permit which unnecessarily duplicate uncontested provisions of the new permit.

(f) When issuing a finally effective NPDES permit the conditions of which were the subject of a formal hearing under Subparts E or 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 5 years after issuance under § 124.15(a).

[Note.—Extensions of compliance schedules under § 124.60(f)(2) 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 CWA 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, when application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.]

(g) For purposes of judicial review under CWA section 509(b), final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under Subparts E and F and § 124.91. Any party which neglects or fails to seek review under § 124.91 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 § 6.805.

§ 124.62 Decision on variances.

(*Applicable to State programs, see § 123.7.*)

(a) The Director may grant or deny requests for the following variances (subject to EPA objection under § 123.75 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 request 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 CWA section 301(c);

(3) A variance based upon certain water quality factors under CWA section 301(g); or

(4) A variance based on water quality related effluent limitations under CWA section 302(b)(2).

(c) The Regional Administrator may deny, forward, or submit to the EPA Deputy Assistant Administrator for Water Enforcement with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the State Director, or that is submitted to the Regional Administrator by the requester where EPA is the permitting authority.

(d) The EPA Deputy Assistant Administrator for Water Enforcement may approve or deny any variance request submitted under paragraph (c) of this section. If the Deputy Assistant Administrator approves the variance, the Director may prepare 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 decision under § 124.54.

§ 124.63 Procedures for variances when EPA is the permitting authority.

(a) In States where EPA is the permit issuing authority and a request for a variance is filed as required by § 122.53, the request shall be processed as follows:

(1) If at the time that a request for a variance is submitted the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit but has not yet prepared 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 § 124.62, shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(2) If at the time that a request for a variance is filed the Regional Administrator has given notice under § 124.10 of a draft permit 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 prepare a new draft permit including a tentative decision on the request, and the fact sheet required by § 124.8. However, if this will significantly delay the processing of the existing draft permit or the Regional Administrator, for other reasons,

considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the administrative disposition of the existing draft 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 request has been separated from a draft permit as described in paragraphs (a) (1) and (2) of this section, the Regional Administrator may prepare a new draft permit and give notice of it under § 124.10. This draft permit shall be accompanied by the fact sheet required by § 124.8 except that the only matters considered shall relate to the requested variance.

§ 124.64 Appeals of variances.

(a) When a State issues a permit on which EPA has made a variance decision, separate appeals of the State permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Variance decisions made by EPA may be appealed under either Subparts E or F, provided the requirements of the applicable Subpart are met. However, whenever the basic permit decision is eligible only for an evidentiary hearing under Subpart E while the variance decision is eligible only for a panel hearing under Subpart F, the issues relating to both the basic permit decision and the variance decision shall be considered in the Subpart E proceeding. No Subpart F hearing may be held if a Subpart E hearing would be held in addition. See § 124.111(b).

(c) *Stays for section 301(g) variances.* If a request for an evidentiary hearing is granted on a variance requested under CWA section 301(g), or if a petition for review of the denial of a request for the hearing is filed under § 124.91, any otherwise applicable standards and limitations under CWA section 301 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 a 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 other than section 301(g) are governed by § 124.60.

§ 124.65 Special procedures for discharge into marine waters section 301(h).

(a) Where it is clear on the face of a section 301(h) request that the discharger is not entitled to a variance, the request shall be denied.

(b) In the case of all other section 301(h) requests the Administrator, or a person designated by the Administrator, may either:

(1) Give written authorization to a requester to submit information required by Part 125, Subpart G or the final request by a date certain, not to exceed 9 months, if:

(i) The requester proposes to submit new or additional information and the request demonstrates that:

(A) The requester made consistent and diligent efforts to obtain such information prior to submitting the final request;

(B) The failure to obtain such information was due to circumstances beyond the control of the requester; and

(C) Such information can be submitted promptly; or

(ii) The requester proposes to submit minor corrective information and such information can be submitted promptly; or

(2) Make a written request of a requester to submit additional information by a certain date, not to exceed 9 months, if such information is necessary to issue a tentative decision under § 124.62(a)(1).

All additional information submitted under this paragraph which is timely received, shall be considered part of the original request.

(c) The otherwise applicable sections of this Part apply to draft permits incorporating section 301(h) variance, except that because 301(h) permits may only be issued by EPA, the terms "Administrator or a person designated by the Regional Administrator" shall be substituted for the term "Director" as appropriate.

(d) No permit subject to a 301(h) variance shall be issued unless the appropriate State officials have concurred or waived concurrence pursuant to § 124.54. In the case of a permit issued to a requester in an approved State, the State Director may:

(1) Revoke any existing permit as of the effective date of the EPA-issued permit subject to a 301(h) variance; and

(2) Co-sign the permit subject to the 301(h) variance, if the Director has indicated an intent to do so in the written concurrence

§ 124.66 Special procedures for decisions on thermal variances under section 316(a).

(a) Except as provided in § 124.65, 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 §§ 124.15 and 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). Permit applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their permit applications are filed under § 122.53. The Regional Administrator will then decide whether or not to make an early decision. 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 or panel hearing under Subparts E or F.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not the CWA section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Regional Administrator may issue a permit under § 124.15 for a term up to 5 years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by law. 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. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its CWA section 316(a) variance request is finally approved.

(c) Any proceeding held under paragraph (a) of this section shall be publicly noticed as required by § 124.10 and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

(d) Whenever the Regional Administrator defers the decision under CWA section 316(a), any decision under section 316(b) may be deferred.

Subpart E—Evidentiary Hearings for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

§ 124.71 Applicability.

(a) The regulations in this Subpart govern all formal hearings conducted by EPA under CWA section 402, except for those conducted under Subpart F. They also govern all evidentiary hearings conducted under RCRA section 3008 in connection with the termination of a RCRA permit. This includes termination of interim status for failure to furnish information needed to made a final decision. A formal hearing is available to challenge any NPDES permit issued under § 124.15 except for a general permit. Persons affected by a general permit may not challenge the conditions of a general permit as of right in further agency proceedings. They may instead either challenge the general permit in court, or apply for an individual NPDES permit under § 122.53 as authorized in § 122.59 and then request a formal hearing on the issuance or denial of an individual permit. (The Regional Administrator also has the discretion to use the procedures of Subpart F for general permits. See § 124.111.)

(b) In certain cases, evidentiary hearings under this Subpart may also be held on the conditions of UIC permits, or of RCRA permits which are being issued, modified, or revoked and reissued, rather than terminated or suspended. This will occur when the conditions of the UIC or RCRA permit in question are closely linked with the conditions of an NPDES permit as to which an evidentiary hearing has been granted. See § 124.74(b)(2). Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under this Part. See § 122.66.

(c) PSD permits may never be subject to an evidentiary hearing under this Subpart. Section 124.74(b)(2)(iv) provides only for consolidation of PSD permits with other permits subject to a panel hearing under Subpart F.

§ 124.72 Definitions.

For the purpose of this Subpart, the following definitions are applicable:

"Hearing Clerk" means The Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

"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:

(a) 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, or which is factually related to such a case.

(b) 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 such action 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.

"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.

"Presiding Officer" for the purposes of this Subpart means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at the hearing. Under Subpart F other persons may also serve as hearing officers. See § 124.119.

"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 otherwise provided by regulation. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All 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 submission 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. This requirement does not apply to State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other generally available reference material which may be incorporated by reference. Any party incorporating materials by reference shall provide copies upon request 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 or the relevant portions shall be indicated.

(4) Failure to comply with the requirements of this section or any other requirement in this Subpart may result in the noncomplying portions of the submission being excluded from consideration. 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 Regional Hearing Clerk to return the submission, together with a reference to the applicable regulations. A party whose materials have been rejected has 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer finds good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets 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.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's final permit decision under § 124.15, any interested person may submit a request to the Regional Administrator under paragraph (b) of this section for an evidentiary hearing to

reconsider or contest that decision. 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 adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted as required by § 124.73 unless they are already part of the administrative record required by § 124.18.

[Note.—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 § 124.91(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 or UIC permit. PSD permits may never be made part of an evidentiary hearing under Subpart E. This request is subject to all the requirements of paragraph (b)(1) of this section and in addition will be granted only if:

(i) Processing of the RCRA or UIC permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.4;

(ii) The standards for granting a hearing on the NPDES permit are met;

(iii) The resolution of the NPDES permit issues is likely to make necessary or appropriate modification of the RCRA or UIC permit; and

(iv) If a PSD permit is involved, a permittee who is eligible for an evidentiary hearing under Subpart E on his or her NPDES permit requests that the formal hearing be conducted under the procedures of Subpart F and the Regional Administrator finds that consolidation is unlikely to delay final permit issuance beyond the PSD one-year statutory deadline.

(c) These 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 granted by the Presiding Officer, or upon order of the Presiding Officer *sua sponte* 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 conditions, as well as suggested revised or alternative permit conditions (including permit denials) which, in the judgment of the requester, would be required to implement the purposes and policies of the 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 the CWA.

(7) Identification of the permit obligations that are contested or are inseverable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.

(8) Hearing requests also may ask that a formal hearing be held under the procedures set forth in Subpart F. An applicant may make such a request even if the proceeding does not constitute "initial licensing" as defined in § 124.111.

(d) If the Regional Administrator grants an evidentiary hearing request, in whole or in part, the Regional Administrator shall identify the permit conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit 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 conditions in writing in accordance with § 124.60(c).

(e) The Regional Administrator must grant or deny all requests for an evidentiary hearing on a particular permit. All requests that are granted for a particular permit shall be combined in a single evidentiary hearing.

(f) 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)(1) Within 30 days following the expiration of the time allowed by § 124.74 for submitting an evidentiary hearing request, the Regional Administrator shall decide the extent to which, if at all, the request shall be granted, provided that the request conforms to the requirements of § 124.74, and sets forth material issues of fact relevant to the issuance of the permit.

(2) When an NPDES permit for which a hearing request has been granted constitutes "initial licensing" under § 124.111, the Regional Administrator may elect to hold a formal hearing under the procedures of Subpart F rather than under the procedures of this Subpart even if no person has requested that Subpart F be applied. If the Regional Administrator makes such a decision, he or she shall issue a notice of hearing under § 124.116. All subsequent proceedings shall then be governed by §§ 124.117 through 124.121, except that any reference to a draft permit shall mean the final permit.

(3) Whenever the Regional Administrator grants a request made under § 124.74(c)(8) for a formal hearing under Subpart F on an NPDES permit that does not constitute an initial license under § 124.111, the Regional Administrator shall issue a notice of hearing under § 124.116 including a statement that the permit will be processed under the procedures of Subpart F unless a written objection is received within 30 days. If no valid objection is received, the application shall be processed in accordance with §§ 124.117 through 124.121, except that any reference to a draft permit shall mean the final permit. If a valid objection is received, this Subpart shall be applied instead.

(b) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is subject to review by the Administrator under § 124.91.

§ 124.76 Obligation to submit evidence and raise issues 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 § 124.18 as part of the preparation 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 party that were not submitted to the administrative record required by § 124.18 as part of the preparation 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; or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced. Good cause exists for the introduction of data available on operation authorized under § 124.60(a)(2).

§ 124.77 Notice of hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.57(b) and by mailing a copy to all persons who commented on the draft permit, testified at the public hearing, or submitted a request for a hearing. Before the issuance of the 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) 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 nonadversary panel 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 or she does not designate himself or herself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a non-adversary panel hearing, 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 which 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 between 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 the 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 in the hearing and any other interested person not employed by the Agency at the time of the communications, and any attorney of record for those persons.

(b)(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 on 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 on the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or who knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk all written communications or memoranda stating the substance of all oral communications together with all written responses and memoranda stating the substance of all oral responses.

(c) Whenever any member of the decisionmaking body receives an *ex parte* communication knowingly made or knowingly caused to be made by a party or representative of 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 the 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.

(d) The prohibitions of this section begin 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.

§ 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 requests that meet the requirements of §§ 124.74 and 124.76.

(b) After the expiration of the time prescribed in paragraph (a) of this section 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. No factual or legal issues, besides those raised by timely hearing requests, may be proposed except for good cause. A motion for leave 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 Presiding Officer shall grant the 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 is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall also serve a copy of each 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 acknowledgement of service by the person served or a certificate of service citing the date, place, time, and manner of service and the names of the persons served.

(d) The Regional Hearing Clerk shall maintain and furnish a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives to any person upon request.

§ 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 assign 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 in a separate proceeding.

§ 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) of this section.

(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 may 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) of this section, the following matters may be considered:

(1) Simplification, clarification, amplification, or limitation of the issues.

(2) Admission of facts and of the genuiness of documents, and stipulations of facts.

(3) 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 § 124.19 shall be received in evidence subject to the provisions of § 124.85(d)(2). 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) Matters subject to official notice may be taken.

(5) Scheduling as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) Submission of narrative statements of position on each factual issue in controversy;

(ii) Submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports, and any other type of written material) in support of those statements; or

(iii) Requests by any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) Grouping participants with substantially similar interests to eliminate redundant evidence, motions, and objections.

(7) Such other matters that may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or at some other 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 § 124.18 shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony, and other evidence may be added or amended upon order of the Presiding Officer for good cause shown. 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 each 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 its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. This motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown the 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 may 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 factual issues are decided by summary determination, no hearing will be held and the Presiding Officer shall prepare an initial decision under § 124.89. If summary determination is denied or if 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.

(f) Should it appear from the affidavits of a party opposing a motion for summary determination that he or she cannot for reasons stated present, by affidavit or otherwise, facts essential to justify his or her opposition, the Presiding Officer may deny the motion or order a continuance to allow additional affidavits or other information to be obtained or may make such other order as is just and proper.

§ 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.

[Note.—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.]

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged condition of a final permit.

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different conditions or requirements; or

(B) The deletion of those conditions or requirements; or

(ii) That the denial or issuance of a permit is otherwise improper or invalid, shall have the burden of going forward to present an affirmative case at the conclusion of the Agency case on the challenged requirement.

(b) The Presiding Officer shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. For these purposes, the Presiding Officer may:

(1) Arrange and issue notice of the date, time, and place of hearings and conferences;

(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 whenever 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 as confidential business information in accordance with § 122.19 and 40 CFR Part 2; and

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an evidentiary hearing. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In deciding whether or not to allow cross-examination, the Presiding Officer shall consider the likelihood of clarifying or resolving a disputed issue of material fact compared to other available methods. 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 issues. Written testimony shall be prepared in narrative form.

(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 § 124.18 shall be admitted and received in evidence. Upon motion by any party the Presiding Officer may direct that a witness be provided to sponsor a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards in § 124.85(b)(3) have been met, shall direct the appropriate party to produce the witness for cross-examination. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight accorded the appropriate portion of the record.

[Note.—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 decisionmaker; and (3) it provides factual material for use by the decisionmaker.]

(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, by means of a brief statement on the record describing the testimony excluded.

(4) When two or more parties have substantially similar interests 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 those 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.

§ 124.86 Motions.

(a) Any party may file a motion (including a motion to dismiss a particular claim on a contested issue), with the Presiding Officer on any matter relating to the proceeding. All motions shall be in writing 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 part 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 10 days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.52, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory provision issued or made available after the issuance of the permit under § 124.15. The Presiding Officer shall grant any motion to apply a new statutory provision unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement when appropriate to carry out the purpose of CWA, and when 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 hearing record and shall be available to the public except as provided in § 122.19, in the Office of the Regional Hearing Clerk, as soon as it is received in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall certify and file with the Regional Hearing Clerk:

(1) The original of the transcript, and

(2) 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 upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such 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 30 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 after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions of law and a brief in support thereof. Briefs shall contain appropriate references to the record. A copy of these findings, conclusions, and brief shall be served upon all the other parties 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 under § 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 30 days after its service unless within that time:

(1) A party files a petition for review by the Administrator pursuant to § 124.91; or

(2) The Administrator *sua sponte* files a notice that he or she will review the decision pursuant to § 124.91.

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Administrator may be taken only under § 124.91. 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 10 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 proceeding; or

(ii) A review after the final order is issued will be inadequate or ineffective.

(c) 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 automatically 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 5 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.

(d) In exceptional circumstances, 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.

(e) The failure to request an interlocutory appeal shall not prevent taking exception to an order or ruling in an appeal under § 124.91.

§ 124.91 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or a 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 the initial decision or denial, or 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. The petition shall include a statement of the supporting reasons and, when 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 review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1) of this section, any other party to the proceeding may file a responsive petition.

(3) Policy decisions made or legal conclusions drawn 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 a request for an evidentiary hearing the Administrator may, *sua sponte*, review such decision. Within 7 days after the Administrator has decided under this section to review an initial decision or the denial of a request for an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c)(1) 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) of this section to review a decision, the Administrator may notify the parties that only certain issues shall be briefed.

(2) Upon granting a petition for review, the Regional Hearing Clerk shall promptly forward a copy of the record to the Judicial Officer and shall retain a complete duplicate copy of the record in the Regional Office.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) of this section to review a decision, the Administrator may summarily affirm without opinion an initial decision or the denial of a request for an evidentiary hearing.

(e) A petition to the Administrator under paragraph (a) of this section 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.

(f) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purposes of judicial review, final Agency action on an issue occurs as follows:

(1) If the Administrator denies review or summarily affirms without opinion as provided in § 124.91(d), then the initial decision or denial becomes the final Agency action and occurs upon the service of notice of the Administrator's action.

(2) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's original decision, shall be reissued and served upon all parties to the appeal.

(3) If the Administrator issues a decision remanding the proceeding, then final Agency action occurs upon completion of the remanded proceeding, including any appeals to the Administrator from the results of the remanded proceeding.

(g) 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 the petitioner's brief. The petitioner then may file a reply brief within 14 days of service of the responsive brief. Any person may file an *amicus brief* for the consideration of the Administrator within the same time periods that govern reply briefs. If the Administrator determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of a request for an evidentiary hearing, the Administrator shall notify the parties of the schedule for filing briefs.

(h) Review by the Administrator of an initial decision or the denial of an evidentiary hearing shall be limited to the issues specified under paragraph (a) of this section, except that 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.

Subpart F—Non-Adversary Panel Procedures

§ 124.111 Applicability.

(a) Except as set forth in this Subpart, this Subpart applies in lieu of, and to complete exclusion of, Subparts A through E in the following cases:

(1)(i) In any proceedings for the issuance of any NPDES permit which constitutes "initial licensing" under the Administrative Procedure Act, when the Regional Administrator elects to apply this Subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. If an NPDES draft permit is processed under this Subpart, any other draft permits which have been consolidated with the NPDES draft permit under § 124.4 shall likewise be processed under this Subpart, except for PSD permits when the Regional Administrator makes a finding under § 124.4(e) that consolidation would be likely to result in missing the one year statutory deadline for issuing a final PSD permit under the CAA.

(ii) "Initial licensing" includes both the first decision on an NPDES permit applied for by a discharger that has not previously held one and the first decision on any variance requested by a discharger.

(iii) To the extent this Subpart is used to process a request for a variance under CWA section 301(h), the term "Adminstrator or a person designated by the Administrator" shall be substituted for the term "Regional Administrator".

(2) In any proceeding for which a hearing under this Subpart was granted under § 124.75 following a request for a formal hearing under § 124.74. See §§ 124.74(c)(8) and 124.75(a)(2).

(3) Whenever the Regional Administrator determines as a matter of discretion that the more formalized mechanisms of this Subpart should be used to process draft NPDES general permits (for which evidentiary hearings are unavailable under § 124.71), or draft RCRA or draft UIC permits.

(b) EPA shall not apply these procedures to a decision on a variance where Subpart E proceedings are simultaneously pending on the other conditions of the permit. See § 124.64(b).

§ 124.112 Relation to other subparts.

The following provisions of Subparts A through E apply to proceedings under this Subpart:

(a)(1) §§ 124.1 through 124.10.

(2) § 124.14 "Reopening of comment period."

(3) § 124.16 "Stays of contested permit conditions."

(4) § 124.20 "Computation of time."

(b)(1) § 124.41 "Definitions applicable to PSD permits."

(2) § 124.42 "Additional procedures for PSD permits affecting Class I Areas."

(c)(1) §§ 124.51 through 124.56.

(2) § 124.57 (c) "Public notice."

(3) §§ 124.58 through 124.66.

(d)(1) § 124.72 "Definitions," except for the definition of "Presiding Officer," see § 124.119.

(2) § 124.73 "Filing."

(3) § 124.78 *"Ex parte* communications."

(4) § 124.80 "Filing and service."

(5) § 124.85(a) (Burden of proof).

(6) § 124.86 "Motions."

(7) § 124.87 "Record of hearings."

(8) § 124.90 "Interlocutory appeal."

(e) In the case of permits to which this Subpart is made applicable after a final permit has been issued under § 124.15, either by the grant under § 124.75 of a hearing request under § 124.74, or by notice of supplemental proceedings

under § 124.14, §§ 124.13 and 124.76 shall also apply.

§ 124.113 Public notice of draft permits and public comment period.

Public notice of a draft permit under this Subpart shall be given as provided in §§ 124.10 and 124.57. At the discretion of the Regional Administrator, the public comment period specified in this notice may include an opportunity for a public hearing under § 124.12.

§ 124.114 Request for hearing.

(a) By the close of the comment period under § 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 the 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 notify each person requesting the hearing and the applicant, and shall provide public notice under § 124.57(c). If the Regional Administrator determines that a request does not meet the requirements of paragraph (a) of this section or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of that determination on all persons requesting the hearing.

(c) The Regional Administrator may also decide before a draft permit is prepared under § 124.6 that a hearing should be held under this section. In such cases, the public notice of the draft permit shall explicitly so state and shall contain the information required by § 124.57(c). This notice may also provide for a hearing under § 124.12 before a hearing is conducted under this section.

§ 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 request are denied under that section, the Regional Administrator shall then prepare a recommended decision under § 124.124. Any person whose hearing request has been denied may then appeal that recommended decision to the Administrator as provided in § 124.91.

§ 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 § 124.57(c). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the Recommended decision. The mailed notice shall also allow the participants at least 30 days to submit written comments as provided under § 124.118.

(b) The Regional Administrator may also give notice of a hearing under this section at the same time as notice of a draft permit under § 124.113. In that case the comment periods under §§ 124.113 and 124.118 shall be merged and held as a single public comment period.

(c) The Regional Administrator may also give notice of hearing under this section in response to a hearing request under § 124.74 as provided in § 124.75.

§ 124.117 Request to participate in hearing.

(a) Persons desiring to participate in any hearing noticed under this section, shall file a request to participate with the Regional Hearing Clerk before the deadline set forth in the notice of the grant of the hearing. Any person filing such a request becomes a party to the proceedings within the meaning of the Administrative Procedure Act. 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 nonbinding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than 2 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 party. 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) of this section 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 party believes can more effectively be argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party 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 the party will be prejudiced if required to submit the comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other parties under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding Officer.

(a)(1)(i) Before giving notice of a hearing under this Subpart in a proceeding involving an NPDES permit, the Regional Administrator shall request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge shall then make the assignment.

(ii) If all parties to such a hearing waive in writing their statutory right to have an Administrative Law Judge named as the Presiding Officer in a hearing subject to this subparagraph the Regional Administrator may name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(2) Before giving notice of a hearing under this Subpart in a proceeding which does not involve an NPDES permit or a RCRA permit termination, the Regional Administrator shall either:

(i) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge may thereupon make such an assignment if he concludes that the other duties of his office allow, or

(ii) Name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer:

(iii) If the Chief Administrative Law Judge declines to name an Administrative Law Judge as Presiding Officer upon receiving a request under subparagraph (2)(i) of this section, the Regional Administrator shall name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(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 §§ 124.113 and 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.9 or in § 124.18 as the case may be shall be received in evidence, and

(3) Either upon motion or *sua sponte*, to change the date of the hearing under § 124.120, or to recess such a hearing until a future date. In any such case the notice required by § 124.10 shall be given.

§ 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 or responsibility in areas related to the hearing issue, at least two or whom shall not have taken part in writing the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership, at the discretion of the Regional Administrator, may change or may include persons not employed by EPA.

(b) At the time of the hearing notice under § 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 and address 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. The 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 when the Presiding Officer determines, after consultation with the panel, that the 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 party may submit to the Presiding Officer written questions specifically directed to any person appearing or testifying in the hearing. The Presiding Officer, after consultation with the panel may, at his sole discretion, ask the written question so submitted.

(f) Within 10 days after the close of the hearing, any party shall submit such additional written testimony, affidavits, information, or material as they consider relevant or which the panel may request. 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 party to a panel hearing may submit a written request to cross-examine 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. 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 then-existing record, and the extent to which they are material to the decision on the application; and

(2) The person(s) to be cross-examined, and an estimate of the time necessary to conduct the cross-examination. This shall include a statement explaining how the cross-examination will resolve the disputed issues of material fact.

(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 request. Orders granting requests for cross-examination shall be served on all parties 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.

(c) In issuing this order, the Presiding Officer may determine that two or more parties 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 that case, the order shall simply assign time for cross-examination without further identifying the representative. If the designated parties fail to choose a single representative, the Presiding Officer may divide the assigned time among the representatives or issue any other order which justice may require.

(d) 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.

(e)(1) No later than the time set for requesting cross-examination, a party 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 this request at the time he or she issues (or would have issued) an order granting or denying a request for cross-examination, under paragraph (b) of this section. If the request for an alternative method is granted, the order shall specify the alternative and any other relevant information (such as 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 the request, require alternative means of clarifying the record to be used whether or not a request to do so has been made. The party requesting cross-examination shall

have one week to comment on the results of using the alternative method. After considering these comments the Presiding Officer shall issue an order granting or denying the request for cross-examination.

(f) The provisions of § 124.85(d)(2) apply to proceedings under this Subpart.

§ 124.122 Record for final permit.

The record on which the final permit shall be based in any proceeding under this Subpart consists of:

(a) The administrative record compiled under §§ 124.9 or 124.18 as the case may be;

(b) Any material submitted under § 124.78 relating to *ex parte* contacts;

(c) All notices issued under § 124.113;

(d) All requests for hearings, and rulings on those requests, received or issued under § 124.114;

(e) Any notice of hearing issued under § 24.116;

(f) Any request to participate in the hearing received under § 124.117;

(g) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113;

(h) The full transcript and other material received into the record of the panel hearing under § 124.120;

(i) Any motions for, or rulings on, cross-examination filed or issued under § 124.121;

(j) Any motions for, orders for, and the results of, any alternatives to cross-examination under § 124.121; and

(k) The full transcript of any cross-examination held.

§ 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 permit (if such person is urging that the draft or final permit 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 where appropriate. 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 or final permit should be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of that 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 that decision or to any adverse order or ruling of the Presiding Officer to which that party objected, and may appeal those exceptions to the Administrator as provided in § 124.91, 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. That final decision shall include findings of fact; conclusions regarding material issue of law, fact, or discretion, as well as reasons therefore; and a modified 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 or her designee may consult with the Presiding Officer, members of the hearing panel, or any other EPA employee other than members of the Agency Trial Staff under § 124.78 in preparing the final decision. The Hearing Clerk shall file a copy of the decision on all parties.

§ 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 becomes 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 under this Subpart.

(b) The failure of the Administrator, Regional Administrator, or Presiding Officer to do any act within the time periods specified under this Part shall not waive or diminish any right, power, 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 under this Part the Administrator, Regional Administrator, or Presiding Officer, as the case may be, may grant that party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

Appendix A to Part 124—Guide to Decisionmaking Under Part 124

This Appendix is designed to assist in reading the procedural requirements set out in Part 124. It consists of two flow charts.

Figure 1 diagrams the more conventional sequence of procedures EPA expects to follow in processing permits under this Part. It outlines how a permit will be applied for, how a draft permit will be prepared and publicly noticed for comment, and how a final permit will be issued under the procedures in Subpart A.

This permit may then be appealed to the Administrator, as specified both in Subpart A (for RCRA, UIC, or PSD permits), or Subpart E or F (for NPDES permits). The first flow chart also briefly outlines which permit decisions are eligible for which types of appeal.

Part 124 also contains special "non-adversary panel hearing" procedures based on the "initial licensing" provisions of the Administrative Procedure Act. These procedures are set forth in Subpart F. In some cases, EPA may only decide to make those procedures applicable after it has gone through the normal Subpart A procedures on a draft permit. This process is also diagrammed in Figure 1.

Figure 2 sets forth the general procedure to be followed where these Subpart F procedures have been made applicable to a permit from the beginning.

Both flow charts outline a sequence of events directed by arrows. The boxes set forth elements of the permit process; and the diamonds indicate key decisionmaking points in the permit process.

The charts are discussed in more detail below.

Figure 1—Conventional EPA Permitting Procedures

This chart outlines the procedures for issuing permits whenever EPA does not make use of the special "panel hearing" procedures in Subpart F. The major steps depicted on this chart are as follows:

1. The permit process can begin in any one of the following ways:

a. Normally, the process will begin when a person applies for a permit under §§ 122.4 and 124.3.

b. In other cases, EPA may decide to take action on its own initiative to change a permit or to issue a general permit. This leads directly to preparation of a draft permit under § 124.6.

c. In addition, the permittee or any interested person (other than for PSD permits) may request modification, revocation and reissuance or termination of a permit under §§ 122.15, 122.16 and 124.5.

Those requests can be handled in either of two ways:

i. EPA may tentatively decide to grant the request and issue a new draft permit for public comment, either with or without requiring a new application.

ii. If the request is denied, an informal appeal to the Administrator is available.

2. The next major step in the permit process is the preparation of a draft permit. As the chart indicates, preparing a draft permit also requires preparation of either a statement of basis (§ 124.7), a fact sheet (§ 124.8) or, compilation of an "administrative record" (§ 124.9), and public notice (§ 124.10).

3. The next stage is the public comment period (§ 124.11). A public hearing under § 124.12 may be requested before the close of the public comment period.

EPA has the discretion to hold a public hearing, even if there were no requests during the public comment period. If EPA decides to schedule one, the public comment period will be extended through the close of the hearing. EPA also has the discretion to conduct the public hearing under Subpart F panel procedures. (See Figure 2.)

The regulations provide that all arguments and factual materials that a person wishes EPA to consider in connection with a particular permit must be placed in the record by the close of the public comment period (§ 124.13).

4. Section 124.14 states that EPA, at any time before issuing a final permit decision may decide to either reopen or extend the comment period, prepare a new draft permit and begin the process again from that point, or for RCRA and UIC permits, or for NPDES permits that constitute "initial licensing", to begin "panel hearing" proceedings under Subpart F. These various results are shown schematically.

5. The public coment period and any public hearing will be followed by issuance of a final permit decision (§ 124.15). As the chart shows, the final permit must be accompanied by a response to comments (§ 124.17) and be based on the administrative record (§ 124.18).

6. After the final permit is issued, it may be appealed to higher agency authority. The exact form of the appeal depends on the type of permit involved.

a. RCRA, UIC or PSD permits standing alone will be appealed directly to the Administrator under § 124.19.

b. NPDES permits which do not involve "initial licensing" may be appealed in an evidentiary hearing under Subpart E. The regulations provide (§ 124.74) that if such a hearing is granted for an NPDES permit and if RCRA or UIC permits have been consolidated with that permit under § 124.4 then closely related conditions of those RCRA or UIC permits may be reexamined in an evidentiary hearing. PSD permits, however, may never be reexamined in a Subpart E hearing.

c. NPDES permits which do involve "initial licensing" may be appealed in a panel hearing under Subpart F. The regulations provide that if such a hearing is granted for an NPDES permit, consolidated RCRA, UIC, or PSD permits may also be reexamined in the same proceeding.

As discussed below, this is only one of several ways the panel hearing procedures may be used under these regulations.

7. This chart does not show EPA appeal procedures in detail. Procedures for appeal to the Administrator under § 124.19 are self-explanatory; Subpart F procedures are diagrammed in Figure 2; and Subpart E procedures are basically the same that would apply in any evidentiary hearing.

However, the chart at this stage does reflect the provisions of § 124.60(b), which allows EPA, even after a formal hearing has begun, to "recycle" a permit back to the draft permit stage at any time before that hearing has resulted in an initial decision.

Figure 2—Non-Adversary Panel Procedures

This chart outlines the procedures for processing permits under the special "panel hearing" procedures of Subpart F. These procedures were designed for making decisions that involve "initial licensing" NPDES permits. Those permits include the first decisions on an NPDES permit applied for by any discharger that has not previously held one, and the first decision on any statutory variance. In addition, these procedures will be used for any RCRA, UIC, or PSD permit which has been consolidated with such an NPDES permit, and may be used, if the Regional Administrator so chooses, for the issuance of individual RCRA or UIC permits. The steps depicted on this chart are as follows:

1. Application for a permit. These proceedings will generally begin with an application, since NPDES initial licensing always will begin with an application.

2. Preparation of a draft permit. This is identical to the similar step in Figure 1.

3. Public comment period. This again is identical to the similar step in Figure 1. The Regional Administrator has the opportunity to schedule an informal public hearing under § 124.12 during this period.

4. Requests for a panel hearing must be received by the end of the public comment period under § 124.113. See § 124.114.

If a hearing request is denied, or if no hearing requests are received, a recommended decision will be issued based on the comments received. The recommended decision may then be appealed to the Administrator. See § 124.115.

5. If a hearing is granted, notice of the hearing will be published in accordance with § 124.116 and will be followed by a second comment period during which requests to participate and the bulk of the remaining evidence for the final decision will be received (§§ 124.117 and 124.118).

The regulations also allow EPA to move directly to this stage by scheduling a hearing when the draft permit is prepared. In such cases the comment period on the draft permit under § 124.113 and the prehearing comment period under § 124.118 would occur at the same time. EPA anticipates that this will be the more frequent practice when permits are processed under panel procedures.

This is also a stage at which EPA can switch from the conventional procedures diagrammed in Figure 1 to the panel hearing procedures. As the chart indicates, EPA would do this by scheduling a panel hearing either through use of the "recycle" provision in § 124.14 or in response to a request for a formal hearing under § 124.74.

6. After the close of the comment period, a panel hearing will be held under § 124.120, followed by any cross-examination granted under § 124.121. The recommended decision will then be prepared (§ 124.124) and an opportunity for appeal provided under § 124.125. A final decision will be issued after appeal proceedings, if any, are concluded.

