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federal register

Monday
July 26, 1982

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Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Coal Mining
Surface Mining Reclamation and Enforcement Office

Conflict of Interests
National Science Foundation

Fisheries
National Oceanic and Atmospheric Administration

Hazardous Materials
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Securities and Exchange Commission

Trade Practices
Federal Trade Commission

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Selected Subjects

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Water Pollution Control
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Florida Orange, Grapefruit, Tangerine and Tangelo Reg. 6]

Florida Oranges, Grapefruit, Tangerines and Tangelos; Grade and Size Requirements

CFR Correction

In the January 1, 1982 revision of Title 7 (Parts 900 to 999) of the Code of Federal Regulations, § 905.306 was inadvertently omitted. Section 905.306, published at 46 FR 60170, December 8, 1981, should read as set forth below:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) During the period specified in Column (2) of Table I, no handler shall ship between the production area and any point outside thereof; in the continental United States, Canada, or Mexico, any variety of fruit listed in Column (1) of such table unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) of this section specified for such variety in Columns (3) and (4) of such table.

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges			
Early and midseason	On and After 12/7/81	U.S. No. 1	2 2/64
Navel	On and After 12/7/81	U.S. No. 1 Golden	2 2/64
Valencia and other late type	On and After 12/7/81	U.S. No. 1	2 2/64
Temple	On and After 12/7/81	U.S. No. 1	2 2/64
Grapefruit			
Seeded, except pink	On and After 12/7/81	U.S. No. 1	3 13/64
Seeded, pink	On and After 12/7/81	U.S. No. 1	3 13/64
Seedless, except pink	On and After 12/7/81	Improved No. 2	3 2/64
Seedless, pink	On and After 12/7/81	Improved No. 2	3 2/64
Tangerines			
Robinson	On and After 12/7/81	U.S. No. 1	2 2/64
Dancy	On and After 12/7/81	U.S. No. 1	2 2/64
Honey	On and After 12/7/81	Florida No. 1	2 13/64
Tangelos			
Tangelos	On and After 12/7/81	U.S. No. 1	2 2/64

(b) During the period specified in Column (2) of Table II, no handler shall ship to any destination outside the continental United States, other than Canada or Mexico, any variety of fruit listed in Column (1) of such table unless such variety meets the applicable minimum grade and size (with tolerances for size as specified in paragraph (c) of this section) specified for such variety in Columns (3) and (4) of such table.

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Oranges			
Early and midseason	On and After 12/7/81	U.S. No. 1	2 2/64
Navel	On and After 12/7/81	U.S. No. 1 Golden	2 2/64
Valencia and other late type	On and After 12/7/81	U.S. No. 1	2 2/64
Temple	On and After 12/7/81	U.S. No. 1	2 2/64
Grapefruit			
Seeded, except pink	On and After 12/7/81	U.S. No. 1	3 2/64
Seeded, pink	On and After 12/7/81	U.S. No. 1	3 2/64
Seedless, except pink	On and After 12/7/81	Improved No. 2	3 2/64
Seedless, pink	On and After 12/7/81	Improved No. 2	3 2/64
Tangerines			
Robinson	On and After 12/7/81	U.S. No. 1	2 2/64
Dancy	On and After 12/7/81	U.S. No. 1	2 2/64
Honey	On and After 12/7/81	Florida No. 1	2 2/64
Tangelos			
Tangelos	On and After 12/7/81	U.S. No. 1	2 2/64

(c) Size Tolerances: In the determination of minimum size as prescribed in Tables I and II, the following tolerances are permitted (1) for *oranges,* as set forth in § 2851.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos, except that such tolerances for other than navel and Temple oranges shall be based only on the oranges in the lot measuring $2^{1}\frac{5}{16}$ inches or smaller in diameter, and the tolerance for Honey tangerines shall be as specified in § 2851.1818 of the U.S. Standards for Grades of Florida Tangerines; (2) for *grapefruit,* as specified in § 2851.761 of the U.S. Standards for Grades of Florida Grapefruit; (3) for *tangerines,* as specified in § 2851.1818 of the U.S. Standards for Grades of Florida Tangerines; and (4) for *tangelos,* as set forth in § 2851.1152 of the U.S. Standards for Grades of Florida Oranges and Tangelos.

(d) Terms used in the marketing order, including Improved No. 2 grade for grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in Rule No. 20–35.03 of the Regulations of the Florida Department of Citrus, and terms relating to grade, except Improved No. 2 grade for grapefruit, and diameter shall mean the same as is given to the terms in the U.S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 2851.1140–2851.1180), the U.S. Standards for Grades of Florida Tangerines (7 CFR 2851.1810–2851.1835), or the U.S. Standards for Grades of Florida Grapefruit (7 CFR 2851.750–2851.784).

BILLING CODE 1505–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82–CE–21–AD; Amendment 39–4221]

Airworthiness Directives; EMBRAER Models EMB–110P1 and EMB–110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires incorporation of a temporary revision into the "Pilot's Operating Handbook (POH) and Centro Tecnico Aeroespacial (CTA) Approved Airplane Flight Manual" (POH/AFM) that limits flap extension to no more than 50 percent when there is known or suspected ice accumulation on the horizontal stabilizer on certain EMBRAER Models EMB–110P1 and EMB–110P2 airplanes. This AD is needed to prevent sharp and unexpected nose-down pitching which could result in the loss of control of the airplane during approach to landing in icing conditions.

EFFECTIVE DATE: July 29, 1982.

Compliance.—

Required within the next 25 hours time-in-service after the effective date of this AD unless already accomplished.

ADDRESSES: A copy of the temporary POH/AFM revision is contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, Federal Building, 601 East 12th Street, Kansas City, Missouri 64106, and in Room 275, Atlanta Aircraft Certification Office, FAA, 3400 Norman Berry Drive, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: Edward M. Boothe, ACE–160A, Atlanta Aircraft Certification Office, FAA, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763–7446.

SUPPLEMENTARY INFORMATION: There have been reports of sharp and unexpected nose-down pitching during approach to landing in icing conditions when the horizontal stabilizer has failed to deice and when the flaps are extended to 100 percent on certain EMBRAER Models EMB–110P1 and EMB–110P2 airplanes. This combination of events is likely to occur at low altitude, just prior to landing, when the pilot has very limited time to take corrective action. This condition could result in loss of control of the airplane and an accident. The FAA has determined that limitation of the flap extension to 50 percent will prevent the nose-down pitching under these circumstances.

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is being issued which requires the incorporation of a temporary revision into the POH/AFM which limits flap extension to no more than 50 percent in icing conditions on certain EMBRAER Models EMB–110P1 and EMB–110P2 airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety.

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 AD:

Embraer: Applies to Models EMB–110P1 and EMB–110P2 (S/Ns 110001 thru 110415) airplanes certificated in any category.

Compliance: Required as indicated unless already accomplished.

To prevent loss of control of the airplane during approach and landing in icing conditions, within the next 25 hours time-in-service after the effective date of this AD, accomplish the following:

(a) Incorporate a temporary POH/AFM revision (immediately following page 2–10) in the affected airplane POH/AFM. This revision is set forth in Figure I of this AD.

(b) Make the following pen and ink changes in the Log of Revisions, page IX, of the POH/AFM: "Temporary Revision No. 1", "add page 2–10A", "include temporary landing flap limitations" and "in accordance

with Airworthiness Directive Amendment 39-4421."

(c) The incorporation of the temporary POH/AFM revision and Log of Revisions entry required by this AD may be accomplished by the owner/operator of the airplane.

(d) An equivalent method of compliance with this AD may be used if approved by the Chief, Atlanta Aircraft Certification Office, FAA, P.O. Box 20636, Atlanta, Georgia 30320.

This amendment becomes effective on July 29, 1982.

(Secs. 313(a), 601, and 603 of the 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)); Section 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined that this regulation involves an emergency regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and certifies that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it involves an operating limitation affecting only a few aircraft owned by small entities. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket; otherwise, an evaluation is not required. A copy of it, when filed, may be obtained by contacting the Rules Docket at the location identified under the caption "ADDRESSES."

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the various Courts of Appeal of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Kansas City, Missouri, on July 13, 1982.

John E. Shaw,

Acting Director, Central Region.

Figure I.—Temporary Revision Number 1

Section 2 Limitations.—EMBRAER EMB 110P1 and EMB 110P2 BANDEIRANTE

Insert this page immediately following Page 2-10 of the Pilot's Operating Handbook and CTA Approved Airplane Flight Manual.

2-31 Systems Operating Limitations

During the approach to landing phase of flight when in icing conditions or when having been in icing conditions, visually check, if possible, the horizontal stabilizer to verify that ice has been removed by the de-icing system. If it is suspected that ice has not been removed, or it is not possible to perform the visual check, observe the following wing flap deflection limitation: "DO NOT EXTEND THE WING FLAPS MORE THAN 50 PERCENT FOR LANDING. USE THE APPROACH SPEEDS FOR THE APPROPRIATE FLAP SETTING IN THE PILOT OPERATING HANDBOOK AND CTA APPROVED AIRPLANE FLIGHT MANUAL."

Landing Distance Factor Limitations

When using 50 percent or less wing flap deflection for landing, the landing distances given for 100 percent flap deflection must be multiplied by the following factors depending on landing weight:

FOR 50 PERCENT FLAPS

Landing weight (pounds)	Factor
12,500	1.25
11,800	1.25
9,450	1.00

FOR 0 PERCENT AND 25 PERCENT FLAPS

Landing weight (pounds)	Factor
12,500	1.31
11,800	1.31
9,000	1.00

The above factors vary linearly between the weights given.

FAA approved: ———.

Date: ———.

[FR Doc. 82-19864 Filed 7-23-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 82-ASW-39; Amdt. 39-4419]

Airworthiness Directives; Robinson Helicopter Company Model R-22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires replacement of the tail rotor drive shaft assembly on Robinson Helicopter Company Model R-22 series helicopters. The AD is needed to prevent shaft whipping during inadvertent shaft overspeeds which could cause coupling failures. This could result in loss of power to the tail rotor, and loss of control of the helicopter.

DATES: Effective July 26, 1982.

Compliance required within 100 hours' additional time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505.

These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106, or at the Rules Docket in Room 916, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Harold Ferris, Aerospace Engineer, Propulsion Section, ANM-174W, Western Aircraft Certification Field Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009; Telephone: (213) 536-6381.

SUPPLEMENTARY INFORMATION: There have been reports that the long tail rotor drive shaft has entered a whirl mode during inadvertent overspeeds into the 115 percent rotor speed range. This third order whirl mode allows the shaft to take a permanent set, creating excessive misalignment on the shaft couplings which results in coupling fatigue failure and loss of drive to the tail rotor. Since the R-22 series helicopters require throttle coordination on several maneuvers to prevent overspeeds, and because the helicopter is often used for training, the rotor RPM limits may frequently be exceeded. A new, larger diameter shaft assembly has been approved that will preclude shaft whipping during inadvertent overspeed operations. Since this condition is likely to exist or develop on other helicopters of the same type design, an Airworthiness Directive is being issued which requires replacement of the tail rotor drive shaft, damper, and aft coupling plate assemblies on the Robinson R-22 series helicopters.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Approximately 280 aircraft could be affected by the requirements of this AD for an estimated impact of $113,400 or $405 per aircraft.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

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:

Robinson Helicopter Company: Applies to Model R-22 series helicopters certificated in all categories, serial numbers 0002 through 0282.

Compliance is required as indicated, unless already accomplished.

To prevent loss of power to the tail rotor, accomplish the following:

Within 100 hours' additional time in service after the effective date of this AD, remove from further service the following tail rotor drive shaft components in accordance with Robinson Helicopter Company Service Bulletin #21 dated June 1, 1982, or FAA approved equivalent:

T/R Driveshaft Assembly A197-[1] thru Rev. P,
Damper Assembly A041-1 thru Rev. H,
Plate, Flex Coupling A193-3,
Spacer A559-1 thru Rev. F,
Spacer A559-2.

Replace with:

T/R Driveshaft Assembly A197-* Rev. Q and subsequent,
Damper Assembly A041-1 Rev. I and subsequent,
Plate, Flex Coupling A947-3,
Spacer A559-1 Rev. G and subsequent.

Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations to operate rotorcraft to a base for the accomplishment of modifications required by this AD.

Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Chief, Western Aircraft Certification Field Office, FAA, Northwest Mountain Region.

This amendment becomes effective July 26, 1982.

(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)

Note.—The FAA has determined that this document involves a regulation that is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on July 9, 1982.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 82-19863 Filed 7-23-82; 8:45 am]

BILLING CODE 4910-13-M

[1] The dash number of the replacement A197 shaft must be the same as the one removed to obtain the correct length.

14 CFR Part 71

[Airspace Docket No. 82-ASW-26]

Designation of Transition Area: Waller, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Waller, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Skylake Airport, Waller, TX. This amendment is necessary to provide protection for aircraft executing a standard instrument approach procedure (SIAP) to the Skylake Airport using the Navasota VORTAC.

EFFECTIVE DATE: October 28, 1982.

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, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 22376) stating that the Federal Aviation Administration proposed to designate the Waller, TX, transition area. Interested persons were invited to participate in this rulemaking 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.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 GMT, October 28, 1982, as follows:

Waller, TX, New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Waller, TX, Skylake Airport (latitude 29°59'26" N., longitude 95°55'48" W.).

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

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on July 14, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-19868 Filed 7-23-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 23218; Amdt. No. 1221]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

For Examination

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

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

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

For Purchase

Individual SIAP copies may be obtained from:

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

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

By Subscription

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

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO–730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

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

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

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

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument.

Adoption of the Amendment

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

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

* * * Effective September 16, 1982

Montague, MA—Turners Falls, VOR–A, Amdt. 2
Westfield, MA—Barnes Muni, VOR or TACAN Rwy 2, Amdt. 1
Hamilton, NY—AMA Executive Airstrip, VOR–A, Amdt. 1
Winchester, VA—Winchester Muni, VOR/DME–A, Original

* * * Effective September 2, 1982

Decatur, AL—Pryor Field, VOR Rwy 18, Amdt. 8
Decatur, AL—Pryor Field, VOR Rwy 36, Amdt. 1
Kodiak, AK—Kodiak, VOR or TACAN Rwy 25, Amdt. 4
Fresno, CA—Fresno-Chandler Downtown, VOR–A, Amdt. 3, cancelled
Fresno, CA—Fresno-Chandler Downtown, VOR/DME–C, Original
Marietta, GA—McCollum, VOR/DME Rwy 9, Original cancelled
Hilo, HI—General Lyman Field, VOR Rwy 26, Amdt. 5
Hilo, HI—General Lyman Field, VOR/DME or TACAN–A, Amdt. 4
Hilo, HI—General Lyman Field, VOR/DME or TACAN Rwy 26, Amdt. 2
Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 8L, Amdt. 17
Honolulu, HI—Honolulu Intl, VOR or TACAN Rwy 8R, Amdt. 4
Kahului, HI—Kahului, VOR/DME or TACAN Rwy 20, Amdt. 4
Kahului, HI—Kahului, VOR/DME or TACAN–A, Amdt. 3
Kahului, HI—Kahului, VOR or TACAN Rwy 2, Amdt. 6
Kahului, HI—Kahului, VOR Rwy 20, Amdt. 9
Indianapolis, IN—Indianapolis Intl, VOR Rwy 13, Amdt. 21
Jeffersonville, IN—Clark County, VOR Rwy 18, Original
Elizabethtown, KY—Elizabethtown, VOR–A, Original
Marksville, LA—Marksville Muni, VOR/DME–A, Amdt. 1
Grand Ledge, MI—Abrams Muni, VOR–A, Amdt. 1
Utica, MI—Berz-Macomb, VOR–A, Original
Minneapolis, MN—Flying Cloud, VOR Rwy 9R, Amdt. 4
Minneapolis, MN—Flying Cloud, VOR Rwy 36, Amdt. 9
Brockport, NY—Ledgedale Airpark, VOR Rwy 28,, Amdt. 2
Millbrook, NY—Sky Acres, VOR–A, Amdt. 5
Beach City, OH—Beach City, VOR–A, Original
Painesville, OH—Concord Airpark, VOR–A, Amdt. 7
Sidney, OH—Sidney Muni, VOR Rwy 22, Amdt. 9
Crossville, TN—Crossville Memorial, VOR/DME–A, Amdt. 7
Dayton, TN—Mark Anton, VOR/DME–A, Amdt. 2
Jamestown, TN—Jamestown Muni, VOR/DME–A, Amdt. 1
Knoxville, TN—Knoxville Downtown Island, VOR–A, Amdt. 2, cancelled
Livingston, TN—Livingston Muni, VOR/DME Rwy 21, Amdt. 1
Oneida, TN—Scott Muni, VOR/DME–A, Amdt. 2
Rockwood, TN—Rockwood Muni, VOR/DME Rwy 22, Amdt. 3
Decatur, TX—Decatur Muni, VOR–A, Amdt. 2
Wheeling, WV—Wheeling Ohio Co., VOR Rwy 21, Amdt. 7

* * * Effective July 15, 1982

Shelby, NC—Shelby Muni, VOR/DME Rwy 5, Amdt. 6

* * * Effective July 8, 1982

Shelbyville, TN—Bomar Field-Shelbyville Muni, VOR/DME Rwy 18, Amdt. 1

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

* * * Effective September 2, 1982

Tampa, FL—Tampa Intl, LOC BC Rwy 18R, Amdt. 5, cancelled
Macon, GA—Herbert Smart Downtown, LDA Rwy 9, Original
Kahului, HI—Kahului, LOC/DME (BC) Rwy 20, Amdt. 7

Minneapolis, MN—Flying Cloud, LOC Rwy 9R, Original
Memphis, TN—Memphis Intl, LOC (BC) Rwy 27, Amdt. 19, cancelled
Oneida, TN—Scott Muni, SDF Rwy 23, Amdt. 1

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

* * * Effective September 2, 1982

Kodiak, AK—Kodiak, NDB Rwy 25, Amdt. 2
Fresno, CA—Fresno-Chandler Downtown, NDB–B, Amdt. 4
Titusville, FL—Titusville-Cocoa, NDB Rwy 18, Amdt. 9
Kahului, HI—Kahului, NDB Rwy 20, Amdt. 6
Indianapolis, IN—Indianapolis Intl, NDB Rwy 4L, Amdt. 16
Indianapolis, IN—Indianapolis Intl, NDB Rwy 31, Amdt. 9
Larned, KS—Larned-Pawnee County, NDB Rwy 17, Amdt. 1
Larned, KS—Larned-Pawnee County, NDB–A, Amdt. 1, cancelled
Marksville, LA—Marksville Muni, NDB Rwy 4, Original
Minneapolis, MN—Flying Cloud, NDB Rwy 9R, Original, cancelled
Vicksburg, MS—Vicksburg Muni, NDB Rwy 1, Amdt. 4
Hamilton, OH—Hamilton, NDB–A, Amdt. 10
Versailles, OH—Darke County, NDB Rwy 9, Amdt. 4
Oneida, TN—Scott Muni, NDB Rwy 23, Amdt. 1
Devine, TX—Devine Muni, NDB Rwy 35, Original
Ladysmith, WI—Rusk County, NDB Rwy 32, Original
Powell, WY—Powell Muni, NDB Rwy 31, Original

* * * *Effective July 15, 1982*

Grayling, MI—Grayling AAF, NDB Rwy 14, Amdt. 4
Shelby, NC—Shelby Muni, NDB Rwy 5, Amdt. 2

* * * *Effective July 9, 1982*

Delavan, WI—Lake Lawn, NDB Rwy 18, Amdt. 1

* * * *Effective July 8, 1982*

Andreafsky/St. Marys, AK—St. Marys, NDB/DME Rwy 16, Amdt. 3
Andreafsky/St. Marys, AK—St. Marys, NDB Rwy 16, Amdt. 3
Andreafsky/St. Marys, AK—St. Marys, NDB Rwy 34, Amdt. 2

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

* * * *Effective September 16, 1982*

Washington, DC—Dulles Intl, ILS Rwy 12, Amdt. 2

* * * *Effective September 2, 1982*

Kodiak, AK—Kodiak, ILS/DME–1 Rwy 25, Amdt. 2
Hilo, HI—General Lyman Field, ILS Rwy 26, Amdt. 7
Honolulu, HI—Honolulu Intl, ILS Rwy 8L, Amdt. 16
Kahului, HI—Kahului, ILS Rwy 2, Amdt. 17
Indianapolis, IN—Indianapolis Intl, ILS Rwy 4L, Amdt. 19
Indianapolis, IN—Indianapolis Intl, ILS Rwy 22R, Amdt. 4
Indianapolis, IN—Indianapolis Intl, ILS Rwy 31 Amdt. 11
Minneapolis, MN—Flying Cloud, MLS Rwy 9R (Interim), Amdt. 3
Pierre, SD—Pierre Muni, ILS Rwy 31, Amdt. 6
Crossville, TN—Crossville Memorial, ILS Rwy 25, Amdt. 6
Memphis, TN—Memphis Intl, ILS Rwy 27, Original
Wheeling, WV—Wheeling Ohio Co, ILS Rwy 3, Amdt. 14

* * * *Effective July 8, 1982*

Andreafsky/St. Marys, AK—St. Marys, ILS/DME Rwy 16, Amdt. 3

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

* * * *Effective September 2, 1982*

Indianapolis, IN—Indianapolis Intl, RADAR–1, Amdt. 25

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective September 2, 1982*

Hamilton, OH—Hamilton, RNAV Rwy 29, Amdt. 4
Sidney, OH—Sidney Muni, RNAV Rwy 28, Amdt. 1
Dayton, TN—Mark Anton, RNAV Rwy 21, Amdt. 1
Knoxville, TN—Knoxville Downtown Island, RNAV Rwy 26, Original, cancelled

* * * *Effective July 8, 1982*

Shelbyville, TN—Bomar Field-Shelbyville Muni, RNAV Rwy 18, Amdt. 2

Note.—The FAA published an amendment in Docket No. 23079, Amdt. No. 1218 to Part 97 of the Federal Aviation Regulations (Vol. 47 FR No. 114, page 25511; dated June 14, 1982) under section 97.33 effective August 5, 1982, which is hereby amended as follows: Esterville, IA—Esterville Muni, RNAV Rwy 34, orig cancelled.

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

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on July 16, 1982.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1981.

John M. Howard,

Acting Chief, Aircraft Programs Division.

[FR Doc. 82-19865 Filed 7-23-82; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9125]

BASF Wyandotte Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: This order upholds the Administrative Law Judge's May 14, 1982 Initial Decision in this matter and effects dismissal of the complaint on July 13, 1982. The complaint charged the wholly-owned American subsidiary of a German chemical corporation with antitrust violations in the organic pigments market.

DATES: Complaint issued April 5, 1979. Dismissal order issued July 12, 1982.[1]

FOR FURTHER INFORMATION CONTACT: Paul W. Turley, Director, 3R, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603. (312) 353–4423.

SUPPLEMENTARY INFORMATION: In the Matter of BASF Wyandotte Corporation, a wholly owned subsidiary of BASF A.G., a corporation.

List of Subjects in 16 CFR Part 13

Organic pigments.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

The Final Order is as follows:

Final Order

The Administrative Law Judge filed an Initial Decision dismissing the complaint in this matter on May 14, 1982, and service on the parties was completed on May 26, 1982. No appeal from the Initial Decision has been filed. The Commission has determined that the case should not be placed on its own docket for review and that the Initial Decision should become effective as provided in Rule 3.51(a) of the Commission's Rules of Practice (16 CFR 3.51(a)). By operation of Rule 3.51(a), the Commission adopts the Administrative Law Judge's order of dismissal as its

[1] Copies of the Complaint, Initial Decision and Final Order filed with the original document.

decision in this matter. The precedential significance of all or any part of this dismissal in future Commission proceedings will depend entirely on the persuasive weight the Commission determines that it should bear in such proceedings. Accordingly, it is ordered that the Initial Decision dismissing the complaint herein shall become effective on July 13, 1982.

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82-20158 Filed 7-23-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM81-7-000; Order No. 202-A]

Exemption From the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or Less

Issued July 20, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying petition for stay of final rule.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order denying a petition for a stay of the final rule in Docket No. RM81-7-000 (Order No. 202). The final rule establishes procedures and standards for exempting two categories of small hydroelectric power projects 5 MW or less from licensing requirements in Part 1 of the Federal Power Act.

FOR FURTHER INFORMATION CONTACT: Frederick D. Chanania, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Order Denying Petition For Stay of Final Rule

Issued July 20, 1982.

In the matter of exemption from the licensing requirements of Part I of the Federal Power Act of certain categories of small hydroelectric power projects with an installed capacity of 5 megawatts or less.

I. Introduction

On June 21, 1982, the National Wildlife Federation, Trout Unlimited, Inc., and New England Rivers Center ("petitioners") filed with the Commission a Motion for Stay of Order No. 202 Pending Reconsideration ("Motion").[1] Order No. 202 is the final rule in Docket No. RM81-7-000.[2] This final rule establishes procedures and standards for exempting two categories of small hydroelectric power projects 5 MW or less from licensing requirements in Part 1 of the Federal Power Act.[3] In their Motion, petitioners request a stay of the final rule, pending rehearing pursuant to the petitioner's Application for Rehearing.[4]

II. Discussion

The Motion is grounded upon arguments raised during the rulemaking comment period. Notwithstanding the Commission's treatment of these issues in the final rule, the petitioners raised these same arguments in their application for rehearing of the final rule. The Commission has not yet completed its final reconsideration of the points raised on rehearing and, therefore, will defer, until its rehearing decision, any final action on these points. Nonetheless, in light of the pendency of the Motion to stay the final rule, the Commission makes the following determinations.[5]

A. Assessment of Potential Harm

In the context of their request for a stay of the final rule in Docket No. RM81-7-000, the burden is upon the petitioners for such extraordinary action to show that significant harm will be incurred and that the equities favor granting the stay. Petitioners have basically presented only a reargument of views expressed during the rulemaking and on rehearing. For the reasons set forth below, the Commission does not believe a stay is warranted at this time.

The final rule addresses two categories of hydroelectric power projects (less than 100KW and 100KW-5MW) that are very small in size in relation to other hydroelectric projects licensed by the Commission. *See* 18 CFR 4.109(a) and (b). The rule establishes stringent criteria which any project must meet in order to qualify for an exemption, and these criteria specifically eliminate those projects where significant adverse environmental effects are likely. For example, water cannot be diverted from the existing waterway for more than 300 feet, thus allowing only a minimal area for the construction of any necessary project works. In addition, projects may not obstruct the passage of migratory fish and may not adversely affect any threatened or endangered species or critical habitat. Projects with more than 100 KW of installed capacity may not cause violation of federal or state water quality standards and may not vary the existing regime of storage and release at the existing dam. Other requirements are imposed as well. *See generally,* 18 CFR 4.109 (a) and (b).

The final rule also requires an applicant to serve a copy of the Notice of Exemption on, and obtain certifications from, fish and wildlife agencies, state historic preservation officers, and water resources agencies before filing the application. These certifications must attest that water quality standards will not be violated, that historic sites will not be adversely affected, that no endangered or threatened species or critical habitats will be adversely affected, and that there is either no significant migratory fish population (for 100 KW or 5 MW projects) or no constriction of passage of any migratory fish (for less than 100 kW projects). *See* 18 CFR 4.112(b), and 4.113(b).

In assessing whether there is potential harm from the continued effectiveness of the final rule, the petitions have not presented any information to demonstrate that the environmental protection afforded in the exemption process is so deficient as to warrant a stay. Absent such a showing, the Commission will not take the unusual step of granting a stay of the final rule at this point.

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[1] Petitioners filed their Motion pursuant to 16 U.S.C. 825-1(c) (1976) and 18 CFR 1.12 (1981). Sections 1.12 (a) and (e) permit motions to be filed only "after a hearing has commenced" i.e., in a trial-type proceeding. Rulemakings are not trial-type proceedings and do not involve hearings in the sense that term is used in § 1.12. Therefore, the Commission is treating the Motion as a petition for a stay under 18 CFR 1.7 (a) and (b).

[2] Issued Jan. 19, 1982, 47 FR 4232 (Jan. 29, 1982).

[3] The final rule implements, in part, section 408 of the Energy Security Act of 1980 ("ESA"), Pub. L. 96-294, 94 Stat. 611. This section of the ESA amended sections 405 and 408 of the Public Utilities Regulatory Policy Act of 1978 (PURPA), 16 U.S.C. 2705, 2708. Under section 408(b) of the ESA, the Commission is authorized to exempt "classes or categories" of small hydroelectric power projects.

[4] Filed February 18, 1982. The Commission tolled the period for action on rehearing on March 22, 1982, 47 FR 13517 (Mar. 31, 1982).

[5] Contrary to petitioners' assertion, the standards for judicial stays in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) are not mandatory for the Commission in determining whether to stay a final rule during the pendency of rehearing. Under the Administrative Procedure Act, the Commission may grant such a stay when it determines that "justice so requires." 5 U.S.C. 705.

B. Balance of the Equities

Granting petitioners' request for a stay, and thereby foreclose the availability of further categorical exemptions, would lead to unwarranted adverse effects, both on potential hydroelectric project developers and on the public interest. First, the Congressional mandate to the Commission in sections 402 and 408 of the ESA would be frustrated. Section 408 of the ESA authorizes the Commission to establish categorical exemptions. Section 402 of the ESA provides specifically that one major purpose of Title IV (including Section 408) is "to provide further encouragement for the development of small hydroelectric power projects."

Second, given the size of these projects and the types of developers that appear interested in these small projects (based on the developers that have filed pplications or expressed interest thus ıar), adverse effects would likely be ımposed upon those persons interested in developing small hydroelectric power projects. It is not unreasonable for such persons to rely on the availability of the categorical exemption process when acquiring ownership of potential sites and when incurring start-up expenses, such as the site studies and information-gathering needed to meet certification requirements. A stay of the final rule would adversely affect those hydroelectric projects, into which developers and others have put time and expense. A stay would delay the effectiveness of an exemption where a Notice of Exemption is pending, and also would jeopardize the future filing of any Notice of Exemption which is now in the preparation stage. Under the circumstances, it is unlikely that resort to case-specific exemption from licensing procedures under Order No. 106 will be an acceptable alternative to the categorical exemption process, particularly in view of the Congressional mandate in section 408 of the ESA. The petitoners have not adequately demonstrated how this adverse disruption of small hydroelectric power project development would be outweighed by the potential for environmental or other harm from continued administration of the rule.

Since the effective date of the final rule, February 18, 1982, the Commission has received seven acceptable (and four deficient) notices seeking categorical exemptions under 18 CFR §§ 4.109–4.113. The Commission is not presently aware of any reason to expect this flow of exemption applications to increase or decrease dramatically before the rehearing order is issued in this docket. Petitioners' statement about submittal of an "incalculable number" of future exemption notices is not supported. As a result, the Commission does not find that the equities favor granting the requested stay, or that the public interest is best served by suspending the final rule.

III. Conclusion

The Commission has taken into account the petitioners' arguments as well as all the interests involved, including the public interest in hydroelectric power development and appropriate environmental protection. Based upon the showing made in the petitioners' Motion and upon the factors discussed above, the Commission concludes that a stay of the effectiveness of the final rule in Docket No. RM81–7–000, pending a decision on rehearing, is unwarranted at this time. Accordingly, the petitioners' Motion For a Stay of Order No. 202 is hereby denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–20134 Filed 7–23–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 1, 3 and 5

Notice of Deferral of Effective Dates of Regulations Relating to Labor Standards on Federal and Federally Assisted Construction Projects

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice of deferral of effective dates of regulations.

SUMMARY: This notice defers the effective dates of certain Labor Department regulations relating to labor standards on federal and federally assisted construction projects, from July 27, 1982, until further notice. This action is taken in order to comply with a preliminary injunction issued in the U.S. District Court for the District of Columbia on July 22, 1982.

EFFECTIVE DATE: This notice is effective on July 22, 1982.

ADDRESS: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S–3502, 200 Constitution Avenue, NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Telephone: (202) 523–8305.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 28, 1982 (47 FR 23644, 23658, 23678), the Department of Labor issued final regulations, 29 CFR Part 1, entitled "Procedure for Predetermination of Wage Rates"; section 3.3(b) of 29 CFR Part 3 entitled "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants From the United States"; and 29 CFR Part 5, entitled "Labor Standards Provisions Applicable to Noncontracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)." These regulations were to be effective July 27, 1982.

On July 22, 1982, the District Court for the District of Columbia issued a preliminary injunction enjoining the Department from putting certain provisions of these regulations into effect pending final disposition. Accordingly, to prevent confusion and disruption which would be caused by partial effectuation of the regulations, the effective date of the entire regulations published on May 28, 29 CFR Part 1, 29 CFR 3.3(b), and 29 CFR Part 5, Subpart A, is stayed until further notice.

Because these rules are scheduled to become effective very shortly, notice and public comment on this change of effective date is impracticable, unnecessary and contrary to the public interest and good cause exists for making these deferrals effective immediately.

Authority: The statutory authority for this action is as follows: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of Part 5.

Signed at Washington, D.C., this 23rd day of July, 1982.

William M. Otter,

Administrator, Wage and Hour Division.

[FR Doc. 82–20285 Filed 7–23–82; 11:47 am]

BILLING CODE 4510–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Conditional Approval of the Permanent Regulatory Program Submission From the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On September 28, 1981, the State of Indiana resubmitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This follows an initial approval in part and disapproval in part of the proposed program which was published in the **Federal Register** on November 25, 1980 (45 FR 78482–78499). The purpose of the resubmission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. Only those portions of the State's original submission which were not initially approved or which were changed are considered in this decision. This rule grants conditional approval of the Indiana permanent regulatory program.

A new Part 914 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective July 29, 1982. This conditional approval will terminate as specified in 30 CFR 914.11 unless the deficiencies identified below have been corrected in accordance with the dates specified in 30 CFR 914.11, adopted below.

ADDRESSES: Copies of the Indiana program and the administrative record on the Indiana program are available for public inspection and copying during regular business hours at:

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240, Phone: (202) 343–7896

Office of Surface Mining, Federal Building and U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, Phone: (317) 269–2600

Indiana Department of Natural Resources, Division of Reclamation, Suite 202, 309 West Washington Street, Indianapolis, Indiana 46204

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Phone: (202) 343–5351.

SUPPLEMENTARY INFORMATION:

A. General Background

The general background on the permanent program, the program approval process, and the Indiana program submission were discussed in the **Federal Register** notice of November 25, 1980 (45 FR 78482–78499). Amendments to the Federal permanent program regulations were published December 12, 1980 (45 FR 82084–83100); January 23, 1981 (46 FR 7894 and 7906); July 17, 1981 (46 FR 37232); August 17, 1981 (46 FR 41702); September 29, 1981 (46 FR 47720); October 8, 1981 (46 FR 50018); October 28, 1981 (46 FR 53376); November 2, 1981 (46 FR 54495); April 29, 1982 (47 FR 18552–18558); and June 17, 1982 (47 FR 26356–26367). An interpretive rule was published November 7, 1980 (45 FR 73945–73946). Additional regulations were suspended August 19, 1981 (46 FR 42063), and December 7, 1981 (46 FR 59934), pending further rulemaking.

In the November 25, 1980 **Federal Register** notice, the Secretary announced his partial approval and partial disapproval of the Indiana program. The Indiana statute was approved with the exceptions noted under the heading "Secretary's Decision," November 25, 1980 (45 FR 78482–78499). The proposed rules submitted by Indiana on March 3, 1980, were not fully promulgated by the 104th day following program submission, as required by 30 CFR 732.11(d).

Therefore, the November 25, 1980 **Federal Register** notice did not contain findings on the State's regulatory provisions. However, the Indiana regulations were published in the *Indiana Register* on November 1, 1981, and amendments subsequent to that time were adopted on May 26, 1982 (IN–0269). The regulations become effective on the date of approval of the Indiana program.

Background on the Indiana Resubmission

In accordance with the procedures set forth in 30 CFR 732.13(f), the State of Indiana originally had 60 days from the date of publication of the Secretary's partial approval decision on November 25, 1980, to resubmit a revised program for consideration. On July 29, 1980, prior to the publication of the Secretary's initial decision, the Marion County Circuit Court enjoined the Indiana Department of Natural Resources (IDNR) from submitting or resubmitting the Indiana permanent State program for a period of one year. On July 28, 1981, the injunction terminated and the State had 60 days within which to resubmit its program. The State submitted its revised program for consideration on September 28, 1981. Announcement of Indiana's resubmission was made in newspapers of general circulation within the State of Indiana and published in the **Federal Register** on September 28, 1981 (46 FR 47467), and a public hearing was held in Vincennes, Indiana on October 23, 1981. An additional 20 day public comment period was announced in the **Federal Register** on May 26, 1982 (47 FR 22974), in order to allow public comment on additional information submitted by Indiana and to consider the Indiana program in light of the new definition of "consistent with," which sets a new standard for comparison of the State program with the Federal regulations, 30 CFR 732.15 (46 FR 53376–53384, October 28, 1981). The second public comment period ended on June 15, 1982.

Public disclosure of comments by Federal agencies was made on June 18, 1982 (47 FR 26406).

On July 9, 1982 the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Indiana program.

The OSM Regional Director completed his program review on June 17, 1982 and forwarded the public hearing transcripts, written presentations, and copies of all comments to the Director together with a recommendation that the program be conditionally approved.

On July 8, 1982, the Director recommended to the Secretary that the Indiana program be conditionally approved.

The basis and purpose statement for the Secretary's decision to conditionally approve the Indiana program consists of this notice and the November 25, 1980 **Federal Register** notice, announcing the Secretary's initial decision. The Indiana program consists of the formal submission of March 3, 1980 (IN–0002), as amended on June 4, 1980 (IN–0114), the resubmission of September 28, 1981 (IN–0220), December 8, 1981 (IN–0260), April 8, 1982 (IN–0265), May 18–19, 1982 (IN–0268), and May 26, 1982 (IN–0269), and as clarified in meetings with Indiana described below. On November 2, 3, 13 and 16, 1981, February 24 and May 18 and 19, 1982, OSM representatives met with officials of the IDNR to discuss the Indiana resubmission. All of the issues discussed at these meetings were subsequently

resolved, with the exceptions of those discussed below under "Secretary's Findings." For further background on the matters discussed at these meetings, see IN–0240, IN–0255, IN–0262, and IN–0268.

Throughout the remainder of this notice, "Indiana program" or "Indiana submission" is used to mean the documents cited above together with those parts of the initial submission partially approved on November 25, 1980. The Indiana program being approved today consists of all information provided to OSM by Indiana, including State laws, regulations, opinions of the Indiana Attorney General, narrative explanations, policy statements, meeting notes, permit application forms, memoranda of understanding or agreement, and related materials. Any changes to any part of the approved State program must be approved by OSM under the rules and procedures governing state program amendments found at 30 CFR 732.17.

The term "resubmission" only refers to those portions of the Indiana program resubmitted on September 28, 1981 (IN–0220), and as modified on December 8, 1981 (IN–0260), April 8, 1982 (IN–0265), May 18–19, 1982 (IN–0268), and May 26, 1982 (IN–0269), and the meeting notes of November 2, 3, 13, and 16, 1981, February 24 and May 18–19, 1982. (See IN–2040, IN–0255, IN–0267, and IN–0268). The term "May 18 and 19, 1982 meeting" refers to a meeting held between OSM and the IDNR, the purpose of which was to discuss concerns about the Indiana program submission. The meeting notes were entered into the administrative record and were made available for public review during the second public comment period (See IN–0268).

The Secretary's findings below are organized to follow the order set forth in Section 503 of SMCRA and 30 CFR 732.15. These sections specify the findings which the Secretary must make before he may approve a regulatory program.

Because Indiana has recodified its regulations since its original submission, OSM has adjusted all references to the State's rules throughout this notice to refer to the current Indiana citations. The following cross-reference table is included to assist the reader.

CROSS REFERENCE OF INDIANA SUBMITTED REGULATIONS AND INDIANA CODIFIED REGULATIONS

Recodified Indiana rules	Original Indiana rules
310 IAC	
12-1-2	700.01
12-1-3	701.10
12-1-4	707.12
12-2-1	761.11
12-2-2	761.11
12-2-3	762.12
12-2-4	762.13
12-2-5	762.14
12-2-6	764.13
12-2-7	764.15
12-2-8	764.17
12-2-9	764.19
12-2-10	764.21
12-2-11	764.23
12-2-12	764.25
12-3-1	770.11
12-3-2	771.4
12-3-3	771.11
12-3-4	771.19
12-3-5	771.21
12-3-6	771.23
12-3-7	771.24
12-3-8	771.25
12-3-9	771.26
12-3-10	771.27
12-3-11	776.3
12-3-12	776.11
12-3-13	776.12
12-3-14	776.13
12-3-15	776.14
12-3-16	776.15
12-3-17	776.17
12-3-18	778.11
12-3-19	778.13
12-3-20	778.14
12-3-21	778.15
12-3-22	778.16
12-3-23	778.17
12-3-24	778.18
12-3-25	778.19
12-3-26	778.20
12-3-27	778.21
12-3-28	779.11
12-3-29	779.12
12-3-30	779.13
12-3-31	779.14
12-3-32	779.15
12-3-33	779.16
12-3-34	779.17
12-3-35	779.18
12-3-36	779.21
12-3-37	779.22
12-3-38	779.24
12-3-39	779.25
12-3-40	779.27
12-3-41	780.11
12-3-42	780.12
12-3-43	780.13
12-3-44	780.14
12-3-45	780.15
12-3-46	780.18
12-3-47	780.21
12-3-48	780.23
12-3-49	780.25
12-3-50	780.27
12-3-51	780.29
12-3-52	780.31
12-3-53	780.33
12-3-54	780.35
12-3-55	780.37
12-3-56	782.11
12-3-57	782.13
12-3-58	782.14
12-3-59	782.15
12-3-60	782.16
12-3-61	782.17
12-3-62	782.18
12-3-63	782.19
12-3-64	782.20
12-3-65	782.21
12-3-66	783.11
12-3-67	783.12
12-3-68	783.13
12-3-69	783.14
12-3-70	783.15
12-3-71	783.16
12-3-72	783.17
12-3-73	783.18
12-3-74	783.22
12-3-75	783.24
12-3-76	783.25
12-3-77	783.27
12-3-78	784.11
12-3-79	784.12
12-3-80	784.13
12-3-81	784.14
12-3-82	784.15
12-3-83	784.16
12-3-84	784.17
12-3-85	784.18
12-3-86	784.19
12-3-87	784.20
12-3-88	784.22
12-3-89	784.23
12-3-90	784.24
12-3-91	784.25
12-3-92	784.26
12-3-93	785.1
12-3-94	785.13
12-3-95	785.14
12-3-96	785.15
12-3-97	785.16
12-3-98	785.17
12-3-99	785.18
12-3-100	785.19
12-3-101	785.20
12-3-102	785.22
12-3-103	785.23
12-3-104	785.24
12-3-105	786.4
12-3-106	786.11
12-3-107	786.12
12-3-108	786.13
12-3-109	786.14
12-3-110	786.15
12-3-111	786.17
12-3-112	786.19
12-3-113	786.21
12-3-114	786.23
12-3-115	786.25
12-3-116	786.27
12-3-117	786.31
12-3-118	787.11
12-3-119	787.12
12-3-120	788.11
12-3-121	788.12
12-3-122	788.13
12-3-123	788.14
12-3-124	788.15
12-3-125	788.16
12-3-126	788.17
12-3-127	788.18
12-3-128	788.19
12-3-129	795.2
12-3-130	795.5
12-3-131	795.13
12-3-132	795.14
12-3-133	795.16
12-3-134	795.17
12-3-135	795.19
12-4-1	800.1
12-4-2	800.2
12-4-3	800.4
12-4-4	800.5
12-4-5	800.11
12-4-6	800.12
12-4-7	800.13
12-4-8	800.14
12-4-9	800.15
12-4-10	800.16
12-4-11	800.20
12-4-12	800.21
12-4-13	800.22
12-4-14	800.24
12-4-15	800.30
12-4-16	800.40
12-4-17	800.50
12-4-18	800.51
12-4-19	800.60
12-5-1	815.11
12-5-2	815.13
12-5-3	815.15
12-5-4	815.17
12-5-5	816.10
12-5-6	816.11

CROSS REFERENCE OF INDIANA SUBMITTED REGULATIONS AND INDIANA CODIFIED REGULATIONS—CONTINUED

Recodified Indiana rules	Original Indiana rules
12-5-7	816.12
12-5-8	816.13
12-5-9	816.14
12-5-10	816.15
12-5-11	816.21
12-5-12	816.22
12-5-13	816.23
12-5-14	816.24
12-5-15	816.25
12-5-16	816.41
12-5-17	816.42
12-5-18	816.43
12-5-19	816.44
12-5-20	816.45
12-5-21	816.46
12-5-22	816.47
12-5-23	816.48
12-5-24	816.49
12-5-25	816.50
12-5-26	816.51
12-5-27	816.52
12-5-28	816.53
12-5-29	816.54
12-5-30	816.55
12-5-31	816.56
12-5-32	816.57
12-5-33	816.61
12-5-34	816.62
12-5-35	816.64
12-5-36	816.65
12-5-37	816.67
12-5-38	816.68
12-5-39	816.71
12-5-40	816.79
12-5-41	816.81
12-5-42	816.82
12-5-43	816.83
12-5-44	816.85
12-5-45	816.86
12-5-46	816.88
12-5-47	816.89
12-5-48	816.91
12-5-49	816.92
12-5-50	816.93
12-5-51	816.97
12-5-52	816.99
12-5-53	816.100
12-5-54	816.101
12-5-55	816.102
12-5-56	816.103
12-5-57	816.104
12-5-58	816.105
12-5-59	816.111
12-5-60	816.112
12-5-61	816.113
12-5-62	816.114
12-5-63	816.115
12-5-64	816.116
12-5-65	816.117
12-5-66	816.131
12-5-67	816.132
12-5-68	816.133
12-5-69	816.150
12-5-70	816.180
12-5-71	816.181
12-5-72	817.10
12-5-73	817.11
12-5-74	817.13
12-5-75	817.14
12-5-76	817.15
12-5-77	817.21
12-5-78	817.22
12-5-79	817.23
12-5-80	817.24
12-5-81	817.45
12-5-82	817.41
12-5-83	817.42
12-5-84	817.43
12-5-85	817.44
12-5-86	817.45
12-5-87	817.46
12-5-88	817.47
12-5-89	817.48
12-5-90	817.49
12-5-91	817.50
12-5-92	817.52
12-5-93	817.53
12-5-94	817.54
12-5-95	817.55
12-5-96	817.56
12-5-97	817.57
12-5-98	817.59
12-5-99	817.61
12-5-100	817.62
12-5-101	817.65
12-5-102	817.67
12-5-103	817.68
12-5-104	817.71
12-5-105	817.81
12-5-106	817.82
12-5-107	817.83
12-5-108	817.85
12-5-109	817.86
12-5-110	817.88
12-5-111	817.89
12-5-112	817.91
12-5-113	817.92
12-5-114	817.93
12-5-115	817.97
12-5-116	817.99
12-5-117	817.100
12-5-118	817.101
12-5-119	817.102
12-5-120	817.103
12-5-121	817.104
12-5-122	817.105
12-5-123	817.111
12-5-124	817.112
12-5-125	817.113
12-5-126	817.114
12-5-127	817.115
12-5-128	817.116
12-5-129	817.117
12-5-130	817.121
12-5-131	817.122
12-5-132	817.124
12-5-133	817.126
12-5-134	817.131
12-5-135	817.132
12-5-136	817.133
12-5-137	817.150
12-5-138	817.180
12-5-139	817.181
12-5-140	818.11
12-5-141	818.13
12-5-142	818.15
12-5-143	819.10
12-5-144	819.11
12-5-145	823.11
12-5-146	823.12
12-5-147	823.13
12-5-148	823.14
12-5-149	824.11
12-5-150	826.11
12-5-151	826.12
12-5-152	826.15
12-5-153	826.16
12-5-154	826.17
12-5-155	827.11
12-5-156	827.12
12-5-157	828.11
12-5-158	828.12
12-6-1	840.1
12-6-2	840.2
12-6-3	840.3
12-6-4	840.4
12-6-5	843.11
12-6-6	843.12
12-6-7	843.14
12-6-8	843.15
12-6-9	843.16
12-6-10	843.19
12-6-11	845.12
12-6-12	845.13
12-6-13	845.15
12-6-14	845.16
12-6-15	845.17
12-6-16	845.18
12-6-17	845.19
12-6-18	845.20

B. The Secretary's Findings

In reaching his decision to conditionally approve the Indiana program submission, the Secretary finds, in accordance with Section 503(a) of SMCRA and 30 CFR 732.15, that Indiana has the capability, except as noted below, to carry out the provisions of SMCRA and to meet its purposes in the following ways. Findings made under Section 503 (a) (1) through (7) and (b) (1) through (4) are numbered (1) through (11). Findings made under 30 CFR 732.15 (a), (b) (1) through (16), (c), and (d) are numbered (12) through (30).

Finding 1

The Secretary finds that the State of Indiana has a law (I.C. 13–4.1 *et seq.*) and regulations adopted thereunder to provide, except as noted in the findings below, for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands in Indiana in accordance with SMCRA. This finding is based on the requirements of Section 503(a)(1) of SMCRA (30 U.S.C. 1253(a)(1)). The issues underlying this finding are analyzed in Findings 12 through 30, below.

Finding 2

The Secretary finds that Indiana has a law (I.C. 13–4.1 *et seq.*) which provides, except as noted in the findings below, sanctions for violations of State laws, regulations or conditions of permits concerning surface coal mining and reclamation operations and which meets the requirements of SMCRA, including civil and criminal sanctions, forfeiture of bonds, suspensions, revocations, and withholding of permits and the issuance of cease and desist orders by the IDNR or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). The issues underlying this finding are analyzed in Findings 18, 19 and 20, below.

Finding 3

The Secretary finds that the IDNR has sufficient administrative and technical personnel and sufficient funds to enable Indiana to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding is based on the requirements of Section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)).

Finding 4

The Secretary finds that Indiana has a law (I.C. 13–4.1 *et seq.*) which provides, except as noted in the findings below,

for the effective implementation, maintenance and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within Indiana. This finding is based on the requirements of Section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)). The issues underlying this finding are discussed in Finding 14, below.

Finding 5

The Secretary finds that the Indiana program provides, except as noted in the findings below, for the establishment of a process for designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA (30 U.S.C. 1272). This finding is based on the requirements of Section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)). The issues underlying this finding are discussed in Finding 21, below.

Finding 6

The Secretary finds that the Indiana program provides, for the purposes of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal or State permit processes applicable to the proposed operations. This finding is based on the requirements of Section 503(a)(6) of SMCRA (30 U.S.C. 1253(a)(6)).

Finding 7

The Secretary finds that Indiana has fully enacted regulations which, except as noted in the findings below, are no less effective than the regulations issued by the Secretary pursuant to SMCRA. This finding is based on the requirements of Section 503(a)(7) of SMCRA (30 U.S.C. 1253(a)(7)). The issues underlying this finding are discussed in Findings 12–30, below.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed on June 18, 1982 (47 FR 26406), the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Indiana program. This finding is based on the requirements of Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)).

Finding 9

The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Indiana program being approved today which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*, and the Clean Air Act, as amended, 42 U.S.C. 1857 *et seq.* This finding is based on the requirements of Section 503(b)(2) of SMCRA.

Finding 10

The Secretary has, through OSM, held a public hearing in Indianapolis, Indiana on April 10, 1980, to discuss the completeness of the Indiana program submission, held public hearings in Indianapolis, Indiana on July 23, 1980, and Evansville, Indiana on July 24, 1980, on the adequacy of the Indiana program submission, and held a public hearing on the resubmission of the Indiana program in Vincennes, Indiana on October 23, 1981. This finding is based on the requirements of Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

Finding 11

The Secretary finds that the State of Indiana has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII. This finding is based on the requirements of Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

Finding 12

In accordance with 30 CFR 732.15(a), the Secretary finds, on the basis of information in the Indiana program submission, including the section-by-section comparison of the Indiana law and the regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public hearings, and other relevant information, that the Indiana program provides, except as noted in the findings below, for Indiana to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII. The issues underlying this Finding are analyzed in the findings discussed throughout this **Federal Register** notice.

Finding 13

The Secretary finds that Indiana has authority under enacted Indiana laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and that the Indiana program submission contains provisions to implement, administer and enforce all applicable requirements consistent with Subchapter K of 30 CFR Chapter VII, except as discussed below. Special provisions comparable to 30 CFR Parts 820, 822 and 825 for anthracite mines, operations on alluvial valley floors, and special bituminous coal mining are not applicable to or included in the Indiana laws or regulations. This Finding is made under the requirements of 30 CFR 732.15(b)(1).

13.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–7–3(3) did not require that all of the performance standards equivalent to those found in Section 515 of SMCRA apply to exploration operations. Specifically, the State omitted the requirements of Section 515(b)(15) of SMCRA dealing with the use of explosives [See Finding 13.1, 45 FR 78485, November 25, 1980]. The Secretary now finds that the State has amended its statute at I.C. 13–4.1–7–3(3) to require that any person conducting a coal exploration operation comply with the blasting requirements of I.C. 13–4.1–10, and that the provisions of I.C. 13–4.1–10 provide blasting standards that are in accordance with the provisions of SMCRA Section 515(b)(15). See IN–0269.

13.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–8–1(3) limited the backfilling and grading requirements of SMCRA Section 515(b)(3) to those instances where these practices are advisable to ensure stability or to prevent leaching of toxic materials [See finding 13.2, 45 FR 78485, November 25, 1980]. The Secretary now finds that the State has amended its statute at I.C. 13–4.1–8–1(3) to remove the limitation on backfilling and to require that backfilling and compacting requirements apply to all surface coal mining operations, and that these provisions are in accordance with the requirements of Section 515(b)(3) of SMCRA. See IN–0269.

13.3 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 14–4.1–8–1(8) required that specifications for all prime farmlands for soil removal, storage, replacement and reconstruction be established by the Indiana Natural Resources Commission rather than the Secretary of Agriculture as prescribed by Section 515(b)(7) of SMCRA [See finding 13.3, 45 FR 78486, November 25, 1980]. Indiana has modified its program by adopting in its prime farmland regulation at 310 IAC 12–1–3 the reference to the Secretary of Agriculture's regulations. The Secretary now finds this provision to be in accordance with the requirements of Section 515(b)(3) of SMCRA.

13.4 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–8–

1(13) required compliance with standards established by the Chief of Engineers, U.S. Army Corps of Engineers, for coal mine waste piles used as dams or embankments rather than standards established by the Secretary of the Interior with the concurrence of the Chief of Engineers (See Finding 13.4, 45 FR 78486, November 25, 1980), as prescribed by Section 515(b)(13) of SMCRA. The Secretary now finds that the State has amended its statute at I.C. 13–4.1–8–1(13) to require standards established by the Secretary of the Interior with the concurrence of the Chief of Engineers. See IN–0269.

13.5 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–9–1(5) provided for the use of certain standards established by the Chief of Engineers, U.S. Army Corps of Engineers, concerning waste piles rather than standards established by the Secretary of the Interior as prescribed by Section 516(b)(5) of SMCRA (See Finding 13.7, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has amended its statute at I.C. 13–4.1–9–1(5) to provide for use of standards established by the Secretary of the Interior. See IN–0269.

13.6 Indiana's definition of "best technology currently available" found at 310 IAC 12–1–3 differs from the Federal definition of that term at 30 CFR 701.5. The Indiana definition uses the term "locally" in lieu of the words "anywhere even if they are not in routine use." The Director, IDNR, stated at the May 18–19, 1982 meeting that it is Indiana's policy to interpret its definition of "best technology currently available" as follows:

The use of the word "locally" in Indiana's rule is intended to describe the use of equipment, devices, systems, methods or techniques which are used in areas with the same or similar local conditions as in Indiana. Because the Director, IDNR, has the authority under both the Federal and State definitions to determine the best technology currently available on a case-by-case basis in making this determination, and the Director, IDNR, would need to consider only technology used in areas with the same or similar local conditions for mining, Indiana contends that its rule is no less effective than the Federal definition at 30 CFR 701.5. The Director, IDNR, indicated further that Indiana will consider all equipment, devices, systems, methods or techniques which are available in areas with the same or similar mining conditions as in Indiana even if they are not in routine use (IN–0268).

The Secretary finds that Indiana's definition of "best technology currently available" at 310 IAC 12–1–3, when read in light of the above policy statement, which OSM will enforce through oversight, is no less effective than the Federal definition found at 30 CFR 701.5.

13.7 Indiana rules 310 IAC 12–5–39 and 310 IAC 12–5–104 do not require that coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is placed in accordance with 30 CFR 816.85 and 817.85, demonstrated to be non-toxic and non-acid forming, and demonstrated to be consistent with the design stability of the fill. Such requirements are provided in 30 CFR 816.71(b) and 817.71(b). Indiana rules 310 IAC 12–5–39 and 310 IAC 12–5–104 stipulate the requirements for the disposal of excess spoil.

Indiana pointed out at the May 18–19, 1982, meeting that because of the topography of the Indiana coal fields, there are and will be no head-of-hollow or valley fills. Therefore, the Secretary finds that this requirement is not applicable in Indiana, and Indiana's program is no less effective than the Federal rules. IN–0268.

13.8 Indiana rule 310 IAC 12–5–123(b) does not address productivity levels for post-mining land use. The Director, IDNR, at the meeting of May 18–19, 1982 (IN–0268), indicated that Indiana would amend its program to be no less effective than the requirements of 30 CFR 817.111(b). However, because this amendment has not yet been made, the Secretary's approval of the Indiana program is conditioned on Indiana amending its program to be no less effective than the provisions of 30 CFR 817.111(b).

13.9 The Federal rules at 30 CFR 816.43(c) and 817.43(c) provide that diversions must prevent additional contributions of suspended solids to streamflow "to the extent possible using the best technology currently available." The State rule at 310 IAC 12–5–18(c) provides that "Diversions shall be designed, constructed and maintained in a manner which prevents to the extent possible additional contribution of suspended solids to stream flow and to runoff outside the permit area, to the extent possible using the best technology currently available." This double reference to "to the extent possible" does not make Indiana's rule less effective than the Federal rule, since it is still clear that the best technology currently available must be used. Federal rules 30 CFR 816.43 and 817.43 also set forth design requirements for diversions. Indiana rules 310 IAC 12–5–18, 310 IAC 12–5–19, 310 IAC 12–5–84, and 310 IAC 12–5–85 which govern diversions, do not contain requirements as effective as those in 30 CFR 816.43 and 817.43. Indiana has agreed (IN–0268) to amend its rules to include design criteria consistent with 30 CFR 816.43 and 817.43. The Secretary's approval of Indiana's program is conditioned upon the State's amending its program to incorporate provisions that are no less effective than those in 30 CFR 816.43 and 817.43.

13.10 Federal rules 30 CFR 816.81(b) and 817.81(b) allow coal processing waste from outside the permit area to be disposed of within the permit area if approved by the regulatory authority and if certain protective criteria are met. Indiana rules 310 IAC 12–5–41 and 310 IAC 12–5–105 do not contain the language specifically requiring regulatory authority approval, but do require that the same protective criteria be met. Furthermore, the State's permit application (IN–0269 at S–50 and S–51) requires applicants to submit information to demonstrate compliance with 310 IAC 12–5–41 and 310 IAC 12–5–105. The Director, IDNR, stated that IDNR will approve permits only if all the application requirements are met in a technically adequate manner and that the same criteria will apply to underground permits (See IN–0268). Thus, the Secretary finds that the State program is no less effective than the Federal rules.

13.11 Federal rules 30 CFR 816.52 and 817.52 set forth requirements for surface and ground water monitoring that are not expressed in the Indiana rules in the same manner. The Director, IDNR, at the meeting of May 18–19, 1982 (IN–0268) explained that Indiana rule 310 IAC 12–5–27(b) requires that "surface water monitoring, recording and record keeping shall be conducted as specified in the NPDES permit." Likewise, 310 IAC 12–5–92(c) (the Indiana counterpart to 30 CFR 817.52) contains the same requirement. The Director pointed out that the Indiana rule further states that "copies of the monitoring reports and any noncompliance notification shall be provided to the Director concurrently with the submission to the NPDES permit authority." Further, Indiana rules 310 IAC 12–5–16(c) and 310 IAC 12–5–82(c) state: "In no case shall Federal and Indiana water quality statutes, regulations, standards, or effluent limitations be violated." The requirements of the NPDES permit are

no less effective than those in 30 CFR 816.52 and 817.52; therefore, the Secretary finds Indiana's program to be no less effective than the Federal rule.

13.12 Indiana rules 310 IAC 12–5–24, 310 IAC 12–5–30, 310 IAC 12–5–90 and 310 IAC 12–5–95 do not specify provisions equivalent to those in 30 CFR 816.49(f), 816.55, 817.49(f) and 817.55 that all dams and embankments meeting the size or other criteria of MSHA's rules shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified professional engineer, in accordance with MSHA's rules at 30 CFR 77.216–3. The Director, IDNR, at the May 18–19, 1982 meeting pointed out that in cases where a dam or embankment is necessary to create an impoundment and the dam height is 20 feet or greater, the drainage area is 1 square mile or larger, the volume of water impounded at the emergency spillway level will be more than 100 acre-feet, or the rights of other property owners are affected, the applicant must complete an "Application for Approval of Construction in a Floodway" (IN–0269). The Director, IDNR, stated further that this application must be submittd to the IDNR Division of Water and meet the requirements of Chapter 318 of the State Acts of 1945, as amended (Sections 17 and 19). That State law requires dams and embankments to be inspected annually. Such inspections of dams and embankments conducted by the Division of Water will be made by the Regulations Branch, the Chief of which is required to be a qualified registered professional engineer.

The Secretary finds that Indiana rules 310 IAC 12–5–24, 310 IAC 12–5–30, 310 IAC 12–5–90 and 310 IAC 12–5–95, when read in light of the other program provisions, are no less effective than the provisions of 30 CFR 816.49(f), 816.55, 817.49(f) and 817.55.

13.13 Indiana rules 310 IAC 12–5–21 and 310 IAC 12–5–87 do not specify all of the design standards for sediment ponds in 30 CFR 816.46 and 817.46. The Director, IDNR, stated at the May 18–19, 1982 meeting that IDNR has entered into a memorandum of agreement with the Indiana Stream Pollution Control Board (the State agency having jurisdiction over sediment pond design and construction) whereby the specific design criteria of 30 CFR 816.46 and 817.46 will be used in the review of construction permit applications for sediment ponds (IN–0268). The Secretary interprets this to mean that permits will not be approved unless the design requirements of 30 CFR 816.46 and 817.46 are met, and the State's language clearly expresses that this is the State's intention.

The Secretary finds that Indiana rules 310 IAC 12–5–21 and 310 IAC 12–5–87, as supported by the IDNR memorandum of agreement with the Indiana Stream Pollution Control Board, are no less effective than the provisions of 30 CFR 816.46 and 817.46.

13.14 Indiana rules 310 IAC 12–5–23(c) and 310 IAC 12–5–89(c) concerning hydrologic balance and the burying and treatment of acid-forming and toxic-forming spoil require such actions to be completed "within a reasonable period of time," whereas the Federal rules at 30 CFR 816.48(c) and 817.48(c) require that such actions be completed within 30 days or less if required by the regulatory authority. Also, the aforementioned Indiana rules do not specify the procedures for temporary storage of acid-forming or toxic-forming spoil, as does 30 CFR 816.48(c) and 817.48(c).

The Director, IDNR, at the May 18–19, 1982 meeting stated that it is the policy of the Natural Resources Commission that in determining what is a reasonable time for burial or treatment of acid-forming or toxic-forming spoil, no period of time in excess of 30 days will be considered as reasonable. Further, temporary storage of spoil will be allowed only upon a finding that burial or treatment is not feasible within 30 days and will not result in any material risk of water pollution or other environmental damage. Storage will be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored will be placed on impermeable material and protected from erosion and contact with surface water. See IN–0269. These requirements are no less effective than those set forth in 816.48(c) and 817.48(c) for temporary storage.

The Secretary finds that Indiana rules 310 IAC 12–5–23(c) and 310 IAC 12–5–89(c), when read in light of the policy statement, are no less effective than 30 CFR 816.48(c) and 817.48(c).

13.15 Indiana rule 310 IAC 12–5–152 concerning steep slope variances and approximate original contour does not provide criteria no less effective than those in 30 CFR 826.15. Indiana has indicated that it intends to amend its rules. However, because the amendment is not fully promulgated, the Secretary's approval is conditioned upon the promulgation of rules which are no less effective than the requirements of 30 CFR 826.15. In addition, Indiana has agreed as a condition of approval not to permit use of the variance during the period before the regulation is changed.

13.16 Indiana rule 310 IAC 12–5–149 concerning "hilltop removal" allows exemptions from the approximate contour requirements. The Federal Act and rules do not allow such an exemption. Indiana is amending its rules to repeal this provision (IN–0269), but because the amendment repealing this provision has not been fully promulgated, the Secretary is conditioning his approval upon the satisfactory completion of this action. In addition, the State has agreed, in its letter agreeing to meet the Secretary's conditions of approval, not to issue any permits for hilltop removal during the period before the rule is repealed.

13.17 Indiana's rules 310 IAC 12–5–51 and 310 IAC 12–5–115 do not contain provisions specified in 30 CFR 816.97 (a), (c) and (d) and 817.97 (a), (c) and (d) concerning the protection of fish and wildlife, including requirements that the best technology currently available be used to minimize adverse impacts. The Director, IDNR, at the meeting of May 18–19, 1982 (See IN–0268) agreed to amend the State's program to be no less effective than the requirements of 30 CFR 816.97 and 817.97. Because the amendment has not been fully promulgated at this time, the Secretary's approval of the Indiana program is conditioned on the State's submission of a program amendment that will make the Indiana provisions no less effective than 30 CFR 816.97 and 817.97.

13.18 Indiana does not have in its rules at 310 IAC 12–5–9 and 310 IAC 12–5–75 a requirement that devices used for temporary casing and sealing of drilled holes be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities, as required by 30 CFR 816.14 and 817.14.

Under Indiana rule 310 IAC 12–5–9, the operator is responsible for activities that occur within the permit area. This responsibility necessitates permittee maintenance of temporary casings and seals throughout the duration of the permit and until bond release. The general requirements of Indiana rules 310 IAC 12–5–8 and 310 IAC 12–5–74 (the Indiana counterparts to 30 CFR 816.13 and 817.13, respectively) state that drilled holes must be managed to prevent acid or toxic water drainage from entering ground or surface waters; hence, the operator is responsible for maintenance of all drilled holes to assure not risking a water violation. For these reasons, the Secretary finds that Indiana rules 310 IAC 12–5–9 coupled with 310 IAC 12–5–8, and 310 IAC 12–5–75 coupled with 310 IAC 12–5–74, are no

less effective than 30 CFR 816.14 and 817.14.