BILLING CODE 6560-01-M

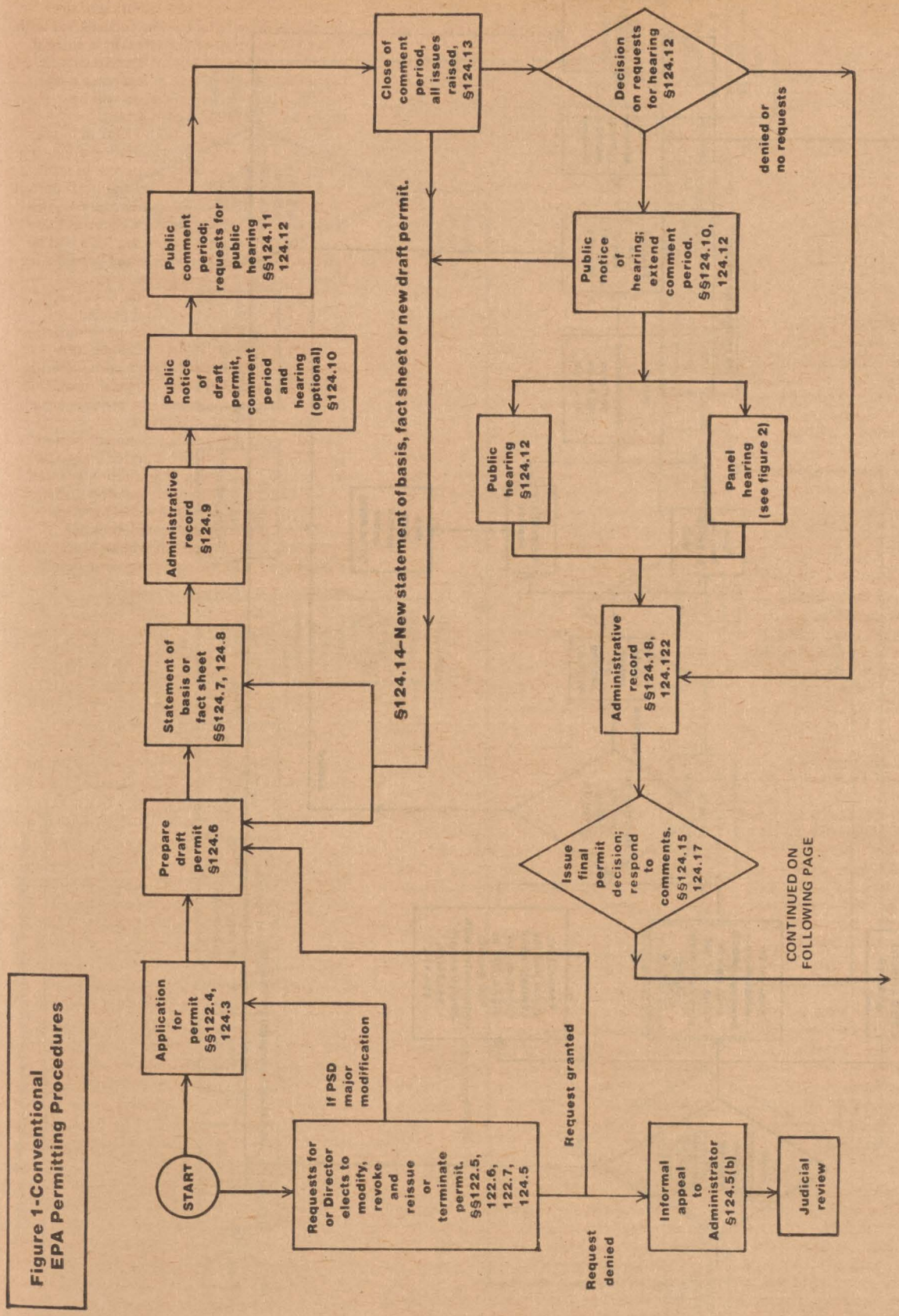
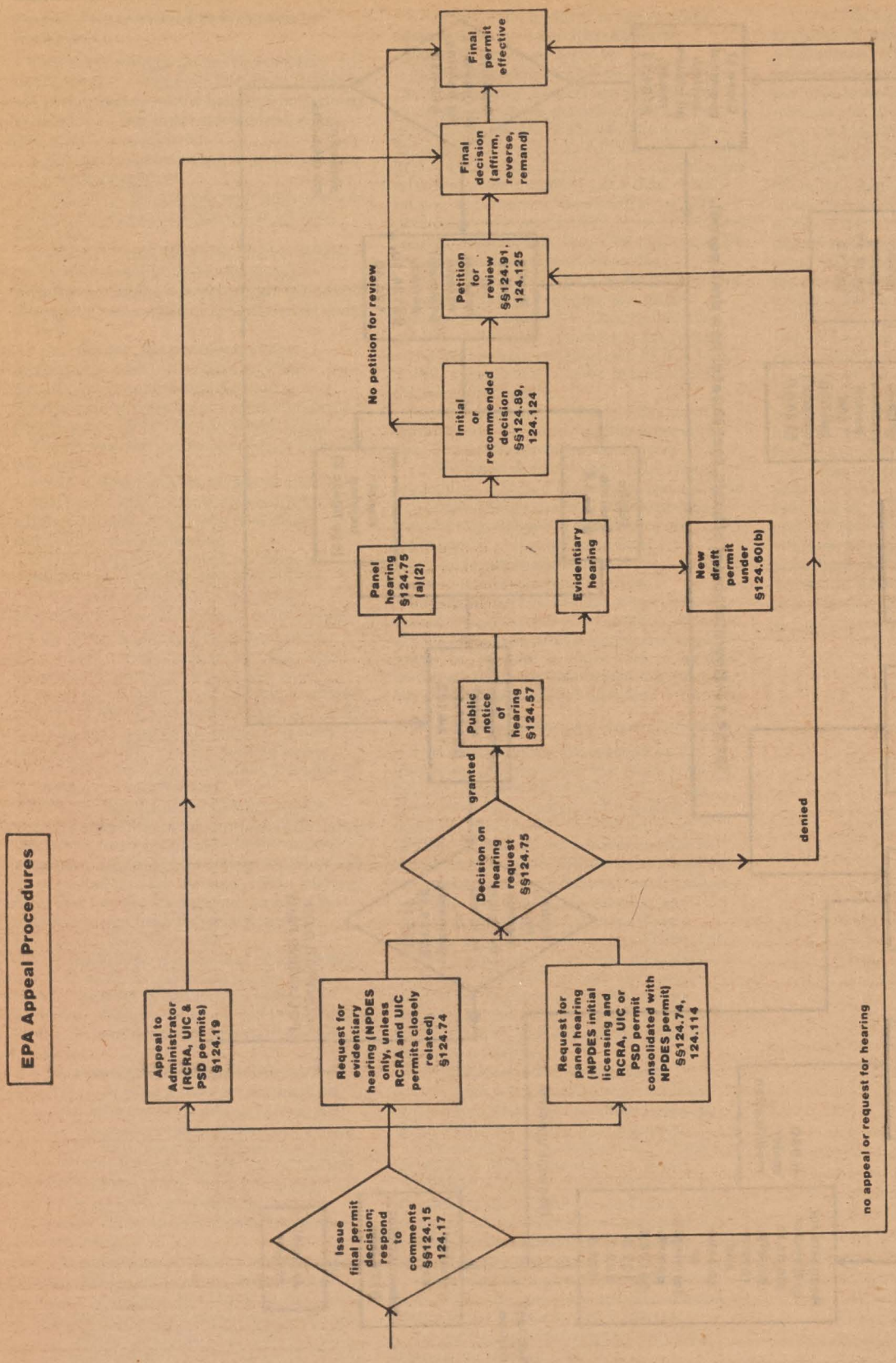


Figure 1-Conventional EPA Permitting Procedures


EPA Appeal Procedures
Issue final permit decision; respond to comments §§124.15 124.17
Appeal to Administrator (RCRA, UIC & PSD permits) §124.19
Request for evidentiary hearing (NPDES only, unless RCRA and UIC permits closely related) §124.74
Request for panel hearing (NPDES initial licensing and RCRA, UIC or PSD permit consolidated with NPDES permit) §§124.74, 124.114
Decision on hearing request §§124.75
granted
denied
Public notice of hearing §124.57
Panel hearing §124.75 (a)(2)
Evidentiary hearing
New draft permit under §124.60(b)
Initial or recommended decision §§124.89, 124.124
No petition for review
Petition for review §§124.91, 124.125
Final decision (affirm, reverse, remand)
Final permit effective
no appeal or request for hearing

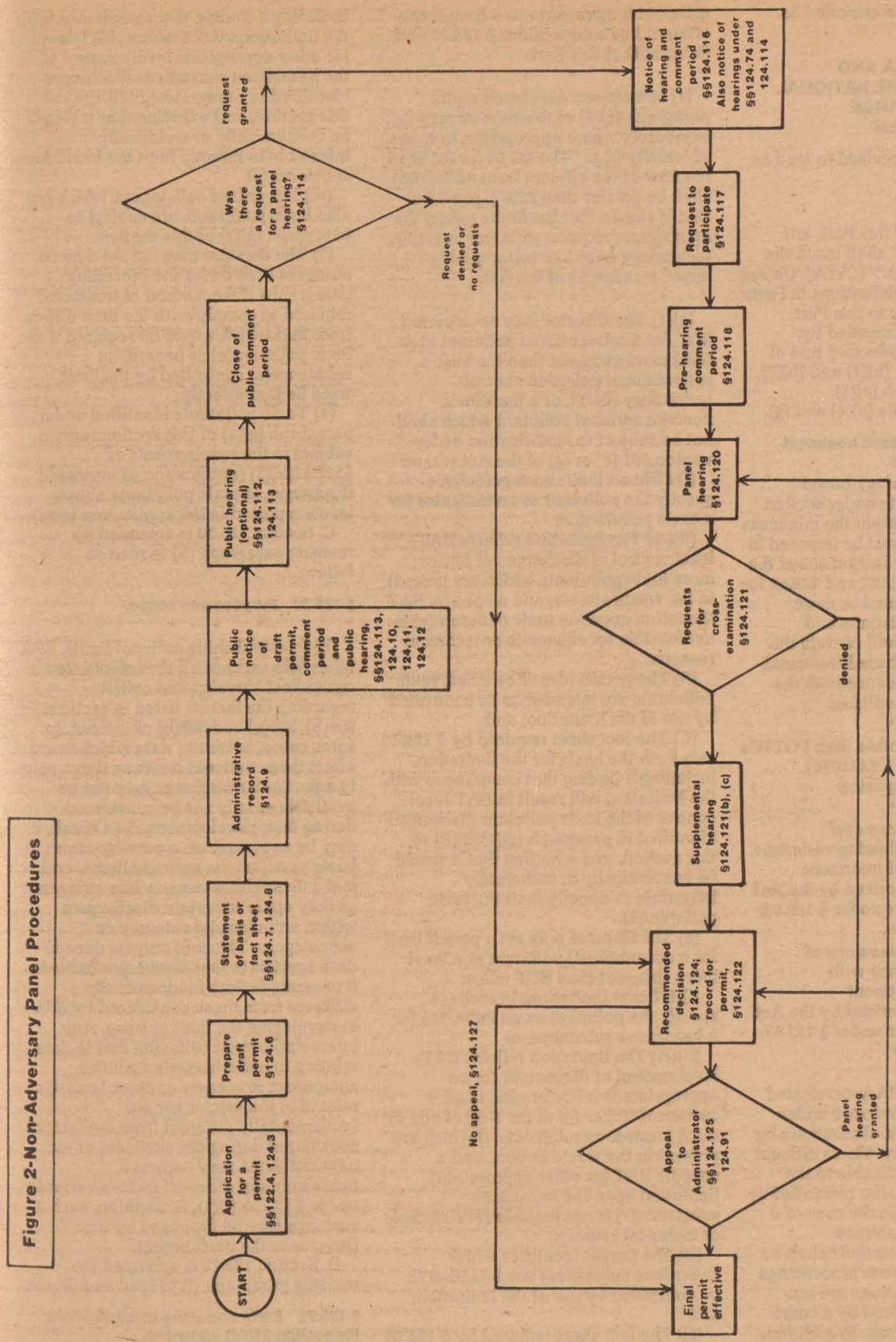


Figure 2-Non-Adversary Panel Procedures

BILLING CODE 6560-01-C

2. 40 CFR Part 125 is amended as follows:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

A. Section 125.2 is revised to read as follows:

§ 125.2 Definitions.

For the purposes of this Part, any reference to "the Act" shall mean the Clean Water Act of 1977 (CWA). Unless otherwise noted, the definitions in Parts 122, 123 and 124 apply to this Part.

B. Section 125.3 is amended by:

1. Revising the introductory text of paragraphs (a), (a)(2), (b)(1) and (b)(2), and revising paragraph (c)(1).

2. Adding paragraphs (c)(4) and (g).

§ 125.3 Technology-based treatment requirements in permits.

(a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.60, 122.61 and 122.62 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines:

* * * * *

(2) For dischargers other than POTW's except as provided in § 122.67(d), effluent limitations requiring:

* * * * *

(b) *Statutory variances and extensions.* (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 122.53;

* * * * *

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 122.53:

* * * * *

(c) * * *

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under § 122.53 and Subpart D of this Part.

* * * * *

(4) Limitations developed under paragraph (c)(2) of this section may be expressed, where appropriate, in terms of toxicity (e.g., "The LC 50 for fat head minnow of the effluent from outfall 001 shall be greater than 25%"), provided that is shown that the limits reflect the appropriate requirements (for example, technology-based or water-quality-based standards) of the Act.

* * * * *

(g)(1) The Director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification under section 301 (c) or (g) of the Act where:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant, or

(ii)(A) 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;

(B) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 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 paragraph (g)(1)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(2) The Director may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance, or

(ii)(A) The limitation reflects BAT-level control of discharges (or an appropriate level determined under section 301(c) or (g) of the Act) of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT (or other appropriate) limitation upon the hazardous substance(s) is not feasible for economic or technical reasons;

(B) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level (or other appropriate level) control of the hazardous substances discharges identified in paragraph (g)(2)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(iii) Hazardous substances which are also toxic pollutants are subject to paragraph (g)(1) of this section.

(3) The Director may not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

(4) Toxic pollutants identified under paragraph (g)(1) of this section remain subject to the requirements of §122.61(a)(1) (notification of increased discharges of toxic pollutants above levels reported in the application form).

C. Section 125.30 is amended by revising paragraph (b) to read as follows:

§ 125.30 Purpose and scope.

* * * * *

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b), 304(g) and 307(b) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under § 122.53 (i)(1). In addition, such a variance may be proposed by the Director in the draft permit.

D. Section 125.72 is amended by revising paragraph (f) to read as follows:

§ 125.72 Early screening of applications for section 316(a) variances.

* * * * *

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.65), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied at the discretion of the Director.

[Note.—At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.]

* * * * *

E. Section 125.92 is revised to read as follows:

§ 125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.

Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations in accordance with the provisions of § 122.53(j).

F. Section 125.95 is revised to read as follows:

§ 125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.

Any owner or operator of a point source other than a POTW that will not achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations in accordance with the provisions of § 122.53(i).

G. Section 125.104 is amended by revising paragraph (c) to read as follows:

§ 125.104 Best management practices programs.

* * * * *

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this Subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.6). The BMP program shall be subject to the applicable permit issuance requirements of Part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.15, provided that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

[Note.—A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR Part 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.]

* * * * *

[FR Doc. 80-14312 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-M

federal register

Monday
May 19, 1980

Part XI

Environmental Protection Agency

Consolidated Permit Application Forms for EPA Programs

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 125

[FRL-1453-4]

Consolidated Permit Application Forms for EPA Programs

AGENCY: Environmental Protection Agency.

ACTION: Publication of consolidated permit application forms.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published final consolidated regulations for several permit programs adminstered by the Agency. As part of its consolidation of permit programs, EPA is also developing a set of consolidated application forms for several of its permit programs.

The complete set of consolidated application forms will consist of a brief general form requesting information common to all the consolidated permit programs (including an identification of the facility and a general description of the various pathways by which the facility releases pollutants to the environment) and several supplemental program-specific forms. Several of these forms, drafts of which were published for public comment on June 14, 1979 (44 FR 34346), are now available for use and are published in this notice. These are:

Form 1—the general form for all applicants.

Form 2b—a supplemental form for concentrated animal feeding operations and aquatic animal production facilities applying for National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act.

Form 2c—a supplemental form for existing industrial dischargers applying for NPDES permits.

Form 3—a supplemental form for hazardous waste management facilities applying for hazardous waste treatment, storage, or disposal permits under the Resource Conservation and Recovery Act.

Additional forms will be developed in the future, as explained in the Supplementary Information section below.

The consolidated application forms have been designed for use by applicants for EPA permits. States with EPA-approved permit programs may adopt the EPA format in developing their own forms, or they may develop forms which differ from EPA's, provided that their forms require submission of the information required by 40 CFR Part 122 of the consolidated permit regulations. EPA encourages States to consolidate their application forms in a manner which will, like EPA's consolidated form, provide complete summaries of facilities' total releases of pollutants to the environment.

The Supplementary Information below discusses extensively the NPDES permitting strategy and related regulations, as well as the application forms. Drafts of the forms and proposed regulations and discussion of the permitting strategy were published together in Part III of the June 14, 1979 **Federal Register** (44 FR 34346). Today, the final regulations are published as part of the consolidated regulations. However, the regulations relating to the application requirements and permitting strategy are discussed here rather than in the preamble to the consolidated regulations to again allow a unified, detailed discussion of the future direction of the NPDES program.

DATES: Forms 1, 2b, 2c, and 3 must be used in accordance with the following schedule:

1. New concentrated animal feeding operations and aquatic animal production facilities applying to EPA for NPDES permits must submit Forms 1 (EPA Form 3510–1, OMB No. 158–RO175) and 2b (EPA Form 3510–2b, OMB No. 158–RO174). EPA Form 7550–7 (OMB No. 158–RO103) will be superseded. Any existing facility applying for a new permit must submit Forms 1 and 2b, unless its permit expires on or before November 30, 1980 and it has already submitted EPA Form 7550–7. See 40 CFR 122.53(c) (published elsewhere in today's **Federal Register**) for information on deadlines for submission.

2. Any existing industrial (manufacturing, commercial, mining or silvicultural) facility applying to EPA for an NPDES permit must submit Forms 1 and 2c (EPA Form 3510–2c, OMB No. 158–RO173), unless its permit expires on or before November 30, 1980 and it has already submitted EPA Forms 7550–8, 7550–9 or 7550–23. Forms 7550–8, –9, and –23 are superseded for all such dischargers applying after May 19, 1980. However, they must still be used by NPDES new sources and new dischargers until Form 2d is made available. See 40 CFR 122.53(c) for information on deadlines for submission.

3. Hazardous waste management facilities must submit Forms 1 and 3 (EPA Form 3510–3, OMB No. 158–S80004) to EPA no later than 180 days after promulgation of 40 CFR Part 261. (These facilities must also submit brief notification forms to EPA no later than 90 days after promulgation of 40 CFR Part 261. See 45 FR 12746, February 26, 1980.)

FOR FURTHER INFORMATION CONTACT:

1. Forms 1, 2b, and 2c: Fanny Knox or Dov Weitman, Permits Division (EN–336), Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 (202) 426–7010.

2. Form 3: Art Glazer or Allen Pearce, Office of Solid Waste (WH-563), Environmental Protection Agency, 401 M Street SW, Washington, D. C. 20460 (202) 755–9150.

SUPPLEMENTARY INFORMATION:

Contents of this Preamble:

I. Overview of Consolidated Application Forms
II. General Application Requirements for All Permit Programs: § 122.4 and Form 1
III. NPDES Forms 2b and 2c and Related NPDES Regulations
A. Introduction
1. Overview of this Preamble Discussion
2. Use of a Single Form for all Existing Industrial Dischargers
B. Strategy for Issuing Permits to Control Discharges of Toxic Pollutants
1. General Approach to Permit Writing
2. New Regulations to Insure the Control of Toxic Pollutants
a. Summary of Requirements
i. Requirement to Control all Significant Discharges of Toxic Pollutants through Permit Limits: § 122.62(e)
ii. Regulation of Toxic Pollutants not Limited in Permits
(A) Notification of Increased Discharges of Toxic Pollutants: § 122.61(a)
(B) Modification of Permit to Control Increased Discharges of Toxic Pollutants: § 122.15(a)(5)(viii)–(x)
b. Discussion of Changes from Proposed Requirements
3. Toxicity-based Limits: § 125.3(c)(4)
4. Indicator Limits to Control Toxic Pollutants or Hazardous Substances: §125.3(g)
C. NPDES Application Requirements for Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities: § 122.53(e) and Form 2b
D. NPDES Application Requirements for Existing Industrial Dischargers: § 122.53(d) and Form 2c
1. General Discussion of Requirements; Public Availability of Information
2. Required Analyses and Estimates of Pollutant Discharges
a. Toxic Pollutants: § 122.53(d)(7)(ii) and (v) and item V–C
b. Other Pollutants
i. Required Analyses: § 122.53(d)(7)(i) and item V–A
ii. Required Reporting of Presence or Absence and, if Present, Required Analyses: § 122.53(d)(7)(iii) and item V–B
iii. Required Reporting of Presence or absence of Asbestos and Hazardous

Substances: § 122.53(d)(7)(iv) and item V–D
c. General Concerns in Sampling, Analysis and Reporting of Testing Results
i. Sampling Requirements
ii. Reporting of Analytical Testing Results
(A) Detection Limits
(B) Miscellaneous
d. Response to Comments Advocating Biological Monitoring for NPDES Permit Applications
3. Other Application Requirements
a. Outfall Location: § 122.53(d)(1) and item I
b. Flows, Sources of Pollution and Treatment Technologies: § 122.53(d)(2)–(4) and item II
c. Maximum Production: § 122.53(d)(5) and item III
d. Currently Required Construction, Upgrading or Operation of Waste Treatment Equipment: § 122.53(d)(6) and item IV
e. Potential Discharges of Toxic Pollutants
i. Toxic Pollutants Used or Produced by the Applicant: § 122.53(d)(9) and item VI–A
ii. Predicted Potential Increases in Discharges of Pollutants: § 122.53(d)(10) and item VI–B and C
f. Results of Previous Biomonitoring: § 122.53(d)(11) and item VII
g. Laboratory Conducting Analyses: § 122.53(d)(12) and item VIII
h. Other Information Required by the Director on a Case-by-Case Basis: § 122.53(d)(13)
4. Proposed Application Requirements Deleted from the Final Regulations and Form
a. Optional Reporting of Discharges of Hazardous Substances
b. Submission of Data on Additional Pollutants
c. Ancillary Activities which May Result in Discharges of Toxic Pollutants or Hazardous Substances—Best Management Practices Programs
E. Monitoring Requirements
1. Chemical Monitoring
2. Biological Monitoring
F. Economic and Resource Impacts
1. Unit Costs of Sampling and Analysis
2. Unit Reporting Costs
3. Total Incremental Costs
4. Economic Impact Upon Selected Industries
5. Impact Upon Independent Laboratory Capacity
6. Small Business Exemption
a. General
b. Coal Mines
IV. Part A of Hazardous Waste Application Requirements: § 122.24 and Form 3

I. OVERVIEW OF CONSOLIDATED APPLICATION FORMS

Today EPA is publishing in final form the first major regulatory products of its permits consolidation efforts. These products, which were proposed on June 14, 1979 (44 FR 34244 and 44 FR 34346), are consolidated permit regulations and a consolidated set of permit application forms.

The consolidated permit regulations are designed to promote consistency in several of EPA's established and newly-developed permit programs. The regulations are promulgated as 40 CFR Parts 122–124 elsewhere in today's **Federal Register.** They apply to five permit programs:

(1) The Hazardous Waste permit program under section 3005 of the Resource Conservation and Recovery Act (RCRA);

(2) The Underground Injection Control (UIC) permit program under Part C of the Safe Drinking Water Act (SDWA);

(3) The National Pollutant Discharge Elimination System (NPDES) permit program under section 402 of the Clean Water Act (CWA);

(4) The Dredged or Fill Material permit program under section 404 of CWA; and

(5) The Prevention of Significant Deterioration (PSD) permit program under Part C of the Clean Air Act (CAA).

The EPA consolidated application forms will be used by applicants for EPA-issued permits under the above permit programs. However, since EPA does not issue any permits under the dredged or fill material program, it is not developing a form for that program. (These permits are issued by the U.S. Army Corps of Engineers and by States approved by EPA.)

The consolidated application forms will, when complete, consist of the following:

Form 1—General Information (all permits).

Form 2—Discharges to Surface Water (NPDES permits).

a. Publicly Owned Treatment Works.

b. Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities.

c. Existing Manufacturing, Commercial, Mining and Silvicultural Operations.

d. New Manufacturing, Commercial, Mining and Silvicultural Operations.

Form 3—Hazardous Waste Information Summary (RCRA permits).

Form 4—Underground Injection of Fluids (UIC permits).

Form 5—Air Emissions in or near Attainment Areas (PSD permits).

The above organization differs slightly from that set out in the June 14 notice. In that notice, EPA proposed to combine all application requirements for proposed facilities into a single form. Upon reconsideration, EPA has determined that, apart from the common elements consolidated in Form 1, the informational needs of the various programs differ significantly for proposed sources as well as existing sources. Thus it makes sense to keep them separate, as outlined above.

This notice contains Forms 1, 2b, 2c, and 3, which must be used as set forth above under "Dates." As mentioned in the June 14 preamble at page 34347, EPA had hoped to publish drafts of Forms 2a, 2d (proposed Form 5), and 5 in December 1979. Forms 2a and 2d have been delayed somewhat due to the need to concentrate Agency resources on finalizing Forms 1, 2b, 2c, and 3, and on promulgating final consolidated regulations. Development of Form 5 has been delayed as a result of *Alabama Power* v. *Costle* (D.C. Cir., 1979), which required EPA to substantially revise several major aspects of the PSD program regulations. EPA currently anticipates that drafts of Forms 2a, 2d, and 4 will be published in June 1980. The date for publication of a draft of Form 5 is currently uncertain. Applicants for PSD permits should contact their local EPA Regional offices for information on how to apply for PSD permits pending availability of Form 5.

The set of consolidated application forms are required to be used only for applications to EPA. Where approved States have permit-issuing authority, they may use their own forms. These forms must, however, require at least the information required by the application requirements contained in 40 CFR Part 122. In addition, States may require information beyond that required by EPA. EPA encourages States to consolidate their programs and forms and hopes that the EPA consolidated application forms will provide a useful model to the States.

Or course, States may choose to use EPA's forms. EPA has in the past provided NPDES forms to States wishing to use EPA forms. This practice will continue in the future for all of the consolidated permit application forms.

States may be able to consolidate State permit application forms for permit programs other than those covered by EPA's consolidated forms, such as State dredged or fill material application forms. Combination of forms for PSD and nonattainment permit applications under Parts C and D of the Clean Air Act might prove particularly useful.

One commenter suggested that EPA require States to use the same form as EPA. This suggestion has not been adopted, because States are allowed by the applicable laws to have more stringent application requirements than EPA. In addition, EPA sees no compelling need to require a uniform application form in all States. Inclusion of uniform minimum application requirements in 40 CFR Part 122, coupled with EPA approval of State program forms under 40 CFR 123.4(d), will provide sufficient uniformity to meet program needs.

EPA was pleased to receive generally favorable comments from the public on the concept of consolidating the application forms. As Citizens for a Better Environment pointed out, this consolidation will not only reduce paperwork but will also provide a "concise and clear record of the ultimate fate of all of the pollutants generated by a facility, whether these pollutants are discharged to air, water or land." States were also supportive of EPA's effort.

Some industry commenters did, however, express two major concerns, although in general they did not object to the concept of consolidating application forms.

The first concern expressed by industry was an extension of the general concerns raised about the consolidated permits regulations: that application and permit requirements of one program should not be applied to another program and that application procedures under one program should not be allowed to delay procedures under another program. EPA agrees that consolidation should not affect substantive requirements of applicable law and that consolidated procedures should be used to expedite rather than delay permit issuance. The preamble to Parts 122 and 124 of the consolidated regulations discusses these issues in detail. The important point is that different program-specific application forms (e.g., Forms 2c and 3) may be submitted separately and, if necessary to avoid delay, processed separately.

The second concern expressed by commenters from several industries (particularly farming and coal mining, but also oil and gas producing, steam electric generating, and cement and concrete industries) was that industry-specific forms should be developed for each industry, resulting in simplification for applicants. EPA agrees that development of industry-specific forms may be useful in certain situations, although administrative resource constraints generally preclude such development for each regulated industry. EPA has been able to take steps to develop specific requirements for the farming and coal mining industries. EPA has separated agricultural and aquatic operations from all other dischargers of pollutants by developing Form 2b. Similarly, EPA is working with the Department of the Interior's Office of Surface Mining to develop a consistent set of specific application requirements for the coal mining industry (see section III.F.6.b of this preamble; see also 44 FR 55322, September 25, 1979).

II. GENERAL APPLICATION REQUIREMENTS FOR ALL PERMIT PROGRAMS: § 122.4 AND FORM 1

Form 1 of the consolidated application forms requires identification of the applicant and general information showing the various pathways by which the facility releases pollutants to the environment. This information is used by the applicant to determine what permits are needed by the facility and which supplemental forms must be submitted in addition to Form 1. Most of the requirements of Form 1 also appear in § 122.4 of the consolidated regulations.

The June 14 draft of Form 1 has been changed in some minor respects in the final version. In addition, the instructions have been shortened and clarified by deleting repetitious information and making appropriate editorial changes. The instructions have also been amended to reflect program changes in the final consolidated (and other program) regulations and to reflect the changes in the PSD program required by *Alabama Power* v. *Costle*.

Divergent philosophical viewpoints were expressed in comments by industry and environmental groups. Several industry commenters referring to Items II (draft item I) and XI (draft item X) questioned EPA's authority to require information not directly related to the applied-for permits. Item II requires a facility applying for a permit under one program to state whether or not it engages in any activity regulated under any of the other consolidated EPA permit programs. Item XI requires submission of a map showing the various types of wastes which the facility releases to the environment and the various ways those wastes are released. For example, a facility needing an NPDES permit must also state whether it treats, stores or disposes of hazardous waste and, if so, must show on a map where it does so.

Environmentalists argued to the contrary that Form 1 should require much more detailed information showing the movement of all waste stream components in an industrial process, from the introduction of raw materials through processing to ultimate release.

EPA has concluded, after considering both the industrial and environmental arguments, that the middle course which it adopted in draft Form 1 should be retained as the most suitable one for the form's purposes. EPA believes that responsible environmental management requires a unified examination of a facility's total residual waste stream. In recent years, the interrelation of various environmental programs has become increasingly clear. See, for example, section 1006 of RCRA, requiring EPA to integrate all provisions of RCRA, for purposes of administration and enforcement, with the appropriate provisions of the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and certain other environmental laws administered by EPA.

EPA is responding to this need through its consolidated permit regulations and through its consolidated application forms, particularly Form 1. Because the burden on a facility to list and to indicate on a map its releases of pollutants to the environment is minimal, the environmental benefit of providing this information is not countervailed by a substantial burden on industry.

However, because of the differing informational needs of the various consolidated programs, the detailed information desired by the environmental commenters is not required by Form 1. Rather, any detailed information required to make permit issuance decisions under a particular program should be requested in that program's supplemental form. Form 1 thus functions as a "road map," leading the applicant to the detailed informational requirements relevant to its operation.

Specific items on Form 1 which were of interest to commenters are discussed below:

Item I (item II in the June 14 draft of Form 1): EPA has renamed the "Facility ID Number;" it will now be referred to as "EPA ID Number." In response to comments (particularly from farmers and oil and gas producers) that Dunn and Bradstreet (DUNS) numbers have not been assigned to certain facilities and are difficult to obtain, EPA has decided to provide DUNS numbers to facilities before they fill out their applications. In many instances, the ID number (which will be obtained by EPA from Dunn and Bradstreet where none has existed previously) will be on a preprinted label mailed to the applicant which contains items I, III (facility name), V (facility mailing address), and

VI (facility location). In other instances, EPA will indicate the ID number on the outside of the envelope used to mail the application form to the applicant.

Item II (item I in the June 14 draft): A third column has been added to this item, as requested by some commenters, for applicants to indicate which supplemental forms are being submitted in addition to Form 1. EPA has also adopted a comment requesting that the instructions state that a facility which answers yes to a question but which already has a permit covering that activity need not file a new application, unless the applicant is filing for a permit renewal. Some commenters correctly noted that question E was overly broad. Questions E through H have been redrafted to clarify that only information related to the facility seeking a permit is requested and not, for example, information concerning hazardous waste disposed of by the same owner or operator at a different facility in a distant location.

Item IV: Two environmental commenters requested that each applicant be required to list a telephone number at which a technically competent person could be reached 24 hours a day. EPA believes this is unnecessary. It is true that the Hazardous Waste Permit Program appropriately requires each facility that treats, stores or disposes of hazardous waste to have an emergency coordinator present or on call (40 CFR Part 264). However, different people are likely to function as emergency coordinators at different times; thus the identification of a single person or phone number in the application is likely to become obsolete soon after the application is filed. In the event of an emergency needing immediate attention by the permittee during non-business hours, high-level officials of the permitted facility may generally be contacted immediately without difficulty. Moreover, the National Responses Center may be reached 24 hours a day at 800–424–8802 to respond to emergencies requiring immediate assistance or advice.

Item VII: Several commenters requested clarification concerning SIC codes. The purposes of requesting SIC codes are: (1) to provide permit writers with an additional means of checking whether wastes or pollutants listed on a supplemental form include all of those which the applicant might be expected to release; (2) to provide one means for NPDES and PSD permit writers to determine whether a particular industry guideline or standard applies; and (3) to provide a data base to assist EPA in correlating industrial subcategories (indicated in Item VII) to types of wastes or pollutants being released to the environment (indicated in Item II). EPA recognizes that determining SIC codes is an imprecise exercise and requires simply that each applicant use its best judgment to list at most four SIC codes, in order of priority, which most accurately define goods (final or intermediate) and services created or produced by the applicant. Applicants needing assistance in answering the question are now directed by the instructions, as suggested by one commenter, to contact their EPA Regional offices.

Two commenters noted that off-site hazardous waste management facilities have no specific SIC code; in such cases, SIC code 9999 ("nonclassifiable establishments") would apply. The number 9999, together with the applicant's responses to item I, Question E and item XII will indicate that the facility is an off-site HWM facility.

Item VIII: Commenters correctly noted that facilities may be operated and applications may be submitted by persons who are not owners. Form 1 now presumes that the applicant is the operator of the facility. It should be noted that 40 CFR 122.6, which applies to the NPDES, Hazardous Waste and UIC programs, provides: "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." An additional question has been added to determine whether the operator/applicant is also the owner of the facility.

Item IX: A new item asks whether the facility is located on Indian lands. The significance of this question is jurisdictional; see 40 CFR 123.1(f) and the accompanying preamble discussion. A reference in draft item VIII–C to Indian lands was deleted, since that item is designed to identify the status of the operator, not of the land itself.

Item X (draft item IX): One commenter questioned the need for more than one permit number per facility. EPA does intend in the future to use a common number for each permit issued to a particular facility (except for a one-letter prefix indicating under which program the permit has been issued). However, existing NPDES and PSD permits as well as future permits under "other" permit programs, necessitate provision in the form for insertion of permit numbers.

A few commenters objected to this item and suggested that only Federal permits or only permits relevant to the one applied for be required. However, EPA believes that identification of the various environmental permits issued to the facility will promote cooperation among various agencies and offices in regulating the facility and will ultimately benefit the facility as well.

Item XI (draft item X): Several commenters objected to the requirement that the map extend at least one mile beyond the facility boundaries. However, this requirement has been retained, since the disposal or discharge of wastes is likely to pollute the adjacent environment through such means as surface or ground water movement.

Several other commenters correctly noted that U.S. Geological Service topographic maps at appropriate scale are unavailable for certain regions of the United States. The instruction to this item have therefore been modified to allow the use of a plat map or other appropriate map where an appropriately sized topographic map is unavailable.

Several commenters suggested that applicants not be required to show certain items on the map (e.g., rivers which do not receive any discharge, and rivers, wells and springs uphill of a facility). EPA notes, however, that these features are often relevant to an understanding of the geological and hydrological consequences of a discharge or disposal at the site. Futhermore, most of this information is generally indicated on U.S.G.S. maps and requires no work by applicants.

Several commenters (particularly oil and gas producers) correctly pointed out that an instruction to this item was overly broad in requiring identification on a map of all wells contained within one mile of the facility's property boundaries. The requirement is now limited to drinking water wells identified in the public record or otherwise known to the applicant.

Some commenters suggested further that the map should only show such wells within ¼ mile of the facility. EPA has accepted this suggestion. In light of the slow movement of groundwater, this information should be sufficient to prevent well contamination in cases where the groundwater becomes contaminated through faulty waste disposal or other practices.

Item XIII (draft item XII): See 40 CFR 122.6 and the accompanying preamble, published elsewhere in today's **Federal Register**, for a discussion of certification and signatory requirements.

Several environmental commenters requested that latitude and longitude information be required on Form 1. EPA has decided to require this information on appropriate program-specific forms. Forms 2c and 3, published today, require this information. By using the program-specific forms to require latitude and longitude, EPA obtains more precise

coordinates when wastewater dischargers and hazardous waste disposal facilities are several miles apart.

III. NPDES FORMS 2b AND 2c AND RELATED NPDES REGULATIONS

A. Introduction

1. Overview of This Preamble Discussion

The NPDES regulations on application requirements for existing industrial discharger and the new EPA application form for those dischargers (Form 2c) have been developed primarily to help implement the Agency's strategy for the control of discharges of toxic pollutants designated under section 307(a) of the Clean Water Act in the next round of permit reissuances. Because the application requirements and permitting strategy are closely related, the application form and regulations were published together as Part III of the June 14, 1979 **Federal Register** (44 FR 34393). The proposed regulations and draft Form 2c were prefaced by a lengthy preamble, which explained the context in which the NPDES application and related requirements were developed. The discussion covered the need for a case-by-case determination of limits in the absence of effluent limitations guidelines, the use of limits on toxicity and indicator parameters, the requirement to analyze for the 129 toxic pollutants, the purpose of application-based limits, some suggested monitoring schemes to be required by permits, and the economic and resource impacts of the reporting requirements.

The regulations which were proposed in Part III of the June 14, 1979 **Federal Register** are published in final form elsewhere in today's **Federal Register** as part of EPA's consolidated permit program regulations. This is being done so that all program regulations may be read in one place. However, this preamble, rather than the preamble to those regulations, will discuss the topics and regulations relating to the NPDES application requirements and permitting strategy to explain the final regulations in a unified manner and to respond to comments received on the proposal.

The following regulations which are promulgated as part of the consolidated permit regulations are discussed in this preamble instead of in the preamble to the consolidated permit regulations:

1. § 122.53(d): Application requirements for existing industrial dischargers (paralleling Form 2c).

2. § 122.53(e): Application requirements for concentrated animal feeding operations and aquatic animal production facilities (paralleling Form 2b).

3. § 122.61(a): Application-based notification requirements for toxic pollutants.

4. § 122.15(a)(5)(viii)–(x): Modification of permits to address toxic pollutant discharges not anticipated in applications or permits.

5. § 122.62(e): Requirement to set case-by-case limits to control significant discharges of toxic pollutants.

6. § 125.3(c)(4): Toxicity-based limits.

7. § 125.3(g): Indicator limits.

2. Use of a Single Form for all Existing Industrial Dischargers

Some commenters expressed concern that existing Short Forms C and D for simple discharges are not being replaced by new short forms; rather Form 2c must be used. The reason is that determining "simple" discharges is complex, given the new emphasis on toxic pollutants. Many factors would be relevant in determining "simplicity," such as size of flow, toxicity of discharge, and type of operations producing discharges. Factors relevant to the need to respond to one application requirement may not be relevant to another. For example, although flow was used as a criterion for determining who must fill out Short Forms C and D, the new form requires a primary industry discharger with a small flow to test for toxic pollutants, while a secondary industry discharger with a large flow may not need to do so.

EPA has simplified Form 2c and clarified the instructions to assist applicants in completing the form rapidly. Some of the more burdensome requirements will immediately be understood not to apply to simple non-toxic discharges and therefore may be marked Not Applicable. For example, any secondary industry discharger which does not discharge any toxic pollutants or hazardous substances need not test for pollutants in item V–C, list toxic pollutants in item VI–A or hazardous substances in item V–D, or predict future increases of toxic pollutant discharges in item VI–B and C. Similarly, many of the remaining questions also apply only to certain applicants. Item II–C applies only to applicants with intermittent or seasonal discharges. Item III applies only to applicants whose discharges are covered by effluent guidelines. Item IV applies only to applicants subject to waste treatment construction schedules. Item VII applies only to applicants who have conducted biological monitoring tests.

A few commenters suggested that Form 2c require only minimal information, with the permit writer able to go back to the applicant to ask for any additional information. However, this would impose too great a burden on the permit writer. It also would result in the imposition of unequal burdens on similar applicants.

B. Strategy and Regulations for Issuing Permits To Control Discharges of Toxic Pollutants

1. General Approach to Permit Writing

The 1977 Amendments to the Clean Water Act placed a new emphasis on the control of toxic pollutants in the NPDES program. EPA is implementing the Amendments by developing effluent limitations guidelines, water quality criteria, and test methods for these pollutants. EPA will soon begin applying the new statutory and regulatory standards to specific dischargers through the issuance of NPDES permits requiring dischargers to control toxic pollutants in accordance with limits reflecting the best available technology economically achievable (BAT), as soon as possible but no later than the statutory deadline of July 1, 1984.

The new permit writing strategy will be an extension of that used in issuing first-round NPDES permits. As before, permits must contain limitations reflecting the most stringent of technology-based, water quality-based, or other standards required by CWA (such as criteria for ocean discharges under section 403 and toxic standards or prohibitions under section 307(a)). For most organic toxic pollutants, however, numerical State water quality standards generally will not have been set by the time that the next round of permits are reissued. (Permits are issued for maximum terms of five years as required by CWA, and permits may not be reopened solely to incorporate new State water quality standards unless requested by the permittee.) Thus technology-based limitations will generally be the chief standard for setting permit limits on most toxic pollutants during the next round of permit reissuance.

The rules for setting technology-based limitations are set forth in 40 CFR 125.3 Technology-based limitations are generally established on the basis of effluent limitations guidelines promulgated under section 304 of CWA. As in the past, permit writers must set limits on a case-by-case basis under section 402(a)(1) of CWA to control discharges which are not covered by effluent guidelines. This will occur in two types of situations: (1) when new BAT effluent guidelines addressing toxic pollutants in the applicant's industrial category have not been promulgated or

have been withdrawn or remanded; or (2) when the applicant has certain discharges which are not covered by an otherwise applicable guideline.

The Agency has been developing new effluent limitations guidelines for toxic pollutants in accordance with the NRDC Settlement Agreement (*Natural Resources Defense Council*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)) and with the 1977 Amendments to the Clean Water Act. To focus EPA's resources on the more widespread and significant toxics problems, Paragraph 8 of the NRDC Settlement Agreement allows the Agency to exclude certain categories of industries and certain types of pollutants from coverage under national effluent guideline regulations. For example, pollutants which have been found at only one or two plants in an industrial category need not be included in the guidelines for that category, and pollutants which are in general (though not always) adequately controlled by guideline limitations on other pollutants need not be explicitly limited in guidelines.

As recognized in Paragraph 8 of the NRDC Settlement Agreement and demonstrated in EPA and State experience in issuing NPDES permits, even if a discharger's category is covered by promulgated effluent limitations guidelines, the discharger may be discharging pollutants not adequately covered by those guidelines. A major feature of the Agency's NPDES permittting strategy is the development of ways to identify and address situations in which significant discharges of toxics are not covered by guidelines and thus must be controlled on a case-by-case basis.