13.19 The Indiana rules at 310 IAC 12–5–17, 310 IAC 12–5–20, 310 IAC 12–5–21, 310 IAC 12–5–83, 310 IAC 12–5–86, and 310 IAC 12–5–87 state that all drainage must pass through a siltation structure and that the best technology currently available must be used to control sediment, but do not explicitly provide that this means sedimentation ponds must be used, as do 30 CFR 816.42 and 817.42. The Director, IDNR, stated at the May 18–19, 1982 meeting that it is the policy of the Natural Resources Commission to require the use of the best technology currently available to meet the requirements of 30 CFR 816.42 and 817.42, and that the phrase "best technology currently available" will be interpreted by the State to require the use of sediment ponds. The only exceptions will be those provided in the Federal rules at 30 CFR 816.42(a)(3) and 817.42(a)(3) and case-by-case alternatives submitted to, and approved by, the IDNR and OSM as an experimental practice. The Secretary finds that Indiana's rules at 310 IAC 12–5–17, 310 IAC 12–5–20, 310 IAC 12–5–21, 310 IAC 12–5–83, 310 IAC 12–5–86, and 310 IAC 12–5–87, when read in light of this policy statement, are no less effective than 30 CFR 816.42 and 817.42.

13.20 Indiana rules 310 IAC 12–5–18 and 310 IAC 12–5–84 do not specify the design standards for diversions, as do 30 CFR 816.43 and 817.43. Instead, the Indiana rules state that diversions shall be designed using standard engineering practices and certified by a qualified registered professional engineer. At the May 18–19 meeting, the Director, IDNR, stated that it is IDNR policy to define standard engineering practices as follows: Standard engineering practice for design of temporary and permanent diversions of overland flow and streams with less than one square mile watershed in Indiana would require that: (1) temporary diversions be constructed to pass safely the peak runoff from a precipitation event with a 2-year recurrence interval, and (2) permanent diversions be constructed to pass safely the peak runoff from a precipitation event with a 10-year recurrence interval (See IN–0268). The Secretary finds that Indiana rules 310 IAC 12–5–18 and 12–5–84, when read in light of this policy statement are no less effective than the provisions of 30 CFR 816.43 and 817.43.

Finding 14

The Secretary finds that Indiana has authority under Indiana laws and regulations and the Indiana program includes the necessary provisions to implement, administer, and enforce applicable permitting requirements consistent with Subchapter G of 30 CFR Chapter VII and to prohibit surface coal mining and reclamation operations without a permit issued by the State. This finding is made under the requirements of 30 CFR 732.15(b)(2).

14.1 The Secretary found that the Indiana statute in the Indiana program submission of March 3, 1980, had omitted the requirement of Section 506(a) of SMCRA that no person shall engage in surface coal mining operations unless the person has obtained a permit issued by the regulatory authority (Finding 14.1, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has amended its statute at I.C. 13–4.1–3–1 to require that "no person may open, develop, or operate a new or previously mined or abandoned site for surface coal mining operations * * * without first holding a valid surface coal mining and reclamation permit," and, therefore, now finds the Indiana provision to be in accordance with Section 506(a) of SMCRA. See IN–0269.

14.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–5–1(b) allowed for longer term permits to be issued based on lesser showings than required by Section 506(b) of SMCRA, thus reducing public and agency review of proposed mining operations (Finding 14.2, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has amended its statute at I.C. 13–4.1–5–1(b) to require that for permit terms in excess of five years, the applicant must meet requirements consistent with those in SMCRA Section 506(b). The Secretary finds the Indiana provision to be in accordance with Section 506(b) of SMCRA. See IN–0269

14.3 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–3(a)(3) limited the public notice requirements of Sections 513 and 514 of SMCRA as required by Section 506(d)(1) of SMCRA for issuance of a renewal permit to only those permit applications held since 1970 and required the statement only on the first application with provision for updating on subsequent applications (Finding 14.3, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has amended I.C. 13–4.1–3–3(a) and (b) to remove this limitation and finds this section of the Indiana statute to be in accordance with Section 506(d)(1) of SMCRA. See IN–0269.

14.4 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–3(a)(11) allowed permit approvals when hydrologic information required by Section 507(b)(11) of SMCRA was not present (Finding 14.4, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has amended I.C. 13–4.1–3–3(a)(11) to require that the permit not be approved until the hydrologic information is available and is incorporated into the application. The Secretary finds that the Indiana provision is in accordance with the requirements of Section 507 of SMCRA. See IN–0269.

14.5 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–4(a)(1) required less information from the permit applicant than required by Section 508(a)(6) of SMCRA (Finding 14.5, 45 FR 78486, November 25, 1980) by limiting information to the life of the "permit" rather than "operations" and omitting identification of subareas. The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–3–4(a)(1) to require the same information as in Section 508(a)(6) of SMCRA. Further, the Indiana provision was amended to reflect the life of the operations rather than the permit. The Secretary finds that the Indiana provision is in accordance with the requirements of Section 508(a)(6) of SMCRA. See IN–0269.

14.6 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–4(a)(7) required an estimate of reclamation costs only if requested by the Director, IDNR, while Section 508(a)(5) of SMCRA requires such an estimate in every instance (Finding 14.6, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has amended I.C. 13–4.1–3–4(a)(7) to require the estimated cost per acre of the reclamation in every reclamation plan, which makes the State's provisions in accordance with the requirements of Section 508(a)(5) of SMCRA. See IN–0269.

14.7 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–4(a)(13) made information concerning interest in lands contiguous to the area to be covered by the permit confidential, while Section 508(a)(11) of SMCRA requires it to be public (Finding 14.7, 45 FR 78486, November 25, 1980). Indiana explained that all information pertaining to interests in land is recorded in the County Recorder's Office in the County where the land is located and is, therefore a matter of public record. Indiana further explained that the only information to be kept confidential

would be "trade secrets." The Secretary finds this to be in accordance with SMCRA Sections 508(a)(11) and 508(b), which provide that information which is not on public file shall be held in confidence by the regulatory authority.

14.8 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–6–1 omitted the phrase "and the permit" concerning performance bond, thereby allowing the possibility of a bond which is not conditioned on any special requirements in the permit, which would be contrary to the requirements of Section 509(a) of SMCRA (Finding 14.8, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending I.C. 13–4.1–6–1 to include the phrase "and the permit," thereby assuring that no bond could be allowed which is not conditioned on permit requirements. See IN–0269.

14.9 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–4–3(a)(6) limited violations to be considered to those "pertaining to air or water environmental protection" rather than to violations of SMCRA and any law, rule, or regulation of the United States, as required by Section 510(c) of SMCRA (Finding 14.9, 45 FR 78486, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending the Indiana statute at I.C. 13–4.1–4–3(a)(6) to require consideration of violations of I.C. 13–4.1 *et seq.*, SMCRA, or any law, rule, or regulation of the United States, or of any agency or department of the United States, pertaining to air or water environmental protection. See IN–0269.

14.10 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–4–3(d) appeared to allow an operator who held a permit on August 3, 1977, continually to renew and revise the permit in order to increase the acreage covered by the permit, thereby making this increased acreage subject to the prime farmland "grandfather" exemption from strict environmental protection standards. This was believed to be contrary to the provisions of Section 510(d)(2) of SMCRA (Finding 14.10, 45 FR 78486, November 25, 1980). The Secretary now finds that the earlier finding was incorrect and that the State statute provision need not be interpreted to allow increased acreage to be subject to the "grandfather" exemption. The Secretary finds that the State's statutory language is in accordance with the meaning and intent of the provisions of Section 510(d)(2) of SMCRA and that the State's rules at 310 IAC 12–3–98 regarding the determination of lands exempt from the prime farmland regulations made the State program no less effective than 30 CFR 785.17. See IN–0269.

14.11 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–3(a)(15) did not require that any waiver concerning the results of test borings and core samplings be made with respect to the specific application, and by a written determination that such results are unnecessary, and that this was contrary to the provisions of Section 507(b)(15) of SMCRA (Finding 14.11, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this deficiency by amending its statute at I.C. 13–4.1–3–3(a)(15) to reflect the requirements of Section 507(b)(15) of SMCRA. IN–0269.

14.12 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–4(a)(2) (A) and (B) limited the applicability of information required in the reclamation plan covering the condition of the land prior to any mining only to coal mining, contrary to Section 508(a)(2) (A) and (B) of SMCRA (Finding 14.12, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this deficiency by amending its statute at I.C. 13–4.1–3–4(a)(2) (A) and (B) to reflect any kind of mining rather than only coal mining. IN–0269.

14.13 The Federal rules at 30 CFR 778.15(a) and (b) and 782.15(a) require public availability of the documents granting the right of entry for the applicant to mine. The Director, IDNR, at the May 18–19, 1982 meeting explained that information concerning public availability of these documents can be found on the State's surface coal mining permit application form (p. S–6, Question I–11(d), IN–0268 and IN–0269). Further, Indiana pointed out that in its rules at 310 IAC 12–3–106(b) the applicant is required to file a copy of the complete permit application "with the recorder at the courthouse of the county where the mining is proposed to occur." The Secretary finds that in light of the above information, Indiana rule 310 IAC 12–3–106(b) is no less effective than 30 CFR 778.15(a) and (b). The Director, IDNR, at the May 18–19, 1982 meeting stated that the above permit application requirements for surface coal mining also apply to underground mining. For this reason, the Secretary finds that Indiana's provision is no less effective than 30 CFR 782.15(a).

14.14 Federal rule 30 CFR 780.12 requires information concerning existing structures. The Indiana rules do not require all of the information required by the Federal section. Indiana rule 310 IAC 12–3–42 addresses existing structures in the surface mining permit application, which requires information on existing structures. (See IN–0269, permit application, p. S–22). Indiana's definition of existing facilities includes those existing facilities for which there are design/construction performance standards (e.g. sediment ponds (and other water impoundments), coal refuse disposal sites, conveyors, rail transportation sytems, haul or access roads, diversion ditches, excess spoil disposal areas, and utility installations). The permit application requires that all structures be listed and meet the applicable performance standards of 310 IAC 12–5–5 through 12–5–71. The location of each structure is to be shown on a map, and a demonstration that each structure complies with the performance standards is required. For structures listed which do not meet the standards, Indiana requires plans and a schedule for modification or reconstruction.

The Secretary finds that, in light of the above information, Indiana's provisions are no less effective than 30 CFR 780.12.

14.15 30 CFR 780.21(a) requires that cross-section drawings be included in reclamation plans. The Indiana rule at 310 IAC 12–3–47 does not contain this requirement. However, Indiana requires cross-sections to be included in its permit application form. (See IN–0269, permit application, pages S–38, S–41, S–42, S–44 and S–45).

The Secretary finds, based on the above information, that the Indiana program is no less effective than 30 CFR 780.21(a).

14.16 The Indiana rules at 310 IAC 12–3–33 and 310 IAC 12–3–44 do not require a plan for control and treatment of surface and ground water drainage, nor do they impose quantitative limits on pollutants in the discharges as required by 30 CFR 780.21. The Director, IDNR, at the May 18–19, 1982 meeting stated that Indiana would amend its program to meet the requirements of 30 CFR 780.21(b)(1) and (2). However, because that action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on Indiana's submitting amended provisions to its program that are no less effective than the requirements of 30 CFR 780.21(b)(1) and (2).

14.17 The Indiana rules at 310 IAC 12–3–49(e) and 310 IAC 12–3–83 omit the

Mine Safety and Health Administration (MSHA) requirements as specified at 30 CFR 780.25(e) and 784.16. However, Indiana's surface coal mining permit application form requires that design plans and cross sections for the construction of each dam or embankment be approved by MSHA. (See IN–0269, permit application page S–48, Question K–2). The Director, IDNR, at the May 18–19, 1982 meeting stated that the above requirements for surface coal mining permit applications will also apply to underground coal mining. See IN–0268. Additionally, Indiana rule 310 IAC 12–3–83(a)(2) requires that all coal processing waste dams and embankments covered by 310 IAC 12–5–112 through 310 ICA 12–5–114 (counterparts to 30 CFR 817.91–93) be certified by a qualified registered professional engineer which is no less effective than 30 CFR 784.16(a)(3). Based on this information, the Secretary finds Indiana's provisions to be no less effective than 30 CFR 780.25(e) and 784.16.

14.18 Indiana rule 310 IAC 12–3–102 omits the requirement of 30 CFR 785.22(c) that no permit shall be issued for an in-situ operation unless the regulatory authority finds that the operation will be conducted in compliance with the performance standards of 30 CFR Parts 817 and 828. The Director, IDNR, at the meeting of May 18–19, 1982, stated that it is the policy of the Natural Resources Commission that no permit for in-situ processing will be approved until appropriate regulations are promulgated and approved by OSM as a state program amendment. See IN–0268. On the basis of this policy, the Secretary finds the Indiana provision to be no less effective than the Federal requirements.

14.19 Indiana rule 310 IAC 12–3–112(m) provides that no permit or permit revision application will be approved unless "the applicant has indicated in the permit application whether or not all reclamation fees required by 30 CFR 870.12 have been paid." The rule does not explicitly state that a permit or permit revision will be disapproved if the required fees have not been paid, as is stated by 30 CFR 786.19(h). The Director, IDNR, pointed out in the May 18–19, 1982 meeting that Indiana's surface coal mining permit application form will be modified to require the applicant to certify that all reclamation fees required by 30 CFR 870.12 have been paid. Further, the Director, IDNR, stated that it is the Natural Resources Commission's policy that no permit will be issued unless the permit application contains an affirmative answer to the question regarding payment of reclamation fees required by 30 CFR 870.12. See IN–0268. However, due to an oversight the modified page of the permit application form was inadvertently omitted from the form provided to OSM and which was subsequently made available for public review. Accordingly, the Secretary's approval of the Indiana program is conditioned on the State's amending its program in order to make Indiana rule 310 IAC 12–3–112(m) no less effective than 30 CFR 870.12.

14.20 30 CFR 779.25(b) requires surface mining permit applications to include cross-sections, maps, and plans showing elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in the preparation of the application. Indiana's counterpart at 310 IAC 12–3–39 requires that groundwater and surface water monitoring stations be shown, but omits air quality and fish and wildlife monitoring stations.

The Director, IDNR, at the May 18–19, 1982 meeting indicated that it is the policy of the Natural Resources Commission that whenever fish and wildlife or air quality monitoring stations are required, the permit applicant must include those stations on the cross-sections and maps and plans, prior to permit approval. See IN–0268.

The Secretary finds that in light of the policy statement of the Director, IDNR, Indiana's provision is no less effective than the requirements of 30 CFR 779.25.

14.21 SMCRA Section 510(d)(1) and 30 CFR 785.17(c) require the regulatory authority to coordinate permit approvals with the U.S. Soil Conservation Service (SCS) in cases where prime farmland may be affected, whereas Indiana's rules do not contain this requirement.

The Director, IDNR, pointed out at the May 18–19, 1982 meeting that the Indiana statute at I.C. 13–4.1–4–3(d) requires that IDNR consult with the SCS. Additionally, Indiana has a memorandum of agreement with the SCS clarifying the details of the coordination requirement. The Secretary finds that Indiana's provisions concerning consultation with the SCS on prime farmland related permit applications are in accordance with Section 510(d)(1) of SMCRA and are no less effective than 30 CFR 785.17(c).

14.22 The Indiana rules at 310 IAC 12–3–118 do not explicitly state the provision of 30 CFR 787.11(b)(2)(iv) that temporary relief may not take the form of granting a permit which has been denied. The Director, IDNR, stated at the May 18–19, 1982 meeting that it is the policy of the Natural Resources Commission that in no case shall the temporary relief granted be such as to issue the permit in whole or in part. See IN–0268. The Secretary finds that Indiana rule 310 IAC 12–3–118, when read in light of the policy statement, is no less effective than the provisions of 30 CFR 787.11(b)(2)(iv).

14.23 Indiana rules 310 IAC 12–3–25 and 310 IAC 12–3–63 limit the requirement that applicants list necessary "other licenses" to only "safety and environmental licenses," contrary to the provisions of 30 CFR 778.19 and 782.19. Indiana has proposed amendments to its rules to require the identification of all other licenses and permits.

Because these amendments have not been fully promulgated, the Secretary's approval of the Indiana program is conditioned upon Indiana's amending its program to make it no less effective than 30 CFR 778.19 and 782.19.

14.24 Indiana rules 310 IAC 12–3–37 and 310 IAC 12–3–74 omit the provisions of 30 CFR 779.22 and 783.22, requiring a narrative analysis of "the known history of any previous uses before mining." Indiana has proposed amendments to its rules which would require this information. Because these amendments have not been promulgated, the Secretary is conditioning his approval of the Indiana program upon the State amending its program to make it no less effective than 30 CFR 779.22 and 783.22.

14.25 Indiana omits the phrase "including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative land uses," from 310 IAC 12–3–48(a) concerning the reclamation plan as required by 30 CFR 780.23. In 310 IAC 12–3–48(a)(2) Indiana added the above language but, by placing it in this section, limited the requirement only to situations where a different land use was proposed rather than to all reclamation plans. Further, in 310 IAC 12–3–48(b), Indiana prefaced, and thus limited, the section to "Where a land use different from the pre-mining use is proposed * * *".

Indiana has proposed amendments to its rules which would add the above language to 310 IAC 12–3–48(a) and delete the limiting language of 310 IAC 12–3–48 (a)(2) and (b). Because these amendements have not been fully promulgated, the Secretary's approval of the Indiana program is conditioned upon the State amending its program to make it no less effective than 30 CFR 780.23.

14.26 The Indiana rules at 310 IAC 12–3–97 concerning steep slope mining and variances from approximate

original contour do not contain criteria consistent with those in 30 CFR 785.16. Indiana has agreed to amend its rules. However, because that action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on the State's amending its program to include provisions no less effective than 30 CFR 785.16.

Finding 15

The Secretary finds that Indiana has the authority and the necessary program provisions to regulate coal exploration consistent with 30 CFR Parts 776 and 815 and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(3).

15.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–7–1 and 3 did not clearly state that any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of the Indiana statute will be subject to the penalty provisions of I.C. 13–4.1–11 and 12. He found this inconsistent with Section 512(c) of SMCRA, which requires that violations of coal exploration provisions of SMCRA or the Federal rules shall be subject to the penalty provisions of Section 518 of SMCRA (Finding 15.1, 45 FR 78487, November 25, 1980). However, SMCRA Section 512(c) only applies to coal exploration activities which substantially disturb the natural land surface. Indiana has explained that coal exploration in the State which removes less than 250 tons is primarily limited to core drilling and the drilling of boreholes neither of which substantially disturb the natural land surface. *See* IN–0268. Furthermore, the Director, IDNR, at the May 18–19, 1982 meeting made a policy statement that no coal exploration in excess of 250 tons will be permitted until such time as a statutory change is made to make Indiana's penalty provisions at I.C. 13–4.1–11 and I.C. 13–4.1–12 applicable to coal exploration (IN–0268). For these reasons, the Secretary finds the Indiana program to be in accordance with SMCRA and no less effective than the Federal rules. Should Indiana wish to allow future coal exploration operations that will substantially disturb the natural land surface, or where more than 250 tons of coal will be removed, the State will then have to amend its program to be in accordance with SMCRA and no less effective than the Federal rules.

15.2 30 CFR 776.11(b)(6) requires that the notice of intent to explore, when less than 250 tons of coal will be removed, must include a description of the practices proposed to be followed to protect the environment. Indiana's rules omit this requirement.

The Director, IDNR, at the May 18–19, 1982 meeting stated that Indiana would amend its program to meet the requirements of 30 CFR 776.11(b)(6). See IN–0268. However, because that action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on Indiana submitting amendments to its program that are no less effective than 30 CFR 776.11(b)(6).

15.3 The Indiana rules do not contain a specific counterpart to 30 CFR 815.15(h), which states that each exploration hole, borehole, well or other exposed underground opening created during exploration must be covered in a manner consistent with the casing and sealing performance standards under 30 CFR 816.13–15. However, Indiana rule 310 IAC 12–3–12(a)(2) requires all holes, wells, or other exposed openings created during exploration to meet the requirements of 310 IAC 12–5–8 through 310 IAC 12–5–10 which, in turn, the Secretary finds are no less effective than the provisions of 30 CFR 816.13–15. For these reasons, the Secretary finds Indiana rule 310 IAC 12–3–12(a)(2) to be no less effective than 30 CFR 815.15(h).

15.4 Indiana rule 310 IAC 12–5–3(g) is less effective than 30 CFR 815.15(j) because the State rule exempts core drilling or drilling of boreholes in coal exploration from the requirements of 30 CFR 815.15(j). Section 512(a)(2) of SMCRA requires that performance standards be met with regard to coal exploration. The Director, IDNR, at the May 18–19, 1982 meeting stated that Indiana intends to amend its rules to require that all coal exploration be conducted in such a manner as to meet the performance standards of 310 IAC 12–5–21 pertaining to siltation structures. However, because that action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on the State's submission of a program amendment in accordance with Section 512(a)(2) of SMCRA and are no less effective than 30 CFR 815.15(j).

Finding 16

The Secretary finds that Indiana has authority under State laws and regulations and the State program includes the necessary provisions to require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR Parts 707. This finding is made under the requirements of 30 CFR 732.15(b)(4).

Finding 17

The Secretary finds that Indiana has authority under State laws and regulations and the State program includes the necessary provisions to enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian land within Indiana in accordance with the requirements of Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(4).

17.1 In the Indiana program submission of March 3, 1980, the Secretary found that the Indiana statute, regulations, and narrative did not give field inspectors the authority and require them to issue notices of violation and cessation orders. This is contrary to Section 521 of SMCRA and 30 CFR Part 843 (Finding 17.1, 45 FR 78487, November 25, 1980). The Attorney General of Indiana states that the Director, IDNR, has the authority to delegate his duties to other employees of IDNR by virtue of I.C. 13–4.1–2–2(c). See IN–0260. The State has provided a policy statement which assures that the Director, IDNR, has the authority to issue notices of violation and cessation orders, that he has the authority to delegate this authority to field inspectors, and that he has done so. See IN–0265. The Secretary accepts the Attorney General Opinion and policy statement as resolving this issue.

17.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–1 failed to contain the requirements of Section 517(b)(1) (B) (C) (D) and (E) of SMCRA that the regulatory authority require the permittee to make monthly reports, install, use, and maintain monitoring equipment or methods, evaluate results, and provide other reasonable and necessary information (Finding 17.2, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this deficiency by amending its statute at I.C. 13–4.1–11–1 to require the permittee to make monthly reports, install, use, and maintain monitoring equipment or methods, evaluate results and provide other reasonable and necessary information. See IN–0269.

17.3 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–3(a) (11) and (14) was inconsistent with Section 517(b)(2) of SMCRA because it

failed to contain the hydrologic monitoring requirements for operations which remove or disturb strata that serve as aquifers (Finding 17.3, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 13–4.1–11–1.5 to require such hydrologic monitoring. See IN–0269.

17.4 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–1(b)(3) was inconsistent with Section 517(b)(3)(A) of SMCRA because it failed to include right of entry to premises where records are kept (Finding 17.4, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–11–1(b)(3)(A) to allow the Director, IDNR, or his authorized representatives to have the right of entry "to, upon, or through any surface coal mining and reclamation operations or any premises in which any records * * * are located." See IN–0269.

17.5 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4–11–1(b)(1) was inconsistent with Section 517(b)(3)(B) of SMCRA because it provided for a delay in allowing access to records (Finding 17.5, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–11–1(b)(1) to allow access to records "without delay." See IN–0269.

17.6 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–1(b)(3) was inconsistent with Section 517(b)(3) of SMCRA because it was applicable to "surface coal mining and reclamation premises," an undefined term, while SMCRA Section 517(b)(3) is applicable to the specifically defined term, "surface coal mining and reclamation operations." The Secretary was concerned that inspectors have access to all parts of a mining and reclamation operation in order to be able to carry out their duties (Finding 17.6, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–11–1(b)(3) to reflect "surface coal mining and reclamation operations" rather than "surface coal mining and reclamation premises." See IN–0269.

17.7 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–2(b) was inconsistent with Section 521(a)(1) in that while it would allow persons to accompany the Director on an inspection, it would absolve the operator or permittee from any liability (Finding 17.7, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–11–2(b) to delete the language absolving the operator or permittee from liability. See IN–0269.

17.8 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–3(a) and I.C. 13–4.1–11–4 was inconsistent with Section 517(e) of SMCRA in that it did not require that each inspector, upon detection of each violation, notify the operator in writing and report in writing any such violation to the regulatory authority (Finding 17.8, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 13–4.1–11–3(a) and I.C. 13–4.1–11–4 to give the inspector the authority to and require that he report notices of violation in writing to the operator and the regulatory authority. See IN–0269.

17.9 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–3(b) was inconsistent with the public participation provisions of Section 517(f) of SMCRA because it failed to require that the materials referenced in this section be made immediately and conveniently available to the public at central and sufficient locations in the county, multi-county and state areas of mining (Finding 17.9, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this deficiency by amending its statute at I.C. 13–4.1–11–3(b) to reflect that "a copy of any record report, inspection material, or other information obtained under this chapter * * * shall be available to the public" at specific locations. See IN–0269.

17.10 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute omitted the requirements of Section 517(h) of SMCRA which allows any person adversely affected by a surface coal mining operation the right to notify the regulatory authority of any violation, the right to a review of a refusal to issue a citation, the right to notify the regulatory authority of a failure to inspect, and the right to written reasons for the final determination (Finding 17.10, 45 FR 78487, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 13–4.1–11–11 (g) and (h) to provide all of the above-stated rights to such persons. See IN–0269.

17.11 The Indiana statute at I.C. 13–4.1–12–2 omits the requirements of Section 518(e) of SMCRA that a failure or refusal to comply with an order is the basis for a possible criminal conviction and penalty. The Attorney General of Indiana explained that this section of the State statute provides adequate authority to criminally punish a violation of "a provision of * * * any order," because "the article, permit, and orders clearly, in appropriate and numerous circumstances require an affirmative act on the part of persons subject to the jurisdiction of the program." See IN–0260. The Director, IDNR, at the May 18–19, 1982 meeting (IN–0268) clarified the Attorney General's opinion by pointing out first, that the correct citation should be I.C. 13–4.1–12–2 rather than I.C. 13–4.1–12.2 and further, that the statutory phrase "a provision of * * * any order," means any order issued under the Indiana statute (I.C. 13–4.1 *et seq.*). The Secretary finds that with this clarification, the Indiana provisions are in accordance with the requirements of Section 518(e) of SMCRA.

17.12 30 CFR 843 requires that the regulatory authority have the authority to, and will take action for, violations of permit conditions. The Director, IDNR, at the meeting on May 18–19, 1982 (IN–0268) pointed out that the State Attorney General's opinion shows that the State has the authority to and will take action for violations of permit conditions. See IN–0268. The Secretary finds that with this explanation, the Indiana provision is no less effective than the requirements of 30 CFR 843.

17.13 The Indiana rule at 310 IAC 12–6–6.5(a)(1) limits the IDNR Director's ability to make a determination that a pattern of violations exists or has existed to "only on the basis of an inspection." Further, Indiana omits the phrase "lack of diligence" from its definition of "unwarranted failure to comply" concerning the failure of the permittee to prevent the occurrence of any violation, and also omits a violation due to indifference or lack of reasonable care. It was also unclear when the Indiana Natural Resources Commission must act on a permit suspension or revocation.

At the meeting of May 18–19, 1982 (IN–0268), the Director, IDNR, stated that Indiana intends to amend its program to make this section no less effective than 30 CFR 843.13. However, because this action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on the State's submission of a program amendment making the program no less effective than the above provisions.

17.14 Indiana rule 310 IAC 12–6–16 does not state whether or not any person can attend and participate in an assessment conference. The Director, IDNR, stated that it is the State's policy that since assessment conferences are not governed by I.C. 4–22 *et seq.*, any person can attend and participate in such conferences (IN–0265).

The Secretary finds that with this policy statement, Indiana's provision is no less effective than the requirements of 30 CFR 845.18.

17.15 Indiana rule 310 IAC 12–5–16 does not allow the conference officer the authority to increase a penalty, as is required by 30 CFR 845.18(b)(3). At the meeting of May 18–19, 1982 (IN–0268), the Director, IDNR, stated that Indiana intends to amend its program to make this rule no less effective than the requirements of 845.18(b)(3). However, because that change has not been made at this time, the Secretary's approval of the Indiana program is conditioned on Indiana amending its program to be no less effective than 30 CFR 845.18(b)(3).

17.16 The Indiana rule at 310 IAC 12–6–1 does not explicitly state the requirement of 30 CFR 840.11 that an inspector collect evidence of "any violation of those conditions or violations observed." The Director, IDNR, explained at the May 18–19, 1982 meeting (IN–0268) that the Indiana rule at 310 IAC 12–6–1(a)(3) does require inspections and the prompt filing of inspection reports "adequate to enforce the requirements of this program." The Director, IDNR, further explained that the inspector is required to collect all evidence sufficient to enforce the requirements of the program.

The Secretary finds that on the basis of this explanation the Indiana provision is no less effective than 30 CFR 840.11.

17.17 Indiana rule 310 IAC 12–6–6(e) provides that the Director, IDNR, can accept information obtained from an appropriate government agency when making a determination that a violation has been abated. The Director, IDNR, stated at the May 18–19, 1982 meeting (IN–0268) that for the purposes of 310 IAC 12–6–6(e) the regulatory authority would rely on the following government agencies for those areas for which they have primary jurisdiction:

The Mine Safety and Health Administration for the purposes of 30 CFR 1–100.

The Indiana Air Pollution Control Board for purposes of the Indiana Air Pollution Control Law.

The Indiana Stream Pollution Control Board for purposes of the Indiana Stream Pollution Control Law.

The Secretary finds that with this additional explanation, the Indiana provisions are no less effective than the requirements of 30 CFR 843.12(e).

Finding 18

The Secretary finds that Indiana has the authority under enacted Indiana laws and regulations and that the Indiana program submission includes the necessary provisions to implement, administer and enforce a system of performance bonds and liability insurance or other equivalent guarantees consistent with the requirements of Subchapter J of 30 CFR chapter VII except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(6).

18.1 The Secretary found that in the Indiana program submission on March 3, 1980, the Indiana statute at I.C. 13–4.1–6–7 was inconsistent with Section 519(a)–(g) of SMCRA because it made optional the requirement that local planning agencies and others be notified of bond release applications (Finding 18.1, 45 FR 78488, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 13–4.1–6–7(b) to make such notice mandatory. The Secretary also finds that Indiana's requirement that notice be provided to "appropriate local governmental bodies, planning agencies, sewage and water treatment authorities or water companies in the county in which the surface coal mining operation is located * * *" is in accordance with Section 519(a) of SMCRA, which requires that such notice be made to the municipality in which a surface coal mining operation is located. See IN–0269.

18.2 The Indiana rules at 310 IAC 12–4–3(e) and 310 IAC 12–3–4–7(a) do not require the regulatory authority to forfeit the bond if all attempts to ensure completion of the reclamation plan by the operator have failed, unlike 30 CFR 800.13(f) and 808.11–12. The Director, IDNR, at the May 18–19, 1982 meeting (IN–0268) stated that it is Indiana's policy to use its discretion to require forfeiture of all or part of the bond in all cases where attempts to ensure that the operator complete reclamation have failed.

The Secretary finds that based on this policy statement, Indiana rules 310 IAC 17–4–3(e) and 310 IAC 12–4–17(a) are no less effective than the provisions of 30 CFR 800.13(f), and 808.11–12.

18.3 Indiana rule 310 IAC 12–4–5 does not specifically prohibit the disturbance of surface areas, underground shafts, tunnels, etc. prior to the IDNR's acceptance of the performance bond, as does 30 CFR 800.11(b). The Director, IDNR, explained at the May 18–19, 1982 meeting that no permit can be issued prior to an acceptable bond being posted and no disturbance would be allowed until a permit is issued (IN–0268). The Secretary finds that Indiana rule 310 IAC 12–4–5, when read in light of this policy statement, is no less effective than the provisions of 30 CFR 800.11(b).

18.4 Indiana rule 310 IAC 12–4–5(b) allows for incremental bonding, a system allowed by the Federal rules under 30 CFR 800.11(b)(2). While the Indiana rule does not detail all the specific information concerning how the requirements of 30 CFR 800.11(b)(2) will be met, the Secretary finds that Indiana has provided the necessary information elsewhere in its rules and the surface coal mining permit application form (IN–0268). Specifically, Indiana rules 310 IAC 12–3–44(b)(3) and 310 IAC 12–3–89 (b) and (c) require that maps be submitted showing "each area of land for which a performance bond will be posted * * *". Furthermore, the Director, IDNR, explained at the May 18–19, 1982 meeting, that operators will be required to show all increments proposed throughout the duration of the permit prior to permit approval (IN–0268). The surface coal mining permit application also sets forth bonding amount requirements for each increment. For these reasons, the Secretary finds that Indiana rule 310 IAC 12–4–5(b) when read in light of the other State regulations at 310 IAC 12–3–44(b)(3) and 310 IAC 12–3–89(b)(3) and the information and other requirements contained in the permit application, ensure that Indiana's incremental bonding system is no less effective than the provisions of 30 CFR 800.11(b)(2).

18.5 Indiana rule 310 IAC 12–4–5(c) does not require replacement of a bond for long-term operations 120 days prior to the expiration of the existing permit, as called for by 30 CFR 801.13(b). The Director, IDNR, at the May 18–19, 1982, meeting stated that Indiana intends to amend its program to meet the 120 day bond replacement requirement (IN–0268). However, because this action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on the State's submission of a program amendment no less effective than 30 CFR 801.13(b).