Permit writers will use several sources of information to determine appropriate BAT limits in the absence of guidelines. These sources include development documents for effluent guidelines in draft or final versions, a treatability manual prepared by EPA, and any other information available to the permit writer (including information provided by the permit applicant). The treatability manual is a five-volume compilation of historical data on the levels of reductions of toxic pollutants achievable by various types of treatment equipment or methods, together with associated costs. The manual is being developed with the participation of several EPA offices, including the Effluent Guidelines Division. Thus, the information it contains should be consistent with that used to develop proposed effluent limitations guidelines. The manual will be continually updated to reflect any new or newly discovered data on technologies and associated costs.

It would be inappropriate to promulgate the treatability manual as a regulation, as requested by several commenters, because the manual contains no requirements. Rather, it compiles and summarizes historical data; it does not state conclusions based on the data. Futhermore, EPA expects to continually update the manual to incorporate new or newly-discovered data. Any rulemaking proceeding would thus be endless.

EPA plans to publish a **Federal Register** notice announcing availability of the treatability manual in June 1980. Comments are welcome and will, where appropriate, be incorporated into future editions of the manual. More important, EPA emphasizes that the manual is not a binding document (unlike, for example, a promulgated effluent limitations guideline) but is merely one source of relevant information. The permit writer's case-by-case development of permit limits, based on information contained in the manual or elsewhere, remains subject to challenge under the appropriate procedures of 40 CFR Part 124.

EPA agrees with several commenters who advocated national uniformity of permit limitations for similar discharges. Promulgated effluent guidelines will guarantee uniformity for commonly-occurring discharges. Even when plant-specific discharges require individualized permit limits, the manual and other guidance developed by EPA should further promote national consistency. Of course, the very existence of plant-specific discharges implies a need to set permit limits for such plants which differ from those set for other plants within the same industrial category.

2. New Regulations To Insure the Control of Discharges of Toxic Pollutants

a. *Summary of Requirements.* Today's regulations provide that permit writers must set permit limits to control all significant discharges of toxic pollutants. Such a requirement is already implicit in section 301(b) of the Clean Water Act. However, today's regulations specify certain steps to see that this is done. The approach is two-fold, as follows:

(i) *Requirement To Control all Significant Discharges of Toxic Pollutants Through Permit Limits: § 122.62(e).* Significant discharges of toxic pollutants must be limited in the permit either directly or through the use of limits on other parameters which assure control of the toxic pollutants. "Significant" pollutants are defined to include:

- Pollutants reported in the permit application at levels exceeding the level which the permit writer determines could be achieved by BAT; or
- Pollutants used or manufactured or expected to be used or manufactured as intermediate or final products or byproducts.

The fact sheet for each permit (see 40 CFR 124.56) must explain how the permit limits comply with this requirement.

(ii) *Regulation of Toxic Pollutants Not Limited in Permits.* All non-"significant" pollutants (i.e., those considered not likely to be discharged above BAT levels based upon the levels reported in the application or upon expected use or manufacture at the facility) need not be specifically controlled in the permit (although the permit writer retains authority to do so under § 125.3). This will allow permitting authorities to focus their resources on significant discharges of toxic pollutants. To prevent future significant discharges of non-limited pollutants, two regulatory requirements have been established:

(A) Notification of Increased Discharges of Toxic Pollutants: § 122.61(a)

A permittee must notify the permitting authority as soon as it becomes aware that:

- Some activity has occurred or will occur to cause it to discharge a toxic pollutant at more than the greatest of 100 μg/1 (or 500 μg/1 for 2,4 dinitrophenol and 2-methyl-4,6-dinitrophenol, 200 μg/1 for acrolein and acrylonitrile, and 1 mg/1 for antimony) or 5 times the maximum concentration reported for that pollutant in the permit application (or a different notification level established by the Director); or
- It has been begun or will begin to use or manufacture a toxic pollutant as an intermediate or final product or byproduct.

(B) Modification of Permit to Control Increased Discharges of Toxic Pollutants: [6] 122.15(a)(5)(viii)–(x).

The permit may be modified to control a toxic pollutant when:

- The permittee discharges or expects to discharge the pollutant at a level higher than can be achieved by BAT; or
- The permittee begins or expects to begin to use the pollutant or to manufacture it as an intermediate or final product or byproduct.

In developing the concept of significance for determining when permit limits should be set for toxic pollutants, when notification should be required, and when permits may be

modified, EPA considered commenters' suggestion that toxicity be used as a criterion. EPA has not accepted the suggestion; all pollutants listed as toxic under section 307(a) of the Clean Water Act must be controlled by BAT. The concept of significance is used only to determine which pollutants are likely to be discharged at levels greater than achievable by BAT and thus must be limited in the permit. An assessment of toxicity does not pertain to this determination.

b. *Discussion of Changes from Proposed Requirements.* This section discusses the proposed "application-based limits" regulation (proposed § 122.68(a)), its deletion from the final regulation in response to comments, and the Agency's rethinking which led to the regulations discussed in section (a) above.

In the June 14 proposal, EPA did not provide guidance on when toxic pollutants should be limited. While the preamble noted that "significant" toxics should be limited in permits, the proposed regulations did not contain the specific requirements promulgated today in § 122.62(e). On the other hand, the regulations and preamble focused upon the control of all present and future discharges not specifically limited through effluent guidelines or by setting case-by-case limits. The Agency proposed in § 122.68(a) a stringent approach of application-based limits: the discharge of any pollutant would have been limited to 5 times (or a higher multiplier if a certain showing could be made by a permit applicant) the level reported in the application (or to 5 times the pollutant's detection limit, if a zero discharge was reported), unless the pollutant was limited directly.

The proposed application-based limit was intended to serve two purposes. First, it would have assured some control over significant discharges identified in the permit application which were for any reason not otherwise controlled in the permit. Second, it would have assured control of future significant discharges of pollutants which were discharged at insignificant levels at the time of the permit application and thus were not specifically limited in the permit.

Commenters almost unanimously criticized proposed § 122.68(a), although a few industrial commenters stated that the proposed approach was reasonable and several environmental groups supported it with reservations. Most commenters argued that the proposed regulation would not contribute any substantial environmental benefits justifying the significant burden on all permittees and that it was insupportable legally and technically. Some commenters suggested that EPA could better achieve its stated goals by focusing more closely at the permit-writing stage on those pollutants which are likely to be discharged at significant levels and by using notification requirements for other pollutants which first become significant after the permit is issued.

These comments, some of which were quite detailed and lengthy, convinced EPA that the imposition of application-based limits could not be supported at present and assisted the Agency in rethinking its approach to the problem of controlling discharges which are not covered sufficiently by effluent guidelines. The major comments are summarized below:

SUMMARY OF COMMENTS ON PROPOSED § 122.68(a) (APPLICATION-BASED LIMITS)

(1) *The values reported in the permit application may not be representative of existing or future discharges of pollutants,* both because of normal random fluctuations in concentration and because of future changes in processes or operations which were not anticipated in the permit application or which result in discharges not easily predicted. Insufficient data exist to select a multiplier which is adequate to relate the results of one sample to future discharges. If such data did exist, it would show that an appropriate multiplier would be much higher than five. Further variability is introduced by errors in sampling and analysis, variations of pollutant levels in intake water, and the use of batch processes which result in continually changing levels of pollutants. To avoid liability based upon an unduly low multiplier, applicants would have to spend a great deal of money for alternate testing to be eligible for a higher multiplier under proposed § 122.68(a)(3), and even then they could not be completely assured of compliance with that multiplier.

(2) *Setting permit limits on all reportable pollutants is an inappropriate and unduly costly way to regulate permittees' discharges.* Permittees could often be subjected to liability for minor violations (e.g., discharges at 50 μg/l). As a result, permittees would either have to spend a great deal of money on compliance monitoring to assure that they were complying with all application-based limits, or they would have to rely on assurances that, under EPA's enforcement discretion, only large violations would be prosecuted. It would be unfair to impose near-certain liability on dischargers on the assurance that they will not be enforced against except for significant violations. It would be particularly unfair when analysis of a pollutant had not been required or when the pollutant had not been detected in the sample(s) analyzed and thus had been reported as absent in the application.

(3) *Application-based limits are illegal.* The Clean Water Act requires permit limits to be based on technology-based, water quality-based, or certain other standards; application-based limits are not authorized by any of these standards. In particular, application-based limits which are lower than the levels achievable by BAT (which would often occur where a pollutant was reported as zero in the application) are improper.

(4) *Pollutants of concern should be limited directly using technology-based limits, rather than indirectly using application-based limits.* EPA should focus on limiting significant discharges. Monitoring and reporting requirements should be relied upon to assure the discovery and subsequent control of new significant discharges occurring after the permit is issued.

(5) *Existing NPDES regulations already provided sufficient controls over large potential discharges of pollutants not limited in the permit,* because (a) substantial changes in production were required to be reported and were grounds for permit modification, and (b) large discharges of pollutants not limited in the permit would have occurred only when permit limits on other pollutants would have been violated.

(6) *Application-based limits, if used at all in the final regulations, should be based on a multiple of the amount of discharged pollutants rather than on concentrations of the pollutants.* Otherwise, EPA would discourage desirable flow reduction practices.

(7) *Application-based limits could result in differing limits for dischargers in the same industrial subcategory.*

EPA does not agree with all of the above comments. In particular, EPA continues to believe that an application-based limit is legal if the multiplier accurately reflects waste stream variability. Any limit currently being achieved by a discharger is obviously no more stringent than the best available technology economically achievable. Thus if a variability-based multiplier times a reported value is the maximum level currently being discharged, it clearly may be adopted as BAT.

However, EPA is persuaded by the comments, considered collectively, that its proposed approach must be revised. In particular, EPA agrees with the commenters that the insufficiency of data on waste stream variability and the problem of continually changing feedstocks and batch processes both present severe technical difficulties for the concept of across-the-board application-based limits. Similarly, EPA acknowledges that the proposed approach had the potential for imposing unduly severe monitoring costs upon applicants wishing to demonstrate that a multiplier higher than 5 should be used and upon permittees wishing to assure that they are complying with application-based limits. Finally, EPA agrees that a better-focused alternative exists to address most of EPA's concerns.

The revised approach, as outlined above, focuses the permit writer's attention (in § 122.62(e)) more clearly than before on the specific control of all significant discharges of toxic pollutants by specifying various factors (reported discharge levels and the use or manufacture of toxic pollutants) indicating significance. The possibility that currently insignificant discharges of certain pollutants may be transformed later into significant discharges is addressed through notification requirements (§ 122.61(a)) and through an authorization to modify permits to address such problems (§ 122.15(a)(5)(viii)–(x)).

The multiplier used in § 122.61(a) as one means to trigger the notification requirement is still set at five, despite the comments criticizing it. The Agency believes that the available data supports a value of five to distinguish between random fluctuations and significant increases, at least for the purposes of a notification requirement. If the Director becomes aware of sampling or analysis errors, or fluctuations in pollutants in the intake water, the Director may modify the permit to establish a higher notification level to account for these fluctuations, as provided in § 122.62(f). Increases from other causes are exactly what this requirement was designed to regulate.

Two changes have been made, however, in the way the multiplier of five will operate in the notification requirement.

First, the lower threshold for notification has been raised to 100 μg/l (and higher for several pollutants which have high detection limits). Multiples of detection limits are not used as a basis for application-based notification.

Second, the multiplier applies to the maximum, rather than the average value reported in the application, of either the tested or the predicted value. This approach was suggested by some commenters. Of course, when only one sample is tested for toxic pollutants (which is all that is required), maximum and average values are indentical. However, the maximum value has been defined to include values predicted by the applicant under § 122.53(d)(10) and item VI of Form 2c (discussed below in section III.D.3.e.ii). This change responds to several comments noting the difficulties in applying the proposed regulation to batch discharges and other nonrandom changes. Applicants are discouraged from reporting unrealistically high values in item VI by § 122.62(e), which requires that their permits contain limits to control toxic pollutants reported at levels greater than BAT under § 122.53(d)(10) and item VI. Any variations in levels of pollutants which cannot be predicted at the time of the application will be subject to the notification requirements in § 122.61(a).

The requirement to submit 10 samples to get a higher multiplier has been deleted. The Director may set a higher notification level based on a higher maximum value, not a higher multiplier. Thus several comments received on the alternate multiplier provision (proposed § 122.68(a)(3)) no longer apply.

EPA recognizes that the revised approach falls short of the proposal in some respects. There is still some possibility (though less likely as the result of § 122.62(e)) that a permittee may discharge a large amount of a pollutant not limited in its permit, and EPA will not be able to take enforcement action against the permittee as long as the permittee complies with the notification requirements of § 122.61(a). Although EPA will now have authority under § 122.15(a)(5)(viii)–(x) to modify (or revoke and reissue) the permit to require control of the pollutant, permit modification can be a lengthy process.

EPA will continue to examine the problem of pollutants which are not limited in permits and to seek solutions to what it still considers to be a regulatory gap, although the gap is made smaller by the regulations published today. EPA welcomes suggestions on how best to develop a technically and legally supportable approach. In addition, the final regulations control discharges only of the pollutants listed in the permit application, which consist primarily of the listed toxic pollutants and designated hazardous substances. (Proposed § 122.68(a) also was limited to the pollutants listed in the application form.) This list is by no means exhaustive of all chemicals which may be discharged.

EPA intends to continue to study other pollutants, to make appropriate additions to the toxic pollutant and hazardous substance lists and to consider appropriate technological controls in the development of future effluent guidelines. Some of this work has already begun. However, some will not begin until currently listed toxics and hazardous pollutants are fully addressed.

Even at present, however, permit writers may set limits on any pollutant believed to be of concern. In certain cases, bioassays and further toxicity testing may result in the identification and control of additional harmful pollutants (see sections III.D.2.d and E.2 of this preamble).

The new authorities provided to EPA under the Toxic Substances Control Act (TSCA) may help further to reduce threats of toxic discharges. Under TSCA, EPA may regulate the manufacture, use and disposal of toxic substances. Regulation under TSCA may indirectly (or, in certain instances, directly) result in the reduction or elimination of particular pollutants from discharges.

3. § 125.3(c)(4): Toxicity-Based Limits

§ 125.3(c)(4) provides that permit limits may be expressed in terms of effluent toxicity if they reflect the appropriate requirements of the Clean Water Act, such as technology-based or water quality-based standards. This aspect of the regulations is essentially unchanged from the proposal.

Several minor editorial changes have been made, including the elimination of the reference to subparagraph (c)(2), which implied that toxicity-based limits may be used only on a case-by-case basis. The regulation now provides that toxicity-based limits may also be applied in effluent guidelines, provided the requirements of subparagraph (c)(4) are otherwise met. At this time, however, EPA does not contemplate including toxicity-based limitations in forthcoming effluent guidelines.

Many comments were received concerning the issue of establishing toxicity-based permit limits. Many commenters expressed unqualified support for biomonitoring and toxicity-based permit limits, arguing that chemical limits alone are insufficient to control the many unknown toxic chemicals and the results of their interactions. Indeed, this issue was of great interest to many private citizens. Several other commenters agreed that toxicity-based limits are appropriate in certain situations but, because of the expense and delay involved in determining and enforcing such limits, argued that they should be used only for demonstrated toxic discharges when other limits are inadequate or unavailable. EPA agrees and is recommending that toxicity limits be used when (1) it is suspected that the discharge is toxic based on ongoing or previous toxicity testing or a history of fish kills or related toxicity problems, and (2) effluent guidelines are either absent, or it is believed that significant toxicity will remain in an effluent after the appropriate guidelines control technology is installed. Thus, toxicity-based limits should be used when the chemical limits approach is inadequate. Examples of such situations include primary industry discharges when the listed toxic pollutants are not found but serious toxicity problems exist, and

secondary industry discharges when chemical analyses are not required.

Several commenters expressed concern over the determination of toxicity limits by permit writers. They argued that toxicity-based limits should reflect BAT as defined in the Clean Water Act. Other commenters opposed rigid protocols, advocating instead that the most appropriate type of toxicity-based limits should be worked out between the permittee and permit writer to correspond to the particular situation. EPA agrees that toxicity-based limits must reflect BAT or other requirements of the Clean Water Act. EPA also agrees that considerable flexibility should be allowed the permit writer to determine the permit limits most appropriate for a particular situation.

There are two approaches for determining toxicity-based permit limits. The first approach is based on State water quality standards. All State standards include a statement to the effect that no toxic substances may be discharged in toxic amounts. Additionally, many States such as California and Arizona specify acute or chronic levels which are not to be exceeded and define methods of measurement and reporting. The second approach is technology-based; the permit writer makes a case-by-case determination of BAT or other appropriate technological standard, using his or her best professional judgment. Such determinations must be based on an evaluation of the available technology to achieve a particular toxicity reduction. For example, when information on treatability is lacking, studies can be conducted to assess the reduction in toxicity resulting from various treatment systems or process alternatives. Technology-based limits using toxicity units may then be set based on this data. EPA recognizes the significant cost of this procedure and recommends that it be used only when it is not possible to adequately control toxic chemicals using appropriate chemical limits.

Several commenters argued that because too much discretion was being allowed permit writers in setting toxicity limits, non-uniformity would result. EPA recognizes that some non-uniformity is inherent in a case-by-case approach, whether that approach uses chemically-based or toxicity-based permit limits. As discussed in section III.B.1 of this preamble, case-by-case limits are a necessary approach when applicable guidelines are not available or do not result in the installation of BAT for all pollutants. To assist the permitting authorities and to promote uniformity, EPA has distributed the May 1, 1978, draft *Biomonitoring Protocol Guidance for the NPDES Permits Program*, which discusses the use of toxicity-based permit limits. In addition, a guidance document entitled *Use of Biological Toxicity Testing in the Second Round of NPDES Permit Issuance* is being developed and will be available in mid-1980.

EPA is continuing at present to rely primarily on chemical limits to control toxicity; therefore, toxicity-based limits will be employed only when these chemical limits are inadequate. The Agency believes, however, that toxicity testing and toxicity-based permit limits must play an ever-increasing role in order to address the problems of toxic pollutant control.

4. Indicator Limits To Control Toxic Pollutants and Hazardous Substances

§ 125.3(g). Proposed § 125.3(g), which established certain criteria for the use of limits on indicator parameters to control toxic pollutants, has been retained in the final regulations. However, a provision has been added in paragraph (g)(3) to preserve the discharger's ability to determine the most cost-effective method for reducing its discharges of toxic pollutants. In addition, paragraph (g)(2) has been added to provide for the use of indicator parameters to control hazardous substances, as proposed on August 29, 1979 (44 FR 50780). The use of indicators and final § 125.3(g) are discussed below. While the discussion below focuses on the control of toxic pollutants, most of the discussion pertains to hazardous substances as well.

a. *Outline of Strategy.* EPA generally will use the word "indicator" to refer to conventional and nonconventional pollutants used as authorized in § 125.3(g). Several commenters pointed out the BAT limits on toxic pollutants, BCT limits on conventional pollutants and modified (e.g., to BPT levels) limits on nonconventional pollutants may, in appropriate circumstances, be used as "indicator" pollutants. EPA agrees. However, the use of such pollutants as indicators does not require any new regulations.

As described above in section III.B.1 of this preamble, permit writers must set technology-based limits to control pollutants by applying guidelines or, in the absence of applicable guidelines, by setting case-by-case limits under section 402(a)(1) of CWA. In some cases, it is not feasible to set limits on each discharged pollutant. This is particularly true in the case of organic pollutants, because they can be expensive to sample and analyze and because there is relatively limited experience and historical data demonstrating achievable levels of removals by various types of technology.

EPA believes that the most appropriate way to regulate toxic pollutants is to limit toxic pollutants. As discussed in section III.B.1 of this preamble, EPA has prepared a five-volume treatability manual, compiling data on treatability levels of specific toxic pollutants which have been achieved by particular technologies, to help permit writers to limit toxic pollutants directly when guidelines do not apply.

However, as noted above, direct limitation of all toxic pollutants in a waste stream is not always feasible. In such cases, limiting indicator pollutants (or selected toxic pollutants) is sometimes an appropriate alternative. When a certain treatment system is the most cost-effective method for limiting toxic pollutants, and where limits on certain other pollutants (e.g., BOD, COD, chromium and total phenols) found in the discharge would require installation of the treatment system, then those other pollutants are referred to as "indicator" pollutants.

The term "indicator" is not intended to denote a statistical relationship between the limited pollutants and the nonlimited toxic pollutants. It means simply that the limits on the indicators will reflect (i.e., result in installation of) the best available technology economically achievable to reduce discharges of the toxic pollutants. Note that the identification of BAT technology for the toxic pollutants does not require precise knowledge of the numerical levels of those pollutants to be achieved by installation of that technology. Of course, to be defensible as BAT, the general effectiveness of the technology as compared to alternative technologies must be known. Such qualitative relationships are more easily discerned and agreed-upon, based on existing treatability data, than the actual numbers which may be achieved to a desired confidence interval by the compared technologies.

An approach similar to the indicator approach was used frequently in developing existing BPT guidelines, although the term "indicator" was not used. Such guidelines include various mining (coal, ore, mineral) and metals industries. A typical example is the use of limits on pH, TSS, and one or two metals to assure the precipitation not only of the limited metals, but of others as well.

If a pollutant is used as an indicator for toxic pollutants, its limit must reflect BAT for those toxic pollutants. This is

clearly required by section 301(b) of CWA, which states that limits to control toxic pollutants must reflect BAT. Therefore, § 125.3(g) provides that, for conventional pollutants listed under section 304(a)(4) of CWA which are used as indicators for toxic pollutants, the Director may set limits at levels which are more stringent than the best conventional pollutant control technology (BCT). Similarly, for nonconventional pollutants (those not listed as either conventional or toxic pollutants) which are used as indicators for toxic pollutants, the Director may set limits which are not subject to modification under sections 301 (c) or (g) of CWA. (As one commenter pointed out, and as directly acknowledged in § 125.3(g)(2), nonconventional pollutants used as indicators for hazardous substances not listed as toxic under section 307(a) of CWA are subject to requests for 301 (c) and (g) modifications.)

EPA stresses that the Director may invoke § 125.3(g) only after establishing that direct limitation of the toxic pollutant is not feasible for economic or technical reasons and that limitation of the indicator will result in BAT-level control of the toxic pollutant discharges. The permit applicant may challenge the use of an indicator and offer evidence to support direct limitations of toxic pollutants. EPA intends to apply the indicator strategy reasonably, with toxic limits remaining the preferred approach whenever feasible.

b. *Response to Comments.* EPA received many comments on proposed § 125.3(g). The comments almost uniformly favored the use of indicators in appropriate circumstances when agreed upon by both the permitting authority and permit applicant. Several industries strongly encouraged the use of indicators. However, most commenters expressed reservations concerning the scope of proposed § 125.3(g).

Several commenters were concerned that proposed § 125.3(g) might authorize the Director to impose indicator limits which would require the discharger to control discharges of toxic pollutants in a cost-ineffective manner by requiring too stringent control of the indicator. For example, segregation of toxic waste streams, process changes and raw materials substitutions are possible means of controlling particular toxic pollutant discharges without controlling any parameter intended to serve as an indicator.

EPA agrees that limits on indicators should not be used to require greater or more expensive effluent control than would be required if all pollutants were regulated directly. § 125.3(g) has therefore been amended by the addition of a requirement that the Director may not impose a more stringent limit on a pollutant intended to be used as an indicator when the limit would effectively require the permittee to use a method of treatment which differs from that which would be required if the toxic pollutants were limited directly. In the event that the Director uses an indicator limit in the draft or final permit that the discharger believes would preclude the use of more cost-effective measures to regulate the indicated toxic pollutants, the discharger can make appropriate objections challenging the limits under the procedures in 40 CFR Part 124.

Several commenters requested that the concurrence of the permittee be obtained before an indicator limit is set in the permit. Another requested simply that the permittee be given an opportunity to comment on the proposed use of indicator limits. EPA believes that it is administratively infeasible to obtain the permittee's concurrence in each situation before setting indicator limits. However, the procedures in 40 CFR Part 124, which include opportunities for permittees to comment on the draft permit, request an evidentiary hearing after the permit is issued (unless an expanded non-adversary hearing has been held during the comment period under Part 124, Subpart F) and appeal to the Administrator, will afford significant opportunity for permit writers and permittees to resolve disagreements. The strict restrictions placed by § 125.3(g) upon the use of indicators, together with the possibility of administrative and judicial review, will insure that permit writers do not use indicators improperly.

Some commenters argued that the limitation of conventional indicators beyond BCT and the denial of variance opportunities for nonconventional indicators is contrary to the requirements of CWA. EPA disagrees. When limits on indicators are used as a means to control toxic pollutants, they must reflect the best available technology economically achievable (BAT) to control the toxic pollutants. As long as the requirements of § 125.3(g) are met (i.e., that indicators be used only where direct limitation of toxic pollutants is infeasible and that indicators not be used to require control technology which is not needed to control the toxic pollutants), discharges will effectively be subject to precisely those technology-based requirements required by section 301 of CWA.

Many commenters expressed concern over the possible lack of correlation between levels of indicators and the controlled toxic pollutants. The commenters noted that certain indicators may be present in concentrations several orders of magnitude greater than the toxic pollutant. This comment was most imaginatively expressed by the Chemical Manufacturers Association, which stated: "To select an 'indicator' controlled to concentrations several orders of magnitude greater than the toxics indicated is almost like trying to determine the weight of a flea by weighing a dog with and without the flea." Still other commenters attempted to support their objections by submitting charts demonstrating the poor correlation between what they termed an indicator and a specific pollutant (e.g., total suspended solids and zinc) in their discharges.

EPA believes that the above commenters have misconstrued the "indicator" concept and regulation. EPA does not assert that indicators and specific toxic pollutants controlled through the indicator limits must be or are likely to be statistically correlated. Nor does it assert that any pollutant used as a measure of a class of compounds will necessarily be statistically correlated to each or any compound in that class. Rather, the function of an indicator limit is to assure the installation and maintenance of BAT controls for toxic pollutants. Sufficiently low limits on one or more indicators may require installation of treatment equipment known to constitute BAT for certain toxic pollutants. In that case (and only in that case), the indicator limits will have served their purpose of assuring BAT control of the toxic pollutants, whether or not a correlation exists between the indicators and toxics.

Two commenters urged the use of bioassays instead of indicators or to calibrate indicators. The use of bioassays is discussed below in sections III.D.2.d and III.E.2 of this preamble. It is noted here, however, that bioassays and indicators generally serve different purposes and are not generally substitutable for each other.

Some industrial commenters argued that if the indicator concentrations are not statistically correlated with the toxic concentrations, a violation of an indicator limit may occur even when the indicated toxics are not being discharged at signficant levels. EPA does not expect this to be a problem. Indicators will be used only where necessary to control discharges of toxic pollutants. If a toxic pollutant will not be discharged at levels above those

achievable by BAT, then an indicator limit will not be authorized by § 122.3(g).

If an indicator limit is violated by the permittee, this demonstrates improper operation or maintenance by the permittee of its treatment system. In such a situation, the violation may properly result in an enforcement action. Of course, a situation may arise where indicator limits are set to control toxic pollutants which are discharged above BAT levels at the time of permit application, but which are later no longer present at levels requiring control.

In that case, the permittee may apply for a permit modification to eliminate the indicator limit or to modify it to a less stringent level authorized by law.

Some environmental groups used similar logic to that used in the preceding comment by industrial commenters and argued that if indicator concentrations are not correlated with toxic pollutant concentrations, a significant discharge of toxic pollutants may not result in a violation of the indicator limit. EPA agrees, as it acknowledged in the June 14 preamble, that this is a possibility in some cases. However, the proper selection of indicators should assure that violation of the indicator limits will occur whenever the treatment system is not properly operated or maintained. When the system is properly operated or maintained, the indicated toxics should generally be reduced to levels below BAT. Furthermore, as noted above, the regulations allow the use of indicators only where the direct limitation of toxic pollutants is infeasible.

EPA also notes that occasional monitoring of specific toxic pollutants as required by the permitting authority would reveal whether an indicated toxic is being discharged at high levels. If so, the application-based notification requirements of § 122.61(a) would be triggered. The permitting authority could then, if necessary and feasible, modify the permit to limit the toxic directly. EPA has rejected the suggestion by one environmental commenter that EPA specify technology in conjunction with the use of indicators. Such an approach is inconsistent with the general statutory approach that, except for the specification of best management practices in certain instances (see § 122.62(k)), permits should specify effluent limitations rather than technologies or control practices.

Some commenters suggested that indicators be used only for monitoring purposes. EPA disagrees. Although direct limitation of toxic pollutants is required whenever feasible, indicators may be necessary as permit limits in certain situations. However, indicators may be used for frequent monitoring purposes when toxics are limited directly. In such situations, the indicators would be monitored frequently, and the toxics would be monitored less frequently to reduce monitoring costs.

Some environmental commenters suggested that any violation of an indicator limit should trigger automatic monitoring of the indicated toxics, as was suggested in the preamble. Such monitoring will often be appropriate when indicator limits are violated. However, in many instances, the source of the violation may be discerned and corrected without such testing. Therefore, EPA has rejected this suggestion. The Director thus retains the flexibility to take the most appropriate approach to discover and remedy the cause of the violation. In addition, the final consolidated regulations (in § 122.62(g)) require permits to specify that violations of maximum daily discharge limitations on indicators, as well as limitations on toxic pollutants and hazardous substances, must be reported within 24 hours, so that the Director may take appropriate action.

One commenter noted that the statutory deadlines for an indicator and the indicated pollutants may differ in certain cases under section 301(b) of the Clean Water Act. When a parameter is used as an indicator, any earlier statutory deadline for the indicated pollutant controls.

Finally, some commenters argued that application-based limits (proposed § 122.68(a)) should not apply to indicated toxic pollutants. As explained in section III.B.1 of this preamble, EPA has deleted its proposed application-based limits from the final regulations. Thus, under the final rule, indicated toxics will not be subject to application-based limits. They will, however, be subject to the much less burdensome application-based notification requirements in § 122.61(a).

C. NPDES Application Requirements for Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities: § 122.53(e) and Form 2b

The requirements for applications from concentrated animal feeding operations and aquatic animal production facilities appear in § 122.53(e) of the final regulations and in Form 2b. Although these requirements were inadvertently omitted from the proposed regulations, draft Form 2b was published in the June 14, 1979 **Federal Register** (44 FR 34393) and was the subject of several comments.

The State of Nebraska expressed approval of Form 2b and noted its similarity to the form used by their State. The American Farm Bureau had two suggestions which were adopted. First, the question on the location of the operation has been changed to require a detailed description of the location only if the answer to item VI of Form 1 was not sufficient. Second, the question about the number of acres available for manure disposal has been omitted; EPA agrees that it was not relevant to the NPDES program. The Department of Water Resources of Texas stated that the form was too technical and crowded, but suggested that questions should be added requiring a description of the method for disposing contaminated runoff, the water detention facilities, the pesticides used, and the plans for constructing a runoff control system. These suggestions have not been adopted, because the Agency has decided that the suggested additional information is not routinely needed to set appropriate permit limits for these facilities. Of course, Texas and other States may require this information on their application forms.

D. Minimum NPDES Application Requirements for Existing Industrial Dischargers: § 122.53(d) and Form 2c

1. General Discussion of Requirements; Public Availability of Information

On June 14, 1979, EPA proposed new application requirements and a new Form 2c to be used by existing industrial dischargers. Consistent with the Clean Water Act's mandate that EPA focus upon the control of toxic pollutants and with EPA's new permitting strategy for toxic pollutants in response to that mandate, EPA proposed that existing industrial dischargers be required to submit in their NPDES permit applications, in addition to other information, detailed information concerning discharges of toxic (and certain other) pollutants.

The requirements reflect the Agency's belief (which was supported by many commenters) that dischargers have a duty to be aware of any significant pollutant levels in their discharge. In addition, they serve two specific purposes. Most important, they provide the information which permit writers need to determine what pollutants are likely to be discharged in significant amounts and to set appropriate permit limits. Second, they will be used as a basis for application-based notification requirements under § 122.61(a).

The final regulations retain the essential components of the proposed application requirements of June 14,

1979. Some testing requirements were modified for certain industries based on EPA's continuing review of data on those industries' discharges. In addition, certain requirements were added with respect to hazardous substances designated under section 311 of CWA, based on EPA's August 29, 1979 proposal (44 FR 50780) responding to the 1978 Amendments to section 311(a)(2).

Dischargers will generally be required to submit applications in three situations: when an initial permit is needed, when an existing permit will soon expire and a new permit will thus be needed, and when a permit is being revoked and reissued under 40 CFR 122.15. However, § 124.5 provides that an application may also be required, if specifically requested by the permitting authority, when grounds for permit modification exist. This requirement was also contained in previous NPDES regulations in § 122.14(e) (44 FR 32905). A more extensive requirement in § 122.10(b), that new applications be submitted for certain types of modifications, has been deleted in response to comments pointing out that a new application is not always necessary in such situations.

The new application requirements and Form 2c apply only to existing dischargers. Until Form 2d is developed, EPA Forms 7550–8, –9 and –23 should continue to be used by new sources and new dischargers as well as by existing facilities which will first begin to discharge through particular outfalls in the future.

Applicants should note that section 402(j) of CWA requires that any information contained in a NPDES permit application must be made available to the public. (This rule set forth in 40 CFR 122.19 and is highlighted in the instructions to Form 2c.) Therefore, EPA has not accepted the suggestion by some commenters that certain portions of the application be confidential. However, EPA has attempted to address this potential concern by minimizing requests for information which may be regarded by certain applicants as sensitive.

First, information on the applicant's volume of production (or other measure of total operation) is requested only of applicants who are subject to production-based effluent limitation guidelines. Applicants subject only to concentration-based guidelines or to case-by-case development of individualized permit limits (when no guidelines apply), for example, need not submit such information. Second, all effluent discharge reporting requirements ask only for end-of-pipe effluent data, rather than in-process waste stream data. While permit writers may request additional information not required in the EPA application form (under § 122.53(d)(13), discussed below in section III. D.3.i of this preamble), such information is subject to the protections afforded by 40 CFR Part 2.

Some industrial commenters argued that product information submitted by applicants subject to production-based guidelines should be held confidential. Some argued that if all application information must be available to the public, then product information should be deleted as an application requirement and obtained by permit writers on a case-by-case basis, such as under the authority of section 308 of CWA.

EPA must reject the above suggestion for several reasons. First, it is not administratively feasible to require permit writers to individually request many thousands of permit applicants to submit such information separately from the standard application process. While permit writers will in some instances need to request information in addition to that required in the application form, they cannot be expected to do so on a regular basis for routine information. This would result in unacceptable delays in issuing permits.

Second, much of the information in the permit application is "effluent data" within the meaning of 40 CFR 2.302(d)(2) and therefore would have to be disclosed under section 308 of CWA. For example, if the applicant is subject to an effluent limitations guideline of 7 pounds of BOD per 1000 pounds of product produced, a production figure is necessary to determine the amount of BOD discharge authorized by the applicable limitation. Even if the production figure could be protected from public disclosure, the figure could easily be calculated from the permit limitation.

Third and most important, EPA believes that the requested product information is not sensitive. Applicants are requested in the instructions to the form to report product information based on past production, such as highest month of the past year or the monthly average of the highest year of the past five years. (This reflects the requirements of 40 CFR 122.63(b).) The applicant need not identify in the application which basis was used to determine production volume. Moreover, the reported information does not indicate the applicant's estimate of future product demand or its anticipated future production.

The final application requirements include one new item which might be regarded as touching upon sensitive data. Applicants are now required to list any toxic pollutants which they use or manufacture as intermediate or final products or byproducts. EPA has tried to minimize the possibility that reporting this information will result in revelation of trade secrets. First, applicants need not indicate on this list the specific basis for listing any particular pollutant; the basis will be assumed to be one of the above factors. Second, applicants need not list the amount used or manufactured.

Certain wording changes have been made in response to comments in other questions on Form 2c to minimize the amount of potentially sensitive information required. These changes are discussed in more detail in section III.D.3 of this preamble.

2. Required Analyses and Estimates of Pollutant Discharges

a. *Toxic Pollutants: § 122.53(d)(7)(ii) and item V–C.* The chief innovation of the new NPDES application requirements is that applicants must report discharges of toxic pollutants. The proposal required applicants in 36 industries (the 34 primary industries listed in the modified NRDC Settlement Agreement, plus the Asbestos and Ferroalloys industries) to test for all toxic pollutants (except for asbestos and TCDD, which are discussed below). The final regulations have modified this requirement for certain industries.

The reporting requirements for toxic pollutants may be summarized as follows:

(1) All applicants in the 34 primary industries listed in the NRDC Consent Decree must analyze their process wastewater outfalls and report quantitative results for the 13 metals on the toxic pollutant list and for cyanide and total phenols.

(2) All applicants in the 34 primary industries must analyze their process wastewater outfalls and report quantitative results for some or all of the 114 organic toxic pollutants. The organic toxic pollutants have been grouped into the four fractions which are used in the gas chromatography/mass spectrometry (GC/MS) analytical test method. The regulations and Form 2c each contain tables showing the fractions which applicants in each of the 34 industries must test for.

(3) All applicants must indicate the presence of any toxic pollutants which they know or have reason to believe are or will be discharged from any outfall. They are required to analyze only for those pollutants which they know or have reason to believe are currently discharged.

An exemption from the second and third requirements listed above is provided for small businesses whose average annual gross sales total less than $100,000 (or, in the case of coal mines, those whose average annual production is less than 100,000 tons of coal). See section III.F.6.b of this preamble.

The proposed requirement that applicants in the 36 industries analyze for the 129 toxic pollutants was heavily commented upon. Environmental groups, many private citizens, and some State agencies expressed strong support for the analysis of the 129 toxic pollutants as a minimum requirement. (Many of these commenters argued, in fact, that the requirement is insufficient in itself and should be supplemented by biomonitoring requirements. See discussion in section III.D.2.d of this preamble.) On the other hand, many industrial commenters argued that the requirement was too broad, imposing significant costs to sample and analyze for pollutants which may be absent from applicants' waste streams. In particular, commenters from certain industries (pulp and paper, mining, oil and gas extraction, metal finishing, steam electric generating plants, textiles, rubber processing, and laundries) argued for full or partial exemptions for their industries or for all industries.

In the June 14 preamble, EPA stated in support of its proposed reporting requirements that although EPA has sampled plants in each industrial category as part of the effluent guidelines development process, plant-unique situations could be discovered only through waste stream analysis by each discharger. As described today in section III.B of this preamble, EPA needs to be aware of those specific situations to write adequate permits. The Agency restricted its proposed requirements to the 36 industries which EPA concluded were likely to discharge at least some toxic pollutants. The Agency noted, however, that it would continue to investigate existing data and would add or delete requirements to ensure that waste streams be analyzed only for pollutants which may be discharged.

In response to EPA's specific request for comments on this issue, several suggestions were received. The comments and EPA's responses are set forth below:

1. *Comment:* EPA should require applicants to test only for the pollutants regulated in the relevant effluent limitations guidelines. *Response:* EPA has not adopted this approach because it ignores the diversity among plants which the application requirements are designed to address. It also would require EPA to wait for guidelines to be finally promulgated before setting application requirements. That approach would delay the permitting process and possibly result in failures to meet the statutory 1984 deadline.