18.6 Indiana rule 310 IAC 12–4–6(c) includes a blanket bonding provision which OSM originally considered to be an alternative bonding system. At the May 18–19, 1982, meeting, the Director, IDNR explained that the State rule does not prescribe an alternative bonding system because even though one bond could apply to all operations of one company, all bonding requirements will

apply to each operation, including the submittal of the required bond amount per acre for each permit (IN–0268). Based on the policy statement, the Secretary finds that Indiana rule 310 IAC 12–4–6(c), when read in light of the above explanation, provides for a bonding system that is no less effective than the bonding system requirements of 30 CFR 800.13.

18.7 Indiana rule 310 IAC 12–4–7 provides for separate bonding of areas requiring extended liability, but does not explicitly specify the criteria contained in 30 CFR 805.13(c)(1) and (2) used to determine whether extended liability should apply to only a portion of the original bonded area. The Director, IDNR, stated at the May 18–19, 1982 meeting that it is the State's policy that separate bonding will only be approved by the Director pursuant to 310 IAC 12–4–7, and provided that extended liability will only apply to a portion of the original bonded area and that such portion: (1) is not significant in extent in relation to the entire area under the bond; and (2) is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area (IN–0268). The Secretary finds that Indiana rule 310 IAC 12–4–7, when read in light of this policy statement, is no less effective than 30 CFR 805.13(c).

18.8 Indiana rule 310 IAC 12–4–8(c) imposes a maximum bond per acre of $10,000, whereas Section 509(a) of SMCRA and 30 CFR 805.12 require bond coverage adequate to cover the costs of reclamation. The Director, IDNR, explained at the May 18–19, 1982 meeting that Indiana has a State fund which the State intends to use to supplement the bond coverage prescibed by its rule at 310 IAC 12–4–8(c) (IN–0268). The State fund is based on an annual operator's fee consisting of $2,000 for each permit application and $1,000 annually thereafter due on the anniversary date of permit issuance. The Director, IDNR explained further that approximately $300,000 is contained presently in the State fund. The State provided additional narrative explaining the projected health of the fund (IN–0268) which the Secretary has carefully considered. Based on the supplemental information concerning the State fund, the Secretary finds that the bonding limits provided by Indiana rule 310 IAC 12–4–8(c) as supplemented by the State fund will provide bonding requirements that are in accordance with Section 509(a) of SMCRA and no less effective than the provisions of 30 CFR 805.12. However, the Secretary will, through OSM's monitoring role under the permanent program, carefully evaluate the health of Indiana's State fund and the overall adequacy of Indiana's bond coverage. Should the Secretary later determine that the requirements of Section 509(a) of SMCRA and 30 CFR 805.12 are not being met, additional requirements may be placed on Indiana to take corrective actions at that time.

18.9 Indiana rule 310 IAC 12–4–10(e)(1) contains a typographical error in that the phrase "suspension of revocation of the surety's right to do business" should read "suspension or revocation of the surety's license to do business." The Director, IDNR stated that Indiana intends to correct the typographical error (IN–0268). However, because that action has not been completed at this time, and because the error could have a substantive effect, the Secretary's approval of the Indiana program is conditioned on the State's submission of a program amendment no less effective than 30 CFR 806.12(e)(6)(i).

18.10 Indiana rule 310 IAC 12–4–10(e)(2) does not explicitly state provisions consistent with all of 30 CFR 806.12(e)(6) concerning replacement of bond coverage due to the insolvency of the surety. 30 CFR 806.12(e)(6)(iii) provides that upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license, the permittee shall be deemed to be without bond coverage in violation of 30 CFR 800.11(b). The Federal rule requires that the regulatory authority issue a notice of violation against any operator who is without bond coverage and that the notice shall specify a reasonable period to replace bond coverage not to exceed 90 days.

The Director, IDNR, stated at the May 18–19, 1982, meeting that Indiana rule 310 IAC 12–4–10(e)(2) requires that any operator who is without bond coverage shall replace bond coverage within a reasonable period not to exceed 90 days (IN–0268). Additionally, the Director, IDNR, indicated that as a matter of policy, any operator who is without bond coverage shall be deemed to be in violation of Indiana rule 310 IAC 12–4–5, the State's counterpart to 30 CFR 800.11(b). In that event, the Director, IDNR, will issue a notice of violation against the operator. The notice will specify a reasonable period, not to exceed 90 days, to replace bond coverage. If such a notice of violation is not abated in accordance with the schedule, a cessation order will be issued.

The Secretary finds that Indiana rule 310 IAC 12–4–10(e)(2) as amplified by the policy statement, is no less effective than the provisions of 30 CFR 806.12(e)(6)(iii).

18.11 The Indiana rules do not specifically consider seasonal effects on reclamation results in order to properly evaluate reclamation, as in 30 CFR 807.11(a)(1). For example, Indiana rule 310 IAC 12–4–16(b) requires the regulatory authority to inspect within 30 days, and does ot specifically require an extension of that time due to weather, as in 30 CFR 807.11(d). The intent of the Federal rules is to ensure that weather and seasonal conditions are appropriate so that proper inspections and evaluations of revegetation can be made prior to bond release. The Director, IDNR, stated at the May 18–19, 1982, meeting that it is Indiana's policy that the submittal of an application for bond release during a period which would prevent an adequate inspection being made to validate the application would cause the application to be disapproved because a finding could not be made that bond release requirements have been met. IN–0268.

The Secretary finds that Indiana rule 310 IAC 17–4–16(b), when read in light of this policy statement, is no less effective than the provisions of 30 CFR 807.11(a)(1) and (d).

18.12 Indiana rule 310 IAC 12–4–16(a) does not require that the advertisement published by the bond release applicant contain notice of the public right of participation, thus making the State provision less effective than 30 CFR 807.11(b)(7). The Director, IDNR, at the May 18–19, 1982, policy meeting stated that Indiana intends to amend its rule at 310 IAC 12–4–16(a) to require that "such advertisement shall also state that written comments, objections, and requests for a public hearing or informal conference may be submitted to the IDMR, provide the IDNR's address, and the closing date by which comments, objections, and requests must be received." (IN–0268). However, because that action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on the State's submittal of an amendment consistent with 30 CFR 807.11(b)(7).

18.13 Indiana rule 310 IAC 12–4–16(b) does not contain a provision to allow the surface owner, agent or lessee to participate at the bond release inspection, as required by 30 CFR 807.11(d). The Director, IDNR, at the May 18–19, 1982 meeting (IN–0268) stated that it is the policy of the IDNR that any surface owner, agent or lessee may accompany the State inspector and participate in the bond release inspection pursuant to 310 IAC 12–4–16(b).

The Secretary finds that Indiana rule 310 IAC 12–4–16(b), when read in light of the policy statement, is no less effective than 30 CFR 807.11(d).

Finding 19

The Secretary finds that the state regulatory authority has the authority under State laws and regulations to provide criminal and civil sanctions for violations of State laws, regulations and conditions of permits, and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA and consistent with 30 CFR Part 845 and the same or similar procedural requirements, except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(7).

19.1 and 19.2 In the Indiana program submission of March 3, 1980, the State statute at I.C. 13–4.1–12–1 was inconsistent with SMCRA Section 518(a), (c) and (g). (Findings 19.1 and 19.2, 45 FR 78488, November 25, 1980.) The State statute failed to provide a civil penalty of $5,000 per violation and it was unclear whether it provided criminal fines as stringent as those in SMCRA. The State amended its statute at I.C. 13–4.1–12–1(b) to allow civil penalties of up to $5,000 per violation. The State's statute does not allow criminal penalties of up to $10,000, as does SMCRA, using the $5,000 figure instead. However, the Secretary finds that the State program is in accordance with SMCRA because where, for instance, a criminal violation were to last five days, the operator's total liability under SMCRA would be $35,000 ($5,000 per day civil penalty, plus $10,000 criminal penalty) while under Indiana's system, the operator's total liability would be $30,000 ($5,000 per day civil penalty plus $5,000 criminal penalty). Although these penalty amounts are not identical, they are for all practical purposes equivalent in stringency because fines this large have not been and are not likely to be assessed

19.3 In the Indiana program submission of March 3, 1980, the Secretary found that the Indiana statute at I.C. 13–4.1–12–1(b) was inconsistent with Section 518(h) of SMCRA because it provided that the allotted time period for the correction of a violation and, therefore, the issuance of a cessation order for non-abatement extends "until all proceedings challenging the violation are final" (Finding 19.3, 45 FR 78388, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 13–4.1–12–1(b) to provide for the time period for abatement to be in accordance with Section 518(h) of SMCRA. See IN–0269.

Further, the Indiana rules at 310 IAC 12–6–6(f) allow an extension of the period for abatement under a notice of violation beyond 90 days under circumstances not allowed by 30 CFR 843.12. Indiana has agreed to amend its program to make its provision no less effective than 30 CFR 843.12(f). See IN–0268. However, because this action has not been completed, the Secretary's approval of the Indiana program is conditioned on Indiana's amending its program to make its provision no less effective than 30 CFR 843.12(f).

Specifically, regarding circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days, Indiana must: (1) limit to climatic conditions the circumstance where abatement within 90 days would cause more environmental harm than it would prevent, and (2) delete Subsection (f)(6) relating to circumstances where abatement could create an imminent danger.

Indiana's reference to a labor dispute as a basis for the extension, rather than a strike, as in the Federal rule, is in effect equivalent to the Federal rule because the dispute must make compliance within 90 days impossible, and nothing short of a strike could do this. Further, Indiana must promulgate regulations which are no less effective than 30 CFR 843.12(h), (i) and (j), or otherwise amend its program to accomplish the same result. These subsections describe the showing required of a permittee in requesting an abatement period exceeding 90 days, contain a right of administrative appeal in accordance with the regulations at 43 CFR 4, and provide a maximum abatement extension of 90 days per request.

Additionally, Indiana rules contain no provision requiring the issuance of a cessation order where the operator fails to meet an interim step as required under 30 CFR 843.12(d). Indiana has agreed to amend its rule at 310 IAC 12–6–6(d) to require the issuance of a cessation order in such instances. See IN–026. However, because this action has not been completed, the Secretary's approval of the Indiana program is conditioned on Indiana's amending its program to make its provision no less effective than 30 CFR 843.12(d).

Finally, Indiana rule 310 IAC 12–6–6(b)(4) limits the issuance of a notice of violation to surface coal mining and reclamation operations, omitting coal exploration operations that are included under 30 CFR 843.12(b)(4). The Secretary finds that the Indiana rule is no less effective than 30 CFR 843.12(b)(4) because the kinds of coal exploration operations covered under a State program are limited by 30 CFR 840.1 to coal exploration operations which substantially disturb the natural land surface. Indiana has stated that coal exploration operations in Indiana are primarily limited to core drilling and the drilling of boreholes which do not substantially disturb the natural land surface. Should Indiana desire to allow coal exploration operations that will substantially disturb the natural land surface to be conducted in the future, the State will then have to amend its program to be in accordance with SMCRA and no less effective than the Federal rules. Also, see Finding 15.1.

19.4 In the Indiana program submission of March 3, 1980, the Secretary found that the Indiana statute at I.C. 13–4.1–12–4 was inconsistent with Section 518(f) of SMCRA in that it was not clear that the violation of a permit condition was covered in this section (Finding 19.4, 45 FR 78488, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–12–4 to cover violations of permit conditions. See IN–0269.

19.5 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–12–1(b) was inconsistent with Section 518(h) of SMCRA because it failed to provide a minimum penalty of $750 per day for each day during which a failure to abate a violation continues (Finding 19.5, 45 FR 78488, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–12–1(b) to provide for a penalty of $750 for each day during which such failure or violation continues. See IN–0269. In amending its statute the State also inserted the phrase "if a civil penalty is assessed" with respect to the imposition of the $750 per day penalty. However, Indiana rule 30 IAC 12–6–13 provides that the penalty will be assessed in every case, so Indiana's program is in accordance with SMCRA and no less effective than the Federal rules.

19.6 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–10 did not meet the requirements of Section 521(c) of SMCRA because it could be construed to require an affirmative act of violation, whereas the Federal law clearly authorizes criminal and civil actions for acts of omission as well (Finding 19.6, 45 FR 78488, November 25, 1980). The Secretary now

finds that the State has corrected this deficiency by amending its statute at I.C. 13-4.1-11-10 to include the phrase "or fails or refuses to comply with." See IN-0269.

Finding 20

The Secretary finds that the State regulatory authority has authority under State laws and regulations to issue, modify, terminate, and enforce notices of violations, cessation orders, and show cause orders in accordance with Section 521 of SMCRA (30 U.S.C. 1271) and the requirements of Subchapter L of 30 CFR Chapter VII, including the same or similar procedural requirements, except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(8).

20.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 14-4.1-11-5(a) was inconsistent with Section 521(a)(2) of SMCRA in that it did not require that a cessation order be issued whenever it is determined that a "condition or practice" creates an imminent danger to the health or safety of the public, or is causing a significant, imminent environmental harm (Finding 20.1, 45 FR 78488, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this deficiency by amending its statute at I.C. 13-4.1-11-5(a) to require that a cessation order be issued whenever "any condition or practice exists * * * which creates an imminent danger to the health or safety of the public or is reasonably expected to cause significant environmental harm." See IN-0269.

20.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13-4.1-11-2 was inconsistent with Section 521(a)(2) of SMCRA in that it limited the authority to issue, modify, vacate, and terminate notices of violation and cessation orders to only the Director, IDNR, rather than extending this authority to field inspectors (Finding 20.2, 45 FR 78488, November 25, 1980). The Secretary now finds that this has been satisfactorily resolved. See Finding 17.1 above.

20.3 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana Statute at I.C. 13-4.1-11-6 was inconsistent with Section 521(a)(4) of SMCRA because it failed to apply to violations of permit conditions (Finding 20.3, 45 FR 78488, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this problem by amending its statute at I.C. 13-4.1-11-6 to reflect violations of any permit conditions. See IN-0269.

Finding 21

The Secretary finds that Indiana has the required authority under enacted Indiana laws and regulations and that the Indiana program submission includes required provisions for the designation of areas as unsuitable for surface coal mining consistent with Subchapter F of 30 CFR Chapter VII except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(9).

21.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13-4.1-14-4 and 5 was inconsistent with Section 522(a) of SMCRA by not providing for a planning process separate from the petition process and by not providing for a data base and inventory system (Finding 21.1, 45 FR 78488, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute to add I.C. 13-4.1-14-1(c), which is in accordance with Secton 522(a)(1) of SMCRA (IN-0269).

21.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13-4.1-14-2 was inconsistent with Section 522(c) of SMCRA because it placed a burden on the petitioner to establish allegations of unsuitability rather than merely to submit evidence which tends to establish the allegations, as under the Federal statute. (Finding 21.1, 45 FR 78488, November 25, 1980). The Secretary now finds that Indiana partially satisfied this deficiency by amending its statute at I.C. 13-4.1-14-2(b), which governs intervenors. However, the required change was not made to Subsection (a) of that provision, which governs petitioners. The Director, IDNR, at the May 18-19, 1982 meeting stated that Indiana would amend its statute to meet the requirements of Section 522(c) of SMCRA. However, because that action has not been completed at this time, the Secretary's approval of the Indiana program is conditioned on Indiana submitting amended provisions to its statute that are in accordance with the requirements of Section 522(c) of SMCRA and are no less effective than 30 CFR 74.13(b)(2).

21.3 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana Administrative Adjudication Act (AAA) provided for adjudicatory hearings rather than the legislative hearing required by 30 CFR 764.17 (Finding 21.2, 45 FR 78488, November 25, 1980). Section I.C. 13-4.1-14-2 of the Indiana statute (referencing I.C. 4-22-1) and 310 IAC 12-2-8(a) of the Indiana rules provide for adjudicatory hearings rather than the legislative type of hearings provided for by 30 CFR 764.17(a). Further, the Indiana rules do not specify that consideration will be given to all relevant information collected or prepared or received by the regulatory authority in reaching decisions on petitions to designate lands unsuitable as required by 30 CFR 764.19(a), nor do the Indiana rules provide for the right of any person to intervene up to within three days prior to the hearing, as required by 30 CFR 764.15(c). At the May 18-19, 1982, meeting, the Director, IDNR stated that its hearing officers will ensure that intimidation of non-expert witnesses will not be allowed during cross-examination, nor will such witnesses otherwise be dissuaded from participating at hearings (IN-0268). Additionally, the Attorney General of Indiana stated that Indiana's designation of a hearing procedure does not strip the hearing of its "public" nature, as required by SMCRA, but rather operates as a safeguard against arbitrary, capricious and illegal actions. The Attorney General added that the public's right to participate is guaranteed by the statute's intervenor provisions in Subsection (b), which ensure an orderliness fitting for public discussion and inquiry into the issues involved in the particular petition. The Secretary has carefully considered whether Indiana's hearing format and structure meet the public participation requirements of SMCRA. The Secretary has determined that Indiana has provided adequate procedural safeguards to ensure fair hearings that are no less effective than the hearings provided for by 30 CFR 764.17(a). The Secretary is approving this provision based on the understanding that intimidation of non-expert witnesses will not be allowed. However, the Secretary will continue to monitor this during monitoring and evaluation of the Indiana program, and if he finds that witnesses are being harassed or intimidated, the State will be required to amend its program.

With respect to consideration of relevant information in reaching decisions on petitions to designate lands unsuitable, the Director, IDNR, stated at the May 18-19, 1982 meeting that Indiana has proposed an amendment to its rules at 310 IAC 12-2-9(b) to provide for the Director, IDNR, to use the information contained in the data base and inventory system in reaching decisions on petitions to designate lands unsuitable as required by 30 CFR 764.19(a), and will initiate an amendment to the Indiana rules at 310

IAC 12–2–7(c) to allow intervention by persons up to three days before a hearing to meet the requirements on 30 CFR 764.15(c). However, because these actions have not been completed at this time, the Secretary's approval of the Indiana program is conditioned on Indiana's submittal of program amendments that are in accordance with Section 522 of SMCRA and no less effective than 30 CFR 764.15(c) and 764.19(a).

21.4 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–14–1(a) was inconsistent with section 522(e) of SMCRA because the Indiana phrase "surface coal mining and reclamation" appeared to prohibit reclamation activities on lands covered by that section (Finding 21.3, 45 FR 78488, November 25, 1981). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 12–4.1–14–1(a) to delete the phrase "and reclamation." the State statute is now in accordance with Section 522(e) of SMCRA.

21.5 The Indiana rules at 310 IAC 12–2–7(b)(2) provide that the Director, IDNR, shall notify the general public of the receipt of a petition to designate lands unsuitable for mining and request submissions of relevant information by newspaper advertisements to be published within five weeks after accepting the petitions for further processing. Under 30 CFR 764.15(b)(2) the newspaper advertisements are to be published within three weeks after the determination that a petition is complete. The Secretary finds that the additional two-week interval does not render the Indiana provisions less effective than the requirements of 30 CFR 764. The intent of 30 CFR 764.15(b)(2) is to provide adequate public notice of the petition and to allow adequate time in which persons may participate in the designation process by providing information. The Indiana rule at 310 IAC 12–2–7(b)(2) prescribes the publication of the newspaper advertisement with the same frequency and in the same locations as in 30 CFR 764.15(b)(2). Further, under Indiana rule 310 IAC 12–2–9(b), the time period for the regulatory authority to reach a final decision on a petition is the same as that required by 30 CFR 764.19(b), i.e., within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the petition accepted for further processing. The Secretary interprets the phrase "accepted for further processing" to equate to the Federal language of "receipt of the complete petition." For these reasons, the Secretary finds Indiana rule 310 IAC 12–2–7(b)(2) to be no less effective than 30 CFR 764.15(b)(2) in meeting the intent and purposes of Section 522 of SMCRA.

Finding 22

The Secretary finds that Indiana has authority under enacted laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and that the Indiana program submission has provisions for public participation in the development, review, and enforcement of State regulations and the State program, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(10).

22.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–5–4 was inconsistent with Section 506(d) of SMCRA by omitting the public notice requirements with regard to permit renewal (Finding 22.1, 45 FR 78489, November 25, 1980). The Secretary now finds that the State has sufficiently corrected this problem by amending its statute at I.C. 13–4.1–4–1 to insert "renewal," thus making all of the public notice requirements applicable to applications for permit renewals. See IN–0269.

22.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–4(A)(B) was inconsistent with Section 508(a)(11) of SMCRA in that it made information confidential which is public under the Federal section (Finding 22.2, 45 FR 78489, November 25, 1980). The Secretary now finds that the State has corrected this problem. The reference to the Indiana statute cited in the Secretary's initial decision was incorrect. Indiana addresses the issue of public availability of application information under I.C. 13–4.1–3–4(a)(13), and the Secretary finds in Finding 14.7 above that it is in accordance with Section 508(a)(11) of SMCRA.

22.3 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–5–5(b) was inconsistent with Section 511(a)(21) of SMCRA by not requiring that any revisions which proposed significant alterations in the reclamation plan shall at a minimum be subject to public notice and hearing requirements (Finding 22.3, 45 FR 78489, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–5–5(b) to reflect that "any revisions which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements." See IN–0269.

22.4 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–4–1 was inconsistent with Section 513(a) of SMCRA in that it omitted the requirement that the applicant submit a copy of his advertisement to the regulatory authority. This Indiana section also did not require that the advertisement contain the "ownership, precise location, and boundaries of the land to be affected" (Finding 22.4, 45 FR 78489, November 25, 1980). The Secretary now finds that the State has corrected this problem. See IN–0269. When the provisions of I.C. 13–4.1–3–3(a)(6) are read together with I.C. 13–4.1–4–1, it is evident that the Indiana provisions are in accordance with Section 513(a) of SMCRA.

22.5 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–4–5 omitted the requirement of Section 514(f) of SMCRA that appeals filed under this section must be in accordance with Section 526(a)(2) of SMCRA, which provides a 30-day period for judicial review (Finding 22.5, 45 FR 78489, November 25, 1980). The Secretary finds the Indiana provisions acceptable for the reasons set forth below in Finding 27.1.

22.6 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11(3)(b) was inconsistent with Section 517(f) of SMCRA because the locations and availability of the records, reports, inspection materials and information required by the Indiana statute were insufficient and not consistent with the Federal requirements in that Indiana only required this information to be available "at the Department" and not in sufficient locations so that they are conveniently available to residents in the area of mining (Finding 22.6, 45 FR 78489, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–11(3)(b) to require that this information be available at the office of the County Recorder in the appropriate county as well at the IDNR. See IN–0269.

22.7 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–6–7 was inconsistent with Section 519(a)–(g) of SMCRA because it made optional the requirement that local planning agencies and others be notified of bond release applications (Finding 22.7, 45 FR

78489, November 25, 1980). The Secretary now finds that the State has corrected this problem by amending its statute at I.C. 13–4.1–6–7 to require the Director, IDNR, to notify local governmental bodies, etc. See IN–0269. (See Finding 18.1 above.)

22.8 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana Administrative Adjudication Act (I.C. 4–22–1–21) was inconsistent with Section 519(h) of SMCRA because it failed to authorize the inspection of land affected and other surface coal mining operations carried on by the applicant in the general vicinity (Finding 22.8, 45 FR 78489, November 25, 1980). The Secretary now finds the State has corrected this problem by amending its statute at I.C. 13–4.1–6–7(e) to include such inspection authority. See IN–0269.

22.9 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–11–11 was inconsistent with Section 520 of SMCRA as follows:

(1) The State failed to allow the Secretary of the Interior to intervene as of right in a suit to compel compliance with SMCRA. The Secretary now finds that the State has corrected this deficiency by amending its statute at I.C. 13–4.1–11–11(d) to provide that the Secretary may intervene in any suit brought under I.C. 13–4.1–11–11(a)(1). See IN–0269.

(2) Indiana did not explain the limitations included in I.C. 13–4.1–11–11(a)(2). The Secretary now finds that the limitation on the location of the commencement of the action does not operate to make the Indiana statute any less stringent than SMCRA because it does not prohibit any action otherwise intended to be provided.

(3) The Indiana statute did not provide that the Secretary gets notification of suits to compel compliance. The Attorney General of Indiana has agreed to take the necessary steps to assure that notice of any citizen suit brought pursuant to I.C. 13–4.1–11–11 will be given to the Secretary. See IN–0260.

(4) The State statute did not contain the requirement of Section 520(e) of SMCRA that nothing restricts any right of any person to seek enforcement of any of the provisions of SMCRA and the regulations thereunder, or to seek other relief. The Secretary now finds that the State has corrected this deficiency by amending its statute to add I.C. 13–4.1–11–11(f) which is in accordance with Section 520(e) of SMCRA. See IN–0269.

(5) The Indiana statute did not contain the requirements of Section 520(f) of SMCRA that a person who is injured through a violation by any operator may sue for damages only in the judicial district in which the surface coal mining operation is located. The Secretary's concern is that damage actions, such as those provided under SMCRA, be available in the State courts in the Indiana program. The Attorney General of Indiana stated that I.C. 13–4.1–11–11 preserves remedies available under statutory or common law which, in Indiana, would include an action for damages on such theories as trespass or negligence. The Attorney General also clarified that I.C. 13–4.1–11–11(a)(1) is directly congruous to the SMCRA provision limiting such actions to the district in which the operation is located because in Indiana the judicial districts are called circuits and follow county lines. IN–0260. Finally, with respect to the availability of attorney and expert witness fees in such damage actions, the Director, IDNR, at the May 18–19 meeting, agreed to propose a statutory change which provides for the award of attorney and expert witness fees in surface-mining related common law damage actions. See IN–0268. The Secretary's approval of the Indiana program is conditioned on the State's submission of a statutory amendment in accordance with Section 520(f) of SMCRA.

22.10 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–14–2 was inconsistent with Section 522 of SMCRA by providing for adjudicatory hearings rather than legislative type hearings. (Finding 22.10, 45 FR 78489, November 25, 1980). The Secretary now finds that this issue has been resolved. See Finding 21.3 above.

22.11 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–14–2 and 13–4.1–4–4 (a) and (b) was inconsistent with Section 513(b) of SMCRA in that Indiana provides for a "hearing" instead of an "informal conference" concerning an application for a permit. (Finding 22.11, 45 FR 78489, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by amending its statute to provide for an informal conference in accordance with SMCRA. See IN–0269.

22.12 Indiana's statute at I.C. 13–4.1–4–5 and rules at 310 IAC 12–3–118 and 12–3–119 provide for a hearing only when a permit has been denied. This is contrary to Section 514(c) of SMCRA, which requires that the State regulatory authority hold a hearing on any final permit decision of the regulatory authority on the initial application or an application for revision or renewal, transfer, sale or assignment of rights or concerning coal exploration. At the May 18–19, 1982, meeting the Director, IDNR stated that Indiana would amend its program to meet the Federal requirements (IN–0268).

However, because that action has not been completed at this time, the Secretary's approval of the State program is conditioned on Indiana's submittal of program amendments that are in accordance with Section 514(c) of SMCRA and no less effective than the provisions of 30 CFR Part 787.

Finding 23

The Secretary finds that Indiana has authority under enacted Indiana laws and regulations and that the Indiana program submission includes provisions to monitor, review and enforce the prohibition against indirect or direct financial interest in coal mining operations by employees of the Indiana Department of Natural Resources consistent with 30 CFR Part 705, except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(11).

The Indiana rules at 310 IAC 12–77–4(f) require that the annual listing of exempt positions include a written justification, as required by 30 CFR 705.11(d). The language of the Indiana rule is unclear due to a typographical error in that the State rule should provide for a justification for inclusion of the positions listed in 310 IAC 12–7–4(b) (1) and (2), rather than those not listed in those sections. The Director, IDNR, explained at the May 18–19, 1982 meeting that the State is proceeding to correct the typographical error (IN–0268). However, because that action has not been completed at this time, and because the error could have a substantive effect, the Secretary's approval of the Indiana program is conditioned on Indiana's submittal of a program amendment correcting the typographical error and ensuring that the Indiana rules are no less effective than the provisions of 30 CFR 705.11(d).

Finding 24

The Secretary finds that Indiana has authority under enacted laws and regulations to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. This finding is made under the requirements of 30 CFR 732.15(b)(12).

Under 30 CFR 732.15(b)(12), Indiana is not required to implement regulations governing such training, examination and certification until six months after Federal regulations for these provisions have been promulgated. Federal

regulations have not been promulgated at this time. *See* 30 CFR 850.11. However, when the Secretary issues final rules on this subject, Indiana will be required to amend its program to have regulations that are no less effective than the Federal rules.

Finding 25

The Secretary finds that Indiana has authority under enacted Indiana laws and regulations and that the Indiana program submission includes provisions for small operator assistance consistent with 30 CFR 795. This finding is made under the requirements of 30 CFR 732.15(b)(13).

Finding 26

The Secretary finds that Indiana has authority under enacted Indiana laws and regulations and that the Indiana program includes provisions for protection of State employees of the regulatory authority in accordance with the protection afforded Federal employees under Section 704 of SMCRA, except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(14).

The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–12–4 did not appear consistent with Section 704 of SMCRA, in that the protection offered in this section appeared to apply only to the Director, IDNR, rather than to all employees (Finding 26.1, 45 FR 78490, November 25, 1980). The Secretary now finds that this deficiency has been corrected by the State's amendment to its statute I.C. 13–4.1–12–3 which provides the protection of the section to the Director, IDNR, or his representative. IN–0269.

Finding 27

The Secretary finds that the Indiana Department of Natural Resources has the authority under enacted State laws and regulations to provide administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII, except as discussed below. This finding is made under the requirements of 30 CFR 732.15(b)(15).

27.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute was inconsistent with the provisions of Section 526(a)(2) of SMCRA because it failed to provide for judicial review within 30 days from the date of order or decision in a civil penalty proceeding or other proceeding. (Finding 27.1, 45 FR 78490, November 25, 1980). The Attorney General of Indiana explained that the Indiana Administrative Adjudication Act, I.C. 4.22–1 *et seq.*, allows a 15 day period for judicial review, which comports with due process and is a time period that is familiar to Indiana citizens and Government agencies. See IN–0220. The Secretary now finds that this explanation resolves the issue because Section 526(e) of SMCRA provides for judicial review of State action to be "in accordance with State law" and that, therefore, the judicial review provisions of the State programs are in accordance with SMCRA.

27.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–3–13 was inconsistent with the provisions of section 526(e) of SMCRA because it failed to provide for standards of judicial review of regulatory actions consistent with those found in SMCRA (Finding 27.2, 45 FR 78490, November 25, 1980). The Secretary now finds that this issue has been resolved by the Attorney General Opinion (IN–0220) and the Indiana program is in accordance with Section 526(e) of SMCRA for the reasons set forth above in Finding 27.1.

Finding 28

The Secretary finds that the State has authority under enacted Indiana laws and regulations and that the Indiana program submission includes provisions to cooperate and provide documents and other information to the Office of Surface Mining in accordance with the provisions of 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(16).

Finding 29

The Secretary finds that the Indiana laws and regulations contain no provisions which would interfere with or preclude implementation of SMCRA and 30 CFR Chapter VII except as discussed below. This finding is made under the requirements of 30 CFR 732.15(c).

29.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana statute at I.C. 13–4.1–5 (b) and (c) could have the effect of voiding the entire Indiana statute if any section of SMCRA is found to be unconstitutional by any court (Finding 29.1, 45 FR 78490, November 25, 1980). The Indiana Attorney General has advised OSM that the statute limits the IDNR Director's enforcement authority as to that State law provision which corresponds to a provision of SMCRA is held unconstitutional and that this language does not require total non-enforcement if any section of the Federal law is declared unconstitutional.

Additionally, section I.C. 13–4.1–1–5(c) of the Indiana statute provides that neither the Director, IDNR nor the Indiana Natural Resources Commission may enforce a provision of I.C. 13–4.1 (the Indiana statute) if the Indiana Natural Resources Commission determines that it is unnecessary due to a final judgment of a court of competent jurisdiction which holds that corresponding provisions of SMCRA are unconstitutional or otherwise invalid. OSM expressed concern that this provision could be construed to allow a State or Federal judge in any State to change the Indiana program, undermining the consistency requirement of SMCRA. At the May 18–19, 1982, meeting, the Director, IDNR stated that it is the policy of the Commission that it will only find enforcement of the State law unnecessary if one of the following courts invalidates a provision of the Federal law:

1. An Indiana State Court.
2. An Indiana Federal District Court.
3. The U.S. Court of Appeals for the Seventh Circuit.
4. The U.S. Supreme Court.

Although an Indiana State Court cannot rule on the validity of Federal law, it can rule on the validity of the State law. If a provision of State law is invalidated by a State court, the State may not enforce that provision. If a provision of Federal law is invalidated by one of the above listed Federal courts, I.C. 13–4.1–1–5(c) allows the State to choose not to enforce the comparable provision.

Therefore, the Secretary finds that the Attorney General Opinion (IN–0260) and the policy statement (IN–0268) ensure that the State program is consistent with SMCRA.

29.2 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana Administrative Adjudication Act (AAA) is possibly inconsistent with the hearing and notice requirements of SMCRA and 30 CFR Chapter VII. (Finding 29.2, 45 FR 78490, November 25, 1980). The Attorney General of Indiana provided an explanation of how Indiana's Administrative Adjudication Act is consistent with SMCRA and is no less effective than the Federal rules. See IN–0260. In addition, the hearing procedure was discussed in finding 22.10 above. The Secretary now finds, based upon these explanations, that the issue is resolved.

29.3 The Secretary found that the Indiana Attorney General's opinion in the Indiana program submission of March 3, 1980, was inadequate (Finding

29.4, 45 FR 78490, November 25, 1980). On September 28, 1982, and on December 8, 1981, the State submitted an updated Attorney General's opinion and an Addendum to the same which resolves these problems. See IN–0220 and IN–0260.

Finding 30

The Secretary finds that Indiana has demonstrated that the Indiana Department of Natural Resources and other agencies having a role in the program have sufficient legal, technical, and administrative personnel and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) and other applicable State and Federal laws, SMCRA and 30 CFR Chapter VII except as discussed below. This finding is made under the requirements of 30 CFR 732.15(d).

30.1 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana program provisions describing the existing and proposed structural organization of the regulatory authority, and of other applicable agencies which will have duties in the state program, and indicating the coordination systems between these agencies, and the lines of authority and staffing functions within each agency and between agencies, appeared to be inadequate and inconsistent with the Federal requirements (Finding 30.1, 45 FR 78490, November 25, 1980). On September 28, 1981, Indiana submitted further information which addressed the concerns of OSM by demonstrating that the regulatory authority will have sufficient staff and funds to operate the program. See IN–0220.

30.2 The Secretary found that in the Indiana program submission of March 3, 1980, no supporting agreements between agencies were supplied (Finding 30.2, 45 FR 78490, November 25, 1980). On June 16, 1980, the State furnished copies of proposed supporting agreements between the Indiana Department of Natural Resources and other agencies. However, these proposed agreements were not signed or in effect at the time of submission. Therefore, they did not provide an adequate basis upon which the Secretary could approve the program narrative. Signed copies of the agreements were provided in the September 28, 1981, resubmission; therefore, the Secretary now finds that adequate information has been supplied and that the deficiency has been corrected. See IN–0220.

30.3 The Secretary found that in the Indiana Program submission of March 3, 1980, the Indiana summary table of existing and proposed State program staff showing job functions, titles, and required job experience and training was inadequate (Finding 30.3, 45 FR 78490, November 25, 1980). This information was provided in the September 28, 1981 resubmission; therefore, the Secretary now finds that the State has corrected this deficiency. See IN–0220.

30.4 The Secretary found that in the Indiana program submission of March 3, 1980, the Indiana submission did not describe sufficiently how the staffing for the State program will be adequate to carry out the identified administrative, technical, permitting, or enforcement elements (Finding 30.4, 45 FR 78490, November 25, 1980). This information was provided in the September 28, 1981 resubmission, and the Secretary now finds that the State has satisfactorily corrected this deficiency. See IN–0220.

30.5 The Secretary found that the Indiana program submission of March 3, 1980 did not describe sufficiently how the staffing for the State program would be adequate to carry out the identified administrative, technical, permitting, or enforcement elements (Finding 30.5, 45 FR 78491, November 25, 1980). The Secretary now finds that the State has satisfactorily corrected this deficiency by submitting additional information which fully describes staff and staffing functions adequate to carry out the administrative, technical, permitting and enforcement elements of the permanent program. See IN–0220.

30.6 The Secretary found that in the Indiana program submission of March 3, 1980, the description of the actual capital and operating budget was insufficient to allow a reasonable determination of the capability of Indiana to operate a permanent program (Finding 30.6, 45 FR 78491, November 25, 1980). The State has now submitted additional budget information from which the Secretary has determined that the State's actual capital and operating budget is sufficient to operate the Indiana permanent program. See IN–0220.

30.7 The Secretary found that the Indiana program submission of March 3, 1980 lacked physical resource information sufficient to allow evaluation of the State's preparedness in this area (Finding 30.7, 45 FR 78491, November 25, 1980). The Secretary now finds that the State has corrected this deficiency by submitting additional budget and physical resource information to assure that the State has adequate equipment and other physical resources to operate a permanent program. See IN–0220.

30.8 The Indiana resubmission of September 28, 1981, was unclear in that it did not provide any method for determining the lines of authority between elements of the organizational structure of the regulatory authority, particularly between the Director, IDNR and the Natural Resources Commission. This matter was discussed at the May 18–19, 1982, meeting, and Indiana provided additional narrative which delineated the authority and duties of the Director, IDNR and the Natural Resources Commission (IN–0268). The Secretary finds that the Indiana program meets the requirements of 30 CFR 732.15(d).

C. Disposition of Public Comments

Comments have been accepted and considered on Indiana's program resubmission of September 28, 1981 and on information provided by Indiana in connection with a reopened public comment period. Comments are organized into appropriate subject headings.

I. General

1. The Environmental Policy Institute, the National Wildlife Federation and the Indiana Wildlife Federation (EPI, NWF and IWF) expressed concern over the acceptability of policy statements as a means for the State to meet the requirements of the Federal rules. EPI, NWF and IWF questioned whether an operator could circumvent a policy statement by refusing to comply because it has not been adopted under proper rulemaking procedures. EPI, NWF and IWF contend that the public will, in turn, be forced to accept the consequences of an operator's non-compliance with unenforceable policy statements.

The Secretary has carefully considered the commenters' argument. Under 30 CFR 732.15(b), State program provisions are eligible for approval by the Secretary when they are in accordance with SMCRA and no less effective than the Federal rules. The Secretary has accepted policy statements as meeting State program requirements only when the State laws or regulations provide adequate authority for the policy statements. It should be noted that when the Secretary accepts a policy statement, the Secretary considers it to be a legally binding and an enforceable part of the State's program, and that it cannot be changed except under the State program amendment procedures found at 30 CFR 732.17. Further, the Secretary, through OSM's monitoring role, will check to ensure that all policy statements as well as other program provisions are being implemented in accordance with SMCRA, the Federal rules, and the

Secretary's decision on the State's program.

2. The Fish and Wildlife Service (FWS) issued on June 8, 1982, a biological opinion pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 531 et seq.), which stated that the Indiana program is not likely to jeopardize the continued existence of endangered or threatened species or result in the adverse modification of their critical habitat.

3. EPI, NWF and IWF commented that Indiana failed to respond to OSM's concerns regarding the failure of the State's conflict of interest regulations to provide remedial action for violation by the head of the state regulatory authority. The State of Indiana has submitted a letter from the Governor, dated April 27, 1982, by which he agrees to cooperate with OSM to ensure that the provisions of 30 CFR 705.19(b) are complied with in Indiana. The Secretary finds this submission to be a satisfactory resolution of the issue.

4. EPI, NWF, and IWF commented that Indiana is required by 30 CFR 731.14(c) to submit an Attorney General's opinion stating that Indiana has the legal authority to implement, administer and enforce the State program and containing a section-by-section analysis of the differences between the State and Federal standards. In particular, the commenters asked about the Attorney General's opinion referenced in Indiana's responses to OSM's comments I–18 and I–19 in the April 28, 1982, letter (See IN–0266 and IN–0268) and requested an opportunity for the public to comment on that opinion. The Attorney General of Indiana did provide an opinion which included a section-by-section analysis of both the regulations and the statute with its resubmission on September 28, 1981. Additionally, the Attorney General opinion referred to in the comment was an addendum submitted to OSM on December 8, 1981. See IN–0260. It has been available for public review and comment as part of the administrative record. As stated in Finding 29.3 above, the Secretary has determined that the requirements of 30 CFR 731.14(c) have been met.

5. EPI, NWF, and IWF commented that Indiana's explanation of its definition of best technology currently available (BTCA) fails to convince them that it is consistent with the Federal law and regulations at 30 CFR 701.5, which provides for use of technology available "anywhere . . . even if . . . not in routine use." They stated that by limiting BTCA to that which is available locally, Indiana discourages operators from the innovation and technology forcing direction for water pollution control that Congress intended. See 44 FR 14926.

As discussed in Finding 13.6 above, the Secretary finds that Indiana has adequately addressed this concern and that 310 IAC 12–1–3 is no less effective than 30 CFR 701.5.

II. Indiana law

1. The Environmental Policy Institute, the National Audubon Society, National Wildlife Federation, Save Our Irreplaceable Land and the Indiana Division of Izaak Walton League of America (EPI, *et al.*) commented that the Indiana statute at I.C. 13–4.1–4(a)(13) fails to remove the provision making confidential information on interest in lands contiguous to the area covered by the permit. EPI noted that Section 508(a)(11) of SMCRA requires this information to be public. The Secretary finds that Indiana has addressed the commenter's concern for the reasons set forth in Finding 14.7 above.

2. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–4–1 does not require that the applicant for a permit submit a copy of the advertisement referred to in I.C. 13–4.1–4–1 and I.C. 13–4.1–3–3(a)(6) to the regulatory authority as does Section 513(a) of SMCRA. The Secretary finds that Indiana has addressed the commenter's concern for the reasons set forth above in Finding 22.4.

3. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–4–3(d) does not address the problem of having a point at which areas of land can no longer be added onto a permit, i.e., which "grandfathers" prime farmlands through the process of renewals and revisions. The Secretary finds that Indiana's program is in accordance with the Federal standards for the reasons set forth above under Finding 14.10.

4. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–4–5 has no counterpart to Section 514(f) of SMCRA providing for judicial review of regulatory authority decisions. The Secretary finds that Indiana has addressed the commenter's concern for the reasons set forth above in Finding 22.5.

5. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–8–1(7) fails to require, as does Section 515(b)(7) of SMCRA, that specifications for all prime farmlands for soil removal, storage, replacement and reconstruction be established by the United States Secretary of Agriculture. The Secretary finds that Indiana has addressed the commenter's concerns for the reasons set forth above under Finding 13.3.

6. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–11–2 (a) and (b) only authorize the Director, IDNR, to inspect surface coal mining and reclamation operations, i.e., it is unclear that inspectors may also do inspections. The Secretary finds that Indiana has addressed the commenter's concerns for the reasons set forth above in Finding 17.1.

7. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–11–3(b) is inconsistent with Section 517(f) of SMCRA because the State provision does not say when the materials will be made available to the public while Section 517(f) of SMCRA requires that the material be available immediately. The Secretary finds that Indiana has addressed the commenter's concerns for the reasons set forth above in Findings 17.9 and 22.6.

8. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–11–11 appears not to include permits issued under the Indiana statute as the basis for a civil action, as does Section 528 of SMCRA. EPI commented further that the Indiana Constitution and I.C. 34–4–16.5 must be construed to establish no greater defense to suit than the 11th Amendment of the United States Constitution to be consistent with SMCRA. The Secretary finds that the commenter's concerns have been addressed by Indiana for the reasons set forth above in Finding 22.9.

9. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–12–1 is not in accordance with Section 518(h) of SMCRA which requires that any operator be assessed a civil penalty of not less than $750 each day a violation continues. EPI *et al.* argued that the Indiana statute appears to be inconsistent with SMCRA in that it is discretionary whether the IDNR Director assesses the civil penalty. The Secretary finds that Indiana's program is in accordance with the Federal standard for the reasons set forth above under Finding 19.5.

10. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–12–2 does not appear to provide a criminal fine consistent with Section 513(e) and 513(g) of SMCRA. The Secretary finds that Indiana's provisions are acceptable for the reasons set forth above in Finding 19.2.

11. EPI *et al.*, EPI, NWF and IWF commented that the Indiana statute at I.C. 13–4.1–14–2 appears, by the reference to I.C. 4–22–1, to provide for adjudicatory hearings as opposed to legistative hearings for unsuitability petitions while Section 522 of SMCRA provides for legislative hearings. The

Secretary finds that Indiana's provisions, which assure that no non-expert witness will be harassed, are in accordance with the Federal standards for the reasons set forth above in Findings 21.3 and 22.10.

12. EPI *et al.* commented that the Indiana statute at I.C. 13–4.1–14–4 and 5 appears not to require a data base and inventory system for designating areas unsuitable for surface coal mining as required by Section 522(a) of SMCRA. The Secretary finds that Indiana has addressed the commenter's concerns for the reasons set forth above in Finding 21.1.

13. EPI *et al.* commented that the Indiana statute at I.C. 14–3–3–3 creates a Commission to perform administrative review functions over the IDNR with six of the twelve Commission members as "lay members." EPI expressed concern that these "lay members" appear to have been chosen to represent specific interests.

The Secretary finds that the Indiana Natural Resources Commission is a multi-interest board under 30 CFR 705.5. Under that regulation, members of multi-interest boards such as Indiana's are exempt from the conflict of interest rule. The State program is consistent with this rule.

14. EPI *et al.* commented that the Indiana statute at I.C. 14–22–1 (the Indiana Administrative Adjudication Act) does not provide rights for hearings as complete as those under the Federal Administrative Procedure Act. EPI *et al.* commented further that Indiana does not allow citizen access to regulatory proceedings as broad as under Sections 518 and 525 of SMCRA. They argued that the State lacks the attorney fees provisions of 525 (e) or (f) and the broad discovery provisions of SMCRA. The Secretary finds that the commenter's concerns have been addressed by Indiana for the reasons set forth above in Finding 29.2.

15. EPI *et al.* expressed concern that the Indiana statute at I.C. 13–4.1–11–9 does not allow attorney fees for intervenors in an action as is required by Section 515(e) of SMCRA. The Secretary finds that the Indiana statute at I.C. 13–4.1–11–9 does allow for the award of costs and attorney fees for any person, including intervenors. The Secretary approves the Indiana program based on this interpretation and will continue to observe the implementation of the Indiana provision during OSM's monitoring and evaluation of the State's program. If the Secretary finds that the implementation of this provision of the State program is inconsistent with Section 525(e) of SMCRA, or the Secretary's above interpretation, Indiana will be required to amend its program.

16. EPI, NWF and IWF commented that Indiana's statute at I.C. 13–4–1–5 provides that the State may not enforce any program provisions once the corresponding provision in SMCRA is held invalid by a court of competent jurisdiction pursuant to Section 526(a)(1) of SMCRA. As discussed in Finding 29.1, Indiana has explained that it will find enforcement of its Act unnecessary if one of the following courts invalidates a provision of SMCRA: (1) an Indiana State court, (2) an Indiana Federal District Court, (3) the U.S. Court of Appeals for the Seventh Circuit, and (4) the U.S. Supreme Court. See IN–0268. After having reviewed Indiana's explanation, the commenters expressed concern that it appears that Indiana believes an Indiana State Court could hold a provision of Federal law invalid, which would be contrary to Section 526(a)(1) of SMCRA. However, the Attorney General of Indiana has made it clear also that any action finding a provision of Federal law unconstitutional would have to be based on a judgement of a court having the competence by way of personal and subject matter jurisdiction to make such a finding. See IN–0265. An Indiana State court does not have jurisdiction to rule on the constitutionality of Federal law and could only, therefore, rule on the constitutionality of a State law provision. As stated in Finding 29.1, the State may not enforce a State provision held invalid by a State court and can also choose not to enforce a State provision which is equivalent to a Federal provision held invalid by one of the three Federal courts listed by Indiana in its policy statement.

17. EPI, NWF and IWF objected to the OSM's rationale as stated at the May 18–19, 1982 meeting, (IN–0268) that Indiana's use of the term "establish" rather than "tend to establish" to substantiate allegations of facts for lands unsuitable petitions at I.C. 13–4.1–14–2 constitutes a minor deficiency. Their specific objection is that Indiana's provision may preclude designation petitions, thus undermining the intent of SMCRA. The Secretary has found that the Indiana provision is deficient and has made the correction of this provision a condition of approval (*See* Finding 21.2 and 30 CFR 914.10(g)(1) being promulgated today). As part of the criteria for conditional approval, the Secretary has explained that this deficiency is minor. See Paragraph (g)(1) of Section E, "Secretarial Decision," below for a discussion of why this condition is minor.

III. Permitting

1. The Environmental Protection Agency (EPA) and FWS commented that Indiana's rules do not contain provisions specified in 30 CFR 770.12 pertaining to the coordination of permit review and issuance with other applicable Federal and State permit processes. The Secretary finds that the requirements of 30 CFR 770.12 have been met by Indiana rules 310 IAC 12–3–6(d), 310 IAC 12–3–25, 310 IAC 12–3–45, 310 IAC 12–3–92 and 310 IAC 12–5–16(c). The Indiana provisions are no less effective than the Federal provisions of 30 CFR 770.12.

2. EPA, EPI, NWF and IWF pointed out that 30 CFR 776.11(b)(6) requires that the notice of intent to explore, when less than 250 tons of coal will be removed, includes a description of the practices proposed to be followed to protect the environment from adverse impacts and the Indiana's rules omit this requirement. The Secretary agrees for the reasons set forth in Finding 15.2 above and has required, as a condition of approval, that Indiana adopt a provision consistent with the Federal rule.

3. EPA, FWS, EPI, NWF and IWF commented that 30 CFR 776.12(a)(5) requires a map depicting certain items to be included in an application to conduct coal exploration where more than 250 tons of coal will be removed. Indiana rule 310 IAC 12–3–11(b)(6) omits the following map requirements: existing occupied dwellings and pipelines, the proposed location of trenches, structures to be constructed, land excavations to be conducted, water or coal exploratory holes and wells to be drilled or altered, earth or debris disposal areas, historic and cultural features, and the distribution and important habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

The Secretary has carefully reviewed the Indiana rule and finds that Indiana requires a detailed narrative description and a U.S. Geological Survey topographic map cross-referenced to that narrative. The topographic map requirement will ensure that the requirements of 30 CFR 776.12(a)(5) will be met because all the above features will be shown on the topographic map.

4. EPA suggested that Indiana should require, in its permit application, a description of the existing premining environmental resources "within the proposed mine plan area" rather than "within the proposed permit area." The Federal rules at 30 CFR 779.11 require permit applications to refer to the

proposed permit area as does the Indiana rule at 310 IAC 12–3–28. See 45 FR 51547 *et seq.* (August 4, 1980). For that reason, the Secretary finds that the Indiana rule is no less effective than the Federal rule; therefore, no change is necessary.

5. EPA, EPI, NWF and IWF commented that Indiana should add to its rules language equivalent to 30 CFR 799.13(b)(3), which requires that a permit not be approved until information on hydrology, water quality and quantity, and geology is made available in the permit application. The Secretary finds that Indiana's rules and permit application form contain requirements no less effective than the provisions of 30 CFR 779.13(b)(3) for the following reasons. Permit application hydrology information requirements are included in Indiana rules 310 IAC 12–3–112(c), 310 IAC 12–3–6(a), 310 IAC 12–3–32 and 310 IAC 12–3–33. Geology information requirements are found at 310 IAC 12–3–31. The hydrology and geology information requirements are also found on the Indiana permit application (IN–0269). At the May 18–19, 1982, meeting, the Director, IDNR stated that the requirements contained in the Indiana surface coal mining permit application will also be included in the State's underground coal mining permit application (IN–0268).

EPA further commented that Indiana should include language comparable to 30 CFR 779.13(c), concerning the use of modeling techniques for the gathering of surface and ground water information. The Federal provision is discretionary; it provides that modeling techniques "may" be used. Therefore, the Secretary cannot require Indiana to add this provision.

6. EPA, EPI, NWF and IWF commented that 30 CFR 779.13(a) requires that each surface mining permit application contain a description of hydrology and geology, including information on water characteristics, for any water which will flow into or receive discharges of water from the general area, whereas Indiana's counterpart at 310 IAC 12–3–30 does not specifically state this requirement.

The Secretary finds that Indiana Rules 310 IAC 12–3–32 and 12–3–33 require specific information on ground water and surface water for the permit and adjacent areas for all permit applications. Further, Indiana rule 310 IAC 12–3–30(c) requires hydrologic information outside the permit area and within the adjacent area, and 310 IAC 12–3–30(c) allows Indiana to require additional information for the permit area. These three provisions are in accordance with Section 507(b)(11) of SMCRA and are no less effective than the provisions of 30 CFR 779.13(a).

7. EPA, EPI, NWF and IWF commented that SMCRA Section 507(b)(11) and 30 CFR 779.14(a) require the geology description in a permit application to include a general statement of the geology within the proposed mine plan area down to and including the first aquifer to be affected below the lowest coal seam to be mined, whereas Indiana rule 310 IAC 12–3–30(a) omits this requirement.

The Secretary disagrees. The Secretary finds that Indiana's regulations at 310 IAC 12–3–30 through 12–3–33 require descriptions of the geology and hydrology within the permit area. Rule 310 IAC 12–3–32(a) specifically requires "the location and extent of each aquifer which may be affected by the mining and the estimated level of the water table." This requirement is no less effective than 30 CFR 779.14(a).

8. EPA, EPI, NWF and IWF suggested that Indiana substitute the language contained in 30 CFR 779.15(b) concerning the description of the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water in Indiana's rule 310 IAC 12–3–32(d) pertaining to ground water information for surface mining permits. EPA further suggested that Indiana revise its underground mining permit application requirements at 310 IAC 12–3–70 to be consistent with the requirements of 30 CFR 783.15(a). The Indiana rules, when viewed in conjunction with the hydrology section of the State's surface coal mining permit application (IN–0268) require all necessary information to be shown, including all supporting calculations. The Director, IDNR at the May 18–19, 1982, meeting stated that these requirements will also apply to the State's underground mining permit application (IN–0268). For these reasons, the Secretary finds Indiana's provisions at 310 IAC 12–3–32(d) and 310 IAC 12–3–70, coupled with the State's permit application requirements, are no less effective than the requirements of 30 CFR 779.15(b).

9. EPA, EPI, NWF and IWF suggested that Indiana substitute language comparable to 30 CFR 779.16 concerning surface water information for surface mining permit applications in place of its language at 310 IAC 12–3–33(b), and substitute language comparable to 30 CFR 783.16 for 310 IAC 12–3–71 concerning underground mining surface water information. The Secretary finds that the aforementioned Indiana rules, when coupled with the State's surface coal mining permit application (IN–0268) and commitment to include the same requirements in the Indiana underground coal mining permit application (IN–0268), are no less effective than the provisions of 30 CFR 779.16 and 783.16.

Further, EPA and FWS suggested that Indiana amend its rules at 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b) to broaden the scope of surface water information requirements beyond just perennial streams. The Secretary will not require Indiana to do so because Indiana's surface coal mining permit application requires the inclusion of such information for "other streams and other water bodies which will receive surface water drainage from the permit area" (IN–0269). For this reason, the Secretary finds Indiana rules 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b) to be no less effective than the provisions of 30 CFR 779.16(b)(2) and 783.16(b)(2).

EPA and FWS also commented that Indiana should drop the phrase "subject to legal access" from its rules at 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b) when identifying streams or other water bodies for which surface water information is required in order to be consistent with 30 CFR 779.16(b) and 783.16(b). Indiana has amended its rules by deleting the phrase "subject to legal access," making the State rules consistent with the Federal requirements (IN–0269).

EPA further stated that the parameters of acidity, total and dissolved iron, and total manganese contained in 30 CFR 779.16(b) and 783.16(b) should be added to the surface water information requirements of 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b). Indiana amended its rules to specify acidity as one parameter to be used. Further, the rules require the use of State water quality standards and EPA effluent limitations (IN–0269). Specific dissolved solids, including iron and manganese, are also included in the hydrology and ground water information section of the State's surface coal mining permit application form and will be included in the State's underground coal mining permit application form (IN–0269). For these reasons, the Secretary finds Indiana rules 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b) to be no less effective than 30 CFR 779.16(b) and 783.16(b).

EPA also suggested that Indiana add the language of 30 CFR 779.16(b)(2)(vii) and 30 CFR 783.16(b)(2)(vii) to its rules at 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b), respectively. The Federal provisions specify that surface water information shall include such other information as the regulatory authority

determines is relevant. Indiana will not be required to add the suggested language to its rules because the Secretary finds that the Federal requirement will be met through Indiana's surface coal mining permit application information requirements (IN–0268 and 0269). Therefore, Indiana rules 310 IAC 12–3–33(b) and 310 IAC 12–3–71(b), coupled with the State's permit application requirements, are no less effective than 30 CFR 779.16(b)(2)(vii) and 783.16(b)(2)(vii).

10. EPA, EPI, NWF and IWF commented that 30 CFR 779.25(b) requires surface mining permit applications to include cross-sections, maps, and plans showing elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in the preparation of the application. EPA noted that Indiana's counterpart at 310 IAC 12–3–39 requires that groundwater and surface water monitoring stations be shown, but omits air quality and fish and wildlife monitoring stations. As indicated above in Finding 14.20, the Secretary finds that the State program is no less effective than the Federal rules.

EPI, NWF and IWF further expressed concern that the policy statement found in Finding 14.20 may not be enforceable. The Secretary disagrees with the commenters for the reasons set forth in General Comment 1.

11. EPA suggested that Indiana add the phrase "unless specifically required for the mine plan area or adjacent area beyond 1000 feet of the permit area by the requirements of this section or by the Commission" to Indiana rule 310 IAC 12–3–44(b), which sets forth the requirements for the maps and plans submitted as part of the operation plan for surface mining activities. The same suggestion was also made concerning the underground permit rule at 310 IAC 12–3–76. The Indiana rules require that information be shown for the proposed permit area and adjacent area within 1000 feet. The Federal rules at 30 CFR 780.14(b) and 783.25(b) require that information be shown for the proposed permit area unless specifically required for the mine plan area or adjacent area. Indiana has merely provided specific guidance concerning what is included in the adjacent area. The Secretary, therefore, finds Indiana rules 310 IAC 12–3–44(b) and 310 IAC 12–3–76 to be no less effective than 30 CFR 780.14(b) and 783.25(b), respectively.

12. EPA noted that Indiana substitutes the term "siltation structure" for "sedimentation pond" in its regulations. The Secretary finds that Indiana defines its term "siltation structure" at 310 IAC 12–1–3 in a manner no less effective than the Federal definition of "sedimentation pond" found at 30 CFR 701.5. Therefore, no change is necessary. Also, see Finding 13.19.

13. EPA objected to Indiana's reference in its rules at 310 IAC 12–3–45 and 310 IAC 12–3–92 to permits issued by the Indiana Air Pollution Control Board because Indiana's fugitive dust regulations have not been approved by EPA. The Federal performance standards pertaining to fugitive dust (30 CFR 816.95 and 817.95) were remanded by the U.S. District Court for the District of Columbia, so the State program is no less effective than the Federal rules.

14. EPA, EPI, NWF and IWF pointed out that Indiana fails to require cross-section drawings as required by 30 CFR 780.21(a) to be included in reclamation plans in its rule at 310 IAC 12–3–47. The Secretary finds that Indiana's program is no less effective than the Federal requirements for the reasons set forth above in Finding 14.15. EPI, NWF and IWF further expressed concern that provisions in Indiana's permit application that are not in the State's rules are unenforceable. The Secretary disagrees for the reasons set forth in General Comment 1.

15. EPA commented that Indiana rules 310 IAC 12–3–47(b) (1) and (2), concerning a description of the plans for the control and treatment of surface and groundwater drainage, refer to control plans at 310 IAC 12–3–33 and 12–3–44. EPA is concerned that the referenced provisions do not require a plan for control or treatment of surface and groundwater drainage, nor do they impose quantitative limits on pollutants in the discharges. The Secretary agrees for the reasons set forth above in Finding 14.16, and as a condition of approval Indiana must amend its program to make it no less effective than the Federal rule.

16. EPA commented that Indiana omitted the reference to contents of pollutants at 310 IAC 12–3–47 contained in 30 CFR 780.21(c). Indiana submitted amended rules at 310 IAC 12–3–47(e) containing provisions that are no less effective than the requirements of 30 CFR 780.21(c) (IN–0269). No further change is required.

17. EPA, MSHA, EPI, NWF and IWF commented that the State program does not contain the MSHA requirements for coal processing waste dams and embankments in its reclamation plan information requirements at 310 IAC 12–3–49, 310 IAC 12–3–83, 310 IAC 12–5–30, and 310 IAC 12–5–90(h). The Secretary finds that Indiana has met the Federal requirements for the reasons set forth above in Findings 13.12 and 14.17. EPI, NWF and IWF expressed concern that the provisions in Indiana's permit application that are not in the State's rules are unenforceable. The Secretary disagrees for the reasons set forth in General Comment 1.

18. EPA commented that Indiana's underground mine permit application rules at 310 IAC 12–3–54 do not specify the Federal requirements of 30 CFR 780.35(a) that the permit application contain descriptions of the proposed design of the spoil disposal structures according to 30 CFR 816.71. The Indiana provision correctly references Indiana's counterpart to 30 CFR 816.71 (310 IAC 12–5–39) but omits counterparts to 30 CFR 816.72–74. The latter Federal rules pertain to valley fills, head-of-hollow fills and durable rock fills. Since these do not exist at this time in Indiana, these Federal provisions are not applicable in Indiana. Should the above types of fills be proposed in Indiana, the State would have to amend its program to be no less effective than the Federal requirements. Also, see Finding 13.7.

19. EPA commented that Indiana fails to require a description of water quantity in its underground mine permit application rules at 310 IAC 12–3–68(a) as required by 30 CFR 783.13(a). The Secretary disagrees. Indiana rule 310 IAC 12–3–76 requires comprehensive descriptions of surface and ground water quality and quantity. The descriptions required by this rule are no less effective than 30 CFR 783.13(a).

20. EPA, EPI, NWF and IWF commented that to be no less effective than 30 CFR 783.25(f), Indiana should require cross-section and contour maps for underground mining permit applications to show the location and extent of subsurface water, including areal and vertical distribution of aquifers and portrayal of seasonal differences of head in different aquifers. Indiana amended its rule at 310 IAC 12–3–76(f) by adding the suggested language (IN–0268); therefore, no further change is necessary (IN–0269).

21. EPA, EPI, NWF and IWF commented that Indiana omits "coal development waste" from its rule at 310 IAC 12–3–76(i), the State's counterpart to 30 CFR 783.25(i). The Secretary interprets the Indiana term "waste" to include coal development or processing wastes. The Secretary finds that Indiana defines coal processing waste in a manner no less effective than 30 CFR 701.5; therefore, no further change is required.

22. EPA argued that Indiana rule 310 IAC 12–3–78 is inconsistent with 30 CFR 784.11 because the State rule allegedly limits the information requirements of

operation plans for underground mine permit applications. The Federal rule requires a description of the mining operations proposed to be conducted during the life of the mine within the proposed mine plan area. Indiana's counterpart limits the information to "within the proposed permit area" and drops the phase "during the life of the mine." The Secretary finds that Indiana rule 310 IAC 12–3–78 is consistent with 30 CFR 784.11 because the Federal reference to "mine plan area" was remanded by the U.S. District Court for the District of Columbia (*In Re: Surface Mining Regulation Litigation,* No. 79–1144, (D.D.C. February 26, 1970), p. 35 as clarified by the Court on May 6, 1980, on p. 37).

23. EPA, EPI, NWF and IWF commented that Indiana rule 310 IAC 12–3–97 is inconsistent with 30 CFR 785.16 because the State rule allows for a general variance from approximate original contour restoration while the Federal rule limits the variance to steep slope mining, and then only when specific criteria have been met. The Secretary agrees with the commenter for the reasons set forth above under Findings 13.15 and 14.25 and notes that Indiana has agreed to amend its program to meet the Federal requirements. The Secretary is requiring as a condition of approval that Indiana amend its program to be no less effective then the provisions of 30 CFR 785.16.

24. EPA commented that Indiana omitted from 310 IAC 12–3–102 the requirement of 30 CFR 785.22(c) that no permit shall be issued for an in-situ operation unless the regulatory authority finds that the operation will be conducted in compliance with the performance standards of 30 CFR Parts 817 and 828. The Secretary will not require Indiana to change its rules because no in-situ operation will be allowed in Indiana and for the reasons set forth above in Finding 14.18.

25. EPA, EPI, NWF and IWF commented that the Indiana rules do not contain the requirements of 30 CFR 786.29, Conditions of Permits: Environmental Public Health and Safety. The Indiana Attorney General has stated that this section was duplicative and that the requirements of this section are covered elsewhere in the State regulations (IN–0265). The Secretary accepts the Attorney General's opinion with the understanding that Indiana has the authority to ensure minimization of any adverse impact to the environment of public health and safety resulting from noncompliance with any term or condition of the permit.

26. FWS commented that the Indiana rule 310 IAC 12–3–112 has no counterpart to 30 CFR 786.19(o). This subsection requires that the regulatory authority find that the mining will not "affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)."

It is Indiana's policy that the Natural Resources Commission will not issue any permit which would affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined under the Endangered Species Act of 1973 and Indiana's Endangered Species Law (I.C. 14–2–8.5–5). (See IN–270).

Indiana has demonstrated that the regulatory authority has built into its program other ample safeguards to assure protection of endangered and threatened species and their habitats. The IDNR Division of Reclamation has a member of its Technical Services Section a Wildlife Biologist with ten years' experience with the State Division of Fish and Wildlife. This individual will be reviewing permit applications for fish and wildlife concerns.

In addition, on the staff of the Division of Reclamation are two environmental specialists who are responsible for the development and maintenance of the State's lands unsuitability data base, which contains information on the location of threatened or endangered species and their critical habitat.

Further, the State assures that the Division of Wildlife will be reviewing all permit applications, and will comment on any threatened or endangered species or critical habitat in the proposed permit area. The FWS is also free to comment on permit applications.

In addition to the above safeguards, Indiana has pointed out that pursuant to the Indiana statute at I.C. 13–4.1–2–2(a)(6), the Director of the Department of Natural Resources is required to submit to any Federal agency any report required to be submitted, and that report is to include such information as that agency may require. OSM requires that each State which has an approved program submit or make available to OSM each approved permit promptly upon issuance. These applications will be available to FWS through OSM.

The Secretary finds that Indiana has provided safeguards for the protection of threatened and endangered species and their critical habitats no less effective than those in the Federal rules; therefore, no further changes will be required.

27. FWS commented that the Indiana program omits rules equivalent to 30 CFR 783.20 and 784.21. FWS commented that the above rules have not been remanded by the courts. Although the above rules were not explicitly remanded, 30 CFR 779.20 and 780.16 (which set forth the requirements for fish and wildlife resources information and reclamation plan requirements for surface mines) were remanded (*In re:* Permanent Surface Mining Reclamation Litigation, No. 79–1144 (D.D.C. February 26, 1980, pp. 38–39) for reasons equally applicable to 30 CFR 783.20 and 784.21. OSM suspended these regulations on August 4, 1980 (45 FR 51558).