2. *Comment:* EPA should require applicants to test only for those toxic pollutants which they know or have reason to believe are present in their discharges. *Response:* EPA has not adopted this approach for primary industries because, as EPA has learned during its industry sampling efforts, it can be difficult to predict what toxic pollutants will be discharged from an outfall. However, this approach is being used for secondary industries and for primary industries' non-process wastewater outfalls, since their discharges are much less likely to be toxic.

3. *Comment:* EPA should leave the application requirements to be determined on a case-by-case basis by the Director or should allow the Director to waive requirements on a case-by-case basis. *Response:* EPA has not adopted either approach. EPA is required by section 304(i) of CWA to develop "uniform application forms and other minimum requirements." While this does not preclude EPA from making valid distinctions among industries with differing discharges, EPA should not burden permit writers with the obligation of determining the pollutants which each particular applicant must test for. Indeed, as noted in the preceding paragraph, it would be difficult for permit writers and applicants to determine whether certain toxic pollutants will be discharged by the applicant without testing the discharge. Furthermore, allowing application requirements to be established on a case-by-case basis would result in unfairly disparate application requirements for similar applicants. (Note that EPA does not bar permit writers from requesting further information where appropriate for a particular discharge. However, the minimum requirements should be uniform as required by law.)

4. *Comment:* EPA should allow the substitution of biomonitoring for chemical monitoring. *Response:* Although biomonitoring provides information on the toxicity of a discharge, it does not identify particular pollutants which may be causing the toxicity (certain biological methods of identifying specific chemicals are in the development stage, however). To control the toxicity, it is important to identify and address the sources of that toxicity. Thus biomonitoring is not a suitable replacement for chemical monitoring, although it may be a useful supplement in certain situations (see discussion in section III.D.2.d and III.E.2 of this preamble).

5. *Comment:* Toxic pollutants in certain effluents may be better controlled through Best Management Practices programs; thus testing is not necessary. *Response:* Regardless of the appropriate method of control, one first needs to identify the toxic pollutants being discharged and the means of the discharge. Furthermore, Best Management Practices will be used to regulate process wastewater discharges through outfalls only in relatively few circumstances (see § 122.62(k)); end-of-pipe BAT controls generally will be used for such discharges.

6. *Comment:* Applicants should be required to test only for those pollutants detected or likely to be detected at significant levels, based on data available to EPA, such as from its industry sampling efforts. *Response:* While EPA has not selected precisely this approach, the final regulation (described immediately below) takes a similar approach and imposes similar costs.

EPA has decided to use different approaches for the metals and the organic chemicals on the toxic pollutant list.

All applicants in the primary industries (the 34 NRDC Consent Decree industries) must test their process wastewater discharges for all the toxic metals, because almost all primary industry applicants discharge some metals and because the incremental cost of testing for all 13 toxic metals over the cost of testing for a few metals is relatively small. On December 3, 1979 (44 FR 69464), EPA proposed a new method for testing metals in addition to those already promulgated in 40 CFR Part 136. The method is ICP (inductively coupled plasma optical emission spectroscopy), which provides a simultaneous determination of several metals in a sample. When this method is promulgated, it may make the cost of testing for all 13 toxic metals comparable to testing for fewer metals using other methods.

All applicants in primary industries must also test their process wastewater discharges for cyanide and total phenol. The proposed requirement that all applicants test all discharges for these pollutants has been deleted, as several commenters suggested, because they are not likely to be found in most discharges other than primary industry process wastewater discharges. However, applicants must test for them whenever they expect them to be discharged.

"Process wastewater" is defined in the Glossary of the instructions to the consolidated application forms. In cases of uncertainty in applying the definition, applicants should contact their permitting authorities.

EPA has modified its proposed requirements for organic toxic pollutants by exempting certain industries from testing for certain pollutants. The approach used by EPA applies two factors. First, as suggested in the sixth comment listed above, is the likelihood that an applicant may discharge a particular pollutant. Second is the extent to which deletion of a toxic pollutant or group of toxic pollutants from the list of reportable pollutants results in cost savings.

EPA has determined the likelihood of discharge by using an approach suggested by many commenters. EPA decided that any pollutant which has been detected at greater than 10 μg/l (different cutoffs are used for several pesticides) in one or more samples in an industry should be tested for by all applicants in the industry. This approach has been selected because, in most industries, EPA has sampled only a small percentage of the plants. Thus the appearance of a pollutant in the data base for an industry implies that it may be discharged by several plants in that industry.

In analyzing the costs of various levels of testing requirements, EPA considered both sampling and analytical costs. (Detailed derivations of costs assumed in this discussion are contained below in section III.F of this preamble.) Sampling costs for one outfall ($1,550) are not affected by the number of pollutants analyzed. Thus, the cost of collecting a sample to analyze for all 114 organic toxic pollutants is equivalent to the cost of sampling for only a few of them. Analytical costs, however, are somewhat dependent on the number of pollutants analyzed. Using gas chromatography/mass spectrometry (GC/MS), pollutants are grouped into four fractions which are based upon similar chemical and physical properties. Within a fraction, virtually identical analytical costs are incurred whether one pollutant or all pollutants in a fraction are tested. Moreover, since pollutants in the same fraction share similar chemical and physical properties, the presence of a pollutant in a discharge indicates some likelihood that other pollutants in the fraction may also be discharged. However, elimination of entire fractions from testing requirements can reduce costs. Thus, assuming that testing for all four fractions may cost $2,000, deletion of one fraction may save $150 to $500, depending on the fraction deleted.

Based on the reasoning outlined above, EPA has decided to require applicants in each primary industry to test process wastewater for any pollutant which has been found in discharges from plants in that industry, plus any other pollutants which are contained in the same GC/MS fraction as that pollutant (since this additional analysis is virtually costless and may yield further information of significance). (Applicants with sales of less than $100,000 per year, or production of less than 100,000 tons per year in the case of coal mines, are exempt from testing for organic toxic pollutants under § 122.53(d)(8). See the discussion in section III.F.6 below.) When no pollutants of a particular fraction have been detected in any sampled plant in an industry, that fraction has been deleted as a requirement for applicants in that industry.

After formulating the rule for testing requirements as outlined above, the Agency reviewed the data which has been generated in its effluent guidelines sampling efforts to determine which pollutants have been found in each of the 34 primary industries. The Agency recognizes the technical problems in its approach. Most important, EPA's data base, the most comprehensive data base available, is to some extent subject to errors in sampling, analysis and reporting. On one hand, there is some possibility that a pollutant shown by the data to have been found in a plant's discharge was not actually present. On the other hand, it is possible that a pollutant which was present in a discharge will be shown in the data to be absent. Another problem is that there is limited data for certain categories and especially for subcategories.

Given the shortcomings in the Agency's data base, it became necessary to decide whether to base testing requirements for a GC/MS fraction on a single detection of a pollutant in the fraction, a greater number of detections, or upon some minimum ratio of detections to samples. The Agency decided to adopt the approach of one detection at concentrations above 10 μg/l. First, this approach is less arbitrary than the alternatives, which would have required a judgment without any technical basis that some other number correctly represents the degree of error in the data base. The selection of a single detection as a criterion acknowledges the difficulty of making such a judgment and relies rather on the assumption that a detection indicates a reasonable likelihood of actual presence of a toxic pollutant in a discharge.

Second, as noted above, the cost savings of deleting a particular fraction from the testing requirements for a particular industry are only a small part of the remaining sampling and analysis costs. Therefore, it is appropriate to require testing of a fraction whenever a reasonable likelihood exists that a pollutant in the fraction is being discharged.

Third, the adopted approach is the most environmentally protective alternative to EPA's proposed approach: requiring testing for all four fractions without exception. Any further relaxation of the proposal would result in a higher probability that some plants would not be required to test for certain toxic pollutants which they discharge.

The need for stringent testing requirements is particularly strong in light of the Agency's decision not to require biomonitoring for toxic effects on a uniform basis. As noted elsewhere in the preamble, many private citizens as well as environmental groups have urged that EPA require biomonitoring. EPA's chief argument for not requiring biomonitoring at this time is that it is more appropriate to focus the testing requirements at this stage upon monitoring of specific toxic pollutants. This argument would be weakened substantially by a further relaxation of the toxic pollutant testing requirements.

The final toxic pollutant testing requirements for primary industries strike a reasonable balance between the competing considerations of cost and environmental protection by exempting industries from testing those GC/MS fractions in which toxic pollutants have not been found. This criterion has resulted in the exemption of 16 out of the 34 primary industries from testing for the pollutants in the pesticide fraction. In addition, 3 industries are exempted from testing for pollutants in the acid fraction, 1 industry is exempted from testing for the pollutants in the volatile fraction, and 1 industry is exempted from testing for pollutants in the base/neutral fraction. See Part 122, Appendix D, Table I, and Table 2c–2 of the instructions to Form 2c.

EPA has deleted the proposed requirement that applicants in the Ferroalloys and Asbestos Manufacturing industries test for all toxic pollutants. EPA's industry toxic pollutant sampling efforts covered only the primary industries. EPA thus lacks the data to support a supposition that secondary industries are discharging toxic pollutants. Thus secondary industries,

including the Ferroalloys and Asbestos industries, are exempted from mandatory testing for toxic pollutants.

However, in addition to the testing requirements specified for process wastewater discharges from primary industries, all applicants are required to report discharges of any toxic pollutant which they know or have reason to believe may be discharged through any outfall. This requirement includes pollutants in GC/MS fractions not marked in Table 2c–2 of the instruction to Form 2c, pollutants discharged by primary industries through nonprocess wastewater outfalls, and pollutants discharged by secondary industries through any outfall. This requirement is similar to the proposal, with one change. The proposal allowed applicants to estimate such discharges. The final regulation allows estimation of presence or absence; however, applicants are now required to test for any pollutant known or believed to be present in the discharge.

EPA has decided to require testing for one toxic pollutant for which the proposal allowed estimates: TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin). Testing for TCDD was excluded from the proposal because the routine shipping and use of analytical standards of TCDD needed to perform quantitative analyses would endanger the public due to the extreme toxicity of TCDD. The National Wildlife Foundation correctly noted that due to TCDD's toxicity, "added rather than lessened precautions must be taken to avoid its undetected discharge into the environment." Accordingly, EPA will require certain dischargers to screen for TCDD in a manner which does not require the shipping of analytical standards.

Applicants who produce or use the following compounds must screen for TCDD:

2,4,5-trichlorophenoxy acetic acid (2,4,5-T)
2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP)
2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon)
O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothinate (Ronnel)
Hexachlorophene (HCP)
2,4,5-Trichlorophenol (TCP)

This list is based upon a recent draft study conducted by EPA's Office of Toxic Substances: *Dioxins: Sources, Transport, Exposure and Control* (April 1979). These studies indicate that TCDD is likely to be a contaminant in the six compounds listed above.

TCDD screening will be done by the use of GC with an electron capture detector. This method will reveal the presence of dioxin but will not separate its isomers. However, positive results may then be used by the permit writer as a basis for requiring the use of GC/MS and a TCDD standard to identify and quantify TCDD (see method 613, . proposed in 40 CFR 136 on December 3, 1979, 44 FR at 69526).

EPA is retaining the proposed exemption from testing for one other toxic pollutant: asbestos. Due to the lack of a suitable test method for asbestos, applicants are required only to indicate whether asbestos is expected to be discharged and, if so, to describe the source of the discharge and to submit any available analytical data.

Applicants whose outfalls were analyzed by EPA during EPA's industry sampling program may submit quantitative data generated by EPA rather than retest their discharges, if the data is less than three years old and remains representative of the present discharge. When data has not been developed by EPA for a particular pollutant, the exemption does not apply to that pollutant. The exemption should affect at least 100 applicants. The June 14 proposal required data to be no more than two years old; commenters pointed out that more than two years will generally have elapsed since EPA tested the applicant's effluent. In response, EPA has changed the time to three years. (This period is consistent with regulations requiring permittees to retain monitoring records for three years.)

For the applicants who are required to test their waste streams, EPA has reduced its sampling requirements from the proposed 72-hour single flow proportional composite sample to a 24-hour sample. This change was adopted in response to comments and after reconsideration of the relative costs and benefits of using 24-hour samples and 72-hour samples.

The Agency has used 24-, 48-, and 72-hour samples in its data collection efforts. Although a 72-hour sample may in some instances be more representative of a discharge than a 24-hour sample, other factors such as the retention times of treatment facilities would have to be considered in each instance to determine the most appropriate sampling time. Furthermore, preserving a 72-hour sample may introduce errors which cancel the benefits of the longer time period.

Although the incremental benefits of using a 72-hour sample instead of a 24-hour sample are questionable, the cost savings of using a 24-hour sample are substantial. The cost of sampling a single outfall for 72 hours is estimated to be $2,500, while the cost for 24 hours is $1,550; thus a 24-hour sample results in a savings of $1,000 per outfall. EPA cannot conclude that the benefits of using a 72-hour sample justify the costs.

Several commenters objected to the lack of standard EPA-approved sampling methods. However, as discussed in the June 14, 1979 preamble, the art of sampling is dependent on experience and often not amenable to standardization of methods. Accordingly, only general guidance on sampling is given in the instructions to Form 2c. Sampling should be supervised by an experienced contractor, as assumed by EPA in its sampling cost estimates (section III.F.1 below). (Certain sampling issues are discussed later in this section of the preamble.)

Many comments were received concerning the lack of promulgated methods for the analysis of the organic toxic pollutants. EPA proposed methods for analysis of the organic toxic pollutants on December 3, 1979 (44 FR 69464). The comment period on the methods, which include GC, HPLC, and GC/MS, was extended to April 28, 1980. (See 45 FR 15950, March 12, 1980.) Comments on the adequacy of the test methods will be considered in that rulemaking proceeding and will not be addressed here, except to note that the elimination of proposed application-based limit requirements has reduced the importance of high precision and accuracy in data reported in NPDES applications.

Because the comment period for the test methods for organic toxic pollutants was extended, the methods may not be promulgated in 40 CFR Part 136 by the time that some applicants test their waste streams. As a result, EPA will allow applicants to use any suitable method to test for any pollutant for which Part 136 methods do not exist. To assure quality control, applicants will be required in such cases to describe the method used, including sample preservation techniques. When an independent laboratory conducts the analysis, the applicant should request this information so that it may be included in the application. Applicants are encouraged (but not required) to use the December 3, 1979 proposed methods for organic toxic pollutants until the final methods are promulgated in Part 136.

b. *Other Pollutants.* In addition to the toxic pollutants, all applicants will be required to report other pollutants in all types of discharges. Some of these pollutants are conventional and nonconventional (pollutants not listed as toxic under section 307(a) or conventional under section 304(b)) pollutants which have traditionally been

of concern in the NPDES program, and others are nonconventional pollutants which have not generally been regulated before, such as certain hazardous substances. Fewer commenters addressed these requirements than the requirements for testing of toxic pollutants, perhaps because of the relatively smaller costs.

There are three groups of pollutants, other than toxic pollutants, with differing reporting requirements:

(1) All applicants must test all their discharges for the first group of pollutants.

(2) All applicants must indicate whether they know or have reason to believe that any of a second group of pollutants is present in any discharge. They must then test for any of those pollutants known or believed to be discharged.

(3) All applicants must indicate whether they know or have reason to believe that any of a third group of pollutants is present in any discharge. They must then describe the source of any pollutant known or believed to be discharged and provide any analytical data which they possess.

These requirements are discussed immediately below.

(i) *Required Analyses: § 122.53(d)(7)(i) and item V–A.* All applicants must analyze for three conventional pollutants (BOD, TSS, AND pH) and four nonconventional pollutants (temperature, COD, TOC, and ammonia).

Certain minor revisions have been made from the proposed requirements.

First, the toxic pollutants cyanide and total phenols have been moved from this list to item V–C. Thus applicants other than primary industries, which must test their process wastewater outfalls, are not required to test for cyanide and total phenols unless they expect them to be present. This change, advocated by several commenters, was made because these two pollutants are less likely to be discharged by secondary industries or from non-process wastewater outfalls than the other parameters in item V–A.

Second, the required measure of nitrogen compounds in item V–A has been changed from total Kjeldahl nitrogen (TKN) to ammonia. Ammonia is the nitrogen compound of most concern in terms of water quality. EPA has recently proposed to add ammonia to the section 307(a) list of toxic pollutants (45 FR 803, January 3, 1980). Total organic nitrogen, which measures nitrogen compounds, which are generally nutrients, is now required in item V–B. (Total Kjeldahl nitrogen is the sum of ammonia nitrogen and total organic nitrogen.)

Some commenters requested deletion or selected waiver of the uniform testing requirements, the development of industry-specific requirements, or the addition of pollutants (total oxygen demand and total organic halogen). EPA believes that the requirements of item V–A are generally appropriate for two reasons. First, the parameters in item V–A are commonly found in many different types of discharges. Second, taken together they are generally indicative of the nature of a discharge. In addition, the testing costs are small. However, in response to comments, the regulations have been modified to provide that the Director may waive testing requirements, on a case-by-case basis, for one or more pollutants in item V–A. This selected waiver is reasonable in light of the substantial experience which permit writers have in regulating the parameters included in item V–A.

(ii) *Required Reporting of Presence or Absence and, if Present, Required Analysis: § 122.53(d)(7)(iii) and item V–B.* All applicants must indicate expected presence or absence of discharges of 2 conventional pollutants (fecal coliform and oil and grease) and 23 nonconventional pollutants and report at least one analysis for each pollutant expected present. These pollutants either are of less significance or are less likely to be found than toxic pollutants or the pollutants in item V–A, for which testing is automatically required. Commenters on the proposal made many of the same general criticisms and suggestions as on item V–A. EPA has not made changes in response to these general comments (although some specific comments were adopted, as discussed below), particularly because the required level of reporting presents minimal burdens; actual testing is required only where the applicant knows or has reason to believe that it is discharging a pollutant. Furthermore, testing costs are relatively inexpensive. As noted earlier in this preamble, permit writers need to know what pollutants are present in an effluent to determine appropriate permit limits in the absence of applicable effluent guidelines. Therefore, EPA does not feel it is appropriate to make the requirements of item V–B any less stringent.

One significant change has been made from the proposal, which allowed applicants to estimate the levels of pollutants known or believed to be discharged. The final regulations and item V–B require applicants to test for all such pollutants. This change was made because EPA felt that the increased reliability of a test over an estimate justifies the increased cost in those cases where one or more of these pollutants is expected to be discharged. The change also responds to industry comments pointing out that providing a quantitative estimate is technically difficult and to one comment suggesting that EPA require analysis of expected pollutants.

Other changes have been made in response to suggestions by commenters. The pesticides required to be reported in proposed item V–C are now listed specifically in item V–D (discussed below). Radioactivity has been subdivided into alpha, beta, radium and radium 226. Nitrate and nitrite have been combined as a single pollutant, in accordance with the usual practice of measuring their sum. Finally, the form's instructions and the regulations specify that applicants need not test for pollutants expected to be present solely as a result of their presence in intake water, but need only indicate that they are expected to be present.

EPA rejected certain other suggestions. EPA has retained the use of total residual chlorine (rather than the suggested free available chlorine) because it measures both free available chlorine and chlorinated amines, because most existing toxicity data is in terms of residual chlorine, and because EPA expects to use total residual chlorine as a pollutant measure in forthcoming new effluent guidelines for the Steam Electric Power Generating Industry. Aluminum has been retained, despite one commenter's argument that aluminum has low toxicity and solubility, because aluminum remains of sufficient concern to require limitations in some cases (see, e.g., 40 CFR 421.32 and 404.32).

(iii) *Required Reporting of Presence or Absence of Asbestos and Hazardous Substances: §122.53(d)(7)(iv) and item V–D.* All applicants must indicate expected presence or absence, and briefly describe the source (or levels, if data is available) if present, of discharges of pollutants listed in item V–D. These pollutants include one toxic pollutant (asbestos) and 79 nonconventional pollutants which have been designated as hazardous substances under section 311 of the Clean Water Act but not listed as toxic pollutants and reportable in item V–C and which retain their undissociated form in water.

The proposed requirement for asbestos was controversial and has been changed. Applicants must now state briefly the source of any discharge of asbestos instead of testing or estimating the level of discharge. However, if they have analytical data

on any such discharges, applicants must report them.

Proposed item V–C required applicants to estimate or test for certain pesticides for which EPA had developed (interim) test methods. In response to comments, EPA has now listed specifically (in item V–D) each pesticide required to be reported. EPA has decided to list only those pesticides which have been designated as hazardous substances. These pesticides are contained in the list of 79 hazardous substances required by item V–D. EPA feels that focusing attention on pesticides formally recognized as hazardous in water is a realistic approach at this time.

Reporting requirements for the hazardous substances (other than those also listed as toxic pollutants) evolved out of 1978 Amendments to the Clean Water Act, which changed the relationship between the NPDES program amd section 311 of CWA. Proposed § 122.64(d)(19) and item IX of the draft application form provided to permit applicants the option of submitting information on discharges of hazardous substances designated under section 311 of CWA to obtain exclusion of those discharges from the various requirements of section 311. The proposal reflected proposed 40 CFR 117.12 (44 FR 10271, February 16, 1979) in which EPA tentatively interpreted the 1978 amendments to section 311(a)(2) to grant exclusions for continuous or intermittent discharges which are caused by events occurring within the scope of relevant operating or treatment systems only if certain information identifying those discharges is submitted to the permitting authority. In the final regulations (40 CFR 117.12, 44 FR 50766, August 29, 1979), EPA revised § 117.12 to acknowledge that such discharges by permittees or permit applicants are exempt from section 311 even when information on the discharges is not submitted to the NPDES permitting authority.

Concurrently with promulgating 40 CFR 117.12 on August 29, 1979, EPA published a notice (44 FR 50780) modifying the June 14 proposed application requirements by adding a requirement concerning the reporting of certain discharges of hazardous substances in NPDES applications. This action was taken in recognition of Congressional intent that continuous or anticipated intermittent discharges of hazardous substances are appropriately regulated under the NPDES program rather than under section 311. The new proposal required reporting of 73 hazardous substances (in addition to the June 14 proposal's requirement that hazardous substances which are on the section 307(a) toxic pollutant list must be reported) and of seven dissociation products of hazardous substances. The proposal required each applicant to report any of these pollutants which it knows or has reason to believe it is discharging. In addition, all applicants in 36 industries were required to test for vanadium.

Estimates were permitted except for 16 substances (13 pesticides, 2 chlorinated hydrocarbons and vanadium) for which official EPA test methods had already been developed; actual testing was required for these if expected present.

Commenters generally supported the approach of requiring reporting of a hazardous substance discharge only where the applicant knows or has reason to believe it is discharging the substance. This is a less stringent approach than used for toxic pollutants for several reasons. First, toxic pollutants are required to receive the closest possible scrutiny in the NPDES program under the 1977 Amendments to CWA; thus they may reasonably be distinguished from hazardous substances in formulating application requirements at this time. Second, test methods are lacking for most of the hazardous substances listed in the August 29 proposal. Third, most of the hazardous substances for which interim test methods exist are highly unlikely to be discharged except by a few industries (most notably, the Pesticides industry). Thus a more relaxed uniform reporting requirement for hazardous substances makes sense.

Several commenters contended that the test methods for 14 of the 16 hazardous substances for which EPA claims to have published test methods have not been properly promulgated in 40 CFR 136 under section 304 of CWA and that EPA is therefore barred from requiring any such analysis. They argued that the published methods had not been properly incorporated by reference in Part 136. EPA believes it has legal authority to require testing for those substances, whether by use of the Part 136 methods or by allowing applicants to choose any appropriate method. However, commenters further argued that the methods for pesticides have been less widely tested than the methods for toxic pollutants. EPA agrees with those commenters.

In response to the above comments, the proposed requirements have been modified. Applicants are now required only to indicate the source of the discharges for all hazardous substances unless they have analytical data. Of course, as always, the permit writer may require further testing if necessry. EPA feels this more individualized approach makes sense at this stage of the NPDES program, since less is known about the analysis and treatability of many of these pollutants in discharges than is known for other pollutants to be regulated in the next round of permit issuance.

In response to EPA's request for comments on the list of hazardous substances for which application reporting was proposed, one commenter suggested that vanadium and uranium be omitted, and one commenter suggested that dicamba (a pesticide) be omitted. EPA was not persuaded by these comments. All of these pollutants have been designated by EPA as hazardous substances, which are designated to a large extent on the basis of toxicity criteria. Certain hazardous substances, such as acetic acid, are omitted from reporting requirements because they are toxic only in cases of spills causing shock effects; they are not toxic at the concentrations generally found in continous discharges. However, vanadium, uranium and dicamba are of sufficient concern in continous discharges to require reporting. The burden of such reporting is minimal, since the reporting is based on the inexpensive estimation of presence or absence rather than on more expensive testing.

c. *General Concerns in Sampling, Analysis and Reporting of Testing Results.* Several additional aspects of the sampling of waste streams and the reporting of analytical results were of concern to commenters and are discussed below.

(i) *Sampling Requirements.* The instructions to item V of Form 2c include some general requirements about when samples should be collected. (Not all aspects of these instructions are set forth in the regulations.) The proposed instructions included the statement that samples should be representative of the previous twelve months of operation. Several commenters pointed out that this requirement was incompatible with the minimum requirement of testing one sample. Based on the comments, this statement has been deleted from the final instructions. The instructions retain the statement that applicants should choose sampling times which are representative of their normal operations. If operations are so variable that no representative time can be selected, as claimed by a few commenters, applicants may describe in item VI of Form 2c any types of discharges which differ from those

tested (see section III.D.3.e of this preamble).

Two commenters objected to the requirement that all composite samples be flow-proportional and suggested that time-proportional samples be allowed when retention times are long enough. This suggestion has not been adopted because flow proportional samples give a more accurate measurement of the total mass discharged when flows are not constant. When flows are constant, there is no difference between flow-proportional and time-proportional samples. One of these commenters also requested clarification of the definitions of grab and composite samples; this has been done.

Several commenters pointed out that the proposed requirement that all samples be preserved by cooling to 4° Celsius was unnecessary for some pollutants, paticularly metals. This requirement has been deleted from the instructions, but applicants must comply with specific requirements for individual pollutants covering sampling containers, holding times, and preservation procedures when they are promulgated (proposed at 44 FR 69464, December 3, 1979). Until these requirements are promulgated, applicants must describe the holding times and preservation procedures which they use.

(ii) *Reporting of Testing Results.*

(A) *Detection Limits.* The proposal required applicants to report detection limits for all pollutants in draft item V-C found to be not present. This requirement has been deleted because the proposed application-based limits have been deleted and the promulgated application-based notification requirements of 122.61(a) are not based upon multiples of detection limits. Therefore, the comments which were received on reporting of detection limits are no longer relevant, and the table in the proposed instructions setting forth detection limits has been deleted.

(B) *Miscellaneous Issues.* One commenter pointed out that reporting of flow was required in both draft items V-A and V-B. The purpose was to have the applicant report the flow once to correspond to the concentration levels reported for the toxic pollutants, and a second time to indicate the average and maximum flow over the course of one year. Flow is now reported only once because of reorganization of the form, as described in the next paragraph.

EPA has adopted certain suggestions by environmental groups advocating more detailed presentation of analytical results. Both concentration and mass of pollutant loadings must be reported in the application. In addition, pollutant loadings must now be reported as maximum daily value and as maximum 30-day value and long-term average value, if available. This change does not require any additional testing but does require additional calculations. "Maximum daily value", "maximum 30-day value" and "long-term average value" are explained in the instructions to Form 2c. Requirements for types of samples (grab or composite) are now specified in the instructions; therefore, they no longer have to be specified in item V of the form.

The application form does not require applicants to analyze intake water, but they may do so if they wish to be eligible for net limitations under § 122.63(h).

In response to a comment, a provision has been added to the final regulation allowing the Director to limit testing of substantially identical outfalls to a single outfall. The applicant must state in the application which outfalls were actually tested and which were not and explain why the outfalls are considered substantially identical.

Pollutants required to be reported in item V are listed on separate sheets at the end of Form 2c, numbered V-1 to V-9. In order to provide applicants with some flexibility in reporting, the instructions state that applicants may submit some or all of the required information on separate sheets instead of filling out pages V-1 to V-9, if they provide all the required information in the same format (to allow EPA to computerize the data). For example, applicants (or laboratories conducting analyses for applicants) may program GC/MS data systems to print the data in the required format, eliminating the need to copy the information onto a form.

d. *Response to Comments Advocating Biological Monitoring for NPDES Permit Applications.* The final regulations, like the proposed regulations, do not require biomonitoring of effluents as part of the application process. However, as discussed in the preamble to the proposal at 44 FR 34400, the permitting authority is encouraged to require toxicity testing when the information is needed to assess the toxicity of a present discharge. Toxicity information may be necessary, for example, (1) when BAT is basically equivalent to BPT (that is, no treatment beyond BPT is necessary to control 307(a) toxic pollutants); (2) when guidelines for BAT are absent and permit limits will be case-by-case; or (3) when pollutants will not be chemically analyzed (e.g., secondary industries or non-process wastewater) but toxicity is suspected. The results of such tests would then allow the permit writer to decide whether to require a process evaluation to determine whether additional treatment is required. The option of using toxicity tests also provides the permitting authority with the flexibility to respond to specialized cases when the source of toxicity is something other than the listed toxic pollutants. Permitting authorities have the authority to require acute biological toxicity testing when toxic conditions have occurred in the past, when toxicity information is needed for establishing priorities for permit issuance, or when reported effluent data is insufficient. This authority is clearly provided in section 308 of CWA, which lists biological monitoring as an available method for the purpose of developing permit limitations.

A significant number of comments were received, particularly from private citizens and public interest groups, strongly supporting toxicity testing as a mandatory permit application requirement. At a minimum, most of these commenters wanted all Group I industries (defined in the proposal as the primary industries plus the Ferroalloys and Asbestos Manufacturing categories) to perform a two-tiered testing program consisting of: (1) a 96-hour, acute, static LC50 toxicity test on several appropriate species; and (2) persistency testing by sediment uptake of priority pollutants or bioaccumulation test of animal tissues. Commenters argued that such a testing program would not be an overly-restrictive burden on Group I industries. EPA disagrees and feels that these suggested requirements are inappropriate at this time. Toxicity testing is not being required of all applicants because, in many cases, additional or modified treatment will be required by BAT limits for specific pollutants. In these situations, the results of toxicity testing may not be relevant because specific pollutants which are sources of possible toxicity will be identified chemically and permittees will be required to reduce the concentration of these pollutants. When specific toxic pollutants are identified in the permit application, it may be assumed that the effluent has acute or chronic toxicity, which would make biomonitoring duplicative. EPA believes, therefore, that biomonitoring currently should be required on a case-by-case basis by the permitting authority in situations such as those indentified above, where the information is needed to make a permitting decision. However, after installation of BAT treatment,

biomonitoring will play an increasingly important role in the NPDES program.

Several commenters argued that EPA cannot require biomonitoring for pollutants other than those regulated by a discharger's NPDES permit, apparently misunderstanding that biomonitoring does not test for specific pollutants. One of the advantages of biomonitoring is that total toxicity is measure regardless of the interactions of the constituents contributing to that toxicity. Therefore, toxicity tests measure the effects of chemical mixtures which cannot otherwise be limited in a permit.

One commenter argued that the Agency, not the regulated industry, should bear the burden of data gathering unrelated to determining permit compliance. EPA disagrees. Section 308 of CWA requires the discharger, not the permitting authority, to provide any information necessary to determine permit limits.

Some commenters argued that the cost of toxicity testing is prohibitive. Although testing for chronic toxicity and bioaccumulation can be expensive, the cost of acute toxicity testing is not prohibitive. Many industries have in-house testing capability and many companies have already generated toxicity information on their discharges. In addition, a substantial number of laboratories, including many environmental engineering firms, perform toxicity testing on a contract basis at competitive prices. The following table represents typical present-day costs of several types of acute toxicity tests:

Acute toxicity test	In-house	Contractor	
		Offsite	Onsite
24 hr Static	$100–200	$200–500	$2,000–3,000
96 hr Static Renewal.	$200–500	$500–2,500	$4,000–6,000
96 hr Flowthrough.	$300–600	$800–2,500	$6,000–10,000

Other commenters suggested that no biomonitoring be required until EPA publishes biomonitoring protocols. Several comments were directed at the lack of standardized test methods, particularly for chronic toxicity testing. Standardized test methods for acute toxicity testing are available (see *Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms*, EPA–600/4–78–012) and EPA will soon propose formal rules under section 304(h) of CWA to include these acute toxicity test methods in 40 CFR Part 136. However, test methods for chronic toxicity and bioaccumulation are less standardized. In particular, tests used for the analysis of carcinogenic, mutagenic, and teratogenic properties of pollutants are still undergoing development and evaluation. Therefore, test results on these measures should be carefully evaluated before they are used in the NPDES permit program.

Although biological toxicity testing will be used only on a case-by-case basis during the next round of permit issuance, EPA believes that biological testing must play a major role in future toxic pollutant control strategy. Therefore, EPA will propose rules in the near future to require all dischargers in selected subcategories to evaluate their effluents after BAT treatment processes are in operation using a standard biological screening protocol. The screening protocol will be relatively inexpensive and will identify effluents still containing significant toxicity. Further testing and preparation of a toxicity reduction plan may be required if screening reveals significantly toxic discharges. In cases where severe toxicity problems remain, the permit may be reopened and modified accordingly under § 122.15(a)(2). Data thus generated will also be used to assess problems associated with specific discharge types or chemical classes which could be involved in human health problems. The information will identify those instances where the magnitude of discharge would pose particularly hazardous and long term problems.

EPA expects that many post-BAT discharges will not have the acute toxicity problems which have been associated with industrial dischargers in the past. Of increasing importance in future pollution control will be problems involving chronic toxicity, persistence, and bioaccumulation. EPA plans to incorporate the developing technology in these area into future biomonitoring requirements.

3. Other Application Requirements

a. *Outfall Location: § 122.53(d)(1) and Item I.* A new requirement has been added that applicants list the latitude and longitude and the name of the receiving water for each outfall. Applicants should be able to generate this information easily from the map provided in Form 1. This information, suggested by environmental groups, will be useful to EPA and States in water quality studies and planning activities.

b. *Flows, Sources of Pollution, and Treatment Technologies: § 122.53(d) (2)–(4) and Item II.* The major change from the proposal is that, in response to comments, information required on a line drawing and in tabular form are better coordinated. The line drawing now must show average flows for all types of wastewater, and item V–A requires reporting of the maximum daily total flow from each outfall (as well as average flows).

The information in item II is useful to the permit writer because it reveals what processes use or contribute pollutants to water in the facility, and what kinds of treatment wastewater currently receives. Therefore, comments suggesting that these requirements be deleted as unnecessary and burdensome have been rejected. EPA has also rejected the suggestion of environmental groups that all flows should be measured, not estimated. Estimated average flows are sufficient to give the permit writer a general picture of the facility's water use. However, when actual flow measurements already exist, they must be reported.

All sources of flow to an outfall must be identified in the line drawing, including cooling water, sanitary wastewater, and stormwater runoff. The instructions have been modified to emphasize that similar processes or operations may be shown on the line drawing as a single unit, labeled to correspond to the more detailed listing in item II–B. This responds to comments objecting that extensive reporting of flows between many individual processes would be burdensome.

The National Coal Association commented that the requirement to provide a line drawing is not appropriate for coal mines. In response, the question allows the applicant, when a water balance is not possible, to describe the source of the water (e.g., active surface mine, regraded area, or preparation plant) and its route before being discharged.

Average flows contributed by each operation to an outfall must now be reported in § 122.53(d)(3) and item II–B to enable the permit writer to determine the proportion of the total flow contributed by operations which are covered by an effluent guideline.

Identification of treatment systems is now requested in a coded form which will allow loading of this information into an automated data system. The appropriate codes are listed in the form's instructions.

The instructions have been modified in several other ways. First, processes and operations may be described in general terms, in response to commenters who feared that this requirement would reveal trade secrets. This general identification of processes contributing to wastewater effluent is necessary to identify the standards and limitations applicable to the discharge. Second, any reasonable measure of the flow contributed by stormwater, such as

duration or frequency of storm events, may be used. This responds to comments pointing out the difficulties of predicting flows resulting from rainfall. Finally, a description of the final disposal of any solid or liquid waste other than by discharge is required, so that the permit writer may determine the amount of the effluent discharged and identify the fate of all wastes.

Other suggestions made by commenters have not been adopted. One commenter suggested that estimates of future increased flows be allowed in calculating permit limits. However, the general policy of the NPDES program is to base present limits on present operation, rather than on potential increases. Another commenter stated that the question should not ask for the design flow of the treatment units, because the method of treatment may change. However, the description in the permit application is not binding, but simply must be representative of the facility at that time. Permittees may meet their permit limits by selecting any appropriate treatment equipment or methods.

The question requiring additional description of discharges which are intermittent or seasonal (§ 122.53(d)(4) and item II–C) has been modified slightly. Columns for outfall and contributing operation have been separated, and the column for volume of flow has been expanded to allow reporting of flow rate and duration if applicable.

c. *Measure of Maximum Production: § 122.53(d)(5) and item III.* Applicants must report maximum production when production-based guidelines apply to their discharges. This requirement has been changed slightly from the proposal. Applicants must now report only a maximum measure of their actual production, not an average measure as well. The instructions have been modified to give examples of guidelines expressed in terms of production or other measures of operation. They state that an applicant that discharges only non-process wastewater is not covered by a guideline and thus need not complete this item. Another modification is that applicants now must indicate which outfalls are affected.

d. *Currently Required Construction, Upgrading or Operation of Waste Treatment Equipment: § 122.53(d)(6) and item IV.* Applicants must report any current requirements for construction of waste treatment equipment. The proposed requirement to describe non-required projects proposed by the applicant is now optional.

One environmental group wanted item IV expanded to require listing all interim dates in the construction schedule (as proposed § 122.64(d)(15) required). However, the Agency has decided that the application is not an appropriate mechanism to collect this information, which is usually publicly available anyway. The final compliance date is required to enable the permit writer to determine how soon the discharge will be affected or to decide whether to check other records for more information.

Item IV–B, which asks about planned projects, was made optional in response to several comments noting that the applicant's tentative project plans are an internal matter. Thus, applicants may report any projects they have in planning stages if they feel that this information will assist the permit writer in developing permit conditions; however, applicants are not required to reveal their plans.

e. *Potential Discharges of Toxic Pollutants: § 122.53(d)(9)–(10) and item VI.* Certain information on toxic pollutants must be reported in addition to the testing discussed above in section III.D.2 of this preamble. This additional information will help identify any toxic pollutants which may be discharged from the applicant's facility and thus should be controlled through permit limits. It will also be used as one basis for application-based notification requirements. (See section III.B.2.a.iii of this preamble.)