28. EPI commented that the parameters delineated by Indiana in rule 310 IAC 12–3–121(a)(1) for changes in surface coal mining operations which constitute significant departures requiring a permit revision are too broad. Indiana's narrative provides an example of how this rule would apply. IN–0269. Based on this information, the Secretary finds Indiana rule 310 IAC 12–3–12(a)(1) to be no less effective than 30 CFR 788.12(a)(1).

29. EPI, NWF and IWF commented that Indiana failed to include in its statute a provision for administrative review of permit applications consistent with the provisions of Section 514(c) of SMCRA and 30 CFR 787.11. The Secretary agrees with the commenter for the reasons set forth in Finding 22.12.

30. EPI, NWF and IWF expressed concern with OSM's acceptance at the May 18–19, 1982 meetings of a policy statement from Indiana that in no case will the temporary relief granted under 310 IAC 12–3–118 be the issuance of the permit in whole or in part. The Secretary finds that Indiana has addressed the commenters' concern as demonstrated in Finding 14.22 and Comment 1 under General Comments.

31. EPI, NWF and IWF commented that Indiana failed to provide counterparts to 30 CFR 780.12(a)(3) and (b)(1)–(4) and that inclusion of such items on the permit application rather than in a rule makes the Indiana provisions less effective than the Federal rules. For the reasons set forth in Finding 14.14 and General Comment 1, the Secretary finds the State program no less effective than the Federal rules.

32. EPI, NWF and IWF commented that a state policy that no permit shall be approved unless all reclamation fees have been paid is not as effective as a rule change because a policy may not be enforceable in the event of a legal

challenge. Furthermore, EPI, NWF and IWF indicated that no such requirement is contained on p. S–S7 of Indiana's permit application form. As discussed in Finding 14.19 above, Indiana rule 310 IAC 12–3–112(m) requires the applicant to indicate on the application whether or not all fees have been paid and the State has agreed, in a policy statement, to require certification that such fees have been paid. Through an oversight, the necessary application change was not submitted by the State and, therefore, the Secretary's approval of the program is conditioned on the submission of that revision. As discussed in General Comment 1, the Secretary finds that policy statements which Indiana has the authority to issue are acceptable as part of the State program.

33. EPI, NWF and IWF commented that Indiana has no counterpart to 30 CFR 776.12(a)(3)(v), which requires that an application for exploration operations removing over 250 tons of coal include a description of measures to be used to comply with 30 CFR 815. Indiana rule 310 IAC 12–3–13 addresses the requirements of such applications. In addition to listing specific requirements, it references the requirements of 310 IAC 12–3–12 with which applicants must also comply. Indiana rule 310 IAC 12–3–12(b)(5) does require a description of measures to be used to comply with Part 815.

However, while Indiana's permitting rules cover coal exploration where more than 250 tons of coal will be removed, Indiana's program does not contain penalty provisions for such operations. Because of this, Indiana has stated that coal exploration of over 250 tons will not be allowed at this time. See Finding 15.1 and IN–0268.

34. The U.S. Soil and Conservation Service (SCS) commented that the term "Soil Conservation Service" should be included in Indiana rule Sections 310 IAC 12–3–37(a)(2)(ii), 310 IAC 12–3–40(a), and 310 IAC 12–3–77(a). The Secretary does not agree with the commenter because this reference is not required under the Federal requirements of 30 CFR 779.22, 783.24 and 785.16. The Secretary cannot compel the State to exceed the Federal requirements. However, the Secretary finds that Indiana has taken appropriate steps to coordinate permit approvals with the SCS in cases where prime farmland may be affected. See Finding 14.21.

IV. Bonding and Insurance

1. EPI *et al.* commented that Indiana regulations are confusing because the State appears to allow for self-bonding but did not establish any standards to regulate the acceptance of self-bonding as set forth in 30 CFR 806.11 and Section 509(c) of SMCRA.

The Secretary has carefully reviewed Indiana'a statute at I.C. 13–4.1–6–1 through I.C. 13–4.1–6–8, and the Indiana rules at 310 IAC 12–4–1 through 310 IAC 12–4–19, and finds no mention of Indiana's allowing self-bonding. Indiana rule 310 IAC 12–4–6 specifies the kinds of bonding that will be allowed. Under the rule, surety bonds, escrow account bonds, combined surety/escrow bonding and a combination of any of those bonding methods are allowable. These are all acceptable as specified under 30 CFR 806.11(a). Should Indiana elect to allow for self-bonding in the future the State would then have to demonstrate how it will meet the requirements of Section 509(c) of SMCRA and 30 CFR 806.14.

2. EPI, FWS and IWS commented that Indiana rule 301 IAC 12–4–8, concerning the determination of bond amount, does not take into account the administrative costs.

The Secretary finds the Indiana rule to be no less effective than the Federal standards in light of the supplemental State fund established by Indiana statute I.C. 13–4.1–6–8. The State fund will ensure that the administrative costs will not affect the amount of funds available for actual reclamation. See Finding 18.8.

3. EPI *et al.* commented that Indiana rule 310 IAC 12–4–16 does not require that revegetation standards of success must be met. The commenters note that this is required under Section 509(b) of SMCRA.

The Secretary finds that Indiana rule 310 IAC 12–4–16(c)(2) requires revegetation to have been established on the regraded mined lands in accordance with the approved reclamation plan before the release of an additional 25 percent of the bond. The specific requirements for revegetation are set forth on the State's permit application form as part of the approved reclamation plan. Thus, Indiana rule 310 IAC 12–4–16(c)(2), when coupled with the State's reclamation plan requirements, is in accordance with SMCRA Section 509(b) and is no less effective than 30 CFR 807.12(b)(2).

4. EPI *et al.* commented that Indiana rules 310 IAC 12–4–16 (f) and (h) are unclear in that they do not state that the hearings for bond release will be full Administrative Procedures Act type hearings. The Secretary finds that Indiana rule 310 IAC 12–4–16(h) sets forth hearing criteria that are no less effective than the provisions of 30 CFR 807.11(h)(ii). Specifically, the Indiana rule states that the IDNR shall have the authority to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses, or production of materials and take evidence. Further, Indiana's rule also requires that a verbatim record of each public hearing be made and that the transcript be made available on the motion of any party or the IDNR.

5. EPI *et al.* commented that Indiana rule 310 IAC 12–4–17(d) does not contain a requirement that, even with incremental bonds, bond liability for protection of hydrologic balance shall extend to the entire permit area.

The commenters' concern is unclear. Indiana rule 310 IAC 12–4–17(d) is the State counterpart to 30 CFR 808.12(a)(1)(3), which concerns notification, appeal and collection procedures for bond forfeiture. However, the Secretary notes that Indiana statute section I.C. 13–4.1–6–7(g) and Indiana rule 310 IAC 12–4–16(c) require that specific criteria be met for the release of all or part of the bond and that the criteria to be used will be those included in the approved reclamation plan. For these reasons, the Secretary finds that the Indiana provisions are no less effective than the Federal rules.

6. EPI, NWF and IWF commented that Indiana does not provide for changes in bond amount where standards of reclamation change, and that the Indiana program does not provide for review and reevaluation of each performance bond at the time of permit review. The Secretary disagrees with the commenters for the reasons set forth in Finding 18.2. Indiana has submitted a policy statement that the term "may" in the Indiana statute at 310 IAC 12–34–3(e) and 310 IAC 12–4–17(a), only limits the discretionary authority of the IDNR and the Indiana Natural Resources Commission to determine whether all (as opposed to part) of the bond should be forfeited. Further, it is the State's policy that the term does not extend direct authority to withhold forfeiture altogether; in cases where all attempts to ensure completion of the reclamation have failed, the IDNR and Natural Resources Commission will forfeit all or part of any bond. The Secretary accepts this policy statement for the reasons set forth in General Comment 1.

7. EPI, NWF and IWF commented that in order to be consistent with the Federal rules at 30 CFR 800.11(b), the Indiana regulations must state clearly that disturbance of surface areas, underground shafts, tunnels, etc. will not be permitted prior to approval of an acceptable performance bond. The commenters contended that as the current Indiana rules read, work could begin after submission of a bond of any

amount, and that this is less effective than the provisions of 30 CFR 800.11(b) which requires that disturbance not occur prior to approval of a bond. The Secretary finds that the commenters' concern has been addressed for the reasons set forth above in Finding 18.3.

8. EPI, NWF and IWF commented that the Indiana provisions concerning extended bond liability (discussed above in Finding 18.7) would be acceptable provided that the policy statement being relied upon is a binding part of the State's program which the State cannot change without following the State program amendment process. The Secretary has stated under General Comment 1 that all policy statements are binding and can only be changed under the State program amendment provisions of 30 CFR 732.17.

9. EPI, NWF and IWF expressed concern that Indiana's bonding provisions do not provide for adequate bond. Specifically, the commenters contended that the maximum bond per acre of $10,000 provided in 310 IAC 12–4–8(c) even when supplemented by the State fund established by I.C. 13–4.1–6–8 does not assure that the total funds available will be adequate to cover the costs of reclamation if it had to be carried out by the regulatory authority. The Secretary has carefully considered the adequacy of Indiana's provisions and, in particular, the information provided by Indiana on the projected health of the State fund, in Finding 18.8. The Secretary finds that the commenters' concerns have been addressed. The Secretary will, through OSM, monitor the implementation of the Indiana program. Should the Secretary find later that the Federal requirements are not being met, the Secretary will take appropriate action at that time.

10. EPI, NWF and IWF expressed concern with OSM's acceptance at the May 18–19, 1982 meeting of the Indiana policy statement that any operator who is without bond coverage shall be required to replace bond coverage within a reasonable period not to exceed 90 days and that any operator who is without bond coverage shall be deemed to be in violation of Indiana rule 310 IAC 12–4–5. In that event, the Director, IDNR will issue a notice of violation against any operator who is without bond coverage specifying a reasonable period not to exceed 90 days. (See Finding 18.10) The commenters expressed concern that this provision "may very well violate an operator's due process rights" and therefore be unenforceable. The commenters' concern is unclear, because it did not explain why there could be a due process problem and did not cite any case law which would explain why there is a problem. The Secretary accepts Indiana's policy statement for the reasons set forth in General Comment 1 and assumes that the regulatory authority will make operators aware of its policy.

11. EPI, NWF and IWF commented that Indiana does not contain in its rules a provision comparable to 30 CFR 807.11(a)(1) which requires that the times or seasons appropriate for the evaluation of certain types of reclamation be identified in the permit application and reclamation plan. The Secretary has determined that Indiana has clearly provided that seasonal effects of reclamation will be considered when scheduling inspections of reclamation prior to bond release. See the discussion in Finding 18.11 above for the rationale for the Secretary's finding that Indiana's provisions are no less effective than 30 CFR 807.11(a)(1).

12. EPI, NWF and IWF expressed concern over OSM's acceptance at the May 18–19, 1982 meeting of a policy statement from Indiana that it is the policy of the IDNR that "any surface owner, agent or lessee may accompany the State Inspector and participate in the bond release inspection * * *." For the reasons set forth in Finding 18.13 and General Comment 1, the Secretary finds that the Indiana policy statement and rules are no less effective than the Federal requirements.

V. Performance Standards

1. EPA, FWS, EPI, NWF and IWF argued that Indiana rule 310 IAC 12–5–3 fails to prohibit the diversion of ephemeral, intermittent, and perennial streams as required by 30 CFR 815.15(g).

The Secretary disagrees. 30 CFR 815.15(g) does not prohibit diversions *per se;* it allows and regulates small and temporary diversions of water. Indiana has amended its rules at 310 IAC 12–5–3 to provide the environmental protection required by 30 CFR 815.15(g). Because of the nature of coal exploration in Indiana, the requirements for small temporary diversions are no less effective than the Federal requirements. Indiana allows for the diversion of "all other drainage" with reference to the environmental protection standards of 310 IAC 12–5–18 and 310 IAC 12–5–19. These provisions are no less effective than the Federal rules since all coal exploration activities in Indiana involve core drilling operations which do not substantially disturb the land surface. Also, Indiana explained in its April 8, 1982, modified narrative how it will protect the integrity of biological communities with respect to stream buffer zones (IN–0269).

2. EPA commented that Indiana omits from its rules a section stating the provisions of 30 CFR 815.15(h), which states that each exploration hole, borehole, well or other exposed underground opening created during exploration must be covered in a manner consistent with the casing and sealing performance standards under 30 CFR 816.13–15. The Secretary finds that Indiana has met the Federal requirements for the reasons set forth above in Finding 15.3.

3. EPA commented that Indiana rule 310 IAC 12–5–3(j) exempts "core drilling or drilling of boreholes" in coal exploration from the requirements of 30 CFR 815.15(g). The Secretary agrees for the reasons set forth above in Finding 15.5, and as a condition of approval the State must amend its program to meet the Federal requirements.

4. EPA, EPI, NWF and IWF pointed out that Indiana rules 310 IAC 12–5–8 and 12–5–74, concerning the general requirements for the casing and sealing of drilled holes, do not contain provisions specified in 30 CFR 816.13 and 817.13 to ensure the safety of people, livestock, fish and wildlife and machinery in the mine plan and adjacent area. The Secretary finds the State's program no less effective than the Federal rules because the omitted language merely describes the rationale for why holes must be sealed, which the Indiana rules do require; therefore, no further change is required.

5. EPA, EPI, NWF and IWF commented that Indiana does not have in 310 IAC 12–5–10 a requirement that: "These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activity." The Secretary finds that Indiana has met the Federal requirements for the reasons set forth above in Finding 13.18.

EPI further objected to the fact that Indiana did not submit the rules of the Indiana Division of Oil and Gas. However, the Secretary is not relying on these rules in his approval of the State program. The Secretary has approved Indiana's rules governing boreholes for the reasons discussed in Finding 15.3.

6. EPA, EPI, NWF and IWF pointed out the need for Indiana to incorporate into the State's regulations all of the specific provisions of 30 CFR 816.42 and 817.42 (which state that all drainage must pass through a sedimentation pond or series of sedimentation ponds). The Secretary finds that Indiana has met the Federal requirements for the reasons set forth above in Finding 13.19. EPI, NWF

and IWF expressed concern that the policy statement found in Finding 13.19 may not be enforceable. The Secretary disagrees with the commenters for the reasons set forth in General Comment 1.

7. EPA, EPI, NWF and IWF expressed concern Indiana rules 310 IAC 12–5–18 and 310 IAC 12–54–84: Discharge performance criteria on diversions. EPA argued that Indiana should clarify the term "standard engineering practices," and show how that term requires the design standard for permanent diversions (10-year standard) and temporary diversions (2-year standard) in 30 CFR 816.43 and 817.43 will be met. The Secretary finds that Indiana has met the Federal requirements for the reasons set forth above in Finding 13.20. EPI, NWF and IWF objected to the use of a policy statement to meet 30 CFR 816.43 and 817.43, which set forth design standards for diversions, arguing that it is unenforceable. See response to General Comment 1. The Indiana rules do state that standard engineering practices must be used, and the IDNR has adequate legal authority to exercise its discretion to determine what constitutes such practices in deciding whether to approve a permit. The IDNR can enforce its policy simply by refusing to approve permits which do not reflect engineering practices which IDNR considers to be standard. EPI, NWF and IWF also argued that IDNR's policy statement is "totally inadequate," but did not say in what way it is inadequate. The Secretary finds that it is no less effective than the Federal rules. See Finding 13.20.

8. EPA, EPI, NWF and IWF expressed concern that streams with a watershed of one square mile or less were removed from the protection of 310 IAC 12–5–19 and placed in 310 IAC 12–5–18 and will, therefore, receive less protection. EPA noted that Indiana's rationale for this change is that "administrative efficiency will be promoted" and that a "time-tested rule" implies that such streams do not have hydrological significance. EPA pointed out that significance should be based on hydrological parameters rather than administrative efficiency and that the State's rule is not consistent with the Federal requirements. Therefore, it argues that the State should demonstrate how protection of these streams will be guaranteed as required by 30 CFR 816.44 and 817.44.

Further, EPA commented that Indiana should delete the phrase "* * * with a watershed greater than one square mile * * *" EPA contends that this would provide all streams the protection afforded by 310 IAC 12–5–19. EPA indicated that studies conducted by the Indiana State Board of Health indicate that intermittent streams with small watersheds have biological resources and that these resources may provide food for larger species downstream. EPA contended that these small intermittent streams may serve as spawning and nursery areas for downstream species and, therefore, that the Indiana regulation should be amended to cover all streams in order to provide protection for the downstream biological resources in the general area of the mining activity.

Further, based on the same logic as above, EPA and FWS expressed concern about the deletion of intermittent streams from 310 IAC 12–5–32 and 310 IAC 12–5–97, which establish stream buffer zone requirements. EPA was further concerned that Indiana had omitted the requirements of 30 CFR 816.57(c) concerning streams with biological communities and argued that Indiana should demonstrate how protection of these areas will be provided.

The Secretary finds that the Indiana definition of "intermittent stream" is no less effective than 30 CFR 701.5. The rule differs only in applying the cut-off point of one square mile, which is not mentioned in the Federal definition. EPA appears to have misread the Indiana rule to mean that a perennial stream less than one square mile could be exempted from the protective requirements. The Secretary reads the sentence as protecting all perennial streams within the permit area. Furthermore, Indiana has amended its rule at 310 IAC 12–5–19(d) to delete the limiting phrase "of perennial streams with a watershed greater than five square miles. The deletion of the phrase applies to all streams, intermittent or perennial, in every size or drainage area including those with biological communities (IN–0269). Thus, biological communities are protected.

EPI *et al.* argued that the deletion of this phrase does not make the rule protect all streams because 310 IAC 12–5–19 applies only to intermittent streams with a watershed greater than one square mile.

They also argued that the deletion has nothing to do with 310 IAC 12–5–32 and 12–5–97, which protect only perennial streams. They point out that 30 CFR 816.57(a) requires stream buffer zones for perennial streams and for all streams with a biological community, and argue that Indiana only protects perennial streams. The Secretary finds that Indiana rule 310 IAC 12–5–19(a) sets forth the criteria as to when perennial streams and intermittent streams with a watershed greater than one square mile within the permit area may be diverted. The Secretary finds that Indiana rule 310 IAC 12–5–18 sets forth the criteria as to when intermittent streams of less than one square mile may be diverted. The Secretary finds that intermittent streams of less than one square mile in Indiana may be diverted only when specifically approved by the same conditions imposed under 30 CFR 816.57(a). Therefore, Indiana rule 310 IAC 12–5–18 is no less effective than 30 CFR 816.57(a).

The Secretary finds that for these reasons, the Indiana rules are no less effective than the requirements of 30 CFR 816.43, 816.44 and 816.57, and 817.43, 817.44 and 817.57.

9. EPA, EPI, NWF and IWF commented that in rules 310 IAC 12–5–19(a)(1) and 310 IAC 12–5–85, Indiana omitted the language of 30 CFR 816.44(a)(1) and 817.44(a)(1) that diversions may be allowed if they "are approved by the regulatory authority" after making the findings in 30 CFR 816.57(a). Although Indiana has included part of the requirements, it has omitted restoring the original stream channel. EPA made the same comment regarding Indiana rules 310 IAC 12–5–32 and 310 IAC 12–5–97, the State counterparts to 30 CFR 816.57(a) and 817.57(a), respectively.

The Secretary finds that the Federal requirement that stream channel diversions be approved by the regulatory authority is adequately covered by the requirements of 310 IAC 12–5–19(a)(1) and 310 IAC 12–5–85(a)(1) that diversions be approved by the "Commission." Further, with respect to restoration of stream channels following removal of temporary diversions, 310 IAC 12–5–19(d) (1) and (2) are no less effective than the Federal rules at 30 CFR 816.44(d)(1)–(3) because Indiana's provisions set forth specific restoration requirements. Additionally, Indiana's amended rules at 310 IAC 12–5–32(a) and 310 IAC 12–5–97(a) require stream channel restoration (IN–0269).

10. EPA, EPI, NWF and IWF suggested that Indiana add to its rules at 310 IAC 12–5–19(b)(1), concerning stream channel diversions, the requirements of the last two sentences in 30 CFR 816.44(b)(1) pertaining to erosion control. The Federal rule requires that the regulatory authority approve the use of certain erosion control structures before they can be used. Thus, Indiana has opted to disallow the use of such measures, making its program no less effective than the Federal rules.

11. EPA, EPI, NWF and IWF commented that Indiana should

substitute the language of 30 CFR 816.44(b)(2) for the State's language at 310 IAC 12–5–19(b)(2). Indiana's language does not allow for changes in channel capacity and thus is no less effective than the Federal language.

12. EPA, EPI, NWF and IWF commented that Indiana omits the reference to 30 CFR 816.105 as required by 30 CFR 816.44(c) from 310 IAC 12–5–19(c). The commenters indicated that this is acceptable if Indiana can demonstrate that it has no thick overburden.

The Secretary finds that thick overburden, as defined by 30 CFR 816.105(a), is non-existent in Indiana. Therefore, this provision is not applicable to Indiana; 30 CFR 816.105(a) states that "The provisions of this section apply only when surface mining activities cannot be carried out to comply with 30 CFR 816.101 to achieve the approximate original contour." In Indiana, overburden swell factors and thickness of coal seams are such that approximate original contour can always be achieved. Therefore, no further change is required.

13. EPA, FWS, EPI, NWF and IWF commented that Indiana should delete the language "of perennial streams with a watershed greater than five square miles" from its rules at 310 IAC 12–5–19(d) and 310 IAC 12–5–85(d) to be no less effective than 30 CFR 816.44(d) and 817.44(d). The Secretary finds that Indiana has amended its rules at 310 IAC 12–5–19(d) and 310 IAC 12–5–85(d) to delete the above phrase and to meet the Federal requirements; therefore, no further change will be required (IN–0269).

14. EPA, EPI, NWF and IWF commented that Indiana rules 310 IAC 12–5–19(d) and 310 IAC 12–5–85(d) do not specify all the criteria for construction of permanent diversions and restoration of stream channels as specified in 30 CFR 816.44(d) and 817.44(d). The Secretary has carefully examined the Indiana rules and finds that both of the above Indiana provisions require that the operator shall restore, enhance, or maintain, to the extent possible, natural riparian vegetation on the banks of the stream, and that the operator shall establish or restore the stream to a gradient, cross-section, and shape that approximates premining stream channel characteristics, including (when necessary) meandering and a pattern of pools and riffles. These State rules provide requirements that are no less effective than 30 CFR 816.44(d) and 817.44(d).

15. EPA, EPI, NWF and IWF suggested that Indiana add a provision to its rules at 310 IAC 12–5–20 and 310 IAC 12–5–86, concerning hydrologic balance and sediment control measures, consistent with the requirements of 30 CFR 816.45(b) and 817.45(b). The Federal requirements provide that the sedimentation storage capacity of structures and measures in, and downstream from, the disturbed area shall reflect the degree to which successful mining and reclamation techniques reduce erosion and control sediment. Because Indiana's provisions provide for sufficient control of the sediment storage capacity of structures and measures within the site, the State's rule is no less effective than the Federal requirement. Therefore, the Secretary finds that no further change is required.

16. EPA suggested that Indiana reference the provisions of 30 CFR 816.111(b) and 817.111(b) instead of the State's counterparts setting forth sediment control measures at 310 IAC 12–5–20 and 310 IAC 12–5–85. The reference counterpart to 30 CFR 816.111(b), found at 310 IAC 12–5–59(b), has been amended by Indiana and is consistent with the Federal requirements because the requirements for productivity levels for post-mining land use have been included (IN–0269). Therefore, Indiana's rule establishing sediment control measures at 310 IAC 12–5–70 is consistent with the Federal requirements. However, Indiana's counterpart to 817.111(b), found at 310 IAC 12–5–123(b), was not amended with respect to productivity levels for post-mining land use and is inconsistent with the Federal rules, making its reference in 310 IAC 12–5–86 inadequate. The Secretary agrees with the commenters on this point for the reasons set forth in Finding 13.8 and as a condition of approval has required Indiana to amend its program. Indiana has agreed to amend its program to make its provisions no less effective than the Federal provisions of 30 CFR 817.111(b).

17. EPA suggested that Indiana reference the provisions of 30 CFR 816.101 and 817.101 instead of the State's counterparts setting forth sediment control measures at 310 IAC 12–5–20 and 310 IAC 12–5–86. EPA stated that the referenced counterparts found at 310 IAC 12–5–54 and 310 IAC 12–5–118 provide the same requirements for rough backfilling and grading as 30 CFR 816.101(a)(3) and 817.101, with the exception that at 310 IAC 12–5–118 (the counterpart to 30 CFR 817.101), Indiana refers to an exemption to approximate original contour (AOC). EPA questions whether the exemption is allowed by the Federal rules, an additional concern also raised by EPI, NWF and IWF. The Secretary finds that exemptions to AOC are not allowed by Indiana except for conditions of box cut spoil and last-cut lakes, both of which are covered by performance standards (310 IAC 12–5–39 and 310 IAC 12–5–24) at 30 CFR 816.71 and 30 CFR 816.49. Accordingly, the Secretary finds Indiana provisions to be no less effective than the provisions of 30 CFR 816.101 and 817.101; therefore, no further changes will be required.

18. EPA, EPI, NWF and IWF objected to Indiana's rules on sedimentation ponds. EPA argued that Indiana's rules do not require that 30 CFR 816.46 and 817.46 be met, and EPI, NWF and IWF argued that the memorandum of agreement with the Stream Pollution Control Board is inadequate to meet these requirements because it states that the design criteria in the Federal regulations "will be used in review" of permit applications for sedimentation ponds. The Secretary does not agree for the reasons noted in Finding 13.13. EPI, NWF and IWF also argued that the memorandum of agreement "might not" be enforceable. The Secretary does not agree for the reasons in response to General Comment 1. This memorandum of agreement is a binding part of the State program, and if it should be struck down in court the Secretary will require the State to amend its rules; however, the Secretary does not believe that an element of the State program should be disapproved simply because there is a chance that it will be struck down in court.

19. EPA, EPI, NWF and IWF commented that Indiana's rule at 310 IAC 12–5–23(c) concerning hydrologic balance and the burying and treatment of acid-forming or toxic-forming spoil is inconsistent with 30 CFR 816.48(c) because the Indiana rule does not require such actions to be completed within 30 days or less if required by the regulatory authority. Instead, Indiana's rule uses the phrase "within a reasonable period of time." EPA also pointed out that Indiana's rule does not set forth needed procedures for temporary storage of acid-forming or toxic-forming spoil. The Secretary finds Indiana's program to be no less effective than the Federal provisions for the reasons set forth in Finding 13.14. EPI, NWF and IWF object to the use of a policy statement to meet these Federal requirements, arguing that the statement "may not" survive legal challenge because mining companies may argue that they did not receive notice and an opportunity to comment on the policy statement. The Secretary does not agree that a policy statement is inadequate to meet this requirement because the reference in 310 IAC 12–5–23(c) to "a

reasonable period of time" gives the IDNR ample authority to exercise its discretion to determine that more than 30 days is not reasonable. See also response to General Comment 1. The fact that a policy statement "may not" survive legal challenge does not make it inadequate; rules and statutes as well as policy statements are always subject to legal challenge. If the Indiana's policy statement is legally invalidated, the Secretary will require that the State promulgate a regulation to fill in the gap.

20. EPA, EPI, NWF and IWF commented that Indiana rules 310 IAC 12–5–24 and 310 IAC 12–5–90 concerning hydrologic balance and permanent impoundments are inconsistent with 30 CFR 816.49 and 817.49 because the State's rules do not contain a prohibition on permanent impoundments. The Federal rules state that permanent impoundments are prohibited unless authorized by the regulatory authority. Indiana rules provide that permanent impoundments may be authorized by the Indiana Natural Resources Commission. The State's rule is clear that permanent impoundments are forbidden unless they are authorized by the regulatory authority. For the reasons set forth above, the Secretary finds that the commenter's concerns have been met.

21. EPA, EPI, NWF and IWF suggested that Indiana add the design requirements for impoundment structures contained in 30 CFR 816.49(a)(5) and 817.49(a)(5) to its rules. Indiana amended its rules at 310 IAC 12–4–54(a)(6) and 310 IAC 12–5–90(a)(6) by adding design requirements (IN–0269). The Secretary finds that the Indiana rules are now no less effective than the Federal provisions of 30 CFR 816.49(a)(5) and 817.49(a)(5).

22. EPA commented that Indiana has no provisions consistent with 30 CFR 816.49(f) and 817.49(f) in its rules at 310 IAC 12–4–24 and 310 IAC 12–4–90. The cited Federal provisions require that all dams and embankments meeting the size of other criteria of MSHA's rules shall be routinely inspected by a qualified registered professional engineer, or by someone under the supervision of a qualified registered professional engineer, in accordance with MSHA's rules at 30 CFR 77.216–3. The Secretary finds that the commenter's concerns have been addressed for the reasons set forth above in Finding 13.12.

23. EPA, EPI, NWF and IWF pointed out that Indiana omits several requirements of 30 CFR 816.49(h) and 817.49(h) in its counterparts found at 310 IAC 12–5–24(g) and 310 IAC 12–5–90(g). Specifically, EPA noted that Indiana's rules do not require dams and embankments to be certified to the regulatory authority by a qualified registered professional engineer immediately after construction and annually thereafter. Indiana's rules require certification "after construction" and omit the requirement for annual recertification. Further, Indiana omits the information requirements for certification reports prescribed by 30 CFR 816.49(h)(1)–(5) and 817.49(h)(1)–(5).

The Secretary finds that the Indiana regulations are no less effective than the provisions of 30 CFR 816.49(h) and 817.49(h) because both require the design and construction certification by a qualified professional engineer. The annual certification by a professional engineer is not necessary because the structure need only be recertified after a modification or change. The dam is insected annually by State mine inspectors for modifications and performance. Indiana, therefore, covers the annual certification requirement with an annual inspection requirement. 30 CFR 816.49(h)(1)–(5) is the cross-reference to MSHA rule 30 CFR 77.216(a). Any dam meeting the criteria in 30 CFR 77.216(a) must comply with MSHA's requirement whether or not these requirements are cited in Indiana's State Program. The Secretary finds, for these reasons, that no further changes are required.

24. EPA, EPI, NWF and IWF commented that the Indiana rules at 310 IAC 12–5–27 and 310 IAC 12–5–92 do not provide the same hydrology protection requirements as 30 CFR 816.52 and 817.52. EPA's specific concern was that Indiana rules 310 IAC 12–5–27 and 310 IAC 12–5–92 do not require monitoring of infiltration and flow rates to determine the effects of mining activities on the recharge capacity of reclaimed lands and goundwater systems in the area. While Indiana's rules do not explicitly state these particular methods to determine the effects of mining activities on the recharge capacity and groundwater systems, Indiana's rules do require that the effects of mining activities on recharge capacity be evaluated, which is the intent of the Federal rules. There are other methods available for use by operators to check on groundwater and recharge capacity. Accordingly, the Secretary finds Indiana's rules to be no less effective than 30 CFR 816.52 and 817.52.

Also, on May 18–19, 1982, Indiana provided its Stream Pollution Control Board rules which provide the necessary protection. Therefore, the Secretary finds the Indiana provisions to be no less effective than 30 CFR 816. 52 and 817.52 (IN–0269).

25. EPA, EPI, NWF and IWF argued that Indiana rules 310 IAC 12–5–39 and 310 IAC 12–5–104, concerning general requirements for disposal of excess spoil, do not contain all the requirements of 30 CFR 816.71 and 817.71. EPA's specific concern was that Indiana rules 310 IAC 12–5–39 and 310 IAC 12–5–104 do not require that excess spoil be placed in a manner to ensure that leachate and surface runoff will not degrade surface or ground waters or exceed effluent limitations. While Indiana's rules do not explicitly state the language of 30 CFR 816.71(a)(1) and 817.71(a)(1), the State's rules at 310 IAC 12–5–16(c), 310 IAC 12–5–17(a)(2), 310 IAC 12–5–82 and 310 IAC 12–5–83 specifically state that in no case shall Federal and Indiana water quality statutes, regulations, standards or effluent limitations be violated. Further Indiana rules 310 IAC 12–5–23 and 310 IAC 12–5–89 set forth specific requirements for maintaining hydrologic balance and handling acid-forming and toxic-forming materials. The Secretary finds that Indiana's program, in these particular rules, will ensure that the requirements of 30 CFR 816.71(a)(1) and 817.71(a)(1) will be met in a manner no less effective than the provisions of those Federal rules. The Secretary finds further that Indiana rules 310 IAC 12–5–39 and 310 IAC 12–5–104 contain all of the requirements of Section 516(b)(22) of SMCRA plus other requirements found in 30 CFR 816.71(f) and 817.71(f) for a safety factor of 1.5, and 30 CFR 816.71(m) and 817.71(m) for foundation and abutment stability. The only requirements omitted in the Indiana rules are those which pertain to steep slopes, valley and head-of-hollow fills, which do not occur in Indiana. Indiana rule 310 IAC 12–5–39 also addresses the spoil disposal for box cut, which is not addressed in the Federal rule. For these reasons, the Secretary finds that the commenters concerns have been addressed.