(i) *Toxic Pollutants Used or Produced by the Applicant: § 122.53(d)(9) and item VI–A.* Applicants must identify toxic pollutants which they use or manufacture as intermediate or final products or byproducts. This requirement supports § 122.62(e), which requires that permits be written to control toxic pollutants which are used or manufactured by the applicant. Several commenters noted that pollutants which are used or manufactured at a facility are likely to be discharged by the facility. In addition, several commenters (including an environmental group and State permit-issuing authorities) suggested that the application form include a requirement for an inventory of raw materials and products. This item responds to the above comments.

The Agency considered excluding from this application requirement those pollutants which are used or manufactured in small amounts. This approach requires a determination of cutoff levels of use or manufacture. However, because even relatively small amounts of a toxic pollutant can be of substantial concern in certain circumstances, the cutoff levels would have to be quite low. The Agency concluded, therefore, not to use a cutoff but rather to uniformly require submission of information identifying any toxic pollutant used or manufactured by the applicant.

(ii) *Predicted Potential Increases in Discharges of Pollutants: § 122.53(d)(10) and item VI–B and C.* Applicants must describe and explain the causes of discharges of pollutants which may during the next five years exceed two times the maximum levels reported in waste stream analyses. This information will be used by permit writers to identify any pollutants which are expected to be discharged at significant levels and thus require control under § 125.3 (see section III.B.2.a.i of this preamble.) In addition, § 122.61(a) requires notification of future discharges at levels exceeding five times any levels reported in this question (see III.B.2.a.ii of this preamble.)

Items VI–B and C are essentially the same as the draft items VI–A, B, and C, except that the applicant is now required to report any discharges expected to exceed two times the maximum level reported in item V instead of five times the average level.

One commenter argued that since the Director may modify a permit if the discharge exceeds five times the reported level after the permit is issued, information on expected increases should be optional. This suggestion was rejected. It is appropriate to identify future discharges in the application and to set appropriate limits in the permit. This will help insure the installation of any equipment necessary to treat the potential discharges prior to commencement of the discharges. Reliance on future reporting and permit modification would result in delays in control and should be used only to control discharges which are not foreseeable at the time of permit issuance.

Some commenters contended that this question would be difficult or impossible to answer. However, the question requires only that predictable discharges or fluctuations be identified. When applicants have no reason to believe that such discharges or fluctuations will occur, they may answer "No" to item VI–B. If discharges or fluctuations are not predicted in item VI–B but later do occur, they will trigger application-based notification. When applicants believe that fluctuations may occur but cannot predict their degree, they should state their reasons for believing that the fluctuations may occur; the permit writer will then determine whether more information is necessary.

One commenter requested that some provision be made to exempt applicants from liability for false reporting if the estimates reported in item VI turn out later to be inaccurate. No such provision is necessary because applicants would not be liable to prosecution for incorrect estimates made in good faith.

f. *Results of Previous Biomonitoring: § 122.53(d)(11) and item VII.* Each applicant must indicate whether or not biological tests for acute or chronic toxicity have been performed on its discharge and describe the results of those tests. The proposed requirement that the test results be reported has been deleted.

Two commenters strongly opposed the requirement to report the results of previous biological toxicity testing because the data in many cases would have been developed by EPA in cooperation with the industries to assist in effluent guidelines development. Another commenter suggested that the proposed reporting requirement unfairly penalized industries who have been diligent in their cleanup efforts and would create serious legal or public relations problems for those dischargers who in the past have had effluent quality problems but have now installed extensive treatment facilities.

EPA agrees that requiring dischargers who have voluntarily conducted biomonitoring toxicity tests in the past to report the results could be unfair, particularly if their cleanup efforts have resulted in substantial toxicity reductions. The Agency has eliminated the requirement to provide the results of such testing on the application form. Instead, item VII requires applicants to report whether or not biological tests for acute or chronic toxicity have been performed on the discharge or on the receiving water in close proximity to the outfall. When the results of such tests are likely to indicate the present situation (e.g., when no new treatment system has been installed or when no production and process changes have occurred since the tests were conducted), the permit writer can review these factors and decide whether or not to request further information relating to those tests.

g. *Laboratory Conducting Analyses: § 122.53(d)(12) and item VIII.* If any of the analyses reported on the application form were performed by contract laboratory or consulting firm, applicants must identify each laboratory and the analyses which it performed. In the proposal, applicants were not required to identify which analyses were performed by which laboratories. This requirement was added in response to the single comment received on this question. It imposes only a minimal reporting burden, while providing useful information for quickly following up on problems relating to the data.

h. *Other Information Required by the Director on a Case-by-Case Basis: § 122.53(d)(13).* In addition to complying with specific information requirements on the application form, the applicant must provide such other information as may reasonably be required to assess the discharges of the facility and to determine whether to issue an NPDES permit. This information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to fish and other aquatic life, and requirements to determine the cause of such toxicity. This regulation is essentially the same as proposed § 122.64(d)(20), except for minor changes. The word "reasonably" has been added as suggested by one commenter. In addition, the sentence concerning bioassays, which appeared as a comment in the proposal, now has been incorporated into the regulation, with chemical analysis also mentioned explicity.

Several commenters stated that permit writers were being given too much discretion to ask applicants to generate new and costly data, and that the regulation was too open ended and should be deleted. One commenter suggested that the specific informational requirements were so complete that this regulation was unnecessary. Another suggested that EPA develop a list of pollutants of concern by industry category, and limit requirements to that list. None of these suggestions was adopted, however, except for addition of the word "reasonably," which should provide protection against unreasonable requests for information. The need for "other information" on a case-by-case basis for certain discharges has been demonstrated by prior experience in the NPDES program. While the uniform requirements should suffice for most applicants, the flexibility to request further information in appropriate circumstances must be retained.

4. Proposed Application Requirements Deleted From the Final Regulations and Form

a. *Optional Reporting Requirements for Hazardous Substances.* Proposed § 122.64(d)(19) gave applicants the option of submitting information on discharges of hazardous substances designated under Section 311 of CWA to allow them to apply for exclusions of those discharges from the requirements and penalties of secion 311. Item IX of the draft NPDES application form contained a format for submitting such optional information to EPA. Both the regulation and item have been deleted from the final regulation and form.

EPA has deleted this question because it is unnecessary, in accordance with 40 CFR 117.12 (44 FR 50766, August 29, 1979) which states that to obtain exclusions from section 311, applicants need not report in their applications any information concerning continuous or anticipated intermittent discharges of hazardous substances which are caused by events occurring within the scope of relevant operating or treatment systems. (See section III.D.2.b.iii of this preamble for further background.)

Certain discharges by NPDES permittees or permit applicants, such as spills, remain subject to section 311 coverage absent the submission of appropriate information to the NPDES permitting authority and coverage in the NPDES permit. However, since this information may be submitted at an applicant's option under 40 CFR 117.12(a)(2) (dealing with "exclusion 2"), no regulatory requirement is needed in § 122.53(d). Furthermore, no single format will serve the purposes of each applicant seeking to exclude potential spills from section 311 coverage under exclusion 2. Instead, the instructions to Form 2c direct applicants seeking such exclusions to attach the information required by § 117.12(c)(1) to their application forms on additional sheets of paper.

Information on continuous or anticipated intermittent discharges of many hazardous substances is now routinely required of certain applicants by § 122.53(d)(7)(iv) and item V–D of Form 2c. These requirements reflect Congressional intent that such discharges be regulated under the NPDES program rather than under section 311 of CWA.

b. *Submission of Data on Additional Pollutants.* The proposed application form contained a question requiring applicants to report data on any pollutants in addition to those reported in item V (proposed § 122.64(d)(18) and draft item VIII). This requirement has been deleted from the final form. The deletion is in response to several comments objecting that the proposal was burdensome and required reporting of data that was inaccurate and not useful. The Agency agrees that the information would generally not be useful to permit writers in this round of permit issuances.

An environmental group suggested that EPA require applicants to submit or to keep on file any GC and GC/MS profiles they generate to provide information on additional pollutants. EPA considered establishing such a

requirement; however, investigation revealed several drawbacks. Only a computer-readable form of the raw data (that is, nine-track magnetic tape) would provide data on additional pollutants, and the cost of storing data in this form can be significant. The cost of reanalyzing the tapes ranges up to half of the cost of analyzing a new sample. Therefore, potential cost savings are not great and do not outweigh the advantages of conducting new sampling and analyses, when necessary, rather than retaining raw data on a routine basis. The retained data would be less current and would reveal only a limited number of additional pollutants.

c. *Ancillary Activities Which may Result in Discharges of Toxic Pollutants or Hazardous Substances—Best Management Practices Programs.* Proposed §§ 122.64(d) (11) and (13) and draft items III–B and III–C of Form 2c required each applicant to describe any actual or potential discharges of toxic pollutants or hazardous substances from ancillary activities and to attach a copy of its Best Management Practices (BMP) program for controlling these discharges. The requirement to develop a BMP program was contained in Part 125, Subpart K of the final NPDES regulations published on June 7, 1979 (44 FR 32854, 32954). The effective date of Part 125, Subpart K was deferred on August 10, 1979 (44 FR 47063) pending the availability of a BMP guidance document. On March 20, 1980 (45 FR 17997) the guidance document was made available for a 45-day public comment ending May 5, 1980 (see 45 FR 21635; April 2, 1980). Therefore, at this time 40 CFR Part 125, Subpart K is not yet effective.

In light of this timing problem, EPA decided to omit the requirement to submit a BMP program from Form 2c at this time. When Part 125, Subpart K becomes effective Form 2c will be amended as appropriate. This will allow EPA to make any adjustments to the requirements necessary to respond to public comments on the BMP manual as well as those previously submitted on proposed §§ 122.64(d) (11) and (13) and draft items III–B and III–C. In particular, EPA is considering comments submitted on the draft form which suggested that a summary of the BMP program, rather than the entire program, be included with the application, and that the description of actual and potential discharges (draft item III–B) be combined with this summary.

E. Monitoring Requirements

1. Chemical Monitoring

Specific monitoring requirements for an individual permittee are established by the permit writer when the permit is issued. § 122.11(b) requires that permits contain monitoring requirements which are sufficient to yield data representative of the monitored activity. However, it does not establish any specific requirements for monitoring type and frequency, but rather leaves that to the judgment of the permit writer. This case-by-case approach to setting monitoring requirements, which has been used in the past in the NPDES program, reflects the need to consider outfall-specific factors such as the flow rate, the types of pollutants discharge, the nature of the receiving water, and the existence of downstream intakes for drinking water.

Because monitoring requirements are related to many of the issues in the application form and permit regulations, the preamble to the proposed regulations contained (at 44 FR 34407; June 14, 1979) a description of a typical monitoring scheme under the new toxics-oriented permitting strategy. The scheme depicted the usual frequent monitoring for pollutants limited in the permit as well as periodic monitoring for some or all of the toxic pollutants and, in some cases, periodic biological monitoring. In addition, the proposed regulations included a provision (proposed § 122.71(a)(1)) allowing monitoring requirements to be set for pollutants controlled by the proposed application-based limits regulations, although, again, no frequency was specified. The preamble also discussed the costs which might be associated with particular compliance monitoring requirements.

Two major differences between the final regulations and the proposal affect monitoring requirements.

First, the proposal on application-based limits has been deleted, and the final regulations contain an application-based notification requirement and a provision authorizing permit modification when a toxic pollutant is discharged at a level exceeding that achievable by BAT. Although application-based limits might, as some commenters argued, have forced permittees to monitor their discharges frequently to ensure that the limits would not be violated and that the permittees would not be subject to enforcement actions, application-based notification requirements do not impose similar burdens. Notification is required only when the permittee knows or has reason to believe that some activity has occurred or will occur which would result in increased discharges. No obligation is imposed by the regulation to monitor for pollutants which are not expected to be present. Of course, permits for discharges of toxic pollutants are likely to require some testing for toxic pollutants during the life of the permit to determine whether significant amounts of toxics are being discharged. See § 122.62(1)(i)(4), which allows permit writers to require monitoring for pollutants not limited in the permit.

Second, the final regulations (§ 122.62(e)) require that permits contain limits to control all toxic pollutants which are used or manufactured by applicants or which are reported at high levels. These limits will include limits on specific toxic pollutants unless the permit writer determines that the discharge of the toxics will be adequately controlled by limits on other pollutants. Limits on individual toxics will require compliance monitoring for the toxics, which could be expensive in some instances. However, this follows inevitably from the statutory requirements that permits assure installation of BAT-level treatment to control discharges of toxic pollutants. § 122.62(e) merely provides certain criteria governing which toxic pollutants may be discharged in significant amounts. EPA expects that where toxics testing would be very expensive, the use of indicator limits or indicator monitoring may help alleviate this problem.

2. Biological Monitoring

In the preamble to the proposed regulations, one of the options presented for compliance monitoring and reporting was the use of toxicity tests in addition to chemical analyses. Under this strategy, toxicity tests would supplement chemical analyses so that chemical testing would be required "sparingly" and acute toxicity tests "on a more frequent basis." EPA reasoned that because toxicity tests are generally less expensive than chemical analyses and may lead to the detection of additional sources of toxicity not controlled by the permit, a useful check on wastestream toxicity could be economically provided as part of the compliance monitoring requirements.

Several commenters, however, argued that biological toxicity information is not relevant or necessary when a permit is based solely on chemical limits and when chemical monitoring is required. Several other commenters favored biomonitoring but objected to performing both chemical and biological testing. The Agency agrees that in most

cases where the permit contains only chemical limitations, toxicity tests should not be required for the purpose of compliance monitoring. However, there may be circumstances where considerable doubt exists concerning the adequacy of the chemical limits employed as permit limits to control all sources of toxicity. In these cases, toxicity tests should be required as part of the monitoring plan not to test for compliance, but to trigger investigations of the cause of remaining toxicity. The investigations could lead to the reopening of the permit to control the newly-found problem. Of course, when toxicity limits are specified in the permit, the appropriate toxicity tests are necessary to ensure compliance.

Several commenters suggested that biomonitoring could completely replace chemical analysis and serve as a compliance indicator to trigger more expensive chemical analysis. However, toxicity testing alone is inadequate because many toxic pollutants are not acutely toxic but bioaccumulate or are carcinogenic or mutagenic. It is important to know whether those pollutants are being discharged. These pollutants would often be discharged below the levels of acute toxicity and not be adequately monitored by acute toxicity tests; long-term threats would thus remain undiscovered. Therefore, toxicity tests should not be used exclusively for compliance monitoring in these cases.

EPA intends to continue to rely on chemical testing to insure compliance with permit limits for specific pollutants. However, the Agency believes that biological toxicity testing is useful to help determine whether the toxicity of discharges in compliance with BAT permit limits has been adequately reduced to assure achievement of fishable and swimmable waters as required by Section 101 of CWA. Therefore, EPA will soon enter into a rulemaking proceeding to require toxicity screening tests for certain dischargers after they have installed BAT.

F. Economic and Resource Impacts of Application Reporting Requirements

1. Unit Costs of Sampling and Analysis

The incremental costs (over those associated with existing application requirements) 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 waste streams for some or all of the organic toxic pollutants; and (2) costs imposed by the revision of current 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.

a. *Sampling and analysis of organic toxics.* For the purpose of calculating a probable cost impact, the Agency is assuming that sampling consists of 24-hour composites (a change from the proposed requirement of 72-hour composites). Analysis is assumed to consist of GC/MS quantification. Applicants may use any method of analysis before the publication of final 304(h) test methods, but the Agency expects that GC/MS will be used most often because of the designation of testing requirements by GC/MS fraction.

Cost data to support the proposal were developed from a variety of sources, which yielded figures over a relatively large range. These data were published in the proposal's preamble and comments were received. The Agency verified the data with additional checking, but some uncertainties remain, including the effect of laboratories' increased use of and familiarity with the analytical methods, the impact of the entry of new laboratories into the market, and the level of quality assurance/quality control (QA/QC) which will be required by final regulations under 40 CFR Part 136. The following cost estimates represent conservatively high judgments based upon unit prices as of Fall 1979.

The Agency received comments from a number of sources on the unit cost of sampling and analysis in the preamble to the proposal. These comments ranged from one which indicated that the Agency cost estimate of $4500 was an overestimate by $2,000 of the cost of sampling and analysis to one which suggested that the Agency figure was an underestimate of that cost by a factor of two. Several commenters remarked that the Agency estimates for the cost of sampling and for the cost of GC/MS screening were correct; another commenter confirmed the overall Agency cost estimate. The cost of GC/MS quantification was viewed as an underestimate by several commenters because of their expectations about the cost of quality assurance procedures. However, it was unclear from these comments what the commenters assumed about the nature of the QA/QC procedures to be employed.

Among the comments on the unit cost of sampling and analysis, only those concerning the cost of quality assurance procedures specified the manner in which EPA-assumed unit costs were regarded as underestimates. The Agency recognizes that GC/MS costs vary with the QA/QC procedures used but feels that today's cost estimates reflect a reasonable upper limit on the cost of the QA/QC procedures which will be used in performing GC/MS analysis.

A second group of comments received by the Agency concerned the assumptions about the number of samples which will be taken by permit applicants. One commenter from the coal mining industry argued that the overall cost calculation was an underestimate because some plants in its industry have as many as 10 outfalls. The Agency acknowledges that the total cost for some applicants will be several times the average cost figure, but also emphasizes that the figures are used to calculate the total incremental cost for the average plants. In addition, it is noted that today's regulations provide for testing exemptions for identical outfalls, which should reduce individual impacts in some cases.

Some commenters regarded the one-sample assumption as an underestimate because of the requirement in the proposal that the sample be representative of the operations of the plant for the previous 12 months. In response to these comments, the requirement in today's instructions is that the time for sampling be representative of the applicant's normal operations. This modification means that the instructions no longer potentially require multiple sampling, but only a somewhat careful choice of sampling time.

The application-based limits provision has been replaced by an application-based reporting requirement in § 122.61(a). This change from the proposal strengthens the likelihood that each applicant will need to collect and analyze only one sample. It makes the potential cost of the application-based limit provision a moot issue.

(i) *Sampling Costs.* Sampling costs will vary significantly, depending on the extent to which the applicant has to rely on an independent contractor rather than in-house personnel to perform the sampling. The instructions state that sampling should be supervised by an experienced supervisor. The sampling costs will also depend on the degree to which the costlier, manual (rather than automated) sampling must be used. The analysis below assumes that the sampling will be performed manually, although either sampling method is allowed.

As noted above, this anlaysis reflects the change from the proposed requirement for a 72-hour sample to a

24-hour sample, resulting in substantial cost reductions.

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 2-day sampling trip) is as follows:

Technicians @ $80/day, ×3 sampling shifts = $240×2 = $480
Supervisor @ $120/day = $120×2 = $240
Reports (1 person-day, supervisor) = $120
Overhead on contract salaries (150%) = $1,260
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 = $2,490
Personnel air fare (estimated average)—$200/ea. = $800
Personnel per diem/local travel—$50/day/person = $400
Total = $3,690

Costs in a number of these categories, such as salaries, overhead rates, and air fare may vary significantly. However, the Agency believes that $3,690 is a reasonable estimate of the discharger's cost to have an independent 4-person team to undertake a 2-day sampling trip.

The situation described above is the most expensive case. By using an experienced contract supervisor and possibly contract sampling equipment together with in-house technicians, sampling costs may be reduced by approximately $1850 because overhead, travel, and salary expenses associated with the three contractor technicians are eliminated. This leaves a net sampling cost of approximately $1825 per 24-hour composite sample collected manually.

If a sampling team can sample at least two outfalls simultaneously, additional savings can be achieved because personnel-related costs need not be duplicated. The cost of a two outfalls sample is $2,520; $1260 per outfall. The increase in cost of nearly $700 is due to additional expenditures for report preparation, overhead, equipment, sample transport, and equipment set-up.

For computing the total incremental cost of complying with the application requirements (section F(3) below), an average sampling cost of $1,550 per outfall, which is halfway between $1,260 and $1,825, will be assumed.

(ii) *Cost of Analysis by GC/MS Quantification.* For the purpose of determining the cost of GC/MS testing, it is assumed that applicants will forward their samples to independent laboratories for analysis. The Agency has received data on GC/MS costs from several sources, including Agency experience with effluent guidelines development, industry, independent laboratories, and GC/MS equipment manufacturers.

The data from these sources, together with the fact that increased volume and improved technology have been steadily reducing costs, indicate that a reasonable estimate of GC/MS testing costs (with some QA/QC) is $1,500 to $2,000. This estimate does not take into account that applicants in more than half of the industries can omit analysis of at least one GC/MS fraction, and is thus an overestimate of the total cost. The potential for savings from this exclusion is up to $500 per applicant. For purposes of computing the total incremental cost of complying with the application requirements, the Agency is assuming the cost of GC/MS testing is $2,000. Adding $2,000 for analysis to the assumed average sampling cost of $1,550, the average cost of sampling and analyzing the toxic organics is estimated to be $3,550 per outfall.

b. *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 are therefore more certain than the cost data for organic pollutants.

Section III.D.2.B of this preamble discusses the new requirements and indicates changes from the June 14 proposal. The modifications in the testing requirements from the proposal will result in little or no change in cost from those assumed in the proposal. Little or no change in sampling costs will result from today's requirements. Analytical cost will increase slightly.

The Agency estimates that incremental sampling and analysis costs for pollutants other than the organic toxics will range between $180 to $400. For purposes of computing the total incremental economic impacts in section III.F.3 below, an incremental cost of $300 is assumed.

2. Unit Reporting Costs

The preparation of the information which is required by § 122.53(d) (discussed in section III.D of this preamble) will require stafftime, 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.

Unit reporting cost are summarized in Table V.

Table V reflects two modifications in the Agency analysis made since the proposal. One is the elimination of the item requiring attachment of a BMP program. The other modification is the result of a change in reporting requirements for section 311 discharges. In the proposal an applicant had the option of reporting discharges of hazardous substance in order to claim exemption from section 311 requirements. The final Agency regulations (44 FR 50766; August 29, 1979) provide that an applicant need not report hazardous substances discharges as part of its NPDES application to obtain a section 311 exclusion if the discharges have otherwise been made a part of the public record. Therefore, the costs to prepare this information have been omitted from Table V. (For the remaining application requirement on hazardous substances see item V–D of Form 2c.) The net result of these modifications is a significant reduction in unit reporting costs.

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 Agency chose in the proposal to calculate total costs by examining the burden for a typical plant in each of four categories: primary major, primary minor, secondary major, secondary minor. Costs are highest for primary majors and lowest for secondary minors.

The chief assumptions underlying the calculations are:

1. Primary industry dischargers will in general expend greater effort to study waste stream variability for toxic pollutants (including an examination of processes and raw materials) than secondary industry dischargers.

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 cost of the new application form, on which no substantive comments were received, are summarized in Table V.

Table V.—*Unit Reporting Costs of New Application Form (Hours/Source)*

Type of question	Primary industry discharger		Secondary industry discharger	
	Major	Minor	Major	Minor
General information	3	2	3	2
Environmental engineering data	22	8	16	6

Table V.—*Unit Reporting Costs of New Application Form (Hours/Source)*

Management of analytical data	34	26	21	6
Graphics	4	4	4	4
Potential discharges not covered by analysis	26	14	4	2
Total	89	54	48	20

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 were 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	Primary industry discharger		Secondary industry discharger	
	Major	Minor	Major	Minor
General information	3	2	3	2
Environmental engineering data	44	18	36	18
Management of analytical data	17	7	14	4
Graphics	4	4	4	4
Potential discharges not covered by analysis	0	0	0	0
Total	68	31	57	28

The reporting burdens imposed by the new 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 and new requirements.

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: administrative and clerical (assumed to be $10/hour); mid-level business and technical ($25/hour); and professional, legal and managerial ($50/hour). (No adjustments for inflation have been made in the compensation levels since the proposal.)

Based on the above, the incremental unit reporting cost of the new form is presented in Table VII.

Table VII.—*Incremental Unit Costs of New Application Form*

	Primary industry discharger		Secondary industry discharger	
	Major	Minor	Major	Minor
Old Form Cost	$1855	$765	$1520	$665
New Form Cost	2715	1565	1790	775
Incremental Cost	$860	$800	$270	$110

Table VII illustrates that while the unit reporting cost of the new form is greater than the cost for the old form, the new form focuses reporting requirements on those industries with the greatest potential for toxic discharges (primary industries). Note, however, that the incremental cost shown above for secondary industry minor dischargers is probably understated since some of these dischargers completed a special "short form" rather than the complete NPDES application form analyzed in Table VI above.

3. Total Incremental Costs of Complying With the Proposed Application Requirements

This section discusses the total additional costs imposed by the application requirements of §§ 122.53(d) and 122.4(d) over those imposed by existing requirements. The Agency has computed the total incremental costs of its new requirements during fiscal years 1981–1985 (the period for which the new application requirements will be effective) by multiplying the unit costs derived above by the number of applicants or activities which are expected to incur those costs during the period FY 1981–FY 1985. The facts, estimates and assumptions used to compute the total incremental costs of the form are summarized in Table VIII.

a. *Number of applicants.* The number of existing industrial dischargers who will use the new application form during FY 1981–FY 1985 is based upon the Agency's records of dischargers who currently 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. In general, those test results may be reported and the applicant need not perform the sampling and analysis. It is estimated that approximately 100 applicants will be able to take advantage of this provision. However, the analysis below assumes that all applicants will do their own testing; thus the estimated total cost is probably an overestimate.

b. *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. Due to information received from the Regional offices since the proposal, the estimated average number of non-process wastewater outfalls per major discharger has been reduced. Major dischargers are now assumed to average one and a half non-process wastewater outfalls and one and a half process wastewater outfalls each. Minor dischargers are assumed to average one non-process wastewater outfall and one half of a process wastewater outfall each. These are averages used for computation of total impacts; particular plants may differ significantly. For example, as some commenters stated, certain major dischargers have as many as 10 process wastewater outfalls. However, these situations are balanced by those in which dischargers have no process wastewater outfalls.

c. *Number of intakes to be tested by applicants.* In addition to sampling and analyzing outfalls, some applicants will be testing their intakes to obtain credit for pollutants in their intakes under 40 CFR 122.63(h).

EPA took several factors into account in coming up with its estimate that one-third of all applicants will test one intake point. First, credit is available only under certain circumstances. For example, the intake source must be 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. Also, plants with many outfalls generally have only one source of surface water influent (e.g., a single adjacent stream or lake). Furthermore, the elimination of application-based limits from the regulations will reduce the number of analyses below the number contemplated in the proposal.

Based on the number of dischargers, tested intakes, process wastewater outfalls and nonprocess wastewater outfalls summarized below, Table IX sets forth subtotals and totals of the costs imposed by the regulations during FY 1981–1985.

The total incremental cost of complying with the application requirements over a five year period is approximately $51 million. More than three-fourths of that cost will be borne by primary industry applicants.

Approximately 45% of this primary industry cost will be incurred between April 1980 and June 1981; more than a third of this cost will be borne between July 1981 and June 1984. Therefore, calculation of a meaningful annualized cost figure presents difficulties. Because the total cost over five years is less than $100 million (the threshold for a regulatory analysis), the annualized cost clearly would not exceed the threshold no matter how the annualized cost is calculated.

The Agency believes that the aggregate cost figure overestimates the impact of the application requirements for several reasons. Most important, some primary industry applicants whose permits expire prior to December 1, 1980 are not required to submit the new application forms. (See discussion in preamble to the consolidated regulations found elsewhere in today's **Federal Register**, at 40 CFR 122.53(c).) Approximately one-sixth of the primary industry applicants and probably a similar portion of the secondary industry applicants fall into this category. (However, if issued short-term permits, they will be required to reapply before June 1981, using the new application form.)

Second, the Agency is assuming that each applicant will hire an independent contractor to perform sampling and that each applicant will send its samples to an independent laboratory for analysis. To the extent that applicants can perform the sampling and analysis internally, substantial savings can be achieved.

Third, the Agency's assumptions about the number of pipes per plant and about the number of intake pipes which will be tested are probably high.

Fourth, the cost figure does not take into account that applicants in more than half of the primary industries will not have to test for certain GC/MS fractions when analyzing their samples. This could result in savings of up to a fourth of the analytical costs in these industries.

Fifth, the aggregate cost figure does not reflect the savings which will result from the general small business exemption and from the small coal mine exemption (discussed in section III.F.6 below). These savings could be substantial for the coal mine exemption because several thousand applicants are involved.

The Agency is assuming that there will be no cost for secondary industry applicants to sample and analyze for organic toxics. However, secondary industry applicants are required to test for those organic toxic pollutants which they know or have reason to believe are present in their discharge. Therefore, some secondary industry applicants will test for some of the organic toxics if they know or have reason to believe that they are discharging those toxics. However, the Agency believes that the above assumption results in only a slight underestimate because these applicants are unlikely to have to test for many organic toxic pollutants because of the nature of their discharges. The Agency believes that any underestimate is compensated for by overestimates elsewhere and has not attempted to quantify the amount of additional testing, because little or no information is available (none was supplied by commenters).

Table VIII.—*Basis for Calculating Incremental Costs*

[For fiscal years 1981–85]

	Primary industry discharger		Secondary industry discharger		Total
	Major	Minor	Major	Minor	
Number of dischargers	1,500	6,300	700	16,100	24,600
Number of intakes tested	500	2,100	230	5,370	8,200
Number of process wastewater outfalls	2,250	3,150	1,050	8,050	14,500
Number of non-process wastewater outfalls	2,250	6,300	1,050	16,100	25,700

Table IX.—*Total Incremental Costs of New Application Form*

[Rounded to the nearest thousand]

	Primary industry discharger		Secondary industry discharger		Total
	Major	Minor	Major	Minor	
Cost of Sampling and Analyzing for Organic Toxics	$9,763,000	$18,638,000	0	0	$28,401,000
Incremental Cost of Sampling and Analyzing for Pollutants Other Than Organic Toxics	1,500,000	3,465,000	$699,000	$8,856,000	14,520,000
Incremental Reporting Cost	1,290,000	5,040,000	189,000	1,771,000	8,290,000
Total Incremental Cost					51,211,000

4. Economic Impacts Upon Selected Industries

The Agency conducted an analysis of the economic impact of the revised application reporting requirements upon primary industry dischargers with process wastewater discharges (upon whom the chief burden of the new requirements falls). The analysis focused primarily on those facilities which will be most affected: marginal, small volume facilities in primary 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 for 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 $35,000.

The impact on prices, profits, and plant closures should be small for most industries although impacts may be significant in individual cases. Although the Agency has concluded that the application requirements will not force closures, small businesses with highly toxic, variable, or complex discharges may find the requirements burdensome. In an effort to minimize this burden, the Agency is including a small business exemption in the testing requirements (see section III.F.6 below).

The key economic indicators 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 of the possibility of closures. Table X summarizes the results for average small plants in each industry analyzed during the year that the permit application is submitted. These results represent changes from Table X in the proposal due to the decrease in the estimated testing costs.

For a more detailed analysis of the impact of the regulation on each of the five industries, the reader is referred to the preamble of the proposed regulation (44 FR 34393 at 34412–3, June 14, 1979). That discussion should be read with the modifications in Table X below in mind. The Agency received no comments on that portion of the analysis.

Table X.—*Economic Impacts of Testing Costs*

[Figures in percentages]

Industry	Ratio of testing costs to—		
	Sales	Profits	Pollution Control Cost
Small Tanneries	.09	4.6	1.1
Wood Preservers	2.4	N/A*	5.5
Electroplaters (1–4 person job shops)	4.4	55	N/A*
Foundries (10 person shops)	1.6	31.5	N/A*
Iron and Steel	N/A*	N/A*	.75–1.5

*N/A means information is not available.

5. Impact of Reporting Requirements Upon Independent Laboratory Capability

The Agency received several comments on the proposed regulation which suggested that the NPDES analytical requirements would exceed laboratory capacity for GC/MS analysis. One commenter noted that GC/MS instruments are very expensive and that many applicants will not be able to obtain one. The analysis of demand for independent laboratory GC/MS analyses is based on the assumption that all analyses will be done by independent laboratories and not by the applicants themselves. To the extent that industry associations and individual applicants possess laboratory capacity for these analyses, the estimate of demand for independent lab capability below is an overestimate.

The impact of other Agency programs has been included in the discussion below in response to a comment. Although it is expected that regulation of toxic pollutants will result in some increase in monitoring requirements for toxic pollutants (see section III.E.1 of this preamble), the Agency has not included the effect of monitoring on the demand for laboratory capacity, as suggested by one commenter, because it anticipates that any increase in monitoring requirements would occur after the period during which lab demand will be at its peak due to the application requirements. In addition, monitoring may in some cases be conducted for a selected group of pollutants by use of GC rather than GC/MS.

After reevaluation, the Agency has concluded that GC/MS laboratory capacity should be sufficient to meet expected demand, although some delays in obtaining analytical services may occur during the peak period from April 1980 to June 1981.

The Agency evaluated expected demand on GC/MS capacity from the application form testing requirements by assuming that all required analyses will be done using GC/MS and that, on average, one analysis will require two runs through the machine. Since the number of process wastewater outfalls and intakes to be tested for the primary industry applicants is estimated to be 8,000, the number of GC/MS runs should be between 8,000 and 16,000.

Analysis of the permit expiration dates for the primary industry applicants indicates that about 45% of GC/MS tests will be performed between April 1980 and June 1981. The range of demand for GC/MS tests is projected to be between 240 and 480 analyses per month during this peak period. Demand for GC/MS capacity from other programs within EPA during the same period is expected to be 650–850 analyses per month.

Agency information and a recent manufacturers survey of available laboratories identified 66 laboratories with 129 GC/MS systems capable of performing the required analyses. (These figures represent increases from those reported in the proposal.) Current laboratory experience indicates that larger laboratories (with 3 or more GC/MS systems and an independent data system) are capable of analyzing 60–80 samples per month. The smaller laboratories are capable of performing 20–25 analyses per month. Approximately one quarter of laboratories are of the larger type. A conservatively low estimate of current laboratory capacity, with a 25% allowance for machine failure, appears to be 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. Some growth in capacity can be anticipated; GC/MS capability in service laboratories doubled over the two years prior to Summer 1979. This increase is a reflection of how rapidly additional laboratory capacity becomes available to meet demand.

Thus, sufficient capacity appears to exist, especially if the existing equipment is used on a double shift basis.

6. Small Business Exemption

a. *General.* EPA is exempting any business with annual sales less than $100,000 (in second quarter 1980 dollars) from the requirement to test for the organic toxic pollutants. To qualify for the exemption the permit applicant must submit to the permitting authority annual sales figures for the most recent three years. The average of those three years must be less than $100,000 for the applicant to qualify.

In developing the $100,000 ceiling for this exemption, the Agency used as a guideline its final report implementing Executive Order 12044 (44 FR 30988, May 29, 1979). This report indicates that an analysis of the potential economic impact should be conducted when the additional costs of a regulation exceed 5% of a product's selling price. In this instance, the Agency is using 5% of annual sales as an indicator that the reporting requirements may have an adverse impact on a firm.

As noted above, the average costs of the application requirements are $3,550 for sampling and analysis of organic toxic pollutants. The incremental unit reporting costs for primary industry minor dischargers, $1,250 (see Table VII above), are expected to be more typical of the small business firm than the reporting costs of the primary industry major discharger. The sum of these analytical and reporting costs is approximately $5,000. This would exceed 5% of annual sales if a firm has annual sales of $100,000 or less.

Based on data secured by the Agency during the development of effluent guidelines, the Agency estimates that between 2 and 5% of primary industry applicants will be eligible for the exemption from the sampling and analysis requirements for the organic toxic pollutants in process wastewater. The typical savings for the individual applicant are expected to be on the order of $4,100, which is the sum of the cost of analysis for organic toxics and the reporting costs associated with managing the organic toxics data. The estimated total savings from this exemption are expected to be between $1 million and $2 million. These reductions in the total number of applicants performing the sampling and analysis of discharges for the organic toxic pollutants have not been taken into account in the calculation of the total incremental cost of this regulation.

It should be noted that this exemption does not preclude the permitting

authority from exercising any of its options to obtain information on organic toxic pollutants under section 308 of CWA. However, the Agency expects that permitting authorities will need to exercise those options in a small number of cases, because these applicants generally exert a minor environmental impact.

b. *Coal Mines.* EPA has fashioned a separate exemption for small coal mines which is somewhat analogous to the general small business exemption discussed in the preceding section. Coal mines which are likely to produce less than 100,000 tons of coal per year, based on predicted or historical production figures, are not required to test for organic toxic pollutants.

In section 507 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Congress established a substantial set of application requirements for coal mines, including in part a description of mining methods; maps of land to be affected; identification of affected watersheds; a determination of probable hydrologic consequences of mining and reclamation operations; results of test borings or case samplings; analyses of chemical properties of the coal; the sulfur content of coal seams; chemical analyses of potentially acid or toxic forming sections of the overburden; and chemical analyses of the stratum immediately underneath the coal to be mined.

Due to the appropriately extensive application requirements of SMCRA, EPA is seeking to minimize its requests for either duplicative or overly burdensome information. This is part of the broad efforts by EPA and the Department of Interior's Office of Surface Mining (OSM), which regulates coal mines under SMCRA (see 30 CFR Chapter VII), to coordinate their permitting and other activities. See, e.g., 44 FR 55322, September 25, 1979 (announcing the availability for public comment of a draft Memorandum of Understanding on permit coordination between EPA and OSM). EPA has therefore decided to require testing for organic toxic pollutants only in the case of large coal mines, whose discharges, if toxic, are likely to have more significant impact on receiving waters than those of small mines. In addition, they should generally be able to afford both to provide the information required under SMCRA and to test for the organic toxic pollutants.

In selecting 100,000 tons annual production as the criterion for distinguishing large coal mines from small ones, EPA was guided by sections 502(c) and 507(c) of SMCRA. Section 507(c) provides that certain hydrological and other information shall, upon written request of the operator of a small coal mine, be developed by a laboratory and paid for by the regulating authority rather than by the coal mine. The cutoff used in that section is 100,000 tons annual production. Section 502(c) uses the same cutoff to provide small coal mines with an extended transition period to comply with the initial regulatory program under SMCRA. EPA feels that the cutoff selected by Congress in sections 502(c) and 507(c) of SMCRA is similarly appropriate here.

EPA expects that the exemption for small coal mines will exempt approximately 80% of all coal mine applicants. Because these small coal mines produce only about 20% of all coal produced in the United States, discharges from larger mines producing 80% of our nation's coal will remain subject to the organic toxic pollutant testing requirements. (Percentages stated in this paragraph are based upon Figures 2 and 3 on pages 6 and 7 of OSM's Final Regulatory Analysis, OSM–RA–1, March 1979.) The estimated total savings from this exemption are expected to be approximately $8 million, which was not taken into account in Table IX.

IV. PART A OF HAZARDOUS WASTE APPLICATIONS REQUIREMENTS: § 122.24 AND FORM 3

The RCRA permit program differs from the other permit programs covered by these Consolidated Application Forms in providing for an application in two stages. Six months after the promulgation of regulations setting up the RCRA program in its initial form, every facility which is treating, storing, or disposing of hazardous waste must file Part A of the permit application form. These initial regulations are being promulgated today. Part A of the permit application consists of Forms 1 (discussed in Section II of this preamble) and 3 of the Consolidated Permit Application Forms. Form 3 tracks the regulatory requirements of 40 CFR 122.24. Upon filing a Part A permit application in satisfactory form, a hazardous waste management facility (HWM facility) becomes entitled to "interim status," which means that it is not subject to enforcement for operating without a permit.