26. EPA, EPI, NWF and IWF commented that at 310 IAC 12–5–41 and 12–5–105 Indiana refers to State rules that are inconsistent with their Federal counterparts. The sections in question are Indiana's counterparts to 30 CFR 816.71–72, and 82–88, 817.71–72 and 82–88, as found under 30 CFR 816.81(a)(1) and 817.81(a)(1). The Secretary finds the references to Indiana rules 310 IAC 12–5–39 and 310 IAC 12–4–104 (counterparts to 30 CFR 816.71 and 817.71) acceptable for the reasons set forth in comment 25 in this section. Indiana does not have rules concerning valley fills (816.72 and 817.72) because no valley fills exist in Indiana. The references to Indiana rules

310 IAC 12–5–42 through 310 IAC 12–5–46, and 310 IAC 12–5–106 through 310 IAC 12–5–110 are acceptable for the reasons set forth in comments 28 and 29 in this section and in Finding 13.7.

27. EPA was concerned that Indiana omits from its rules the provisions of 30 CFR 816.81(b) and 817.81(b), requiring regulatory authority approval for disposal of waste, in its counterparts at 310 IAC 12–5–41 and 310 IAC 12–5–105. Indiana has shown that the regulatory authority has the approval/disapproval power, and that it will be exercised in a manner no less effective than the Federal rules. See Finding 13.14. EPI, NWF and IWF object to the use of a policy statement to fulfill the requirements of 30 CFR 816.81(b) and 817.81(b), arguing that a rule change is preferable and that Indiana will not be able to require operators to submit information not specifically required by its regulations. See response to General Comment 1. The reference in Indiana's rule to a "reasonable period of time" gives IDNR ample legal authority to exercise its discretion to determine what is a reasonable time. IDNR has authority under I.C. 13–4.1–2–2(a)(1) to impose conditions in permits on the temporary storage of spoil.

EPI, NWF and IWF also argue that Indiana's permit application form does not state what type of analysis the operator must use to determine whether disposal will harm water quality or flow or vegetation, whether it will create a health hazard, or whether it will be stable. However, the Federal rules also do not specify these requirements, so Indiana's program is no less effective than the Federal rules.

28. EPA commented that Indiana rules 310 IAC 12–5–43 and 310 IAC 12–5–107 do not provide the same waste bank and water control measure protection as specified in 30 CFR 816.83 and 817.83. EPA commented further that the references to Indiana rules 310 IAC 12–5–8 and 310 IAC 12–5–19 are inconsistent with the Federal rules at 30 CFR 816.72(d). The Secretary has carefully reviewed the Indiana rules and finds that because 30 CFR 816.83(a) and 817.83(a) were suspended by OSM (44 FR 77455 (1979)), the Indiana rules are no less effective than the remaining parts of the Federal rules. Furthermore, Indiana does not have rules concerning valley fills, as in 30 CFR 816.72, and the Secretary has found this to be no less effective than the Federal rule for the reasons set forth in Finding 13.7.

EPI, NWF and IWF commented that Indiana should delete the first occurrence of the phrase "to the extent possible" in 310 IAC 12–5–18(c). The Secretary disagrees as discussed in finding 13.7. Further, EPI, NWF and IWF commented that adding the diversion design criteria of 30 CFR 816.44(f) to Indiana's rules 310 IAC 12–5–18(e) and 310 IAC 12–5–84(e) is not a minor change. They stated that numerous permits could be awarded during the first few months of the program and that the diversion designs submitted almost certainly would not be effective as the design criteria of the Federal rules.

Note.—The correct reference is to 30 CFR 816.43(f).

As stated in Finding 13.9 above, the Secretary's approval is conditioned on this rule change being made, and as stated in the condition (a)(2) of Part E herein, the deficiency is considered minor because of the short period of time necessary for the rulemaking to be completed. The State will not issue any permits which do not conform to design criteria which are no less effective than those in 30 CFR 816.43(f).

29. EPA, EPI, NWF and IWF commented that Indiana should add to 310 IAC 12–5–83 and 310 IAC 12–5–107 the references contained in 30 CFR 816.83(c) and 817.83(c). The Indiana rules are no less effective than the Federal rules in that the Indiana rules include not only the standards of the cited Federal provisions, but also require compliance with all applicable State and Federal water quality standards; therefore, no further change will be required.

30. EPA, EPI, NWF and IWF commented that Indiana rule 310 IAC 12–5–47(a) concerning disposal of non-coal waste is inconsistent with 30 CFR 816.89(a) because the State rule omits the Federal requirement that the area used for placement and storage of non-coal wastes remain stable and suitable for reclamation and revegetation "compatible with the natural surroundings." The Secretary finds that the omitted phrase does not render the Indiana provision less effective than the Federal rule because revegetation compatibility with natural surroundings will be achieved by the State's requirement at 310 IAC 12–4–59(a) that vegetation be of the same seasonal variety. Therefore, no further change is required.

31. EPA, EPI, NWF and IWF commented that Indiana does not explicitly state in rule 310 IAC 12–5–47(b) the requirements of 30 CFR 816.89(b) that disposal sites for non-coal wastes be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Further, they commented that the references to the Indiana provisions contained in 310 IAC 12–5–47(b) are inadequate. Specifically, the commenters are concerned that the State counterparts to 30 CFR 816.111–117, 310 IAC 12–5–59 through 12–5–65, are inconsistent with the Federal rules and, therefore, use of these State provisions creates further inconsistencies. The Secretary finds that Indiana rule 310 IAC 12–5–47 is no less effective than 30 CFR 816.89 because it requires that "placement and storage shall ensure that leachate and surface runoff do not degrade surface or groundwater, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation." In addition, specific design criteria are stipulated in 310 IAC 12–5–47(b). The Secretary finds that the fact that Indiana does not include the explanatory phrase "water barriers" does not render the State's rule at 310 IAC 12–5–47(b) less effective than 30 CFR 816.89. EPA also commented that Indiana omitted from its rules the requirements of 30 CFR 816.89(c) concerning disposal of solid waste material, Indiana amended its rules by adding these requirements at 310 IAC 12–5–47(c). The Secretary finds that the Indiana provision is no less effective than the Federal rule. IN–0269.

32. EPA, FWS, EPI, NWF and IWF expressed concern about Indiana's counterparts to 30 CFR 816.97 and 817.97, found at 310 IAC 12–5–51 and 12–5–115. Specifically, Indiana has no regulation explicitly stating the requirements of 30 CFR 816.97 (a), (c) and (d) and 817.97 (a), (c) and (d) concerning the protection of fish and wildlife. The Secretary agrees with the commenters for the reasons set forth in Finding 13.17. As a condition of approval Indiana must amend its program to satisfy these requirements.

EPI, NWF and IWF argue that this deficiency is not minor and that irreparable harm could be done to fish and wildlife during the months before the program is amended. However, this change must be completed by December, 1982, only four months after the effective date of this approval. By the time Indiana issues any new permanent program permits the new standard will be in effect. Under Section 506(a) of SMCRA, operators need not begin meeting the performance standards until eight months after a program is approved.

EPI, NWF and IWF also commented that Indiana must include in its rules the requirements that roads be fenced to guide wildlife to overpasses and underpasses and that new barriers to wildlife migration routes not be created, as in 30 CFR 816.97(d)(2) and

817.97(d)(2). The Secretary is at present making no finding as to whether this will be necessary, and this comment will be appropriate during the program amendment procedure when Indiana submits material to fulfill this condition.

33. EPA, EPI, NWF and IWF commented that Indiana rules 310 IAC 12–5–56 and 12–5–120, which pertain to covering coal and acid-forming and toxic-forming materials, are inconsistent with 30 CFR 816.103 and 817.103 in several respects. EPA noted that the Federal rules require the use of "the best available" nontoxic and noncombustible material whereas Indiana only requires the use of nontoxic and noncombustible material. The Secretary finds no substantive difference between the Indiana and Federal rules.

EPA commented that Indiana rules 310 IAC 12–5–56(a) and 12–5–120(a) are inconsistent with 30 CFR 816.103(a)(3) and 817.103(a)(3) because the Indiana rules do not state that the regulatory authority shall specify thicker amounts of cover, where necessary to protect against upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth of plant growth, or otherwise to meet local conditions. Furthermore, EPA noted the Indiana rules do not mention formation of acid or toxic seeps in its rules. The Secretary finds that Indiana's rules are no less effective than the Federal rules. Acid or toxic seeps are covered adequately under the State regulation's reference to the migration of salts and requirements that waste materials be treated to neutralize toxicity in order to treat water pollution. Further, thicker amount of cover is not the only treatment to neutralize potential acids. For these reasons, no changes to the Indiana rules will be required.

EPA also expressed concern over Indiana rules 310 IAC 12–5–56(b) and 310 IAC 12–5–120(b). The Federal rules at 30 CFR 816.103(b) and 817.103(b) require backfilled materials to be selectively hauled or conveyed and compacted whereas Indiana's rules omit the Federal requirements concerning the hauling or conveying of such materials. Instead, Indiana's rules require such materials be selectively placed and compacted. The Secretary interprets Indiana's rules to be no less effective than the Federal rules as there is no substantive difference between the two phrases.

Further, EPA suggested that Indiana add to its rules the provisions of 30 CFR 816.103(b) and 817.103(b) which state that the method and design specifications of compacting material shall be approved by the regulatory authority before acid-forming or toxic-forming material are covered. The Secretary does not agree with the comment, and will not require Indiana to add the suggested language to its rules, because the regulatory authority's approval of such methods to compact material will be obtained during the permit approval process, which makes Indiana's program no less effective than the Federal requirements.

34. EPA, EPI, NWF and IWF commented that Indiana rule 310 IAC 12–5–76 pertaining to the permanent casing and sealing of underground openings is inconsistent with 30 CFR 817.15 in several respects. The commenters argued that the Federal rule requires that the regulatory authority make a finding that the underground opening is no longer needed for monitoring purposes or other uses before capping, sealing or backfilling is allowed and that the State omits this requirement. EPA suggested that Indiana delete the phrase "in use shall" from its rule. However, the Federal rule does not require that the regulatory authority make a finding that the hole is no longer needed for monitoring; it requires that a hole be properly managed when it is no longer needed for monitoring "or other use approved by the regulatory authority upon a finding of no adverse environmental or health and safety effects or unless it is to be used as a well." Thus, the finding required is that the other use will not have harmful effects, not that the hole is no longer needed for monitoring. The State rule simply does not refer to other uses, requiring that all holes when no longer needed be properly-managed unless it is to be used as a water well. Since the State does not have the "other use" exception at all, it need not require findings about the other use, and its rule is no less effective than the Federal rule.

Further, EPA suggested that Indiana substitute the references to Indiana rules 310 IAC 12–5–74, 12–4–91, and 12–5–53 because those provisions are inconsistent with 30 CFR 817.13, 817.50 and 817.53, respectively. EPA also noted that Indiana has in 310 IAC 12–5–76 no counterpart to the Federal requirement at 30 CFR 817.15 that permanent closure measures be designed "to keep acid or other toxic drainage from entering ground or surface waters." The Secretary finds that Indiana rule 310 IAC 12–5–76 specifically requires that holes be capped, sealed, backfilled or otherwise properly managed to keep acid or other toxic drainage from entering ground or surface waters, and that, therefore, the Indiana provision is no less effective than the Federal requirement.

35. EPA commented that Indiana refers to State provisions that are inconsistent with the Federal rules. The State references concerned are 310 IAC 12–5–144, 310 IAC 12–5–149 and 310 IAC 12–5–157 which correspond to 30 CFR 819.11, 824.11 and 828.11, respectively. The Secretary has no legal authority to require a State to cross-reference a Federal regulation. However, the Secretary can and will require that State provisions be no less effective than the Federal regulations. Regarding 30 CFR Part 819, all provisions of 310 IAC 12–5–43 and 310 IAC 12–5–44 are identical; therefore the Indiana rule is no less effective than 30 CFR 819.

Regarding 30 CFR Part 824, Indiana has deleted its counterpart (310 IAC 12–5–149) because of the fact that there never has been nor will there ever be mountaintop operations in Indiana because of the geology and topography of Indiana. Therefore, the Secretary finds that the State program is no less effective than the Federal rule. Regarding 30 CFR Part 828, the Secretary finds that Indiana rule 310 IAC 12–5–157 is no less effective than the Federal rule because it contains the same requirements.

36. EPI, NWF and IWF commented that Indiana rule 310 IAC 12–5–27(b), which requires that surface and groundwater monitoring be conducted as specified in the NPDES permit, is not in compliance with the provisions of 30 CFR 817.52, arguing that this rule requires more than does the NPDES permit. As discussed in Finding 13.11 above, the Secretary has determined that the requirements of the NPDES permit are no less effective than 30 CFR 817.52.

37. EPI, NWF and IWF commented that Indiana's provisions at I.C. 13–4.1–8–1(22)(H) and 310 IAC 12–5–42, which require that excess spoil areas be inspected during and after construction, are not as effective as 30 CFR 816.71(b), which requires that fills be designed using recognized professional standards and certified by a registered professional engineer. Indiana's law at I.C. 13–4.1–8–1(22)(H) does, however, require that spoil disposal areas be designed by an engineer licensed under State law and in accordance with professional standards, and this requirement is included in the State's permit application at pages S–50 thru S–53 which require plans with information analogous to 30 CFR 816.71 and 816.85. This is in accordance with Section 515(b)(22)(H) of SMCRA and is no less effective than the Federal rule.

Further, EPI, NWF and IWF commented that Indiana's general

requirement in 310 IAC 12–5–41(b)(2) that "no adverse affect on water quality will be allowed" is not as effective as 30 CFR 816.71(k) and 816.85. As discussed in Finding 13.7 above, the Secretary finds Indiana's rules at 310 IAC 12–5–39 and 310 IAC 12–5–104, which set forth the requirements for the disposal of excess spoil to be no less effective than the Federal rules.

38. FWS commented that Indiana does not specify in its rules the requirements of 30 CFR 815.15 (a) and (b) concerning the prohibition against disturbing fish and wildlife during coal exploration. The Secretary finds that the performance standards in Indiana rules 310 IAC 12–5–6 will assure protection to fish and wildlife habitat through 310 IAC 12–5–69, which prevents damage to fish or wildlife or their habitat. Indiana rule 310 IAC 12–5–3 further requires that all road construction and drilling sites be returned to pre-exploration condition or better and revegetated to the same seasonal variety of native vegetation.

39. EPI, NWF and IWF commented that Indiana rule 310 IAC 12–5–42 does not explicitly state the requirement in 30 CFR 816.82(a)(2) concerning maintenance of coal processing wastebanks. The Secretary finds that Indiana rule 310 IAC 12–5–41(a) requires the maintenance of wastebanks and that the Indiana statute at I.C. 13–4.1–12–4 provides penalties for violating permits and conditions thereof which would include the reclamation plan. Accordingly, the Secretary finds the Indiana provision no less effective than the Federal rules.

VI. Inspection and Enforcement

1. EPA, EPI, NWF and IWF commented that the Indiana rules do not contain either the definitions of "partial inspection" and "complete inspection" or the phrase "coal exploration operation" found in 30 CFR 840.11. Indiana has amended its rules at 310 IAC 12–6–1(b) to add the necessary Federal requirements (IN–0269).

2. EPA noted that the Indiana rules omit provisions comparable to 30 CFR 840.12. The Federal rule requires the State to have the authority for a right of entry. The Secretary finds that Indiana has the required statutory right of entry at I.C. 13–4.1–11–1 and, therefore, finds that the commenter's concern has been addressed.

3. EPA noted that the Indiana rules omit any provision comparable to 30 CFR 840.13, which requires that the State's program contain enforcement authority no less effective than that found in the Federal rules. Indiana has established the general authority in 310 IAC 12–6–1, *et seq.* Therefore, the Secretary finds that the commenter's concern has been addressed.

4. EPA commented that Indiana's rules omit the requirements of 30 CFR 840.14(c), which allows the Director and the State to enter into a special agreement to handle certain investigative and enforcement materials. The Federal rule is permissive, and entering such an agreement is not a required part of the State program. Therefore, the Secretary will not require Indiana to make the suggested change.

5. EPA, EPI, NWF and IWF commented that Indiana rules (1) omit protection of a citizen's identity, as is provided in 30 CFR 842.12(b); (2) omit the right of entry for citizens, as provided in 30 CFR 842.12(c); and (3) omit the right of a citizen to be informed of the results of the inspection in accordance with 30 CFR 842.12(d). Indiana has amended 310 IAC 12–6–2 and 310 IAC 12–6–3 (IN–0269) to protect a citizen's identity and to require a report of the inspection results. Further, Indiana amended its rule at 310 IAC 12–6–2(c) (IN–0269) to provide for the right of entry for a citizen to accompany an inspector, thus meeting the requirements of 30 CFR 842.12(c). The Secretary finds that with the above amendments, the commenters' concerns have been addressed.

6. EPA commented that Indiana rule 310 IAC 12–6–5(a)(2) substitutes "completely" for "in the most expeditious manner physically possible" and omits the time for abatement. Indiana has amended its rules to require abatement "in the most expeditious manner physicaly possible." See IN–0269. In addition, on April 8, 1982 (IN–0265), Indiana issued a formal policy statement which specified that a time for abatement would be included in cessation orders where necessary to abate the imminent danger or harm. For these reasons, the Secretary finds that Indiana's program is no less effective than the Federal rules.

7. EPA, EPI, NWF and IWF noted that the Indiana rules (1) have no reference to "coal exploration," as in the notice of violation provision of 30 CFR 843.12(b)(4); (2) extend the 90-day abatement period in a manner inconsistent with 30 CFR 843.12(c); and (3) have no provision specifying the requirements of 30 CFR 843.12(d) requiring the issuance of a cessation order where the operator fails to meet an interim step. With respect to the issuance of a notice of violation for coal exploration operations, the Secretary is not requiring Indiana to amend its program at this time because the Federal rules at 30 CFR 840.1 make the provisions of 30 CFR 843.12(b)(4) applicable to coal exploration operations which substantially disturb the natural land surface. Such exploration operations will not occur in Indiana. See Findings 15.1 and 19.3. With respect to the extension of the 90-day abatement period and the issuance of a cessation order for an operator who fails to meet an interim step, the Secretary agrees with the commenters, and the Secretary's approval of the Indiana program is conditioned on the State's correcting these problems. See Finding 19.3 and IN–0268.

8. EPA commented that the Indiana rules contain no section comparable to 30 CFR 843.19(g), which allows the Attorney General to seek relief for the refusal to permit inspection of monitoring equipment. Indiana has amended its rules at 310 IAC 12–6–10(g) to include a provision allowing the Attorney General to seek relief for the refusal to permit inspection of monitoring equipment. See IN–0269.

9. EPA commented that Indiana rule 310 IAC 12–6–11 prohibits the assessment of a penalty if the proposed penalty is less than $750. The Secretary finds that the Indiana rule is in accordance with SMCRA Section 518(a) which makes the assessment of a penalty for a notice of violation discretionary.

10. EPA commented that Indiana rule 310 IAC 12–6–12(a) only considers a violation for which a penalty was finally assessed, unlike 30 CFR 843.13(b). Indiana has amended its rules to include information on all violations, regardless of whether a penalty was assessed, in the history of violation (IN–0269); therefore, no further change is required.

11. EPA commented that the Indiana rules limit the minimum penalty found in 30 CFR 845.15(a) and that the Indiana rules establish a maximum of 30 days for the minimum penalty not found in 30 CFR 845.15(b). The Secretary finds that Indiana does not have to establish a minimum penalty since the penalty in 30 CFR 845.15(a) is based upon the point system, which is not a requirement for State programs. Revisions of 30 CFR 845.15(b) establish 30 days as the maximum for which the penalty in 30 CFR 845.15(b) can be established. The Indiana provisions, therefore, are no less effective than 30 CFR 845.15(a) and (b).

12. EPA commented that the Indiana rule at 310 IAC 12–6–14 provides for the waiver of the entire civil penalty. Indiana has amended 310 IAC 12–6–14 to limit the potential waiver of a civil penalty to a notice of violation (IN–0269). The Indiana rule is now no less effective than 30 CFR 845.16.

13. EPA, EPI, NWF and IWF commented that the Indiana rules have no provision specifying the requirements of 30 CFR 845.18(b)(2) which state that "any person shall have a right to attend and participate" in an assessment conference. Discussions with Indiana concerning this omission in 310 IAC 12–6–16(b)(2) have resulted in the State's submittal of a formal policy statement which assures that any person may participate in an assessment conference (IN–0265). See Finding 17.14. EPI, NWF and IWF commented further that a policy statement to the effect that any person may attend an assessment conference is not as effective as a rule change since interested persons will probably rely on the State's rules in trying to ascertain their rights. For the reasons set forth in Finding 17.14 and General Comment 1, the Secretary finds this policy statement to be no less effective than 30 CFR 845.18. The Secretary assumes that Indiana will make its citizens aware of this right and notes that anyone reading this notice will be aware of it.

In addition, EPA, EPI, NWF and IWF pointed out that the conference officer does not have the authority to raise a penalty, as in 30 CFR 845.18(b)(3). The Secretary agrees with the commenters for the reasons set forth in Finding 17.5, and as a condition of approval Indiana must amend its program to satisfy the requirements of 30 CFR 845.18(b)(3). EPI, NWF and IWF objected to the Secretary's consideration of this deficiency as constituting a minor deficiency. The Secretary disagrees with the commenters for the reasons set forth below under "Secretary's Decision," in paragraph (d)(2).

14. EPA commented that Indiana rule 310 IAC 12–6–5 requires that written findings be made before the issuance of a cessation order, which is inconsistent with the requirements of 30 CFR 843.11 and Section 521(a)(2) of SMCRA. Indiana submitted amended rules which delete this written finding requirement and make Indiana's rule no less effective than the Federal requirements (IN–0269).

15. EPI *et al.* commented that Indiana rule 310 IAC 12–6–10(g) omitted the requirement of 30 CFR 843.19(g) concerning the inspection of monitoring equipment. At the meeting of May 18 and 19, 1982 (IN–0268), Indiana gave OSM amended rules (IN–0269) in which the State has added the requirement that the Director, IDNR, can request the Attorney General to institute a civil action for relief when a permittee or his agent "refuses to permit inspection of monitoring equipment." Based on the amended rule submitted by Indiana, the Secretary now finds that Indiana rule 310 IAC 12–6–10(g) is no less effective than 30 CFR 843.19(g).

16. EPI *et al.* commented that the ninety-day extension provision in the Indiana rules at 310 IAC 12–6–6 is impermissibly broad. The Secretary agrees with this comment for the reasons set forth above in Finding 19.3, and as a condition of approval Indiana must amend its program to make its provision no less effective than 30 CFR 843.12(f).

17. EPI *et al.* commented that Indiana omitted in its program a provision comparable to 30 CFR 843.18 concerning the effect of inability to comply with cessation orders and violations. Indiana rule 310 IAC 12–6–6 provides that a cessation order shall be issued if there is a failure to abate a notice of violation. Therefore, the Secretary finds that in no case would inability to comply be a basis to vacate any order or violation.

18. EPI *et al.* commented that the Indiana program omits the requirements of 30 CFR 843.19(a) concerning injunctions when the regulations are violated. The Indiana statute at I.C. 13–4.1–11–4, 5 and 7 provides for injunctive relief for violating the State Act. Further, the Indiana statute in the above sections requires compliance with the rules. Therefore, any violation of the rules will necessarily be construed to be a violation of the Indiana statute and subject to injunctive relief.

19. EPI *et al.* commented that Indiana omits the provisions of 30 CFR 843.17 concerning the vacating of enforcement actions due to failure on the part of OSM to give notice or lack of information to the State. The Secretary finds that 30 CFR 843.17 only applies to OSM, and therefore States are not required to have a counterpart to this section.

20. EPI, NWF and IWF commented that neither Indiana's statute nor its rules require it to take enforcement action for violations of permit conditions and that the narrative explanation provided is not adequate to ensure that there is lawful authority to do so. The Attorney General of Indiana has advised OSM that since every requirement of the permit is one authorized to be included in the permit by the State Act or regulation, a violation of a specific permit condition must therefore be a violation of the corresponding legal authorization. See IN–0260. The Secretary finds this assurance acceptable to meet the requirements of SMCRA.

21. EPI, NWF and IWF commented that Indiana must change rule 310 IAC 12–6–1(b) to require an investigator, presumably an inspector, "to collect evidence of any violations of those conditions or violations observed", adding that assurance by Indiana that this will be done is not sufficient to meet the requirement of 30 CFR 840.11. EPI *et al.* stated that Indiana's rules should state that a complete inspection review includes compliance with requirements of any narrative sections of the program and any policy statements issued by the Director or Commission. Otherwise, EPI *et al.* fear that the public may be deprived of the right to bring a citizen suit to force compliance with this standard should the State fail to perform its obligations. As discussed in Finding 17.16 above and in General Comment 1, the Secretary finds that Indiana's explanation that evidence will be collected is acceptable and that it is enforceable as part of the State program. Therefore, the Secretary finds that 310 IAC 12–6–1(b) is no less effective than 30 CFR 840.11.

22. EPI, NWF and IWF commented that Indiana should incorporate into its rules the names of the agencies from which it intends to accept a signed statement that a notice of violation has been abated so that all persons are put on notice as to who are authorized representatives of the State. The commenters argued that a mere "statement" by Indiana of the names of such agencies is not sufficient. As discussed in Finding 17.17 above, the Secretary finds that 310 IAC 12–6–6(c), together with the list of agencies provided by the Director, IDNR (see IN–0268), to be no less effective than 30 CFR 843.12(e). The commenters' concern that the acceptance of a statement is not adequate is addressed in General Comment 1.

23. EPI, NWF and IWF argue that the deficiency concerning patterns of violation discussed in Finding 17.13, and which is subject to a condition of approval, is not minor. They do not explain why this deficiency is so major as to justify disapproval of Indiana's entire program and imposition of a Federal program, which would be necessary if the deficiency is major. For several reasons, the Secretary does not agree that the deficiencies in Indiana's rule 310 IAC 12–6–6.5(a)(1) concerning patterns of violations amount to a major deficiency justifying disapproval of the entire program. First, the rule change must be submitted by December of this year, only four months after Indiana receives primacy. Under Section 506(a) of SMCRA, operators need not begin meeting the permanent program performance standards until eight

months after a state receives primacy. Thus, no violation of these standards could occur during the first eight months. Second, a pattern of violations by its very nature requires some time to emerge, and Indiana's rule will be changed long before this could occur.

VII. Designation of Lands as Unsuitable for Mining

1. EPI, NWF and IWF objected to Indiana rule 310 IAC 12–2–8(c), which provides that IDNR will give notice of the designation hearing by means of a newspaper advertisement "once a week for two consecutive weeks and once during the week prior to the scheduled date of the hearing." They argue that this is not enough time for citizens to prepare to attend the hearing, or to intervene, and point out that under 30 CFR 764.17(c) the two consecutive weeks of newspaper advertisement must begin between four and five weeks before the scheduled date of the hearing.

The Secretary does not consider this difference of only a few weeks to be significant enough to render Indiana's rule less effective than the Federal rule in meeting the purpose set forth in Section 522(c) of SMCRA, which is that there be "appropriate" notice of the hearing. Interested persons will have been preparing for the hearing in any case, having previously received notice of the receipt of a petition, and intervention is a simple procedure for which it should not take a long time to prepare. The hearing is to be held in the locality concerned in the petition, so extensive travel preparations should not be necessary.

D. Backgound on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. SMCRA calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the States in becoming the primary regulators under SMCRA. To enable the States to achieve primacy, the Secretary has undertaken many activities, of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations, such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors' Association and the Western Interstate Energy Board. Through these groups, OSM has frequently met with State regulatory authority personnel to discuss informally how SMCRA should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them.

The Secretary has dispensed over $8.5 million in program development grants and over $37.6 million in initial program grants to help the States to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances, OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet SMCRA's environmental protection standards.

Equally important, the Secretary structured the State program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each State program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to ensure that communication between him and the States remained open and uninhibited at all times (44 FR 54444, September 19, 1979). This policy was critical to avoiding a period of enforced silence between OSM and a State after the close of the public comment period on its program and has been a vital part of the program review process.

The Secretary has also developed in his regulations the critical ability to conditionally approve a State program. Under the Secretary's regulations, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by SMCRA; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 301(c), 502(b), and 503(a)(7).

SMCRA expressly gives the Secretary only two options—to approve or disapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result, and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to conditionally approve a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision. It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. It also avoids the costly and cumbersome problem of implementing Federal programs where the State submittal was deficient in only minor respects. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States, that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations states, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by SMCRA and these regulations" (44 FR 14961; March 13, 1979). That is, a State must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition, there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be granted.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete, because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of SMCRA that the deficiency would probably be major.

The granting of conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional approval authority is to assist States in achieving compliance with SMCRA, not to excuse them from compliance.

E. The Secretary's Decision

As indicated above under "Secretary's Findings," there are minor deficiencies in the Indiana program which the Secretary requires be corrected. In all other respects, the Indiana program meets the criteria for approval. The deficiencies identified in prior findings are summarized below and an explanation is given to show why the deficiency is minor, as required by 30 CFR 732.13(i).

(a) The deficiencies listed below relate to inadequacies in Indiana's performance standards:

(1) As discussed in Finding 13.8, Indiana rule 310 IAC 12–5–123(b) does not address productivity levels for post-mining land use, as does 30 CFR 817.111(b). This deficiency is minor because the State rule will be modified before it is implemented.

(2) As discussed in Finding 13.9, Indiana rules 310 IAC 12–5–43, 310 IAC 12–5–107, 310 IAC 12–5–18, and 310 IAC 12–5–19 omit the design criteria for diversions found in 30 CFR 816.43 and 817.43. This deficiency is minor because the State has begun rulemaking and because of the short period of time involved for the rule to be amended.

(3) As discussed in Finding 13.15, Indiana rule 310 IAC 12–5–152 does not provide the same criteria for steep slope mining and variances from approximate original contour as does 30 CFR 826.15. This deficiency is minor because of the short time period necessary for the amendment to be made and because Indiana has agreed, in its letter agreeing to meet the Secretary's conditions, not to allow any general variances under this rule during the time it is being amended.

(4) As discussed in Finding 13.16, Indiana rule 310 IAC 12–5–149 concerning "hilltop removal" provides an exemption not provided for in the Federal rules. This deficiency is minor because no permits will be issued under this section and because of the short period of time necessary for the State to amend its rules to delete this provision.

(5) As discussed in Finding 13.17, Indiana rules 310 IAC 12–5–51 and 310 IAC 12–5–115 contain provisions less effective than 30 CFR 816.97 (a), (c), and (d) and 817.97 (a), (c), and (d) concerning protection fo fish and wildlife. This deficiency is minor because of the short time period involved for the State to amend its rules.

(b) The deficiencies listed below relate to inadequacies in Indiana's permitting requirements:

(1) As discussed in Finding 14.16, Indiana rules 310 IAC 12–3–33 and 310 IAC 12–3–44 do not require a plan for control and treatment of surface and ground water drainage, nor do they impose quantitative limits on pollutants in the discharges as required by 30 CFR 780.21(b). This deficiency is minor because of the short period of time involved for the State rule to be amended.

(2) As discussed in Finding 14.19, Indiana has not included in its permit application a requirement that the applicant certify that all reclamation fees required by 30 CFR 870.12 have been paid. This certification is necessary in order that Indiana's rule at 310 IAC 12–3–112(m) will be no less effective than 30 CFR 786.19(h). This deficiency is minor because of the short time involved in the submission of a revision of the application and because it is Indiana's policy that no permits will be issued without such certification from the applicant.

(3) As discussed in Finding 14.23, Indiana rules 310 IAC 12–3–25 and 12–3–63 limit other needed licenses which must be listed on the permit application form to only other "safety and environmental licenses" which is less effective than 30 CFR 778.19 and 30 CFR 782.19. This deficiency is minor because of the short time involved for the State rules to be amended.

(4) As discussed in Finding 14.24, Indiana rules 310 IAC 12–3–37 and 310 IAC 12–3–74 omit the provisions of 30 CFR 779.22 and 783.22 requiring a narrative analysis of "the known history of any previous uses before mining." This deficiency is minor because of the short period of time involved for Indiana to amend its rule and because the Indiana surface coal mining permit application form requires a checklist of premining land uses under its land use information section.

(5) As discussed in Finding 14.25, Indiana rule 310 IAC 12–3–48(a) limited information required by 30 CFR 780.23 concerning post-mining utility and capacity of reclaimed land to only those instances where an alternative land use is proposed. This deficiency is minor because of the short period of time necessary for Indiana to amend its rule.

(6) As discussed in Finding 14.26, Indiana rule 310 IAC 12–3–97 does not provide criteria for steep slope mining and variance from approximate original contour in a manner no less effective than 30 CFR 785.16. This deficiency is minor because Indiana has agreed, in its letter agreeing to meet the Secretary's conditions, not to allow any general variances under this rule during the time it is being amended.

(c) The deficiencies listed below relate to inadequacies in Indiana's coal exploration provisions:

(1) As discussed in Finding 15.2, Indiana rules do not require that the notice of intent to explore, when less than 250 tons of coal will be removed, include a description of the practices proposed to be followed to protect the environment as set forth in 30 CFR 776.11(b)(6). This deficiency is minor because of the short period of time involved for the State rule to be amended and because coal exploration in Indiana is primarily limited to core drilling and the drilling of boreholes which do not substantially disturb the natural land surface.

(2) As discussed in Finding 15.4, Indiana rule 310 IAC 125–3(g) is less effective than 30 CFR 815.15(j) because the State rule exempts core drilling or drilling of boreholes in coal exploration from meeting the requirements of 30 CFR 815.15(j). This deficiency is minor because of the short time period involved for the State rule to be amended.