About a year from now the full RCRA permit program will become effective. Facilities may then be required by the permitting authority to complete their permit applications by submitting Part B of the permit application. Part B will also be submitted by persons wishing to construct and operate new HWM facilities. The permitting authority will then proceed to process the application and issue a permit. Part B will be submitted as a narrative; EPA is not promulgating a form for it.

Only limited portions of the requirements for Part B of the permit application are being promulgated today. They are set forth at 40 CFR 122.25. The remaining portions will be promulgated with the rest of the initial set of RCRA requirements in the fall of 1980.

Form 3 is required to be used presently by all existing HWM facilities and by new HWM facilities seeking EPA permits. Under RCRA, States may in the future operate the permit program. Although EPA encourages States with approved RCRA permit programs to use the Federal application forms, or forms as similar to those forms as possible, it is not requiring the use of EPA forms. States may use their own forms, subject to EPA approval, provided that those forms incorporate the application requirements of 40 CFR Part 122, Subpart B.

The above is a simple sketch of the basic features of the RCRA permit program. A far more detailed description is contained in 40 CFR Parts 122, 123 and 124, and the preambles to them, published elsewhere in today's **Federal Register.** The general outlines of the program will not be discussed further here.

Instead, the balance of this preamble discusses the comments received on the Part A application requirements which are specific to RCRA, namely the comments on Form 3 of the Consolidated Application Forms (Part A). Comments on the provisions of 40 CFR 122.24, which discusses Part A, are also discussed. However, comments on Part B application requirements are discussed in Part 122 and not here, both because there is no set "form" for Part B and because the complete requirements have not yet been promulgated.

Probably the single point most emphasized in the comments on Form 3 was that it was too long and cumbersome to fill out. Commenters stressed that EPA would be receiving many thousands of these forms in a very short time, at the same time that other aspects of the RCRA program were starting up. Therefore, commenters felt, EPA would probably not have the time to review extensive forms in detail; thus the information would not serve a significant regulatory purpose and would be in conflict with Congressional intent that interim status be relatively easy to apply for.

EPA agrees with these comments and has accepted many of them. Specifically:

1. EPA has reduced the specificity with which waste must be described. The proposal would have required the DOT shipping name, the EPA-assigned hazardous waste number, and the common name for all wastes. In the final version, EPA will require the EPA number only.

2. The proposal would have required a listing of the exact quantity of each type of waste to be handled at the facility. In response to comments, this has been changed to an estimate of the quantities.

3. The requirements for submitting "all available" drawings and specifications relating to a HWM facility, contained in the proposal, has been greatly cut back. All that will now be required is a scale drawing and photographs of the existing structures. EPA agreed with the commenters that argued that the proposed requirements could have resulted in the submission of vast quantities of paper that would have had little practical regulatory use.

4. The requirement to submit the zoning status of the site set forth in the proposal has been dropped, as some commenters suggested. EPA assumes that as a general rule existing facilities conform to the applicable zoning requirements and that applications for new facilities as a practical matter will only be filed for locations where the local land use laws would permit it. Accordingly, no general regulatory purpose would be served by requiring this information to be listed in all cases. EPA acknowledges that there may be cases where zoning questions may become extremely important to a decision on an individual facility, and where questions of Federal pre-emption may arise. The preamble to the Part 123 regulations discusses some of the points involved. However, those instances should be rare enough to permit the necessary information to be gathered on a case-by-case basis.

5. There will no longer be special requirements for experimental or health care facilities since those special permit categories have been dropped from the final regulations.

However, EPA has not accepted all the suggestions for simplification and in some cases has added items to the form as proposed or has changed items while leaving basic substantive requirements in place.

Specifically, EPA will still require a list of the exact wastes that will be handled in each facility, broken down by EPA code number, and a list of the treatment, storage, and disposal methods that will be used. The latter requirement replaces the one in the proposal for listing a "handling code."

This information is needed to establish how the existing pattern of HWM facilities deals with the national "universe" of hazardous wastes which will have been defined at the same time. That information will tell EPA which facilities are most in need of regulatory attention (for example, because they are dealing with large quantities of wastes, or because the wastes they deal with are particularly hazardous, or because their treatment, storage, or disposal methods from the description given seem open to question).

In addition to the above, several less significant changes have been made in Form 3:

1. A listing of the latitude and longitude of each facility is now required. This will furnish EPA with more precise data on the location of HWM facilities.

2. The proposed form would have required applicants to specify whether the facility was existing, proposed, or under construction. This requirement has been replaced in the final form with a requirement to list whether the facility is new or existing, whether the permit application is new or revised, and whether the facility has a RCRA permit or interim status. These are the permitting categories which the statute and the implementing regulations lay down, and to require the forms to reflect them will make it easier to handle those forms and assign the action required under them to its proper category.

3. Applicants with existing facilities are now required to indicate the date that operation began or the date construction commenced at their facility. This information will help EPA verify that the facility qualifies for interim status. For new facilities, applicants are required to provide the date that operation is expected to begin. This information will assist EPA in setting priorities for processing applications for new facilities.

4. As discussed in the preamble to Part 122, RCRA permits bind both the owner and the operator of HWM facilities where those two persons are different. Accordingly, the form provides for the signature of both these persons.

Impact of Form 3 reporting requirements. It is estimated that approximately 26,400 owners and operators of hazardous waste management facilities will be required to complete and submit Form 3. The estimated workload and economic burden on these applicants is summarized in Table XI.

Table XI.—Summary of Form 3 Impact

Number of respondents	26,400
Frequency of response	once
Work hours to prepare response	15.1 per response
Cost to prepare response	$472 per response

Evaluation Plan.

EPA will review the usefulness and continued need for the consolidated application forms no later than 5 years from their effective date. The review will consider the effectiveness of the consolidated format; the usefulness of the required information in issuing permits and meeting other program needs; the need to change certain requirements to reflect statutory and regulatory changes and changing program priorities; financial and administrative burdens placed upon EPA, State agencies, and the regulated community; and any more effective or less costly alternative, to fulfill the purposes intended by the current application requirements. The review will be conducted, as the present requirements have been developed, through various means calculated to encourage participation by all interested members of the public as well as by permit writers and permittees.

Note.—Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A–197 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 statemement. However, it believes that the detailed analysis contained in section III–F of this preamble complies with the spirit and purpose of the executive orders and OMB circular.

Dated: May 2, 1980.

Douglas M. Costle,

Administrator.

Instructions for Consolidated Permit Application Forms

The Consolidated Permit Application Forms are:

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
- d. New Manufacturing, Commercial, Mining and Silvicultural Operations [Reserved]

Form 3—Hazardous Waste Application Form (RCRA Permits)
Form 4—Underground Injection of Fluids (UIC Permits) [Reserved]

Form 5—Air Emissions in Attainment Areas (PSD permits) [Reserved]

Table of Contents of This Packet

A. General Instructions
B. Instructions for Form 1
C. Activities Which Do Not Require Permits
D. Glossary
E. Form 1

Instructions for Consolidated Permit Application Forms

Section A. General Instructions

Who Must Apply?

With the exceptions described in section C of these instructions, Federal laws prohibit you from conducting any of the following activities without a permit.

NPDES (National Pollutant Discharge Elimination System under the Clean Water Act, 33 U.S.C. 1251). Discharge of pollutants into the waters of the United States.

RCRA (Resource Conservation and Recovery Act, 42 U.S.C. 6901). Treatment, storage, or disposal of hazardous wastes.

UIC (Underground Injection Control under the Safe Drinking Water Act, 42 U.S.C. 300f). Injection of fluids underground by gravity flow or pumping.

PSD (Prevention of Significant Deterioration under the Clean Air Act, 72 U.S.C. 7401). Emission of an air pollutant by a new or modified facility in or near an area which has attained the National Ambient Air Quality Standards for that pollutant.

Each of the above permit programs is operated in any particular State by either the United States Environmental Protection Agency (EPA) or by an approved State agency. You must use this application form to apply for a permit for those programs administered by EPA. For those programs administered by approved States, contact the State environmental agency for the proper forms.

If you have any questions about whether you need a permit under any of the above programs, or if you need information as to whether a particular program is administered by EPA or a State agency or if you need to obtain application forms, contact your EPA Regional office (listed in Table 1).

Upon your request, and based upon information supplied by you, EPA will determine whether you are required to obtain a permit for a particular facility. Contact your EPA Regional office (listed in Table 1). Be sure to contact EPA if you have a question, because Federal laws provide that *you may be heavily penalized if you do not apply for a permit when a permit is required.*

Form 1 of the EPA consolidated application forms (attached to these instructions) collects general information applying to all programs. You must fill out Form 1 regardless of which permit you are applying for. In addition, you must fill out one of the supplementary forms (Forms 2–5) for each permit needed under each of the above programs. Item II of Form 1 will guide you to the appropriate supplementary forms.

You should note that there are certain exclusions to the permit requirements listed above. The exclusions are described in detail in section C of these instructions. If your activities are excluded from permit requirements then you do not need to complete and return any forms.

Note: Certain activities not listed above also are subject to EPA-administered environmental permit requirements. These include permits for ocean dumping, dredged or fill material discharging, and certain types of air emissions. Contact your EPA Regional office for further information.

Table 1.—*Addresses of EPA Regional Offices and States Within Their Jurisdiction*

Region I

Permit Contact, Environmental and Economic Impact Office, U.S. Environmental Protection Agency, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223–4635, FTS 223–4635. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region II

Permit Contact, Permits Administration Branch, Room 432, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007, (212) 264–9880, FTS 264–9880. New Jersey, New York, Virgin Islands, Puerto Rico.

Region III

Permit Contact (3 EN 23), U.S. Environmental Protection Agency, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597–8816, FTS 597–8816. Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Region IV

Permit Contact, Permits Section, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881–2017, FTS 257–2017. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region V

Permit Contact (5EP), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–2105, FTS 353–2105. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI

Permit Contact (6AEP), U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2765, FTS 729–2765. Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region VII

Permit Contact, Permits Branch, U.S. Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, (816) 758–5955, FTS 758–5955. Iowa, Kansas, Missouri, Nebraska.

Region VIII

Permit Contact (8E–WE), Suite 103, U.S. Environmental Protection Agency, 1816 Lincoln Street, Denver, Colorado 80203, (303) 837–4901, FTS 837–4901. Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region IX

Permit Contact Permits Branch (E–4), U.S. Environmental Protection Agency, 215 Freemont Street, San Francisco, California 94105, (415) 556–3450, FTS 556–3450. Arizona, California, Hawaii, Nevada, Guam, American Samoa, Trust Territories.

Region X

Permit Contact, (M/S 521), U.S. Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, (206) 442–7176, FTS 399–7176. Alaska, Idaho, Oregon, Washington.

Where To File

The application forms should be mailed to the EPA Regional office whose Region includes the State in which the facility is located (see Table 1).

If the State in which the facility is located administers a Federal permit program under which you need a permit, you should contact the appropriate State agency for the correct forms. Your EPA Regional Office (Table 1) can tell you to whom to apply and can provide the appropriate address and phone number.

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. These deadlines are as follows: [1]

Table 2.—*Filing Dates for Permits*

Form (permit)	When to file
2a (NPDES)	180 days before your present NPDES permit expires
2b (NPDES)	180 days before your present NPDES permit expires[1], or 180 days prior to startup if you are a new facility

[1] Please note that some of these forms are not yet available for use and are listed as "Reserved" at the beginning of these instructions. Contact your EPA Regional office for information on current application requirements and forms.

Table 2.—*Filing Dates for Permits*—Continued

Form (permit)	When to file
2c (NPDES)	180 days before your present NPDES permit expires[2]
2d (NPDES)	180 days prior to startup
3 (Hazardous Waste)	Existing facility: 180 days following publication of regulations listing hazardous wastes New facility: 180 days before commencing physical construction
4 (UIC)	A reasonable time prior to construction for new wells; as directed by the Director for existing wells
5 (PSD)	Prior to commencement of construction

[2] If your present permit expires on or before November 30, 1980, the filing date is the date on which your permit expires. If your permit expires during the period December 1, 1980–May 31, 1981, the filing date is 90 days before your permit expires.

Federal regulations provide that you may not begin to construct a new source in the NPDES program, a new hazardous waste management facility, a new injection well or a facility covered by the PSD program before the issuance of a permit under the applicable program. Please note that if you are required to obtain a permit before beginning construction, as described above, you may need to submit your permit application well in advance of an applicable deadline listed in Table 2.

Fees

The U.S. EPA does not require a fee for applying for any permit under the consolidated permit programs. (However, some States which administer one or more of these programs require fees for the permits which they issue.)

Availability of Information to Public

Information contained in these application forms will, upon request, be made available to the public for inspection and copying. However, you may request confidential treatment for certain information which you submit on certain supplementary forms. The specific instructions for each supplementary form state what information on the form, if any, may be claimed as confidential and what procedures govern the claim. No information on Forms 1 and 2 may be claimed as confidential.

Completion of Forms

Unless otherwise specified in instructions to the forms, each item in each form must be answered. To indicate that each item has been considered, enter "NA," for not applicable, if a particular item does not fit the circumstances or characteristics of your facility or activity.

If you have previously submitted information to EPA or to an approved State agency which answers a question, you may either repeat the information in the space provided or attach a copy of the previous submission. Some items in the form require narrative explanation. If more space is necessary to answer a question, attach a separate sheet entitled "Additional Information."

Financial Assistance for Pollution Control

There are a number of direct loans, loan guarantees, and grants available to firms and communities for pollution control expenditures. These are provided by the Small Business Administration, the Economic Development Administration, the Farmers Home Administration, and the Department of Housing and Urban Development. Each EPA Regional office (Table 1) has an economic assistance coordinator who can provide you with additional information.

EPA's construction grants program under Title II of the Clean Water Act is an additional source of assistance to publicly owned treatment works. Contact your EPA Regional office for details.

Section B. Instructions for Form 1—General Information

This form must be completed by all applicants.

Completing this form. Please type or print in the unshaded areas only. Some items have small graduation marks in the fill-in spaces. These marks indicate the number of characters that may be entered into our data system. The marks are spaced at ⅙" intervals which accommodate elite type (12 characters per inch). If you use another type you may ignore the marks. If you print, place each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response.

Item I. Space is provided at the upper right hand corner of Form 1 for insertion of your EPA Identification Number. If you have an existing facility, enter your Identification Number. If you don't know your EPA Identification Number, please contact your EPA Regional office (table 1), which will provide you with your number. If your facility is new (not yet constructed), leave this item blank.

Item II. Answer each question to determine which supplementary forms you need to fill out. Be sure to check the glossary in section D of these instructions for the legal definitions of the bold faced words. Check section C of these instructions to determine whether your activity is excluded from permit requirements.

If you answer "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 answer "yes" to any question, then you must complete and file the supplementary form by the deadline listed in Table 2 along with this form. (The applicable form number follows each question and is enclosed in parentheses.) You need not submit a supplementary form if you already have a permit under the appropriate Federal program, unless your permit is due to expire and you wish to renew your permit.

Questions (I) and (J) of Item II refer to major new or modified sources subject to Prevention of Significant Deterioration (PSD) requirements under the Clean Air Act. For the purpose of the PSD program, major sources are defined as (1) sources listed in Table 3 which have the potential to emit 100 tons or more per year emissions, and (2) all other sources with the potential to emit 250 tons or more per year. See section C of these instructions for discussion of exclusions of certain modified sources.

Table 3.—*28 Industrial Categories Listed in Section 169(1) of 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 mill plants
Primary aluminum 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.

Item III. Enter the facility's official or legal name. Do not use a colloquial 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 who can be contacted by reviewing offices if necessary.

Item V. Give the complete mailing address of the office where correspondence should be sent. This often is not the 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. If the facility lacks a street name or route number, give the most accurate alternative geographic information (e.g., section number, quarter section number, or description).

Item VII. List, in descending order of significance, the four 4-digit standard industrial classification (SIC) codes which best describe your facility in terms of the principal products or services you produce or provide. 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.

SIC code numbers are descriptions which may be found in 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. Use the current edition of the manual. If you have any questions concerning the appropriate SIC code for your facility, contact your EPA Regional office (see Table 1).

Item VIII–A. Give the name, as it is legally referred to, of the person, firm, public organization, or any other entity which operates the facility described in this application. This may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.

Item VIII–B. Indicate whether the entity which operates the facility also owns it by marking the appropriate box.

Item VIII–C. Enter the appropriate letter to indicate the legal status of the operator of the facility. Indicate "public" for a facility solely owned by local government(s) such as a city, town, county, parish, etc.

Items VIII–D–H. Enter the telephone number and address of the operator identified in item VIII–A.

Item IX. Indicate whether the facility is located on Indian lands.

Item X. 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. Fill in the unshaded area only. If you have more than one currently effective permit for your facility under a particular permit program, you may list additional permit numbers on a separate sheet of paper. List any relevant environmental Federal (e.g., permits under the Ocean Dumping Act, section 404 of the Clean Water Act or the Surface Mining Control and Reclamation Act), State (e.g., State permits for new air emission sources in nonattainment areas under Part D of the Clean Air Act or State permits under section 404 of the Clean Water Act) or local permits or applications under "other."

Item XI. Provide a topographic map or maps of the area extending at least to one mile beyond the property boundaries of the facility which clearly show the following:

- The legal boundaries of the facility;
- The location and serial number of each of your existing and proposed intake and discharge structures;
- All hazarous waste management facilities;
- Each well where you inject fluids underground; and
- All springs and surface water bodies in the area, plus all drinking water wells within ¼ mile of the facility which are identified in the public record or otherwise known to you.

If 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 (or other) map corresponding to the location.

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. Use 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. If neither a 7½ nor 15 minute series map has been published for your facility site, use a plat map or other appropriate map, including all the requested information; in this case, briefly describe land uses in the map area (e.g., residential, commercial).

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.

(Note—Figure A is provided for purposes of illustration only, and does not represent any actual facility.)

BILLING CODE 6560-01-M

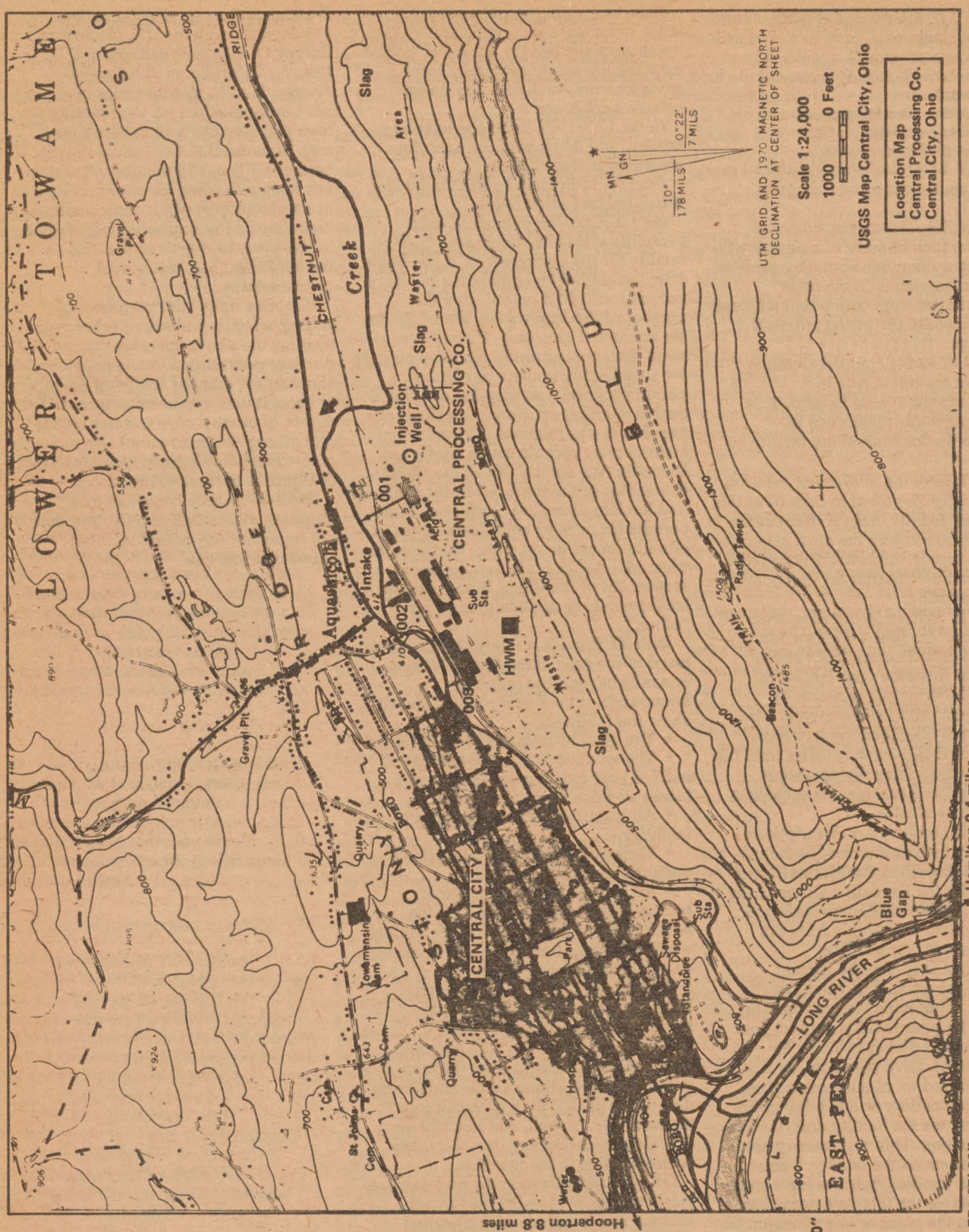


FIGURE A

BILLING CODE 6560-01-C

Item XII. Briefly describe the nature of your business (e.g., products produced or services provided).

Item XIII. Federal statues 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 imprisoned 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 of 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 a least the level of vice president. However, if the only activity in item II which is marked "yes" is Question G, the officer may authorize a person having responsibility for the overall operations of the well or well field to sign the certification. In that case, the authorization must be written and submitted to the permitting authority.

(2) For 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.

Section C. Activities Which Do Not Require Permits

I. *National Pollutant Discharge Elimination System 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). However, under section 510 of CWA a discharge exempted from the federal NPDES requirements may still be regulated by a State authority; contact 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 require permits, and so do other discharges when the vessel is operating in a capacity other than as a means of transportation, such as when the vessel is being used as an energy or 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 authorized by a permit issued by the U.S. Army Corps of Engineers or an EPA-approved State under section 404 of 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 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.

[Note: Dischargers into privately owned treatment works do not have to apply for or obtain NPDES permits except as otherwise required by the EPA Regional Administrator. The owner or operator of the treatment works itself, however, must apply for a permit and identify all users in its application. Users so identified will receive public notice of actions taken on the permit for the treatment works.]

D. *Discharges from Agricultural and Silvicultural Activities.* Most discharges from agricultural and silvicultural activities to waters of the United States do not require NPDES permits. These include runoff from orchards, cultivated crops, pastures, range lands, and forest lands. However, the discharges listed below do require NPDES permits. Definitions of the terms listed below are contained in the Glossary section of these instructions.

(1) Discharges from Concentrated Animal Feeding Operations. (See Glossary for definitions of "animal feeding operations" and "concentrated animal feeding operations." Only the latter require permits.)

(2) Discharges from Concentrated Aquatic Animal Production Facilities. (See Glossary for size cutoffs.)

(3) Discharges associated with approved Aquaculture Projects.

(4) Discharges from Silvicultural Point Sources. (See Glossary for the definition of "silvicultural point source.") Non-point source silvicultural activities are excluded from NPDES permit requirements. 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.

E. *Discharges in Compliance with an On-Scene Coordinator's Instructions.*

II. *Hazardous Waste Permits under the Resource Conservation and Recovery Act.* You may be excluded from the requirement to obtain a permit under this program if you fall into one of the following categories.

Generators who accumulate their own hazardous waste on-site for less than 90 days;

Certain small generators;

Owners or operators of totally enclosed treatment facilities; or

Farmers who dispose of waste pesticide from their own use.

Check with your Regional office for details. Please note that even if you are excluded from permit requirements, you may be required by Federal regulations to handle your waste in a particular manner.

III. *Underground Injection Control Permits under the Safe Drinking Water Act.* 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 a stratum which contains, within ¼ mile of the well bore, an underground source of drinking water (unless your injection is the type identified in item II-H, for which you do need a permit). However, you must notify EPA of your injection and submit certain required information on forms supplied by the Agency, and your operation may be phased out if you are a generator of hazardous wastes or a hazardous waste management facility

which uses wells or septic tanks to dispose of hazardous waste.

IV. *Prevention of Significant Deterioration Permits under the Clean Air Act.* The PSD program applies to newly constructed or modified facilities (both of which are referred to as "new sources") which increase air emissions. The Clean Air Act Amendments of 1977 exclude small new sources of air emissions from the PSD review program. Any new source in an industrial category listed in Table 3 of these instructions whose potential to emit is less than 100 tons per year is not required to get a PSD permit. In addition, any new source in an industrial category not listed in Table 3 whose potential to emit is less than 250 tons per year is exempted from the PSD requirements.

Modified sources which increase their net emissions (the difference between the total emission increases and total emission decreases at the source) less than the significant amount set forth in EPA regulations are also exempt from PSD requirements. Contact your EPA Regional office (Table 1) for further information.

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. If you have any questions concerning the meaning of any of these terms, please contact your EPA Regional office (Table 1).

"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:

1. 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

2. 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 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.

"Application" means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. For RCRA, "application" also means "Application, Part B."

"Application, Part A" means that part of the consolidated permit application forms which a 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 Application Form).

"Application, Part B", means that part of the application which a RCRA permit applicant must complete to be issued a permit. (*Note:* EPA is not developing a specific form for Part B of the permit application, but an instruction booklet explaining what information must be supplied is available from the EPA Regional office.)

"Approved program" or "approved State" means a State program which has been approved or authorized by EPA under 40 CFR Part 123.

"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 area" means the portions of the waters of the United States within which the applicant plans to confine the cultivated species, using a method of plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure the specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"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 all or certain wells within a geographic area, rather than to a specified well, under 40 CFR § 122.37.

"Attainment area" means, for any air pollutant, an area which has been designated under section 107 of the Clean Air Act as having ambient air quality levels better than any national primary or secondary ambient air quality standard for that pollutant. Standards have been set for sulfur oxides, particulate matter, nitrogen dioxide, carbon monoxide, ozone, lead and hydrocarbons. For purposes of the Glossary, "attainment area" also refers to "unclassifiable area," which means, for any pollutants, an area designated under section 107 as unclassifiable with respect to that pollutant due to insufficient information.

"Best Management Practices" ("BMP") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"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 or chemical measure of bioaccumulation.

"Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

"Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in either (1) or (2) or which the Director designates as such on a case-by-case basis:

1. More than the numbers of animals 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 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 handling system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

2. 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 manmade ditch, flushing system or other similar manmade device ("manmade" means constructed by man and used for the purpose of transporting wastes); or pollutants are discharged directly into waters of the United States 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.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which contains, grows or holds aquatic animals in either of the following categories, or which the Director designates as such on a case-by-case basis:

1. Cold water fish species or other cold water aquatic animals including, but not limited to, the *Salmonidae* family of fish (e.g., trout and salmon) 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.

2. Warm water fish species or other warm water aquatic animals including, but not limited to, the *Ameiuridae, Cetrarchidae,* and *Cyprinidae* families of fish (e.g., respectively, catfish, sunfish and minnows) 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.

"Contact cooling water" means water used to reduce temperature which comes into contact with a raw material, intermediate product, waste product other than heat, 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.

"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.*

"Direct discharge" means the discharge of a pollutant as defined below.

"Director" means the EPA Regional Administrator or the State Director as the context requires.

"Discharge (of a pollutant)" means:

(1) Any addition of any pollutant or combination of pollutants to waters of the United States from any point source, or

(2) 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 which is 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 person which do not lead to POTW's; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Disposal" (in the RCRA program) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that the hazardous waste or any constitutent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on land or water, and at which hazardous waste will remain after closure.

"Effluent limitation" means any restriction imposed by the Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the continguous zone, or the ocean.

"Effluent limitation guideline" means a regulation published by the Administrator under section 304(b) of the Clean Water Act to adopt or revise effluent limitations.

"Environmental Protection Agency" ("EPA") means the United States Environmental Protection Agency.

"Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of USDW, but which has been exempted according to the procedures in 40 CFR § 122.35(b).

"Existing HWM facility" means a Hazardous Waste Management facility which was in operation, or for which construction had commenced, on or before October 21, 1976. Construction had commenced if (1) the owner or operator had obtained all necessary Federal, State and local preconstruction approvals or permits, and either (2a) a continuous on-site, physical construction program had begun, or (2b) the owner or operator had entered into contractual obligations, which could not be cancelled or modifed without substantial loss, for construction of the facility to be completed within a reasonable time.

[Note: This definition reflects the literal language of the statute. However, EPA believes that amendments to RCRA now in conference will shortly be enacted and will change the date for determining when a facility is an "existing facility" to one no earlier than May of 1980; indications are the conferees are considering October 30, 1980. Accordingly, EPA encourages every owner or operator of a facility which was built or under construction as of the promulgation date of the RCRA program regulations to file Part A of its permit application so that it can be quickly processed for interim status when the change in the law takes effect. When those amendments are enacted, EPA will amend this definition.]

"Existing source" or "existing discharger" (in the NPDES program) means any source which is not a new source or a new discharger.

"Existing injection well" means an injection well other than a new injection well.

"Facility" means any HWM facility, UIC underground injection well, NPDES point source, PSD stationary source, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES or PSD programs.

"Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

"Generator" means any person by site location, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous substance" means any of the substances designated under 40 CFR Part 116 pursuant to section 311 of CWA. [*Note:* These substances are listed in Table 2c–4 of the instructions to Form 2c.]

"Hazardous waste" means a hazardous waste as defined in 40 CFR § 261.3.

"Hazardous waste management facility" ("HWM facility") means all contiguous land, structures, appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous wastes. A facility may consist of several treatment, storage or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

"In operation" means a facility which is treating, storing, or disposing of hazardous waste.

"Indirect discharger" means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

"Injection well" means a well into which fluids are being injected.

"Interim authorization" means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(c) of RCRA and applicable requirements of 40 CFR Part 123, Subparts A, B, and F.

"Listed State" means a State listed by the Administrator under section 1422 of SDWA as needing a State UIC program.

"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 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 managment agency under section 208 of CWA.

"National Pollutant Discharge Elimination System" ("NPDES") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements, under sections 307, 318, 402 and 405 of CWA. The term includes an approved program.

"New discharger" means any building, structure, facility, or installation: (1) from which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972, it had never discharged pollutants; (2) which has never received a finally effective NPDES permit for discharges at that site; and (3) which is not "new source." This definition includes an indirect discharger which commences discharging into waters of the United States. It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing vessel, or aggregate plant that begins discharging at a location for which it does not have an existing permit.

"New HWM facility" means a Hazardous Waste Management facility which began operation or for which construction commenced after October 21, 1976.

"New injection well" means a well which begins injection after a UIC program for the State in which the well is located is approved.

"New source" (in the NPDES program) 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 CWA which are applicable to such source, or

(ii) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

"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 (other than heat), or finished product.

"Off-site" means any site which is not "on-site."

"On-site" means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-Contiguous properties owned by the same person, but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

"Outfall" means a point source.

"Permit" means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 CFR Parts 122, 123, and 124.

"Physical construction" (in the RCRA program) means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.

"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.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rocks, sand, 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 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 the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

[*Note:* Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

"Prevention of significant deterioriation" (PSD) means the national permitting program under 40 CFR 52.21 to prevent emissions of certain pollutants regulated under the Clean Air Act from significantly deteriorating air quality in attainment areas.

"Primary industry category" means any industry category listed in the NRDC Settlement Agreement (*Natural Resources Defense Council* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified* 12 ERC 1833 (D.D.C. 1979)).

"Privately owned treatment works" means any device or system which is (1) used to treat wastes from any facility whose operator is not the operator of the treatment works and (2) not a POTW.

"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 any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature which is owned by a State or municipality. This definition includes any sewers that convey wastewater to a POTW, but does not include pipes, sewers, or other conveyances not connected to a POTW.

"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, 42 U.S.C. § 6901 *et seq.*).

"Rock crushing and gravel washing facilities" are facilities which process crushed and broken stone, gravel, and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines for these facilities).

"SDWA" means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900, 42 U.S.C. § 300(f) *et seq.*).

"Secondary industry category" means any industry category which is not a primary industry category.

"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 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 POTW. "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.

"Silvicultural point source" means any discernable, 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. This 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, or road construction and maintenance from which there is natural runoff. 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. "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.)

"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 Commonwealth of the Northern Mariana Islands (except in the case of CWA).

"Stationary source" (in the PSD program) means any building, structure, facility, or installation which emits or may emit any air pollutant regulated under the Clean Air Act. "Building, structure, facility, or installation" means any grouping of pollutant-emitting activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control).

"Storage" (in the RCRA program) means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

"Storm water runoff" means water discharged as a result of rain, snow, or other precipitation.

"Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) of CWA.

"Transporter" (in the RCRA program) means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

"Treatment" (in the RCRA program) 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 recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"Underground injection" means well injection.

"Underground source of drinking water" or "USDW" means an aquifer or its portion which is not an exempted aquifer and:

(1) Which supplies drinking water for human consumption, or

(2) In which the ground water contains fewer than 10,000 mg/l total dissolved solids.

"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.

"Waters of the United States" means:

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. All 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, and natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:

(a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(c) Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs (1)–(4) above;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1)–(6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet requirement of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as a disposal area in wetlands) nor resulted from the

impoundments of waters of the United States.

"Well injection" or "underground 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.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

BILLING CODE 6560-01-M

Please print or type in the unshaded areas only
(fill-in areas are spaced for elite type, i.e., 12 characters/inch).

Form Approved OMB No. 158-R0175

FORM 1 GENERAL

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

GENERAL INFORMATION

Consolidated Permits Program

(Read the "General Instructions" before starting.)

I. EPA I.D. NUMBER

F

LABEL ITEMS

I. EPA I.D. NUMBER

III. FACILITY NAME

V. FACILITY MAILING ADDRESS

VI. FACILITY LOCATION

PLEASE PLACE LABEL IN THIS SPACE

GENERAL INSTRUCTIONS

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 fill-in 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(s) below. If the label is complete and correct, you need not complete Items I, III, V, and VI *(except VI-E which must be completed regardless)*. Complete all items if no label has been provided. Refer to the instructions for detailed item descriptions and for the legal authorizations under which this data is collected.

II. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parenthesis following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of bold-faced terms.

SPECIFIC QUESTIONS	MARK 'X' YES	NO	FORM ATTACHED
A. Is this facility a **publicly owned treatment works** which results in a discharge to **waters of the U.S.**? (FORM 2A)			
B. Does or will 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.**? (FORM 2B)			
C. Is this a facility which currently results in discharges to **waters of the U.S.** other than those described in A or B above? (FORM 2C)			
D. Is this a proposed facility *(other than those described in A or B above)* which will result in a **discharge** to **waters of the U.S.**? (FORM 2D)			
E. Does or will this facility treat, store, or dispose of **hazardous wastes**? (FORM 3)			
F. Do you or will you inject at this facility industrial or municipal effluent below the lowermost stratum containing, within one quarter mile of the well bore, underground sources of drinking water? (FORM 4)			
G. Do you or will you inject at this facility any produced water or other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons? (FORM 4)			
H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, solution mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy? (FORM 4)			
I. Is this facility a proposed **stationary source** which is one of the 28 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an **attainment area**? (FORM 5)			
J. Is this facility a proposed **stationary source** which is NOT one of the 28 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an **attainment area**? (FORM 5)			

FACSIMILE

III. NAME OF FACILITY

C 1 SKIP

IV. FACILITY CONTACT

A. NAME & TITLE *(last, first, & title)* | B. PHONE *(area code & no.)*

C 2

V. FACILITY MAILING ADDRESS

A. STREET OR P.O. BOX

C 3

B. CITY OR TOWN | C. STATE | D. ZIP CODE

C 4

VI. FACILITY LOCATION

A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER

C 5

B. COUNTY NAME

C. CITY OR TOWN | D. STATE | E. ZIP CODE | F. COUNTY CODE *(if known)*

C 6

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

VII. SIC CODES *(4-digit, in order of priority)*

A. FIRST	B. SECOND
C 7 (specify) 15 16 - 19	C 7 (specify) 15 16 - 19
C. THIRD	**D. FOURTH**
C 7 (specify) 15 16 - 19	C 7 (specify) 15 16 - 19

VIII. OPERATOR INFORMATION

A. NAME — C 8 — 15 16 - 55

B. Is the name listed in Item VIII-A also the owner? ☐ YES ☐ NO 66

C. STATUS OF OPERATOR *(Enter the appropriate letter into the answer box; if "Other", specify.)*

F = FEDERAL; M = PUBLIC *(other than federal or state)*; S = STATE; O = OTHER *(specify)*; P = PRIVATE — 84 (specify)

D. PHONE *(area code & no.)* — C A 15 — 16 - 18 — 19 - 21 — 22 - 25

E. STREET OR P.O. BOX — 26 - 55

F. CITY OR TOWN — C B 15 16 - 40

G. STATE 41 42

H. ZIP CODE 47 - 51

IX. INDIAN LAND

Is the facility located on Indian lands? ☐ YES ☐ NO 52

X. EXISTING ENVIRONMENTAL PERMITS

A. NPDES *(Discharges to Surface Water)*	D. PSD *(Air Emissions from Proposed Sources)*
C T I 9 N 15 16 17 18 - 30	C T I 9 P 15 16 17 18 - 30
B. UIC *(Underground Injection of Fluids)*	**E. OTHER** *(specify)*
C T I 9 U 15 16 17 18 - 30	C T I 9 15 16 17 18 - 30 (specify)
C. RCRA *(Hazardous Wastes)*	**E. OTHER** *(specify)*
C T I 9 R 15 16 17 18 - 30	C T I 9 15 16 17 18 - 30 (specify)

RECEIVED

XI. 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 its existing and proposed intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities, and each well where it injects fluids underground. Include all springs, rivers and other surface water bodies in the map area. See instructions for precise requirements.

XII. NATURE OF BUSINESS *(provide a brief description)*

XIII. CERTIFICATION *(see instructions)*

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information contained in the application, I believe that the 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 15 16 - 55

EPA Form 3510-1 (5-80) REVERSE

BILLING CODE 6560-01-C

Instructions.—Form 2b—Application for Permit To Discharge Wastewater

Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities

This form must be completed by all applicants who check "yes" to item II–B in Form 1. 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 the General Instructions which accompany Form 1. In particular, for animal feeding operations, the size cutoffs depend on whether or not pollutants are discharged through a man-made device or by direct contact with the facility or animals. A facility for laying hens or broilers is not required to have a permit unless it has a liquid manure handling system or continuous overflow watering. Also, facilities which discharge only in the case of a 25 year, 24 hour storm event are not required to have a permit.

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, facilities which discharge less than 30 days per year, or only during periods of excess runoff (for warm water fish) are not required to have a permit.

Item I–A. See the note above and the General Instructions which accompany Form 1 to be sure that your facility is "concentrated."

Item I–B. If your answer to item VI of Form 1 does not give a complete legal description of your facility's location, use this space to provide a complete description, such as quarter, section, township, and range.

Item I–C. Check "proposed" if your facility is not now in operation, or not now "concentrated" under the definition in the glossary found in the General Instructions which accompany Form 1.

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 (either partially or totally) which are 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; [1] Broilers; [1] Ducks.

Item II–B. Give only the area used for the animal confinement or feeding facility. Do not include any area used for growing or operating feed.

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 in item XI of Form 1. Values given for flow should be representative of your normal operation. The maximum daily flow is the maximum measured flow occurring over a calendar day. The maximum 30-day flow is the average of measured daily flows over the calendar month of highest flow. The long-term average flow is the average of measured daily flows 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 for the receiving water and source of water which correspond to the map submitted in item XI of 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 of no more than $10,000 or by imprisonment for not more than six months, or both."

Federal regulations require the certification to be signed as follows:

(1) For 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 or ranking elected official.

BILLINC CODE 6560-01-M

[1] A permit is not required unless the facility has a liquid manure handling system or continuous overflow watering.

Please print or type in the unshaded areas only.

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

Form Approved OMB No. 158-R0174

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

I. GENERAL INFORMATION

A. TYPE OF BUSINESS	B. LEGAL DESCRIPTION OF FACILITY LOCATION	C. FACILITY OPERATION STATUS
☐ 1. CONCENTRATED ANIMAL FEEDING OPERATION *(complete Items B, C, and Section II)*		☐ 1. EXISTING FACILITY
☐ 2. CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY *(complete Items B, C, and Section III)*		☐ 2. PROPOSED FACILITY

II. CONCENTRATED ANIMAL FEEDING OPERATION CHARACTERISTICS

A. TYPE & NUMBER OF ANIMALS IN OPEN CONFINEMENT & HOUSED UNDER ROOF

1. TYPE	2. NO. IN OPEN CONFINEMENT	3. NO. HOUSED UNDER ROOF

B. NO. OF ACRES FOR CONFINEMENT FEEDING

C. If there is open confinement, has a runoff diversion and control system been constructed?

☐ YES *(complete Items 1, 2, & 3 below)*

☐ NO *(go to Section IV)*

1. What is the design basis for the control system?

a. 10 YEAR, 24 – HOUR STORM *(specify inches)*	INCHES	b. 25 YEAR, 24 – HOUR STORM *(specify inches)*	INCHES	c. OTHER *(specify inches & type)*	INCHES	TYPE
☐		☐		☐		

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 30 day flow and the long term average flow.

1. OUTFALL NO.	2. FLOW *(gallons per day)*		
	a. MAXIMUM DAILY	b. MAXIMUM 30 DAY	c. LONG TERM AVERAGE

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

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 application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the 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 *(print or type)*	B. PHONE NO. *(area code & no.)*
C. SIGNATURE	D. DATE SIGNED

FACSIMILE

EPA Form 3710-2B (5-80)

BILLING CODE 6560-01-C

Instructions.—Form 2c—Application for Permit To Discharge Wastewater

Existing Manufacturing, Commercial, Mining, and Silvicultural Operations

This form must be completed by all applicants who check "yes" to item II–C in Form 1.

Public Availability of Submitted Information. Your application will not be considered complete unless you answer every question on this form and on Form 1. If an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

You may not claim as confidential any information required by this form or Form 1, whether the information is reported on the forms or in an attachment. This information will be made available to the public upon request.

Any information you submit to EPA which goes beyond that required by this form and Form 1 you may claim as confidential, but claims for information which is effluent data will be denied. If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations at 40 CFR Part 2.

Definitions. All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany Form 1.

EPA I.D. Number. Fill in your EPA Identification Number at the top of each page of Form 2c. You may copy this number directly from item I of Form 1.

Item I. You may use the map you provided for item XI of Form 1 to determine the latitude and longitude of each of your outfalls and the name of the receiving water.

Item II–A. The line drawing should show generally the route taken by water in your facility from intake to discharge. Show all operations contributing wastewater, including process and production areas, sanitary flows, cooling water, and stormwater runoff. You may group similar operations into a single unit, labeled to correspond to the more detailed listing in item II–B. The water balance should show average flows. Show all significant losses of water to products, atmosphere, and discharge. You should use actual measurements whenever available; otherwise use your best estimate. An example of an acceptable line drawing appears in Figure 2c–1 to these instructions.

Item II–B. List all sources of wastewater to each outfall. Operations may be described in general terms (for example, "dye-making reactor" or "distillation tower"). You may estimate the flow contributed by each source if no data is available, and for stormwater, you may use any reasonable measure of duration, volume, or frequency. For each treatment unit, indicate its size, flow rate, and retention time, and describe the ultimate disposal of any solid or liquid wastes not discharged. Treatment units should be listed in order and you should select the proper code from Table 2c–1 to fill in column 3–b for each treatment unit. Insert "XX" into column 3–b if no code corresponds to a treatment unit you list.

If you are applying for a permit for a privately owned treatment works, you must also identify all of your contributors in an attached listing.

BILLING CODE 6560–01–M

LINE DRAWING

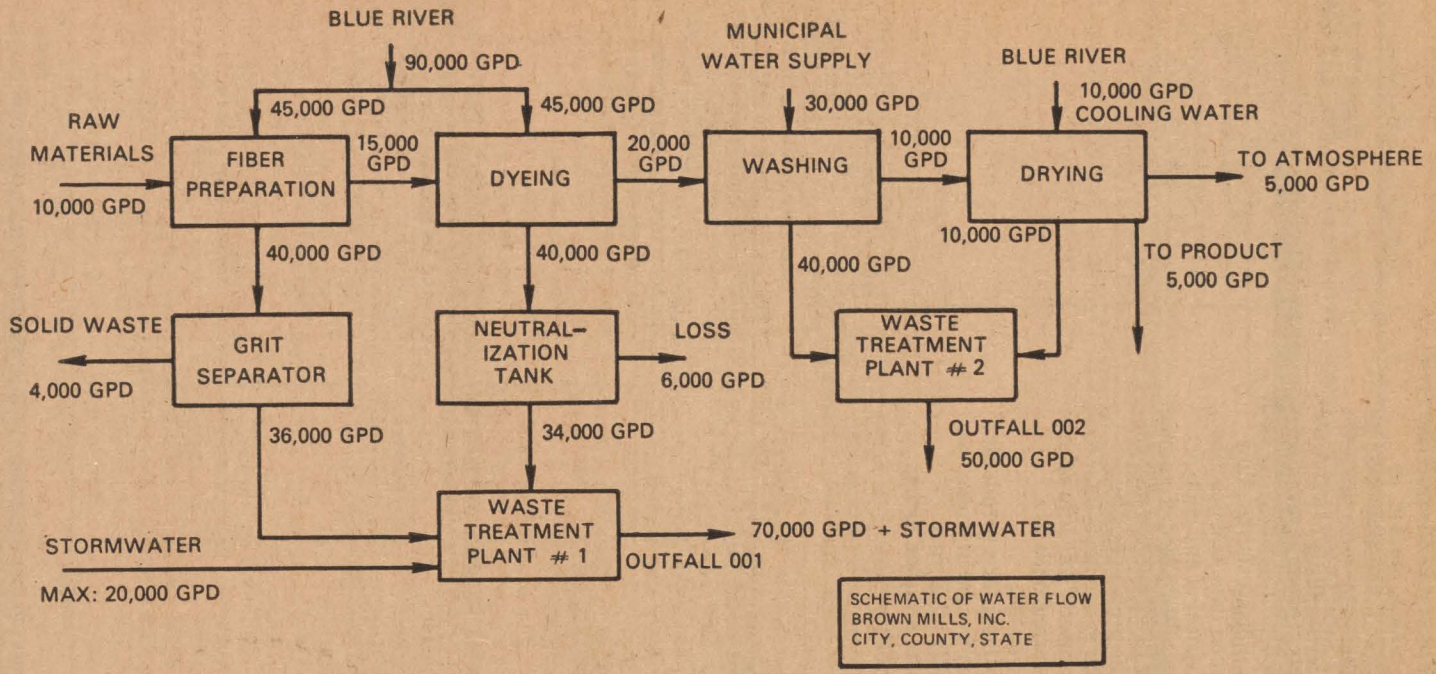


FIGURE 2c-1

BILLING CODE 6560-01-C

Table 2c-1.—Codes for Treatment Units

Physical Treatment Processes

1-A—Ammonia Stripping
1-B—Dialysis
1-C—Diatomaceous Earth Filtration
1-D—Distillation
1-E—Electrodialysis
1-F—Evaporation
1-G—Flocculation
1-H—Flotation
1-I—Foam Fractionation
1-J—Freezing
1-K—Gas-Phase Separation
1-L—Grinding (Comminutors)
1-M—Grit Removal
1-N—Microstraining
1-O—Mixing
1-P—Moving Bed Filters
1-Q—Multimedia Filtration
1-R—Rapid Sand Filtration
1-S—Reverse Osmosis (Hyperfiltration)
1-T—Screening
1-U—Sedimentation (Settling)
1-V—Slow Sand Filtration
1-W—Solvent Extraction
1-X—Sorption

Chemical Treatment Processes

2-A—Carbon Adsorption
2-B—Chemical Oxidation
2-C—Chemical Precipitation
2-D—Coagulation
2-E—Dechlorination
2-F—Disinfection (Chlorine)
2-G—Disinfection (Ozone)
2-H—Disinfection (Other)
2-I—Electrochemical Treatment
2-J—Ion Exchange
2-K—Neutralization
2-L—Reduction

Biological Treatment Processes

3-A—Activated Sludge
3-B—Aerated Lagoons
3-C—Anaerobic Treatment
3-D—Nitrification-Denitrification
3-E—Pre-Aeration
3-F—Spray Irrigation/Land Application
3-G—Stabilization Ponds
3-H—Trickling Filtration

Other Processes

4-A—Discharge to Surface Water
4-B—Ocean Discharge Through Outfall
4-C—Reuse/Recyle of Treated Effluent
4-D—Underground Injection

Sludge Treatment and Disposal Processes

5-A—Aerobic Digestion
5-B—Anaerobic Digestion
5-C—Belt Filtration
5-D—Centrifugation
5-E—Chemical Conditioning
5-F—Chlorine Treatment
5-G—Composting
5-H—Drying Beds
5-I—Elutriation
5-J—Flotation Thickening
5-K—Freezing
5-L—Gravity Thickening
5-M—Heat Drying
5-N—Heat Treatment
5-O—Incinceration
5-P—Land Application
5-Q—Landfill
5-R—Pressure Filtration
5-S—Pyrolysis
5-T—Sludge Lagoons
5-U—Vacuum Filtration
5-V—Vibration
5-W—Wet Oxidation

Item II-C. A discharge is intermittent unless it occurs without interruption during the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. A discharge is seasonal if it occurs only during certain parts of the year. Fill in every applicable column in this item for each source of intermittent or seasonal discharges. Base your answers on actual data whenever available; otherwise, provide your best estimate. Report the highest daily value for flow rate and total volume in the "Maximum Daily" columns (columns 4-a-2 and 4-b-2). Report the average of all daily values measured during days when discharge occurred within the last year in the "Long Term Average" columns (columns 4-a-1 and 4-b-1).

Item III-A. All effluent guidelines promulgated by EPA appear in the **Federal Register** and are published annually in 40 CFR Subchapter N. A guideline applies to you if you have any operations contributing process wastewater in any subcategory covered by a BPT, BCT, or BAT guideline. If you are unsure whether you are covered by a promulgated effluent guideline, check with your EPA Regional office (Table 1). You must check "yes" if an applicable effluent guideline has been promulgated, even if the guideline limitations are being contested in court. If you believe that a promulgated effluent guideline has been remanded for reconsideration by a court and does not apply to your operations, you may check "no."

Item III-B. An effluent guideline is expressed in terms of production (or other measure of operation) if the limitations are expressed as mass of pollutant per operational parameter; for example, "pounds of BOD per cubic foot of logs from which bark is removed," or "pounds of TSS per megawatt hour of electrical energy consumed by smelting furnace." An example of a guideline not expressed in terms of a measure of operation is one which limits the concentration of pollutants.

Item III-C. This item must be completed only if you checked "yes" to item III-B. The production information requested here is necessary to apply effluent guidelines to your facility and you may not claim it as confidential. However, you do not have to indicate how the reported information was calculated.

Report quantities in the units of measurement used in the applicable effluent guideline. The figures provided must be a measure of actual operation over a one-month period, such as the production for the highest month during the last twelve months, or the monthly average production for the highest year of the last five years, or other reasonable measure of actual operation, but may not be based on design capacity or on predictions of future increases in operation.

Item IV-A. If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing the same information.

Item IV-B. You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item V-A, B, C, and D. These items require you to collect and report data on the pollutants discharged from each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions: Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants, you may be required to mark "X" in the "Testing Required" column (column 2-a, Part C), and test (sample and analyze) and report the levels of the pollutants in your discharge whether or not you expect them to be present in your discharge. For all others, you must mark "X" in either the "Believe Present" column or the "Believe Absent" column (columns 2-a or 2-b, Part B, and columns 2-b or 2-c, Part C) based on your best estimate, and test for those which you believe to be present. Part D requires you to list any of a group of pollutants which you believe to be present, with a brief explanation of why you believe it to be present. (See specific instructions on the form and below for Parts A through D.)

Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, maintenance chemicals, intermediate and final products and byproducts, and any previous analyses known to you of your effluent or of any similar effluent. (For example, if you manufacture pesticides, you should expect those pesticides to be present in contaminated stormwater runoff.) If you would expect a pollutant to be present solely as a result of its presence in your intake water, you must mark "Believe Present" but you are not required to analyze for that pollutant.

Instead, mark an "X" in the "Intake" column.

a. *Reporting.* All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages V–1 to V–9 if the separate sheets contain all the required information in a format which is consistent with pages V–1 to V–9 in spacing and in identification of pollutants and columns. (For example, the data system used in your GC/MS analysis may be able to print data in the proper format.) Use the following abbreviations in the columns headed "Units" (column 3, Part A, and column 4, Parts B and C).

Concentration	*Mass*
ppm—parts per million	lbs—pounds
mg/l—milligrams per liter	ton—tons (English tons)
ppb—parts per billion	mg—milligrams
ug/l—micrograms per liter	g—grams
	kg—kilograms
	T—tonnes (metric tons)

If you measure only one daily value, complete only the "Maximum Daily Values" columns and insert "1" into the "Number of Analyses" columns (columns 2–a and 2–d, Part A, and columns 3–a and 3–d, Parts B and C). The permitting authority may require you to conduct additional analyses to further characterize your discharges. For composite samples, the daily value is the total mass or average concentration found in a composite sample taken over the operating hours of the facility during a 24-hour period; for grab samples, the daily value is the arithmetic or flow-weighted total mass or average concentration found in a series of at least four grab samples taken over the operating hours of the facility during a 24-hour period.

If you measure more than one daily value for a pollutant, determine the average of all values within the last year and report the concentration and mass under the "Long-term Average Values" columns (column 2–c, Part A, and column 3–c, Parts B and C), and the total number of daily values under the "Number of Analyses" columns (column 2–d, Part A, and column 3–d, Parts B and C). Also, determine the average of all daily values taken during each calendar month, and report the highest average under the "Maximum 30-day Values" columns (column 2–c, Part A, and column 3–b, Parts B and C).

a. *Sampling:* The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater. You may contact your EPA or State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative of your normal operation, to the extent feasible, with all processes which contribute wastewater in normal operation, and with your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

Composite sample: A combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24 hour period. For volatile pollutants, aliquots must be combined in the laboratory immediately before analysis. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically.

c. *Analysis:* You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding times, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyze only one outfall and submit the results of the analysis for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

d. *Reporting of Intake Data:* You are not required to report data under the "Intake" columns unless you wish to demonstrate your eligibility for a "net" effluent limitation for one or more pollutants, that is, an effluent limitation adjusted by subtracting the average level of the pollutant(s) present in your intake water. NPDES regulations allow net limitations only in certain circumstances. To demonstrate your eligibility, under the "Intake" columns report the average of the results of analyses on your intake water (if your water is treated before use, test the water after it is treated), and attach a separate sheet containing the following for each pollutant:

1. A statement that the intake water is drawn from the body of water into which the discharge is made. (Otherwise, you are not eligible for net limitations.)

2. A statement of the extent to which the level of the pollutant is reduced by treatment of your wastewater. (Your limitations will be adjusted only to the extent that the pollutant is not removed.)

3. When applicable (for example, when the pollutant represents a class of compounds), a demonstration of the extent to which the pollutants in the intake vary physically, chemically, or biologically from the pollutants contained in your discharge. (Your limitations will be adjusted only to the extent that the intake pollutants do not vary from the discharged pollutants.)

Part V–A. Part V–A must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff. However, at your request, the permitting authority may waive the requirements to test for one or more of these pollutants, upon a determination that testing for the pollutant(s) is not appropriate for your effluents.

Use composite samples for all pollutants in this Part, except use grab samples for pH and temperature. See discussion in General Instructions to item V for definitions of the columns in Part A. The "Long Term Average Values" column (column 2–c) and "Maximum 30-day Values" column (column 2–b) are not compulsory but should be filled out if data is available.

Part V–B. Part V–B must be completed by all applicants for all outfalls, including outfalls containing only noncontact cooling water or storm runoff.

Use composite samples for all pollutants you analyze for in this Part, except use grab samples for residual chlorine, oil and grease, and fecal coliform. The "Long-term Average Values" column (column 3–c) and "Maximum 30-day Values" column (column 3–b) are not compulsory but should be filled out if data is available.

Part V–C. Table 2c–2 lists the 34 "primary" industry categories in the left-hand column. For each outfall, if any of your processes which contribute wastewater falls into one of those categories, you must mark "X" in "Testing Required" column (column 2–a) and test for (1) all of the toxic metals, cyanide, and total phenols, and (2) the organic toxic pollutants contained in the gas chromotography/mass spectrometry (GC/MS) fractions indicated in Table 2c–2 as applicable to your category, unless you qualify as a small business (see below). The organic toxic pollutants are listed by GS/MS fractions on pages V–4 to V–9 in Part V–C. For example, the Organic Chemicals Industry has an asterisk in all four fractions; therefore, applicants in this category must test for all organic toxic pollutants in Part V–C. If you are applying for a permit for a privately owned treatment works, determine your testing requirements on the basis of the industry categories of your contributors. When you determine which industry category you are in to find your testing requirements, you are not determining your category for any other purpose and you are not giving up your right to challenge your inclusion in that category (for example, for deciding whether an effluent guideline is applicable) before your permit is issued.

For all other cases (secondary industries, non-process wastewater outfalls, and non-required GC/MS fractions), you must mark "X" in either the "Believed Present" column (column 2–b) or the "Believed Absent" column (column 2–c) for each pollutant, and test for those you believe present (those marked "X" in column 2–b). If you qualify as a small business (see below) you are exempt from testing for the organic toxic pollutants, listed on pages V–4 to V–9 in Part C. For pollutants in intake water, see discussion in General Instructions to this item. The "Long-term Average Values" column (column 3–c) and "Maximum 30-day Values" column (column 3–b) are not compulsory but should be filled out if data is available.

Use composite samples for all pollutants in this Part, except use grab samples for total phenols and cyanide.

Table 2c–2.—Testing Requirements for Organic Toxic Pollutants by Industry Category

Industry category	GC/MS fraction[1]			
	Volatile	Acid	Base/ neutral	Pesti-cide
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	(*)	(*)	(*)	.....
Iorn and steel manufacturing	(*)	(*)	(*)	.....
Leather tanning and finishing	(*)	(*)	(*)	(*)
Mechanical products manufacturing	(*)	(*)	(*)	.....
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining	(*)	(*)	(*)	(*)
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)	(*)	(*)	(*)
Pharmaceutical preparations	(*)	(*)	(*)	.....
Photographic equipment and supplies	(*)	(*)	(*)	(*)
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)	.....	.....	.....
Porcelain enameling	(*)	.....	(*)	(*)
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paperboard mills	(*)	(*)	(*)	(*)
Rubber processing	(*)	(*)	(*)	.....
Soap and detergent manufacturing	(*)	(*)	(*)	.....
Steam electric power plants	(*)	(*)	(*)	.....
Textile mils	(*)	(*)	(*)	(*)
Timber products processing	(*)	(*)	(*)	(*)

[1] The pollutants in each fraction are listed in item V–C.
*Testing required.

You are required to mark "Testing Required" for dioxin if you use or manufacture one of the following compounds: (a) 2,4,5-trichlorophenoxy acetic acid, (2,4,5-T); (b) 2-(2,4,5-trichlorophenoxy) propanoic acid, (Silvex, 2,4,5-TP); (c) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate, (Erbon); (d) O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate, (Ronnel); (e) 2,4,5-trichlorophenol, (TCP); or (f) hexachlorophene, (HCP). If you mark "Testing Required" or "Believe Present," you must perform a screening analysis for dioxins, using gas chromotography with an electron capture detector. A TCDD standard for quantitation is not required. Describe the results of this analysis in the space provided; for example, "no measurable baseline deflection at the retention time of TCDD" or "a measurable peak within the tolerances of the retention time of TCDD." The permitting authority may require you to perform a quantitative analysis if you report a positive result.

The Effluent Guidelines Division of EPA has collected and analyzed samples from some plants for the pollutants listed in Part C in the course of its BAT guidelines development program. If your effluents were sampled and analyzed as part of this program in the last three years, you may use this data to answer Part C 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.

Small Business Exemption. If you qualify as a "small business," you are exempt from the reporting requirements for the organic toxic pollutants, listed on pages V–4 to V–9 in Part C. If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production (such as a schedule of estimated total production under 30 CFR § 795.14(c)) instead of conducting analyses for the organic toxic pollutants. If your facility is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year (in second quarter 1980 dollars), you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants.

The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intra-corporate transfers of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator (second quarter of 1980=100). This index is available in *National Income and Product Accounts of the United States* (Department of Commerce, Bureau of Economic Analysis).

Part V–D. List any pollutants in Table 2c–3 that you believe to be present and explain why you believe them to be present. No analysis is required, but if you have analytical data, you must report it.

Note: Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances (listed in Table 2c–4 of these instructions) may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties, and liability for clean-up costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source and

amount of the discharged substance are identified in the NPDES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.

2. The origin and source of the discharge of the substance.

3. The treatment which is to be provided for the discharge by:

a. An on-site treatment system separate from any treatment system treating your normal discharge;

b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or

c. Any combination of the above.

See 40 CFR § 117.12(a)(2) and (c), published on August 29, 1979, in 44 FR 50766, or contact your Regional office (Table 1), for futher information on exclusions from section 311.

Table 2c-3.—Toxic Pollutants and Hazardous Substances Required to be Identified by Applicants If Expected to be Present

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxyacetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethanolamine
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfonate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
TDE (Tetrachlorodiphenyl ethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofon
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

Item VI-A. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts. Under NPDES regulations your permit will contain limits to control all pollutants you report in answer to this question, as well as all pollutants reported in item V or VI-B at levels exceeding the technology-based limits appropriate to your facility. Your permit will also require you to report to EPA if you in the future begin or expect that you will begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which you did not report here, and your permit may be modified at that time if necessary to control that pollutant.

Item VI-B. For this item, consider only those variations which may result in concentrations of pollutants in effluents which may exceed two times the maximum values you reported in item V. These variations may be part of your routine operations, or part of your regular cleaning cycles.

Under NPDES regulations your permit will contain limits to control any pollutant you report in answer to this question at levels exceeding the technology-based limits appropriate to your facility. Your permit will also require you to report to EPA if you know or have reason to believe that any activity has occurred or will occur which would make your discharge of any toxic pollutant five times the maximum values reported in item V-C or in this item, and your permit may be modified at that time if necessary to control the pollutant.

Do not consider variations which are the result of bypasses or upsets. Increased levels of pollutants which are discharged as a result of bypasses or upsets are regulated separately under NPDES regulations.

Item VI-C. 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;

Significant chemical reactions between pollutants in waste streams; and

Significant variation in removal efficiencies of pollution control equipment.

You may indicate other types of variations as well, except those which are the result of bypasses or upsets. The permitting authority may require you to further investigate or document variations you report here.

Base you prediction of expected levels of these pollutants 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). Use of toxic pollutants which can be expected in the next 5 years is:

1. Copper acetate inhibitor, ½ lb. per tank

2. Dibutyl phthalate, 50 lbs. per tank

3. Toulene, 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.

Item VII. Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item VIII. Self explanatory.

Item IX. 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 of no more than $10,000 or by imprisonment for not more than six months, or both."

Federal Regulations Require the Certification 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.

Table 2c–4.—Hazardous Substances

1. Acetaldehyde
2. Acetic acid
3. Acetic anhydride
4. Acetone cyanohydrin
5. Acetyl bromide
6. Acetyl chloride
7. Acrolein
8. Acrylonitrile
9. Adipic acid
10. Aldrin
11. Allyl alcohol
12. Allyl chloride
13. Aluminum sulfate
14. Ammonia
15. Ammonium acetate
16. Ammonium benzoate
17. Ammonium bicarbonate
18. Ammonium bichromate
19. Ammonium bifluoride
20. Ammonium bisulfite
21. Ammonium carbamate
22. Ammonium carbonate
23. Ammonium chloride
24. Ammonium chromate
25. Ammonium citrate
26. Ammonium fluoroborate
27. Ammonium fluoride
28. Ammonium hydroxide
29. Ammonium oxalate
30. Ammonium silicofluoride
31. Ammonium sulfamate
32. Ammonium sulfide
33. Ammonium sulfite
34. Ammonium tartrate
35. Ammonium thiocyanate
36. Ammonium thiosulfate
37. Amyl acetate
38. Aniline
39. Antimony pentachloride
40. Antimony potassium tartrate
41. Antimony tribromide
42. Antimony trichloride
43. Antimony trifluoride
44. Antimony trioxide
45. Arsenic disulfide
46. Arsenic pentoxide
47. Arsenic trichloride
48. Arsenic trioxide
49. Arsenic trisulfide
50. Barium cyanide
51. Benzene
52. Benzoic acid
53. Benzonitrile
54. Benzoyl chloride
55. Benzyl chloride
56. Beryllium chloride
57. Beryllium fluoride
58. Beryllium nitrate
59. Butylacetate
60. n-Butylphthalate
61. Butylamine
62. Butyric acid
63. Cadmium acetate
64. Cadmium bromide
65. Cadmium chloride
66. Calcium arsenate
67. Calcium arsenite
68. Calcium carbide
69. Calcium chromate
70. Calcium cyanide
71. Calcium dodecylbenzenesulfonate
72. Calcium hypochlorite
73. Captan
74. Carbaryl
75. Carbofuran
76. Carbon disulfide
77. Carbon tetrachloride
78. Chlordane
79. Chlorine
80. Chlorobenzene
81. Chloroform
82. Chloropyrifos
83. Chlorosulfonic acid
84. Chromic acetate
85. Chromic acid
86. Chromic sulfate
87. Chromous chloride
88. Cobaltous bromide
89. Cobaltous formate
90. Cobaltous sulfamate
91. Coumaphos
92. Cresol
93. Crotonaldehyde
94. Cupric acetate
95. Cupric acetoarsenite
96. Cupric chloride
97. Cupric nitrate
98. Cupric oxalate
99. Cupric sulfate
100. Cupric sulfate ammoniated
101. Cupric tartrate
102. Cyanogen chloride
103. Cyclohexane
104. 2,4-D acid (2,4-Dichlorophenoxyacetic acid)
105. 2,4-D esters (2,4-Dichlorophenoxyacetic acid esters)
106. DDT
107. Diazinon
108. Dicamba
109. Dichlobenil
110. Dichlone
111. Dichlorobenzene
112. Dichloropropane
113. Dichloropropene
114. Dichloropropene-dichloproropane mix
115. 2,2 Dichloropropionic acid
116. Dichlorvos
117. Dieldrin
118. Diethylamine
119. Dimethylamine
120. Dinitrobenzene
121. Dinitrophenol
122. Dinitrotoluene
123. Diquat
124. Disulfoton
125. Diuron
126. Dodecylbenzesulfonic acid
127. Endosulfan
128. Endrin
129. Epichlorohydrin
130. Ethion
131. Ethylbenzene
132. Ethylenediamine
133. Ethylene dibromide
134. Ethylene dichloride
135. Ethylene diaminetetracetic acid (EDTA)
136. Ferric ammonium citrate
137. Ferric ammonium oxalate
138. Ferric chloride
139. Ferric fluoride
140. Ferric nitrate
141. Ferric sulfate
142. Ferrous ammonium sulfate
143. Ferrous chloride
144. Ferrous sulfate
145. Formaldehyde
146. Formic acid
147. Fumaric acid
148. Furfural
149. Guthion
150. Heptachlor
151. Hexachlorocyclopentadiene
152. Hydrochloric acid
153. Hydrofluoric acid
154. Hydrogen cyanide
155. Hydrogen sulfite
156. Isoprene
157. Isopropanolamine dodecylbenzenesulfonate
158. Kelthane
159. Kepone
160. Lead acetate
161. Lead arsenate
162. Lead chloride
163. Lead fluoborate
164. Lead flourite
165. Lead iodide
166. Lead nitrate
167. Lead stearate
168. Lead sulfate
169. Lead sulfide
170. Lead thiocyanate
171. Lindane
172. Lithium chromate
173. Malathion
174. Maleic acid
175. Maleic anhydride
176. Mercaptodimethur
177. Mercuric cyanide
178. Mercuric nitrate
179. Mercuric sulfate
180. Mercuric thiocyanate
181. Mercurous nitrate
182. Methoxychlor
183. Methyl mercaptan
184. Methyl methacrylate
185. Methyl parathion
186. Mevinphos
187. Mexacarbate

188. Monoethylamine
189. Monomethylamine
190. Naled
191. Napthalene
192. Napthenic acid
193. Nickel ammonium sulfate
194. Nickel chloride
195. Nickel hydroxide
196. Nickel nitrate
197. Nickel sulfate
198. Nitric acid
199. Nitrobenzene
200. Nitrogen dioxide
201. Nitrophenol
202. Nitrotoluene
203. Paraformaldehyde
204. Parathion
205. Pentachlorophenol
206. Phenol
207. Phosgene
208. Phosphoric acid
209. Phosphorus
210. Phosphorus oxychloride
211. Phosphorus pentasulfide
212. Phosphorus trichloride
213. Polychlorinated biphenyls (PCB)
214. Potassium arsenate
215. Potassium arsenite
216. Potassium bichromate
217. Potassium chromate
218. Potassium cyanide
219. Potassium hydroxide
220. Potassium permanganate
221. Propargite
222. Propionic acid
223. Propionic anhydride
224. Propylene oxide
225. Pyrethrins
226. Quinoline
227. Resorcinol
228. Selenium oxide
229. Silver nitrate
230. Sodium
231. Sodium arsenate
232. Sodium arsenite
233. Sodium bichromate
234. Sodium bifluoride
235. Sodium bisulfite
236. Sodium chromate
237. Sodium cyanide
238. Sodium dodecylbenzenesulfonate
239. Sodium fluoride
240. Sodium hydrosulfide
241. Sodium hydroxide
242. Sodium hypochlorite
243. Sodium methylate
244. Sodium nitrite
245. Sodium phosphate (dibasic)
246. Sodium phosphate (tribasic)
247. Sodium selenite
248. Strontium chromate
249. Strychnine
250. Styrene
251. Sulfuric acid
252. Sulfur monochloride
253. 2,4,5-T acid (2,4,5-Trichlorophenoxyacetic acid)
254. 2,4,5-T amines (2,4,5-Trichlorophenoxy acetic acid amines)
255. 2,4,5-T esters (2,4,5-Trichlorophenoxy acetic acid esters)
256. 2,4,5-T salts (2,4,5-Trichlorophenoxy acetic acid salts)
257. 2,4,5-TP acid (2,4,5-Trichlorophenoxy propanoic acid)
258. 2,4,5-TP acid esters (2,4,5-Trichlorophenoxy propanoic acid esters)
259. TDE (Tetrachlorodiphenyl ethane)
260. Tetraethyl lead
261. Tetraethyl pyrophosphate
262. Thallium sulfate
263. Toluene
264. Toxaphene
265. Trichlorofon
266. Trichloroethylene
267. Trichlorophenol
268. Triethanolamine dodecylbenzenesulfonate
269. Triethylamine
270. Trimethylamine
271. Uranyl acetate
272. Uranyl nitrate
273. Vanadium pentoxide
274. Vanadyl sulfate
275. Vinyl acetate
276. Vinylidene chloride
277. Xylene
278. Xylenol
279. Zinc acetate
280. Zinc ammonium chloride
281. Zinc borate
282. Zinc bromide
283. Zinc carbonate
284. Zinc chloride
285. Zinc cyanide
286. Zinc fluoride
287. Zinc formate
288. Zinc hydrosulfonate
289. Zinc nitrate
290. Zinc phenolsulfonate
291. Zinc phosphide
292. Zinc silicofluoride
293. Zinc sulfate
294. Zirconium nitrate
295. Zirconium potassium flouride
296. Zirconium sulfate
297. Zirconium tetrachloride

BILLING CODE 6560-01-M

Please print or type in the unshaded areas only.

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

Form Approved OMB No. 158-R0173

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. OUTFALL LOCATION

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. OUTFALL NUMBER *(list)*	B. LATITUDE			C. LONGITUDE			D. RECEIVING WATER *(name)*
	1. DEG.	2. MIN.	3. SEC.	1. DEG.	2. MIN.	3. SEC.	

II. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. Attach a line drawing showing the water flow through the facility. Indicate sources of intake water, operations contributing wastewater to the effluent, and treatment units labeled to correspond to the more detailed descriptions in Item B. Construct a water balance on the line drawing by showing average flows between intakes, operations, treatment units, and outfalls. If a water balance cannot be determined *(e.g., for certain mining activities)*, provide a pictorial description of the nature and amount of any sources of water and any collection or treatment measures.

B. For each outfall, provide a description of: (1) All operations contributing wastewater to the effluent, including process wastewater, sanitary wastewater, cooling water, and storm water runoff; (2) The average flow contributed by each operation; and (3) The treatment received by the wastewater. Continue on additional sheets if necessary.

1. OUTFALL NO. *(list)*	2. OPERATION(S) CONTRIBUTING FLOW		3. TREATMENT		
	a. OPERATION *(list)*	b. AVERAGE FLOW *(include units)*	a. DESCRIPTION	b. LIST CODES FROM TABLE 2C-1	

CONTINUED FROM THE FRONT

C. Except for storm runoff, leaks, or spills, are any of the discharges described in Items II-A or B intermittent or seasonal?

☐ YES *(complete the following table)* ☐ NO *(go to Section III)*

1. OUTFALL NUMBER *(list)*	2. OPERATION(s) CONTRIBUTING FLOW *(list)*	3. FREQUENCY		4. FLOW				
		a. DAYS PER WEEK *(specify average)*	b. MONTHS PER YEAR *(specify average)*	a. FLOW RATE *(in mgd)*		b. TOTAL VOLUME *(specify with units)*		c. DURATION *(in days)*
				1. LONG TERM AVERAGE	2. MAXIMUM DAILY	1. LONG TERM AVERAGE	2. MAXIMUM DAILY	

III. MAXIMUM PRODUCTION

A. Does an effluent guideline limitation promulgated by EPA under Section 304 of the Clean Water Act apply to your facility?

☐ YES *(complete Item III-B)* ☐ NO *(to to Section IV)*

B. Are the limitations in the applicable effluent guideline expressed in terms of production *(or other measure of operation)*?

☐ YES *(complete Item III-C)* ☐ NO *(go to Section IV)*

C. If you answered "Yes" to Item III-B, list the quantity which represents an actual measurement of your maximum level of production, expressed in the terms and units used in the applicable effluent guideline, and indicate the affected outfalls.

1. MAXIMUM QUANTITY			2. AFFECTED OUTFALLS
a. QUANTITY PER DAY	b. UNITS OF MEASURE	c. OPERATION, PRODUCT, MATERIAL, ETC. *(specify)*	*(list outfall numbers)*

FACSIMILE

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 or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

☐ YES *(complete the following table)* ☐ NO *(go to Item IV-B)*

1. IDENTIFICATION OF CONDITION, AGREEMENT, ETC.	2. AFFECTED OUTFALLS		3. BRIEF DESCRIPTION OF PROJECT	4. FINAL COMPLIANCE DATE	
	a. NO.	b. SOURCE OF DISCHARGE		a. REQUIRED	b. PROJECTED

B. OPTIONAL: You may attach additional sheets describing any additional water pollution control programs *(or other environmental projects which may affect your discharges)* 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

EPA I.D. NUMBER (copy from Item 1 of Form 1)

CONTINUED FROM PAGE 2

Form Approved OMB No. 158-R0173

V. INTAKE AND EFFLUENT CHARACTERISTICS

A, B, & C: See instructions before proceeding – Complete one set of tables for each outfall – Annotate the outfall number in the space provided. NOTE: Tables V-A, V-B, and V-C are included on separate sheets numbered V-1 through V-9.

D. Use the space below to list any of the pollutants listed in Table 2c-3 of the instructions, which you know or have reason to believe is discharged or may be discharged from any outfall. For every pollutant you list, briefly describe the reasons you believe it to be present and report any analytical data in your possession.

1. POLLUTANT	2. SOURCE	1. POLLUTANT	2. SOURCE

FACSIMILE

VI. POTENTIAL DISCHARGES NOT COVERED BY ANALYSIS

A. Is any pollutant listed in Item V-C a substance or a component of a substance which you do or expect that you will over the next 5 years use or manufacture as an intermediate or final product or byproduct?

☐ YES (list all such pollutants below) ☐ NO (go to Item VI-B)

B. Are your operations such that your raw materials, processes, or products can reasonably be expected to vary so that your discharges of pollutants may during the next 5 years exceed two times the maximum values reported in Item V?

☐ YES (complete Item VI-C below) ☐ NO (go to Section VII)

C. If you answered "Yes" to Item VI-B, explain below and describe in detail the sources and expected levels of such pollutants which you anticipate will be discharged from each outfall over the next 5 years, to the best of your ability at this time. Continue on additional sheets if you need more space.

CONTINUED FROM THE FRONT

VII. BIOLOGICAL TOXICITY TESTING DATA

Do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last 3 years?

☐ YES *(identify the test(s) and describe their purposes below)* ☐ NO *(go to Section VIII)*

FACSIMILE

VIII. CONTRACT ANALYSIS INFORMATION

Were any of the analyses reported in Item V performed by a contract laboratory or consulting firm?

☐ YES *(list the name, address, and telephone number of, and pollutants analyzed by, each such laboratory or firm below)* ☐ NO *(go to Section IX)*

A. NAME	B. ADDRESS	C. TELEPHONE *(area code & no.)*	D. POLLUTANTS ANALYZED *(list)*

IX. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the 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. PHONE NO. *(area code & no.)*
C. SIGNATURE	D. DATE SIGNED

PLEASE PRINT OR TYPE IN THE UNSHADED AREAS ONLY. You may report some or all of this information on separate sheets *(use the same format)* instead of completing these pages. SEE INSTRUCTIONS.

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*

Form Approved OMB No. 158-R0173

V. INTAKE AND EFFLUENT CHARACTERISTICS *(continued from page 3 of Form 2-C)*

OUTFALL NO.

PART A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

1. POLLUTANT	2. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE *(if available)* (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE *(if available)* (2) MASS	c. LONG TERM AVRG. VALUE *(if available)* (1) CONCENTRATION	c. LONG TERM AVRG. VALUE *(if available)* (2) MASS	d. NO. OF ANALYSES	3. UNITS *(specify if blank)* a. CONCENTRATION	3. UNITS b. MASS	4. INTAKE *(optional)* a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	4. INTAKE a. LONG TERM AVERAGE VALUE (2) MASS	4. INTAKE b. NO. OF ANALYSES
a. Biochemical Oxygen Demand *(BOD)*												
b. Chemical Oxygen Demand *(COD)*												
c. Total Organic Carbon *(TOC)*												
d. Total Suspended Solids *(TSS)*												
e. Ammonia *(as N)*												
f. Flow	VALUE		VALUE		VALUE					VALUE		
g. Temperature *(winter)*	VALUE		VALUE		VALUE			°C		VALUE		
h. Temperature *(summer)*	VALUE		VALUE		VALUE			°C		VALUE		
i. pH	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM				STANDARD UNITS				

PART B - Mark "X" in column 2-a for each pollutant you know or have reason to believe is present. Mark "X" in column 2-b for each pollutant you believe to be absent. If you mark column 2-a for any pollutant, you must provide the results of at least one analysis for that pollutant. Complete one table for each outfall. See the instructions for additional details and requirements.

1. POLLUTANT AND CAS NO. *(if available)*	2. MARK 'X' a. BELIEVED PRESENT	2. MARK 'X' b. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE *(if available)* (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE *(if available)* (2) MASS	c. LONG TERM AVRG. VALUE *(if available)* (1) CONCENTRATION	c. LONG TERM AVRG. VALUE *(if available)* (2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	4. UNITS b. MASS	5. INTAKE *(optional)* a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	5. INTAKE a. LONG TERM AVERAGE VALUE (2) MASS	5. INTAKE b. NO. OF ANALYSES
a. Bromide (24959-67-9)														
b. Chlorine, Total Residual														
c. Color														
d. Fecal Coliform														
e. Fluoride (16984-48-8)														
f. Nitrate-Nitrite *(as N)*														

FACSIMILE

ITEM V-B CONTINUED FROM FRONT

1. POLLUTANT AND CAS NO. (if available)	2. MARK 'X'		3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. BELIEVED PRESENT	b. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
			(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
g. Nitrogen, Total Organic (as N)														
h. Oil and Grease														
i. Phosphorus (as P), Total (7723-14-0)														
j. Radioactivity														
(1) Alpha, Total														
(2) Beta, Total														
(3) Radium, Total														
(4) Radium 226, Total														
k. Sulfate (as SO_4) (14808-79-8)														
l. Sulfide (as S)														
m. Sulfite (as SO_3) (14265-45-3)														
n. Surfactants														
o. Aluminum, Total (7429-90-5)														
p. Barium, Total (7440-39-3)														
q. Boron, Total (7440-42-8)														
r. Cobalt, Total (7440-48-4)														
s. Iron, Total (7439-89-6)														
t. Magnesium, Total (7439-95-4)														
u. Molybdenum, Total (7439-98-7)														
v. Manganese, Total (7439-96-5)														
w. Tin, Total (7440-31-5)														
x. Titanium, Total (7440-32-6)														

FACSIMILE

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*	OUTFALL NUMBER

CONTINUED FROM PAGE 3 OF FORM 2-C

Form Approved OMB No. 158-R0173

PART C - If you are a primary industry and this outfall contains process wastewater, refer to Table 2c-2 in the instructions to determine which of the GC/MS fractions you must test for. Mark "X" in column 2-a for all such GC/MS fractions that apply to your industry and for ALL toxic metals, cyanides, and total phenols. If you are not required to mark column 2-a *(secondary industries, non-process wastewater outfalls, and non-required GC/MS fractions)*, mark "X" in column 2-b for each pollutant you know or have reason to believe is present. Mark "X" in column 2-c for each pollutant you believe to be absent. If you mark either columns 2-a or 2-b for any pollutant, you must provide the results of at least one analysis for that pollutant. Note that there are seven pages to this part; please review each carefully. Complete one table *(all seven pages)* for each outfall. See instructions for additional details and requirements.

1. POLLUTANT AND CAS NUMBER *(if available)*	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE *(optional)*		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE *(if available)*		c. LONG TERM AVRG. VALUE *(if available)*		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
METALS, CYANIDE, AND TOTAL PHENOLS															
1M. Antimony, Total (7440-36-0)															
2M. Arsenic, Total (7440-38-2)															
3M. Beryllium, Total, 7440-41-7)															
4M. Cadmium, Total (7440-43-9)															
5M. Chromium, Total (7440-47-3)															
6M. Copper, Total (7550-50-8)															
7M. Lead, Total (7439-97-6)															
8M. Mercury, Total (7439-97-6)															
9M. Nickel, Total (7440-02-0)															
10M. Selenium, Total (7782-49-2)															
11M. Silver, Total (7440-22-4)															
12M. Thallium, Total (7440-28-0)															
13M. Zinc, Total (7440-66-6)															
14M. Cyanide, Total (57-12-5)															
15M. Phenols, Total															
DIOXIN															
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)				DESCRIBE RESULTS											

FACSIMILE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – VOLATILE COMPOUNDS															
1V. Acrolein (107-02-8)															
2V. Acrylonitrile (107-13-1)															
3V. Benzene (71-43-2)															
4V. Bis (Chloromethyl) Ether (542-88-1)															
5V. Bromoform (75-25-2)															
6V. Carbon Tetrachloride (56-23-5)															
7V. Chlorobenzene (108-90-7)															
8V. Chlorodibromomethane (124-48-1)															
9V. Chloroethane (75-00-3)															
10V. 2-Chloroethylvinyl Ether (110-75-8)															
11V. Chloroform (67-66-3)															
12V. Dichlorobromomethane (75-27-4)															
13V. Dichlorodifluoromethane (75-71-8)															
14V. 1,1-Dichloroethane (75-34-3)															
15V. 1,2-Dichloroethane (107-06-2)															
16V. 1,1-Dichloroethylene (75-35-4)															
17V. 1,2-Dichloropropane (78-87-5)															
18V. 1,2-Dichloropropylene (542-75-6)															
19V. Ethylbenzene (100-41-4)															
20V. Methyl Bromide (74-83-9)															
21V. Methyl Chloride (74-87-3)															

FACSIMILE

CONTINUED FROM PAGE V-4

Form Approved OMB No. 158-R0173

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – VOLATILE COMPOUNDS *(continued)*															
22V. Methylene Chloride (75-09-2)															
23V. 1,1,2,2-Tetrachloroethane (79-34-5)															
24V. Tetrachloroethylene (127-18-4)															
25V. Toluene (108-88-3)															
26V. 1,2-Trans-Dichloroethylene (156-60-5)															
27V. 1,1,1-Trichloroethane (71-55-6)															
28V. 1,1,2-Trichloroethane (79-00-5)															
29V. Trichloroethylene (79-01-6)															
30V. Trichlorofluoromethane (75-69-4)															
31V. Vinyl Chloride (75-01-4)															
GC/MS FRACTION – ACID COMPOUNDS															
1A. 2-Chlorophenol (95-57-8)															
2A. 2,4-Dichlorophenol (120-83-2)															
3A. 2,4-Dimethylphenol (105-67-9)															
4A. 4,6-Dinitro-O-Cresol (534-52-1)															
5A. 2,4-Dinitrophenol (51-28-5)															
6A. 2-Nitrophenol (88-75-5)															
7A. 4-Nitrophenol (100-02-7)															
8A. P-Chloro-M-Cresol (59-50-7)															
9A. Pentachlorophenol (87-86-5)															
10A. Phenol (108-95-2)															
11A. 2,4,6-Trichlorophenol (88-06-2)															

FACSIMILE

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS															
1B. Acenaphthene (83-32-9)															
2B. Acenaphtylene (208-96-8)															
3B. Anthracene (120-12-7)															
4B. Benzidine (92-87-5)															
5B. Benzo *(a)* Anthracene (56-55-3)															
6B. Benzo *(a)* Pyrene (50-32-8)															
7B. 3,4-Benzo-fluoranthene (205-99-2)															
8B. Benzo *(ghi)* Perylene (191-24-2)															
9B. Benzo *(k)* Fluoranthene (207-08-9)															
10B. Bis *(2-Chloro-ethoxy)* Methane (111-91-1)															
11B. Bis *(2-Chloro-ethyl)* Ether (111-44-4)															
12B. Bis *(2-Chloro-isopropyl)* Ether (39638-32-9)															
13B. Bis *(2-Ethyl-hexyl)* Phthalate (117-81-7)															
14B. 4-Bromo-phenyl Phenyl Ether (101-55-3)															
15B. Butyl Benzyl Phthalate (85-68-7)															
16B. 2-Chloro-naphthalene (91-58-7)															
17B. 4-Chloro-phenyl Phenyl Ether (7005-72-3)															
18B. Chrysene (218-01-9)															
19B. Dibenzo *(a,h)* Anthracene (53-70-3)															
20B. 1,2-Dichloro-benzene (95-50-1)															
21B. 1,3-Dichloro-benzene (541-73-1)															

FACSIMILE

EPA I.D. NUMBER (copy from Item 1 of Form 1) | OUTFALL NUMBER

CONTINUED FROM PAGE V-6

Form Approved OMB No. 158-R0173

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TEST INFO. REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS (continued)															
22B. 1,4-Dichlorobenzene (106-46-7)															
23B. 3,3'-Dichlorobenzidine (91-94-1)															
24B. Diethyl Phthalate (84-66-2)															
25B. Dimethyl Phthalate (131-11-3)															
26B. Di-N-Butyl Phthalate (84-74-2)															
27B. 2,4-Dinitrotoluene (121-14-2)															
28B. 2,6-Dinitrotoluene (606-20-2)															
29B. Di-N-Octyl Phthalate (117-84-0)															
30B. 1,2-Diphenylhydrazine (as Azobenzene) (122-66-7)															
31B. Fluoranthene (206-44-0)															
32B. Fluorene (86-73-7)															
33B. Hexachlorobenzene (118-71-1)															
34B. Hexachlorobutadiene (87-68-3)															
35B. Hexachlorocyclopentadiene (77-47-4)															
36B. Hexachloroethane (67-72-1)															
37B. Indeno (1,2,3-cd) Pyrene (193-39-5)															
38B. Isophorone (78-59-1)															
39B. Naphthalene (91-20-3)															
40B. Nitrobenzene (98-95-3)															
41B. N-Nitrosodimethylamine (62-75-9)															
42B. N-Nitrosodi-N-Propylamine (621-64-7)															

FACSIMILE

CONTINUE ON REVERSE

CONTINUED FROM THE FRONT

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK "X"			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS *(continued)*															
43B. N-Nitrosodiphenylamine (86-30-6)															
44B. Phenanthrene (85-01-8)															
45B. Pyrene (129-00-0)															
46B. 1,2,4 - Trichlorobenzene (120-82-1)															
GC/MS FRACTION – PESTICIDES															
1P. Aldrin (309-00-2)															
2P. α-BHC (319-84-6)															
3P. β-BHC (319-85-7)															
4P. γ-BHC (58-89-9)															
5P. δ-BHC (319-86-8)															
6P. Chlordane (57-74-9)															
7P. 4,4'-DDT (50-29-3)															
8P. 4,4'-DDE (72-55-9)															
9P. 4,4'-DDD (72-54-8)															
10P. Dieldrin (60-57-1)															
11P. α-Endosulfan (115-29-7)															
12P. β-Endosulfan (115-29-7)															
13P. Endosulfan Sulfate (1031-07-8)															
14P. Endrin (72-20-8)															
15P. Endrin Aldehyde (7421-93-4)															
16P. Heptachlor (76-44-8)															

FACSIMILE

EPA I.D. NUMBER (copy from Item 1 of Form 1)	OUTFALL NUMBER

CONTINUED FROM PAGE V-8

Form Approved OMB No. 158-R0173

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT							4. UNITS		5. INTAKE (optional)		
	a. TEST-ING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE		b. MAXIMUM 30 DAY VALUE (if available)		c. LONG TERM AVRG. VALUE (if available)		d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE		b. NO. OF ANALYSES
				(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS	(1) CONCENTRATION	(2) MASS				(1) CONCENTRATION	(2) MASS	
GC/MS FRACTION — PESTICIDES (continued)															
17P. Heptachlor Epoxide (1024-57-3)															
18P. PCB-1242 (53469-21-9)															
19P. PCB-1254 (11097-69-1)															
20P. PCB-1221 (11104-28-2)															
21P. PCB-1232 (11141-16-5)															
22P. PCB-1248 (12672-29-6)															
23P. PCB-1260 (11096-82-5)															
24P. PCB-1016 (12674-11-2)															
25P. Toxaphene (8001-35-2)															

FACSIMILE

BILLING CODE 6560-01-C

Instructions.—Form 3—RCRA Hazardous Waste Permit Application

This form must be completed by all applicants who check "yes" to Item II–E in Form 1.

General Instructions

Permit Application Process.—There are two parts to a RCRA permit application—Part A and Part B. Part A consists of this form and Form 1 of the Consolidated Permit Application. Part B requires detailed site-specific information such as geology, hydrology, and engineering data. 40 CFR 122.25 specifies the information that will be required from hazardous waste management facilities in Part B.

RCRA established a procedure for obtaining "interim status" which allows existing hazardous waste management facilities to continue their operations until a final hazardous waste permit is issued. In order to qualify for interim status, existing hazardous waste management facilities must submit Part A of the permit application to EPA within six months after the promulgation of regulations under section 3001 of RCRA (40 CFR Part 261). In order to receive a hazardous waste permit, existing facilities must submit a complete Part B within six months after it is requested by EPA. New facilities must submit both Part A and Part B to EPA at least 180 days before physical construction is expected to commence.

Operation During Interim Status.—As provided in 40 CFR 122.23(b), Part A of the permit application defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at a facility during the interim status period. Once Part A is submitted to EPA, changes in the hazardous wastes handled, changes in design capacities, changes in processes, and changes in ownership or operational control at a facility during the interim status period may only be made in accordance with the procedures in 40 CFR 123.23(c). Changes in design capacity and changes in processes require prior EPA approval. Changes in the quantity of waste handled at a facility during interim status can be made without submitting a revised Part A provided the quantity does not exceed the design capacities of the processes specified in Part A of the permit application. Failure to furnish all information required to process a permit application is grounds for termination of interim status.

Confidential Information.—All information submitted in this form will be subject to public disclosure, to the extent provided by RCRA and the Freedom of Information Act, 5 U.S.C. Section 552, and EPA's Business Confidentiality Regulations, 40 CFR Part 2 (see especially 40 CFR 2.305). Persons filing this form may make claims of confidentiality. Such claims must be clearly indicated by marking "confidential" on the specific information on the form for which confidential treatment is requested or on any attachments, and must be accompanied, *at the time of filing*, by a written substantiation of the claim, by answering the following questions:

1. Which portions of the information do you claim are entitled to confidential treatment?
2. For how long is confidential treatment desired for this information?
3. What measures have you taken to guard against undesired disclosure of the information to others?
4. To what extent has the information been disclosed to others, and what precautions have been taken in connection with that disclosure?
5. Has EPA or any other Federal agency made a pertinent confidentiality determination? If so, include a copy of such determination or reference to it, if available.
6. Will disclosure of the information be likely to result in substantial harmful effects on your competitive position? If so, what would those harmful effects be and why should they be viewed as substantial? Explain the causal relationship between disclosure and the harmful effects.

Information covered by a confidentiality claim and the above substantiation will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2.

If no claim of confidentiality or no substantiation accompanies the information when it is submitted, EPA may make the information available to the public without further notice to the submitter.

Definitions.—Terms used in these instructions and in this form are defined in the Glossary section of these instructions. For additional definitions and procedures to use in applying for a permit for a hazardous waste management facility, refer to the regulations promulgated under Section 3005 of RCRA and published in 40 CFR Parts 122 and 124.

Line by Line Instructions

Completing this form. Please type or print in the unshaded areas only. Some items have small graduation marks or boxes in the fill in spaces. These marks indicate the number of characters that may be inputted into our data system. The marks are spaced at ⅙" intervals which accommodate elite type (12 characters per inch—one space between letters). If you do not have a typewriter with elite type then please print, placing each character between the marks. Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words, but not for punctuation marks unless the space is needed to clarify your information.

Item I. Existing hazardous waste management facilities should enter their EPA Identification Number (if known). New facilities should leave this item blank.

Item II. A. *First Application.*—If this is the first application that is being filed for the facility place an "X" in either the Existing Facility box or the New Facility box.

1. *Existing Facility.*—Existing facilities are:

(1) Those facilities which received hazardous waste for treatment, storage, and/or disposal on or before October 21, 1976, or

(2) Those facilities for which construction had commenced on or before October 21, 1976. Construction had "commenced" only if:

(a) The owner or operator had obtained all necessary Federal, State, and local pre-construction approvals or permits; *and*

(b1) A continuous physical, on-site construction program had begun (facility design or other preliminary non-physical and non-site specific preparatory activities do not constitute an on-site construction program), or

(b2) The owner or operator had entered into contractual obligations (options to purchase or contracts for feasibility, engineering, and design studies do not constitute contractual obligations) which could not be cancelled or modified without substantial loss. Generally, a loss is deemed substantial if the amount an owner or operator must pay to cancel construction agreements or stop construction exceeds 10% of the total project cost.

(Note—This definition of "existing facility" reflects the literal language of the statute. However, EPA believes that amendments to RCRA now in conference will shortly be enacted and will change the date for determining when a facility is an "existing facility" to one no earlier than May of 1980; indications are the conferees are considering October 30, 1980. When those amendments are enacted, EPA

will amend the definition of "existing facility."

Accordingly, EPA encourages every facility built or under construction on the promulgation date of the RCRA program regulations to notify EPA and file Part A of the permit application so that it can be quickly processed for interim status when the change in the law takes effect.)

Existing Facility Date.—If the Existing Facility box is marked, enter the date hazardous waste operations began (i.e., the date the facility began treating, storing, or disposing of hazardous waste) or the date construction commenced.

2. *New Facility.*—New facilities are all facilities for which construction commenced, or will commence, after October 21, 1976.

New Facility Date.—If the New Facility box is marked, enter the date that operation began or is expected to begin.

B. *Revised Application.*—If this is a subsequent application that is being filed to amend data filed in a previous application, place an "X" in the appropriate box to indicate whether the facility has interim status or a permit.

1. *Facility Has Interim Status.*—Place an "X" in this box if this is a revised application to make changes at a facility during the interim status period.

2. *Facility Has a Permit.*—Place an "X" in this box if this is a revised application to make changes at a facility for which a permit has been issued.

(Note—When submitting a revised application, applicants must resubmit in their entirety each item on the application for which changes are requested. In addition, items I and IX (and item X if applicable) must be completed. It is not necessary to resubmit information for other items that will not change).

Item III. The information in item III describes all the processes that will be used to treat, store, or dispose of hazardous waste at existing facilities during the interim status period, and at new facilities after a permit is issued. The design capacity of each process must be provided as part of the description. The design capacity of injection wells and landfills at existing facilities should be measured as the remaining, unused capacity. See the form for the detailed instructions to item III.

Item IV. The information in item IV describes all the hazardous wastes that will be treated, stored, or disposed at existing facilities during the interim status period, and at new facilities after a permit is issued. In addition, the processes that will be used to treat, store, or dispose of each waste and the estimated annual quantity of each waste must be provided. See the form for the detailed instructions to item IV.

Item V. All existing facilities must include a drawing showing the general layout of the facility during interim status. This drawing should be approximately to scale and fit in the space provided on the form. This drawing should show the following:

- The property boundaries of the facility;
- The areas occupied by all storage, treatment, or disposal operations that will be used during interim status;
- The name of each operation. (Example-multiple hearth incinerator, drum storage area, etc.);
- Areas of past storage, treatment, or disposal operations;
- Areas of future storage, treatment, or disposal operations; and
- The approximate dimensions of the property boundaries and all areas

See Figure 3–1 for an example of a facility drawing. New facilities do not have to complete this item.

BILLING CODE 6560-01-M

Continued from page 4.

Form Approved OMB No. 158-S8004

V. FACILITY DRAWING *(see page 4)*

EXAMPLE

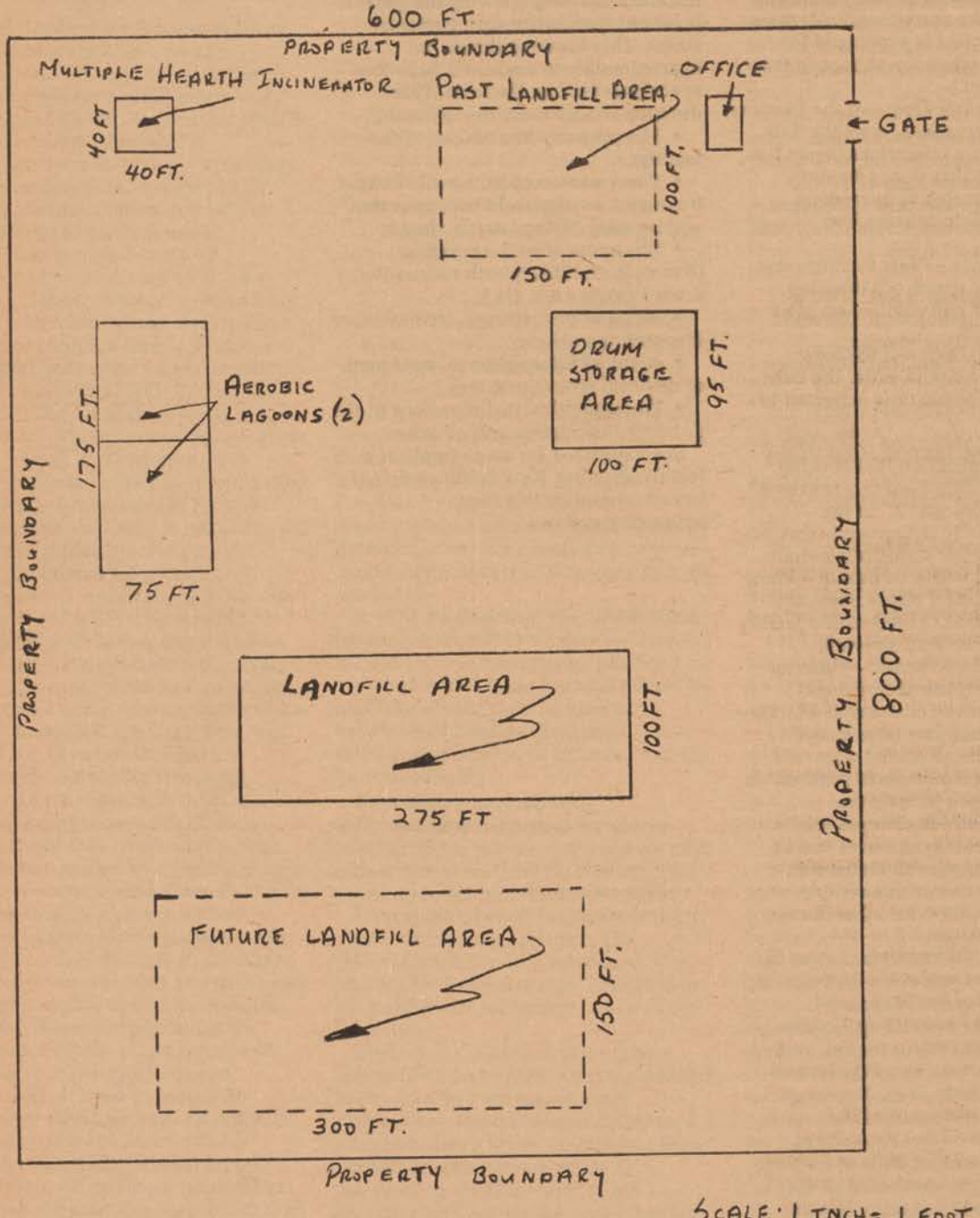


FIGURE 3-1

Item VI. All existing facilities must include photographs that clearly delineate *all* existing structures; *all* existing areas for storing, treating, or disposing of hazardous waste; and *all* known sites of future storage, treatment, or disposal operations. Photographs may be color or black and white, ground-level or aerial. Indicate the date the photograph was taken on the back of each photograph.

Item VII. Enter the latitude and longitude of the facility in degrees, minutes, and seconds. For larger facilities, enter the latitude and longitude at the approximate mid-point of the facility. You may use the map you provided for Item XI of Form 1 to determine latitude and longitude. Latitude and longitude information is also available from Regional Offices of the U.S. Department of Interior, Geological Survey; from State Agencies, such as the Department of Natural Resources; and from the National Cartographic Information Center, U.S. Geological Survey, 12202 Sunrise Valley Dr., Reston, VA. 22092.

Item VIII. See the form for the instructions to item VIII.

Item IX and Item X. All facility owners must sign Item IX. If the facility will be operated by someone other than the owner, then the operator must sign Item X. Federal regulations require the certification to be signed as follows.

(1) For a corporation, by a principal executive officer 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.

The Resource Conservation and Recovery Act provides for severe penalties for submitting false information on this application form.

Section 3008(d) of the Resource Conservation and Recovery Act provides that "Any person who knowingly makes any false statement or representation in any application, . . . 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 one year, or both."

BILLING CODE 6560-01-M

Please print or type in the unshaded areas only
(fill–in areas are spaced for elite type, i.e., 12 characters/inch).

Form Approved OMB No. 158-S80004

FORM 3 RCRA

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS WASTE PERMIT APPLICATION

Consolidated Permits Program

(This information is required under Section 3005 of RCRA.)

I. EPA I.D. NUMBER: F [ ] T/A C 1

FOR OFFICIAL USE ONLY

APPLICATION APPROVED	DATE RECEIVED (yr., mo., & day)	COMMENTS

II. FIRST OR REVISED APPLICATION

Place an "X" in the appropriate box in A or B below *(mark one box only)* to indicate whether this is the first application you are submitting for your facility or a revised application. If this is your first application and you already know your facility's EPA I.D. Number, or if this is a revised application, enter your facility's EPA I.D. Number in item I above.

A. FIRST APPLICATION *(place an "X" below and provide the appropriate date)*

☐ 1. EXISTING FACILITY *(See instructions for definition of "existing" facility. Complete item below.)*

C 8 — FOR EXISTING FACILITIES, PROVIDE THE DATE (yr., mo., & day) OPERATION BEGAN OR THE DATE CONSTRUCTION COMMENCED *(use the boxes to the left)* — YR. [ ] MO. [ ] DAY [ ]

☐ 2. NEW FACILITY *(Complete item below.)*

FOR NEW FACILITIES, PROVIDE THE DATE (yr., mo., & day) OPERATION BEGAN OR IS EXPECTED TO BEGIN — YR. [ ] MO. [ ] DAY [ ]

B. REVISED APPLICATION *(place an "X" below and complete Item I above)*

☐ 1. FACILITY HAS INTERIM STATUS

☐ 2. FACILITY HAS A RCRA PERMIT

III. PROCESSES – CODES AND DESIGN CAPACITIES

A. PROCESS CODE – Enter the code from the list of process codes below that best describes each process to be used at the facility. Ten lines are provided for entering codes. If more lines are needed, enter the code(s) in the space provided. If a process will be used that is not included in the list of codes below, then describe the process *(including its design capacity)* in the space provided on the form *(Item III-C)*.

B. PROCESS DESIGN CAPACITY – For each code entered in column A enter the capacity of the process.

1. AMOUNT – Enter the amount.
2. UNIT OF MEASURE – For each amount entered in column B(1), enter the code from the list of unit measure codes below that describes the unit of measure used. Only the units of measure that are listed below should be used.

PROCESS	PROCESS CODE	APPROPRIATE UNITS OF MEASURE FOR PROCESS DESIGN CAPACITY
Storage:		
CONTAINER *(barrel, drum, etc.)*	S01	GALLONS OR LITERS
TANK	S02	GALLONS OR LITERS
WASTE PILE	S03	CUBIC YARDS OR CUBIC METERS
SURFACE IMPOUNDMENT	S04	GALLONS OR LITERS
Disposal:		
INJECTION WELL	D79	GALLONS OR LITERS
LANDFILL	D80	ACRE-FEET *(the volume that would cover one acre to a depth of one foot)* OR HECTARE-METER
LAND APPLICATION	D81	ACRES OR HECTARES
OCEAN DISPOSAL	D82	GALLONS PER DAY OR LITERS PER DAY
SURFACE IMPOUNDMENT	D83	GALLONS OR LITERS

PROCESS	PROCESS CODE	APPROPRIATE UNITS OF MEASURE FOR PROCESS DESIGN CAPACITY
Treatment:		
TANK	T01	GALLONS PER DAY OR LITERS PER DAY
SURFACE IMPOUNDMENT	T02	GALLONS PER DAY OR LITERS PER DAY
INCINERATOR	T03	TONS PER HOUR, METRIC TONS PER HOUR, GALLONS PER HOUR OR LITERS PER HOUR
OTHER *(Use for physical, chemical, thermal or biological treatment processes not occurring in tanks, surface impoundments or incinerators. Describe the processes in the space provided; Item III-C.)*	T04	GALLONS PER DAY OR LITERS PER DAY

UNIT OF MEASURE	UNIT OF MEASURE CODE
GALLONS	G
LITERS	L
CUBIC YARDS	Y
CUBIC METERS	C
GALLONS PER DAY	U
LITERS PER DAY	V
TONS PER HOUR	D
METRIC TONS PER HOUR	W
GALLONS PER HOUR	E
LITERS PER HOUR	H
ACRE-FEET	A
HECTARE-METER	F
ACRES	B
HECTARES	Q

EXAMPLE FOR COMPLETING ITEM III *(shown in line numbers X-1 and X-2 below)*: A facility has two storage tanks, one tank can hold 200 gallons and the other can hold 400 gallons. The facility also has an incinerator that can burn up to 20 gallons per hour.

C DUP T/A C 1

LINE NUMBER	A. PROCESS CODE (from list above)	B. PROCESS DESIGN CAPACITY 1. AMOUNT (specify)	B. PROCESS DESIGN CAPACITY 2. UNIT OF MEASURE (enter code)	FOR OFFICIAL USE ONLY	LINE NUMBER	A. PROCESS CODE (from list above)	B. PROCESS DESIGN CAPACITY 1. AMOUNT	B. PROCESS DESIGN CAPACITY 2. UNIT OF MEASURE (enter code)	FOR OFFICIAL USE ONLY
X-1	S02	600	G		5				
X-2	T03	20	E		6				
1					7				
2					8				
3					9				
4					10				

SAMPLE

Continued from the front.

III. PROCESSES *(continued)*

C. SPACE FOR ADDITIONAL PROCESS CODES OR FOR DESCRIBING OTHER PROCESSES *(code "T04")*. FOR EACH PROCESS ENTERED HERE INCLUDE DESIGN CAPACITY.

IV. DESCRIPTION OF HAZARDOUS WASTES

A. **EPA HAZARDOUS WASTE NUMBER** – Enter the four–digit number from 40 CFR, Subpart D for each listed hazardous waste you will handle. If you handle hazardous wastes which are not listed in 40 CFR, Subpart D, enter the four–digit number(s) from 40 CFR, Subpart C that describes the characteristics and/or the toxic contaminants of those hazardous wastes.

B. **ESTIMATED ANNUAL QUANTITY** – For each **listed waste** entered in column A estimate the quantity of that waste that will be handled on an annual basis. For each **characteristic** or **toxic contaminant** entered in column A estimate the total annual quantity of all the non–listed waste(s) that will be handled which possess that characteristic or contaminant.

C. **UNIT OF MEASURE** – For each quantity entered in column B enter the unit of measure code. Units of measure which must be used and the appropriate codes are:

ENGLISH UNIT OF MEASURE	CODE	METRIC UNIT OF MEASURE	CODE
POUNDS	P	KILOGRAMS	K
TONS	T	METRIC TONS	M

If facility records use any other unit of measure for quantity, the units of measure must be converted into one of the required units of measure taking into account the appropriate density or specific gravity of the waste.

D. **PROCESSES**

1. PROCESS CODES:
   For listed hazardous waste: For each **listed** hazardous waste entered in column A select the code(s) from the list of process codes contained in Item III to indicate how the waste will be stored, treated, and/or disposed of at the facility.
   For non–listed hazardous wastes: For each characteristic or toxic contaminant entered in column A, select the code(s) from the list of process codes contained in Item III to indicate all the processes that will be used to store, treat, and/or dispose of all the non–listed hazardous wastes that possess that characteristic or toxic contaminant.
   Note: Four spaces are provided for entering process codes. If more are needed: (1) Enter the first three as described above; (2) Enter "000" in the extreme right box of Item IV-D(1); and (3) Enter in the space provided on page 4, the line number and the additional code(s).

2. PROCESS DESCRIPTION: If a code is not listed for a process that will be used, describe the process in the space provided on the form.

NOTE: HAZARDOUS WASTES DESCRIBED BY MORE THAN ONE EPA HAZARDOUS WASTE NUMBER – Hazardous wastes that can be described by more than one EPA Hazardous Waste Number shall be described on the form as follows:

1. Select one of the EPA Hazardous Waste Numbers and enter it in column A. On the same line complete columns B,C, and D by estimating the total annual quantity of the waste and describing all the processes to be used to treat, store, or dispose of the waste.
2. In column A of the next line enter the other EPA Hazardous Waste Number that can be used to describe the waste. In column D(2) on that line enter "included with above" and make no other entries on that line.
3. Repeat step 2 for each other EPA Hazardous Waste Number that can be used to describe the hazardous waste.

EXAMPLE FOR COMPLETING ITEM IV *(shown in line numbers X-1, X-2, X-3, and X-4 below)* – A facility will treat and dispose of an estimated 900 pounds per year of chrome shavings from leather tanning and finishing operation. In addition, the facility will treat and dispose of three non–listed wastes. Two wastes are corrosive only and there will be an estimated 200 pounds per year of each waste. The other waste is corrosive and ignitable and there will be an estimated 100 pounds per year of that waste. Treatment will be in an incinerator and disposal will be in a landfill.

LINE NO.	A. EPA HAZARD. WASTE NO. (enter code)	B. ESTIMATED ANNUAL QUANTITY OF WASTE	C. UNIT OF MEASURE (enter code)	D. PROCESSES 1. PROCESS CODES (enter)	D. PROCESSES 2. PROCESS DESCRIPTION (If a code is not entered in D(1))
X-1	K 0 5 4	900	P	T 0 3 D 8 0	
X-2	0 1 0 0	400	P	T 0 3 D 8 0	
X-3	0 1 0 0	100	P	T 0 3 D 8 0	
X-4	1 0 0 0				included with above

SAMPLE

Continued from page 2.

NOTE: Photocopy this page before completing if you have more than 26 wastes to list.

Form Approved OMB No. 158-S80004

EPA I.D. NUMBER (enter from page 1)	FOR OFFICIAL USE ONLY
W	W DUP

IV. DESCRIPTION OF HAZARDOUS WASTES (continued)

LINE NO.	A. EPA HAZARD. WASTE NO. (enter code)	B. ESTIMATED ANNUAL QUANTITY OF WASTE	C. UNIT OF MEASURE (enter code)	D. PROCESSES 1. PROCESS CODES (enter)	D. PROCESSES 2. PROCESS DESCRIPTION (if a code is not entered in D(1))
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					

SAMPLE

(enter "A", "B", "C", etc. behind the "3" to identify photocopied pages)

Continued from the front.

IV. DESCRIPTION OF HAZARDOUS WASTES *(continued)*

E. USE THIS SPACE TO LIST ADDITIONAL PROCESS CODES FROM ITEM B(1) ON PAGE 3.

EPA I.D. NO. *(enter from page 1)*

F | | | | | | | | | | | | | | | T/A | C | 6

V. FACILITY DRAWING

All existing facilities must include in the space provided on page 5 a scale drawing of the facility *(see instructions for more detail)*.

VI. PHOTOGRAPHS

All existing facilities must include photographs *(aerial or ground—level)* that clearly delineate all existing structures; existing storage, treatment and disposal areas; and sites of future storage, treatment or disposal areas *(see instructions for more detail)*.

VII. FACILITY GEOGRAPHIC LOCATION

LATITUDE *(degrees, minutes, & seconds)*	LONGITUDE *(degrees, minutes, & seconds)*

VIII. FACILITY OWNER

☐ A. If the facility owner is also the facility operator as listed in Section VIII on Form 1, "General Information", place an "X" in the box to the left and skip to Section IX below.

B. If the facility owner is not the facility operator as listed in Section VIII on Form 1, complete the following items:

1. NAME OF FACILITY'S LEGAL OWNER	2. PHONE NO. *(area code & no.)*
D	

3. STREET OR P.O. BOX	4. CITY OR TOWN	5. ST.	6. ZIP CODE
E	F		

IX. OWNER 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 *(print or type)*	B. SIGNATURE	C. DATE SIGNED

X. OPERATOR 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 *(print or type)*	B. SIGNATURE	C. DATE SIGNED

Continued from page 4.

Form Approved OMB No. 158-S80004

V. FACILITY DRAWING *(see page 4)*

SAMPLE

[FR Doc. 80-14313 Filed 5-16-80; 8:45 am]

BILLING CODE 6560-01-C

Advance Orders are now Being Accepted for Delivery in About 6 Weeks

CODE OF FEDERAL REGULATIONS

(Revised as of April 1, 1980)

Quantity	Volume	Price	Amount
_____	Title 20—Employees' Benefits (Parts 0 to 399)	$5.50	$_____
_____	Title 21—Food and Drugs (Parts 800 to 1299)	5.50	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).]

PLEASE DO NOT DETACH

MAIL ORDER FORM To:

Superintendent of Documents, Government Printing Office, Washington, D.C. 20402

Enclosed find $..... (check or money order) or charge to my Deposit Account No. .....

Please send me ..... copies of:

PLEASE FILL IN MAILING LABEL BELOW

Name _____

Street address _____

City and State _____ ZIP Code _____

FOR USE OF SUPT. DOCS.

____Enclosed
____To be mailed later
____Subscription
Refund
Postage
Foreign handling

FOR PROMPT SHIPMENT, PLEASE **PRINT OR TYPE** ADDRESS ON LABEL BELOW, INCLUDING **YOUR ZIP CODE**

SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375
SPECIAL FOURTH-CLASS RATE BOOK

Name _____

Street address _____

City and State _____ ZIP Code _____