(d) The deficiencies listed below relate to inadequacies in Indiana's inspection and enforcement provisions:

(1) As discussed in Finding 17.13, Indiana rule 310 IAC 12–6–6.5(a)(1) is deficient in several respects. First, the State rule limits the IDNR Director's ability to make a determination that a pattern of violations exists or has existed only on the basis of an inspection. Further, the State rule omits the phrase "lack of diligence" from its definition of "unwarranted failure to comply," concerning the failure of the permittee to prevent the occurrence of any violation. The Indiana rule also omits provisions for a violation due to indifference, lack of diligence, or lack of reasonable care. The Indiana rule is also unclear as to when the Indiana Natural Resources Commission must act on a permit suspension or revocation. These deficiencies are minor because no permanent program permits will be issued prior to the State rule being amended to meet the requirements of 30 CFR 843.13.

(2) As discussed in Finding 17.15, Indiana rule 310 IAC 12–6–16 does not allow the conference officer the authority to increase a penalty, as is

required by 30 CFR 845.18(b)(3). This deficiency is minor because Indiana has proposed an amendment to this rule and because of the short time period necessary for this rule to be promulgated.

(e) The deficiencies listed below relate to inadequacies in Indiana's bonding provisions:

(1) As discussed in Finding 18.5, Indiana rule 310 IAC 12–4–5(c) does not contain a requirement for the replacement of a bond for long-term operation 120 days prior to the expiration of the existing permit as specified in 30 CFR 801.13(b). This deficiency is minor because the provision is not expected to be implemented prior to being amended.

(2) As discussed in Finding 18.9, Indiana rule 310 IAC 12–4–10(e)(1) contains a typographical error in that the phrase "suspension of revocation" should read "suspension or revocation" in order to be no less effective than 30 CFR 806.12(e)(b)(i). This deficiency is minor because of the short period of time involved for the State rule to be amended, and because Indiana has indicated that it will read its rule as "suspension or revocation" during the period while the correction is being made.

(3) As discussed in Finding 18.12, Indiana rule 310 IAC 12–4–16(a) does not contain a requirement that the advertisement published by the bond release applicant contain notice of the public right to participate, as required by 30 CFR 807.11(b)(7). This deficiency is minor because the provision is not expected to be implemented before being amended.

(f) The deficiencies listed below relate to inadequacies in Indiana's civil and criminal penalty provisions:

(1) As discussed in Finding 19.3, Indiana rule 310 IAC 12–6–6(f) allows an extension of the period for abatement under a notice of violation beyond ninety days under certain circumstances which are not allowed under 30 CFR 843.12. This deficiency is minor because of the short period of time necessary for this rule to be amended.

(2) As discussed in Finding 19.3, Indiana rule 310 IAC 12–6–6(d) fails to provide for issuance of a cessation order where the operator fails to meet an interim step in abatement as required by 30 CFR 843.12(d). This deficiency is minor because of the short period of time necessary for this rule to be amended.

(g) The deficiencies listed below relate to inadequacies in Indiana's lands unsuitable provisions:

(1) As discussed in Finding 21.2, the Indiana Statute at I.C. 13–4.1–14–2 is inconsistent with Section 522(c) of SMCRA and less effective than 30 CFR 764.16 because it requires that allegations of fact in support of petitions to designate lands unsuitable for mining "establish" the allegations, whereas Section 522(c) requires only allegations of fact which "tend to establish" the allegations. This deficiency is minor because of the low number of petitions anticipated to be filed during the time Indiana is acting to amend its program to be in accordance with Section 522(c) of SMCRA and no less effective than 30 CFR 764.13(b)(2). Also, during this time while the State is making the necessary change, interested persons concerned about possible coal mining being permitted by the State in a specific area will be able to express their concerns under the State's permitting process should a permit application be filed concerning the area in question.

(2) As discussed above in Finding 21.3, the Indiana rules at 310 IAC 12–2–9(b) do not specify that the Director, IDNR, must use the information contained in the data base and inventory system in reaching decisions on petitions to designate lands unsuitable as required by 30 CFR 764.19. Also, Indiana rule 310 IAC 12–2–7(c) does not provide for the right of any person to intervene within three days prior to the hearing as required by 30 CFR 764.16(c). These deficiencies are minor because of the low number of anticipated petitions to be processed prior to the time that the Indiana rules will be amended.

(h) The deficiencies listed below relate to inadequacies in Indiana's public participation requirements:

(1) As discussed in Finding 22.9, the Indiana program does not provide for the award of attorney and expert witness fees in surface mining related common law damage actions as required by Section 520(f) of SMCRA. This deficiency is minor because of the short time period before the State provision will be changed and because it is unlikely that any common law damage action will be completed prior to the amending of the State provisions.

(2) As discussed above in Finding 22.12, Indiana's statute at I.C. 13–4.1–4–5 and rules at 310 IAC 12–3–118 and 310 IAC 12–3–119 provide for a hearing only when a permit has been denied, unlike Section 514(c) of SMCRA and 30 CFR 787, which require that the State regulatory authority hold a hearing on any final decision of the regulatory authority. This deficiency is minor because no permanent program permits for existing operations are expected to be issued during the first eight months after permit approval, and because during the remaining four month interval interested persons would be able to seek relief in the courts. Also, any new permits issued during this time could be reviewed in the State courts.

(i) The deficiency listed below relates to an inadequacy in Indiana's conflict of interest provisions:

As discussed above in Finding 23, Indiana rule 310 IAC 12–77–4(f) does not provide a justification for inclusion of the positions listed in 310 IAC 12–7–4(b)(1) and (2), due to a typographical error, making the State rule less effective than 30 CFR 705.11(d). This deficiency is minor due to the short period of time involved prior to the State rule being amended.

Given the nature of the deficiencies set forth in the Secretary's findings and their magnitude in relation to all the other provisions of the Indiana program, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Indiana program incomplete;

2. All other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII;

3. These deficiencies, which will be promptly corrected, will not directly affect environmental protection at coal mines;

4. Indiana has initiated and is actively proceeding with steps to correct the deficiencies; and

5. Indiana has agreed, by letter dated June 28, 1982, to correct the regulation deficiencies by December 31, 1982, the statutory deficiencies by September 30, 1983, and to amend its permit application form by September 1, 1982.

Accordingly, the Secretary is conditionally approving the Indiana program. If regulations correcting the deficiencies are not promulgated by December 31, 1982, if State legislation correcting the statutory deficiencies is not enacted by September 30, 1983, and if the State does not submit an amended permit application form by September 1, 1982, the Secretary will take appropriate steps under 30 CFR Part 733 (as amended June 17, 1982, 47 FR 26356–26367) to terminate the State program. This conditional approval is effective on July 29, 1982. This brief interval will allow IDNR to give adequate public notice and will help provide a smooth transition between the interim and permanent programs, and is in accordance with 30 CFR 732.13(i), as amended on June 17, 1982 (47 FR 26356). Beginning on that date, the Indiana Department of Natural Resources shall

be deemed the regulatory authority in Indiana and all Indiana surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Indiana shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Indiana, the permanent regulatory program consists of the State program approved by the Secretary. Following this approval, in accordance with Section 523(c) of SMCRA, Indiana may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

The Secretary's approval of the Indiana program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mine lands reclamation program.

Other Information

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining (OSM) an exemption from Sections 3, 4, 6 and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve, State regulatory programs, actions or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this action.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I have certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, 30 CFR Chapter VII is amended by adding a new Part 914 as set forth herein.

Dated: July 12, 1982.

James G. Watt,

Secretary of the Interior.

PART 914—INDIANA

Sec.

914.1 Scope.
914.10 State regulatory program approval.
914.11 Conditions of State regulatory program approval.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*).

§ 914.1 Scope.

This part contains all rules applicable only within Indiana that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 914.10 State regulatory program approval.

The Indiana State program, as submitted on March 3, 1980, as amended and clarified on June 4, 1980, as resubmitted on September 28, 1981, and clarified on December 8, 1981, April 8, 1982, May 18–19, 1982 and May 26, 1982, is conditionally approved, effective July 29, 1982. Beginning on that date, the Indiana Department of Natural Resources shall be deemed the regulatory authority in Indiana for all surface coal mining and reclamation operations and all coal exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Indiana permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Natural Resources agreeing to the conditions of 30 CFR 914.11, are available at:

Office of Surface Mining, Room 5315, 1100 L Street, N.W., Washington, DC 20240

Office of Surface Mining, 46 East Ohio Street, Indianapolis, Indiana 46204

Indiana Department of Natural Resources, Suite 202, Indianapolis, Indiana 46204

§ 914.11 Conditions of State regulatory program approval.

The approval of the Indiana State program is subject to the State revising its program to correct the deficiencies listed in this Section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This Section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, copies of promulgated rules or otherwise amends its program to:

(1) Require productivity levels for post-mining land use as required by 30 CFR 817.111(b);

(2) Require the design criteria for diversions as required by 30 CFR 816.43 and 817.43;

(3) Provide criteria for steep slope mining and variance from approximate original contour in a manner no less effective than the requirements of 30 CFR 826.15 and assure that no general variance for approximate original contour will be allowed.

(4) Delete the provisions for hilltop removal found in 310 IAC 12–5–149; and assure that no permits for hilltop removal are granted; and

(5) Require the protection of fish and wildlife in a manner no less effective than that required by 30 CFR 816.97 (a), (c) and (d) and 817.97 (a), (c) and (d).

(b) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, except as noted in 30 CFR 914.11(b)(2), copies of promulgated rules or otherwise amends its program to:

(1) Require a plan for control and treatment of surface and ground water drainage and impose ground water limits on pollutants in the discharges as required by 30 CFR 780.21(b);

(2) Require that each permit application require the applicant to certify that all reclamation fees due under 30 CFR 870.12 have been paid. Indiana must submit this revision to the permit application to OSM by September 1, 1982;

(3) Require that each permit application contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface or underground mining activities including all the information required by 30 CFR 778.19 and 782.19;

(4) Require the narrative analysis of "the known history of any previous uses before mining," as required by 30 CFR 779.22 and 30 CFR 783.22;

(5) Require information concerning utility and capacity of reclaimed land for all lands, and not just those where an alternative land use is proposed as required by 30 CFR 780.23;

(6) Provide criteria for permit requirements for steep slope mining and variance from approximate original contour in a manner no less effective than 30 CFR 785.16.

(c) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, copies of promulgated rules or otherwise amends its program to:

(1) Require that the notice of intent to explore, when less than 250 tons of coal will be removed, include a description of the practices proposed to be followed to

protect the environment as required by 30 CFR 776.11(b)(6);

(2) Require that core drilling and drilling of boreholes during coal exploration activities be conducted in accordance with Section 512(a)(2) of SMCRA and in a manner no less effective than 30 CFR 815.15(j).

(d) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, copies of promulgated rules or otherwise amends its program to:

(1) Require that the criteria for the determination that a pattern of violations exists or has existed meet the requirements of 30 CFR 843.13 and require that lack of diligence be considered with regard to unwarranted failure to comply;

(2) Require that the conference officer have the authority to increase a penalty as required by 30 CFR 845.18(b)(3);

(e) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, copies of promulgated rules or otherwise amends its program to:

(1) Require the replacement of a bond for long term operations 120-days prior to the expiration of the existing permit as required by 30 CFR 801.13(b);

(2) Change the phrase "suspension of revocation" to "suspension or revocation" in Indiana rule 310 IAC 12–4–10(e)(1) to correct the typographical error and make the Indiana rule no less effective than 30 CFR 806.12(e)(6)(i);

(3) Require that the advertisement published by the bond release applicant contain notice of the public right of participation as required by 30 CFR 807.11(b)(7).

(f) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, copies of promulgated rules or otherwise amends its program to:

(1) Require that no extension of an abatement period will be allowed unless it meets the criteria of 30 CFR 843.12(f).

(2) Require the issuance of a cessation order where the operator fails to meet an interim step in abatement as required by 30 CFR 843.12(d).

(g) (1) Termination of the approval found in § 914.10 will be initiated on September 30, 1983, unless Indiana submits to the Secretary by that date, a statutory amendment or otherwise amends its program to: Require that a petitioner would only have to present evidence which would "tend to establish allegations of fact," to be in accordance with section 522(c) of SMCRA and no less effective than 30 CFR 764.13(b)(2).

(2) The approval found in § 914.10 will terminate unless Indiana submits to the Secretary by December 31, 1982 copies of promulgated rules or otherwise amends its program to: Require that the Director, IDNR, must use the information in the data base and inventory system in reaching decisions to designate lands unsuitable as required by 30 CFR 764.19, and to provide for the right for any person to intervene up to within three days prior to the hearing as required by 30 CFR 764.16(c).

(h) Termination of the approval found in § 914.10 will be initiated on September 30, 1983, unless Indiana submits to the Secretary by that date, statutory amendments or otherwise amends its program to:

(1) Provide for the award of attorney and expert witness fees in surface mining related common law damage actions as required by Section 510(f) of SMCRA.

(2) Provide for administrative review of a permit on any final decision of the regulatory authority in accordance with the provisions of Section 514(c) of SMCRA and in a manner no less effective than the requirements of 30 CFR Part 787.

(i) Termination of the approval found in § 914.10 will be initiated on December 31, 1982, unless Indiana submits to the Secretary by that date, copies of promulgated rules or otherwise amends its program to provide for justification of positions exempted from conflict of interest requirements and makes its provision no less effective than 30 CFR 705.11(d).

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30 CFR Part 914

Approval of the Abandoned Mine Reclamation Plan for the State of Indiana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On December 7, 1981, the State of Indiana submitted to OSM its proposed Abandoned Mine Land Reclamation Plan (Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Land Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the plan submission, the Assistant Secretary for Energy and Minerals of the Department of the Interior has determined that the Indiana Abandoned Mine Reclamation Plan meets the requirements of SMCRA and the Secretary's regulations. Accordingly, the Assistant Secretary has approved the Indiana Plan.

EFFECTIVE DATE: This approval is effective July 29, 1982.

ADDRESSES: Copies of the full text of the Indiana Plan are available for review during regular business hours at the following locations:

OSM Indiana State Office, Room 524, U.S. Court House and Federal Building, 46 East Ohio Street, Indianapolis, Indiana 46207

State of Indiana, Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Don Willen, Chief, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–7951.

SUPPLEMENTARY INFORMATION: The good cause for making this rule effective upon date of publication is: (1) The Office of Surface Mining wants to minimize the time between the approval of Title V regulatory programs and Title IV State reclamation program; and (2) grants are pending approval of the Title IV plan and OSM wishes to expedite grant assistance to States to initiate needed reclamation work as required by the Act.

General Background of Abandoned Mine Land Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status

prior to August 3, 1977, and for which there is no continuing responsibility under State or Federal law. Each State, having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Department a State reclamation plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Department may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Department determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Department shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49932–48847, October 25, 1978). Under those regulations, the Director of the Office of Surface Mining is required to review the plan and solicit and consider comments. If the State plan is disapproved, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan, the State may submit to the Office on an annual basis, an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. The annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T to 30 CFR Chapter VII. Subchapter T consists of parts 900 through 950. Provisions relating to Indiana are found in 30 CFR Part 914.

Background on the Indiana Abandoned Mine Plan Submission

On August 31, 1981, a cooperative agreement between the Indiana Department of Natural Resources and the Office of Surface Mining was approved. The purpose of this agreement was to assure that information required for the preparation of the Indiana Abandoned Mine Reclamation Plan would be assembled.

On June 17, 1981, the Natural Resources Division held a public hearing in Vincennes, Indiana to hear comments on the plan.

On December 7, 1981, the State of Indiana submitted its proposed Abandoned Mine Land Reclamation Plan to the Office of Surface Mining.

Notice of receipt of the submission initiating the Plan review was published January 21, 1982 (47 FR 3008–3010). The announcement requested public comments. On May 21, 1982, OSM's Indiana State Director and on May 26, 1982 the Assistant Director for Program Operations and Inspection recommended to the Director that the Assistant Secretary approve the Indiana Reclamation Plan.

The administrative record on the Indiana Plan is available for review during regular business hours at the Office of Surface Mining Reclamation and Enforcement, at the address listed above in "Addresses."

Assistant Secretary's Findings

1. In accordance with Section 405 of SMCRA the Assistant Secretary finds that Indiana has submitted a Plan for reclamation of abandoned mines and has the ability and necessary legislation to implement the provisions of Title IV of SMCRA.

2. The Assistant Secretary has determined, pursuant to 30 CFR 884.14, that:

(a) The Indiana Department of Natural Resources has the policies and administrative structure necessary to carry out the Plan;

(b) The Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R;

(c) The State has an approved regulatory program; and

(d) The Plan is in compliance with all applicable State and Federal laws and regulations.

3. The Assistant Secretary has solicited and considered the views of Federal agencies having an interest in the Plan as required by 30 CFR 884.13(a)(2). These agencies include: The U.S. Department of the Interior, Geological Survey (USGS); the U.S. Department of the Interior, Fish and Wildlife Service (FWS), the U.S. Department of Interior, Bureau of Mines (BOM), U.S. Department of Agriculture, Forest Service (FS), Department of Energy (DOE), and the Federal Regional Council (FRC).

Disposition of Comments

The following comments received on the Indiana Abandoned Mine Land Reclamation Plan during the public comment period were considered in the Assistant Secretary's evaluation of the Indiana Plan as indicated.

1. The USGS commented that the staffing levels given in the plan are too low to effectively run the reclamation program. OSM's response is that staffing needs of an organization are unique and can always be supplemented by outside contracting. Changing the staffing levels in the plan is unnecessary.

2. The USGS suggested that the following two statements given on page 10 of the plan: "a water sampling program may be initiated" and "sampling *may* continue through the life of the project and then after reclamation" that the word *may* be changed to *will* in each of the statements. OSM agrees with this suggestion. The State has agreed to modify the plan accordingly.

3. The USGS commented that reference in the plan that extreme danger or priority I "small money" will be interspersed with "big money" priority II projects cannot be reconciled with Pub. L. 95–87, the OSM regulations, Indiana code, or the State Regulations. OSM agrees with this comment. The State has complied with this suggestion by taking out all references to "big money" and "little money" projects.

4. The USGS suggested changing the statement in § 884.13(f)(4) on page 17 of the plan containing the phrase "guess work" as to the success that can be achieved * * * "OSM agrees with USGS that "guess work" as to the success of a project is not always the case. Indeed—some project results can be judged. The State has agreed to modify the plan by inserting the word "some" after AML in the third to last sentence of page 17.

5. The USGS suggested that the "Site Evaluation Matrix" presented on page 19 of the plan be called a tally sheet instead of a matrix. OSM's response is that the concept of an Evaluation Matrix, i.e. expressing information in rows and columns, is generally understood to be a mechanism for prioritizing projects. No changes to the plan are required by this suggestion.

6. The FWS commented that "prereclamation fish and wildlife values on AML sites will not be adequately considered in site selection and development of the reclamation plan; a system for consultation with our agency regarding fish and wildlife resources at individual sites is not established in the program; and that fish and wildlife habitat is not encouraged as a postreclamation land use." OSM agrees that there is merit in this comment and recommends closer coordination between the State and various Federal agencies. The State has agreed to include a discussion of how it plans to

coordinate reclamation projects with FWS and other Federal agencies.

7. The FWS commented that the Site Evaluation Matrix as shown in the plan may not protect existing wildlife habitats at the sites selected for reclamation. The State has modified the matrix by including additional data to show how wildlife parameters might be better qualified.

8. The FWS commented that the Federal list of endangered species in exhibit V of the plan is not current. Specifically, the mammal list should be updated. OSM concurs with this suggestion. The State has revised the plan accordingly.

9. The FWS commented that there is no provision in § 884.13(f)(5) of the plan entitled Flora and Fauna to insure that the proposed reclamation action will not jeopardize the continued existence of threatened or endangered species. FWS suggests devising a system which would accommodate a federal review of these areas. The State has complied with this suggestion through its plan to coordinate closer with other Federal agencies. See comment No. 6.

10. The BOM commented that the AML inventory is based on 1971 vintage aerial photography and lacks important data such as acid mine drainage problems. A state summary of the data is suggested. OSM feels that a complete summary of AML reclamation sites is not a strict requirement for the plan. It has been determined that a State inventory was completed in 1981 and does include information on acid mine drainage and other problems that cannot be identified from aerial photographs. No modification to the Plan is required.

11. The BOM observes that after defining in detail how priorities will be set, including the application of the site evaluation matrix, the State in effect proposes to disregard these procedures and plans to do priority II projects over priority I projects. OSM observed the same thing and recommended a revision to the Plan. State has complied with this suggestion by modifying the plan to put priority I projects in proper perspective.

12. The FS commented that rather than having an open ended monitoring program which may include all sites with water quality problems, it would be in the best interest of taxpayers to select a few representative sites with water quality problems and monitor them. OSM feels that water monitoring as discussed in the plan is appropriate. No modification to the plan is necessary.

13. The DOE comments that the plan does not specify the types of skills and educational background which would be used as criteria for screening potential candidates for Reclamation Planning specialist. OSM feels that there is no requirement for including selection criteria for personnel in the plan. No modification to the plan is required.

14. The DOE commented that in § 874.14 of the plan not all of the project evaluation criteria listed in the regulations are covered. DOE suggested including criteria 3, 4, 5 and 7 of 30 CFR 874.14 pertaining to reclamation project evaluation. The State has agreed to modify the plan to include these criteria.

15. The DOE commented that certain reclamation procedures and their roles in the reclamation process such as environmental assessments be discussed. OSM feels that the EA is a unique requirement for each reclamation project. A complete discussion of the EA is not required in the Plan.

16. The DOE commented that the relationship between existing and planned land uses of reclaimed land is only discussed in general terms. DOE points out that the usefulness of the material presented on pages 45–70 of the plan is not specified, incorporated or referenced in § 884.13(f)(3). The State has modified the plan to include a more specific discussion of the applicability of the materials identified in pages 45–70.

17. The DOE commented that the Indiana plan should provide for the findings regarding acquisition and the determination of rights that are necessary for land acquisition as set forth in 30 CFR 879.11(a), (d) and (e). OSM agrees with this comment. The State has modified the plan accordingly.

Additional Findings

On November 12, 1981, the Office of Management and Budget exempted the Office of Surface Mining from the requirements of Sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken by OSM to approve State Reclamation Plans or amendments. Therefore, a Regulatory Impact Analysis is not required.

This rulemaking has been examined pursuant to the Regulatory Flexibility Act., 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule will not have a significant economic effect on a substantial number of small entities. The reason for this determination is that approval will not have demographic effects, direct costs, information collection and recordkeeping requirements, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

The Assistant Secretary has determined that the Indiana Abandoned Mine Land Reclamation Plan will not have a significant effect on the quality of the human environment because the decision relates only to policies, procedures and organizations of the State's Abandoned Mine Land Reclamation Program. Therefore, under the Department of Interior Manual (DM) 516.2.3.(A)(1), the Assistant Secretary's decision on the Indiana Plan is categorically excluded from the National Environmental Policy Act requirements. As a result, no environmental assessment or environmental impact statment (EIS) has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjunction with the implementation of Title IV. Also an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1982.

James R. Harris,

Director, Office of Surface Mining.

Dated: July 6, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary for Energy and Minerals.

Therefore Part 914 is amended by adding § 914.20 to read as follows:

PART 914—INDIANA

§ 914.20 Approval of Indiana abandoned mine plan.

The Indiana Abandoned Mine Plan, as submitted and revised is approved. Copies of the approved program are available at:

The Office of Surface Mining Reclamation and Enforcement, Indiana State Office, Room 524, U.S. Court House and Federal Building, 46 East Ohio Street, Indianapolis, Indiana 46207

State of Indiana, Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

[FR Doc. 82-20077 Filed 7-23-82; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 353

[DOD Directive 5142.1]

Assistant Secretary of Defense (Legislative Affairs)

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant Secretary of Defense (Legislative Affairs) (ASFD(LA)) and has delegated specific authorities. This rule (DOD Directive 5142.1) serves as the instrument that authorizes the ASD(LA) to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Assistant Secretary of Defense on July 2, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202–695–4278.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552a(1) of Title 5, United States Code, and 2 CFR 305.76.

List of **Subjects in 32 CFR Part 353**

Organization and functions (Legislative Affairs).

Accordingly, 32 CFR Chapter 1, is amended by revising Part 353, reading as follows:

PART 353—ASSISTANT SECRETARY OF DEFENSE (LEGISLATIVE AFFAIRS)

Sec.
353.1 Reissuance and Purpose.
353.2 Definition.
353.3 Responsibilities and Functions.
353.4 Relationships.
353.5 Authorities.

Authority: 10 U.S.C. 136.

§ 353.1 Reissuance and purpose.

This Part establishes, pursuant to the authority vested in the Secretary of Defense under Title 10, U.S.C., Section 136, one of the positions of Assistant Secretary of Defense as Assistant Secretary of Defense (Legislative Affairs) (ASD(LA)), with responsibilities, functions, and authorities as prescribed herein.

§ 353.2 Definition.

DOD Components. The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

§ 353.3 Responsibilities and functions.

The *Assistant Secretary of Defense (Legislative Affairs)* as the principal staff assistant to the Secretary of Defense for DOD relations with the members of Congress, shall:

(a) Provide advice and assistance concerning congressional aspects of DoD policies, plans, and programs.

(b) Coordinate actions relating to congressional consideration of the DoD legislative program.

(c) Coordinate DoD participation in congressional hearings and investigations.

(d) Assign responsibility for, and coordinate responses to, congressional inquiries.

(e) Process and coordinate requests for DoD support of congressional travel.

(f) Arrange for the designation and appearance of witnesses and provision of information at congressional hearings.

(g) Coordinate the preparation of all congressional testimony and backup material for the Secretary and Deputy Secretary of Defense.

(h) Provide for DOD processing of personal security clearances for members of congressional staffs.

(i) Perform such other duties as the Secretary of Defense may assign.

§ 353.4 Relationships.

(a) In the performance of his duties, the ASD(LA) shall:

(1) Coordinate and exchange information with DOD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DOD Components shall coordinate with the ASD(LA) on all matters related to the functions cited in

§ 353.5 Authorities.

The ASD(LA) is hereby delegated authority to:

(a) Issue DOD Instruction and one-time directive-type memoranda, consistent with DOD Directive 5025.1, "DOD Directives System," October 16, 1980 which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance consistent with the policies and criteria of DOD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as necessary.

(c) Communicate directly with DOD Components. Communications to the Commanders of Unified and Specified Commands shall be coordinated with the Joint Chiefs of Staff.

(d) Communicate with the Executive Office of the President, other Government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

July 20, 1982.

[FR Doc. 82-20133 Filed 7-23-82; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 375

[DoD Directive 5122.5]

Assistant Secretary of Defense (Public Affairs)

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned responsibilities and functions to the Assistant Secretary of Defense (Public Affairs) (ASD(PA)), and has delegated specific authorities. This rule (DoD Directive 5122.5) serves as the instrument that authorizes the ASD(PA) to carry out his charter.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on June 15, 1982, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, telephone 202–695–4278.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, U.S. Code, and 1 CFR 305.76.

List of Subjects in 32 CFR Part 375

Organization and functions (government agencies), Public affairs.

Accordingly, 32 CFR, Chapter 1, is amended by adding a new Part 375, reading as follows:

PART 375—ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)

Sec.
375.1 Reissuance and Purpose.
375.2 Definition.
375.3 Responsibilities.
375.4 Functions.
375.5 Relationships.
375.6 Authorities.

Authority: 10 U.S.C. 136.

§ 375.1 Reissuance and purpose.

This Part establishes, pursuant to the authority vested in the Secretary of Defense under the provisions of Title 10, U.S.C., Section 36, one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Public Affairs) (ASD(PA)), with responsibilities, functions, and authorities as prescribed herein.

§ 375.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the United and Specified Commands, and the Defense Agencies.

§ 375.3 Responsibilities.

The *Assistant Secretary of Defense (Public Affairs)* shall:

(a) Serve as principal staff advisor and assistant to the Secretary of Defense for DoD public information, internal information, Freedom of Information, mandatory declassification review, clearance of DoD information for public release, community relations, information training, and audiovisual matters.

(b) Ensure a free flow of news and information to the media, appropriate forums, and the American people limited only by national security constraints and statutory mandates.

§ 375.4 Functions.

The ASD(PA) shall:

(a) For each of the areas of responsibility cited in paragraph 3 of this section.

(1) Develop policies, plans, and programs in support of DoD objectives and operations.

(2) Monitor, evaluate, and develop systems, standards, and procedures for the administration and management of approved policies, plans, and programs.

(3) Issue policy guidance to DoD Components.

(4) As required, participate with the Assistant Secretary of Defense (Comptroller) in planning, programing, and budgeting activities.

(5) Promote coordination, cooperation, and mutual understanding among DoD Components and with other federal, state, and local agencies and the civilian community.

(6) Serve on boards, committees, and other groups, and represent the Secretary of Defense outside of the Department of Defense.

(b) Conduct security reviews, consistent with Executive Order 12356 and DoD Directive 5230.9, "Clearance of DoD Information for Public Release," April 2, 1982, of all material prepared for public release and publication originated by the Department of Defense (including testimony before Congressional committees), or by its contractors, DoD employees as individuals, and material submitted by sources outside the Department of Defense for such review.

(c) Review for conflict with established DoD and national security policies or programs, official speeches, news releases, photographs, films, and other information originated within the Department of Defense for public release, or similar material submitted for review by other executive agencies of the U.S. Government.

(d) Oversee the provision of news analysis and news clipping services for the OSD, OJCS, and the Military Departments headquarters.

(e) Evaluate and approve:

(1) Requests for DoD cooperation in programs involving relations with the public consistent with 32 CFR Parts 237 and 238.

(2) Requests for travel in military carriers, for public affairs purposes, by news media representatives or other non-DoD personnel.

(f) Direct and administer the DoD Freedom of Information Act Program consistent with 32 CFR Part 286.

(g) Exercise program and resource management control of American Forces Radio and Television activities through the American Forces Information Service consistent with 32 CFR Part 372.

(h) Evaluate and coordinate the DoD response to requests for speakers received by the Department of Defense and, as required, assist in scheduling, programing, and drafting speeches for the participation of qualified personnel.

(i) Provide policy guidance regarding information training to the Defense Information School consistent with DoD Directive 5160.48, "Department of Defense Information Training," February 21, 1964.

(j) Exercise overall policy development and management responsibilities for DoD audiovisual activities consistent with DoD Directive 5040.2, "Audiovisual Activities," July 23, 1979.

(k) Administer the Freedom of Information Act Program and the access portion of the Privacy Act Program for the OSD, OJCS, and other DoD Components as may be assigned.

(l) Direct and administer the mandatory declassification review program for the OSD, OJCS, and other DoD Components as may be assigned.

(m) Exercise direction, authority, and control over the Defense Audiovisual Agency and the American Forces Information Service consistent with 32 CFR Parts 205 and 372.

(n) Perform such other functions as the Secretary of Defense may assign.

§ 375.5 Relationships.

(a) In the performance of assigned duties the ASD(PA) shall:

(1) Coordinate and exchange information with DoD Components having collateral or related functions.

(2) Use existing facilities and services of the Department of Defense or other federal agencies to avoid duplication and achieve maximum efficiency and economy.

(3) Maintain liaison with and provide assistance to the general public, representatives of the news media, and private organizations seeking information relating to the activities of the Department of Defense.

(b) Heads of DoD Components shall coordinate with the ASD(PA) on all matters related to the functions cited in paragraph 4 of this section.

§ 375.6 Authorities.

The ASD(PA) is hereby delegated authority to:

(a) Issue DoD Instructions and one-time directive-type memoranda, consistent with DoD Directive 5025.1, "DoD Directives System," October 16, 1980, which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands regarding public affairs matters shall be issued directly to the commanders of the Unified and Specified Commands. Instructions which have operational implications shall be coordinated with the Joint Chiefs of Staff, consistent with DoD Directive 5105.35, "Responsibilities of Unified and Specified Commands in Public Affairs Matters," May 7, 1965.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as necessary.

(c) Communicate directly with DoD Components. The channel of communications with the Unified and Specified Commands regarding public affairs matters shall be between the ASD(PA) and the Commanders of the Unified and Specified commands. Communications which have operational implications shall be coordinated with the Joint Chiefs of

Staff consistent with DoD Directive 5105.35.

(d) Communicate with other government agencies, representatives of the legislative branch, and members of the public.

(e) Establish arrangements for DoD participation in those non-DoD government programs for which the ASD(PA) has been assigned primary staff cognizance.

(f) Act as the sole agent at the Seat of Government for the release of official DoD information for dissemination through any form of public information media.

(g) Establish accreditation criteria and serve as the approving and issuing authority for credentials for news gathering media representatives traveling in connection with coverage of official DoD activities.

(h) Approve military participation in public exhibitions, demonstrations, and ceremonies of national or international significance.

(i) Declassify official information submitted for security review, mandatory declassification review, and Freedom of Information appellate actions and those over which the Department of Defense exercises final classification jurisdiction.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

July 20, 1982.

[FR Doc. 82-20069 Filed 7-23-82; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property; Solicitations to Postal Employees by Mail or Telephone

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Existing postal regulations prohibit soliciting, electioneering, advertising and similar activity on postal premises. The Postal Service believes the prohibition applies whether or not the person engaging in the activity is physically present on those premises. However, this final rule makes it unambiguously clear that the prohibition includes such activity when carried out by telephone or by mail directed to postal employees on postal premises.

EFFECTIVE DATE: August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 245-4584.

SUPPLEMENTARY INFORMATION: On May 12, 1982, the Postal Service published for comment in the **Federal Register**, 47 FR 20326, a proposed new 39 CFR 232.1(h)(2) to carry out the purpose described in the Summary above. Interested persons were invited to submit comments concerning the proposed changes by June 11, 1982. No comments were received. Accordingly, the Postal Service hereby adopts, without change, the following revisions of title 39, Code of Federal Regulations;

List of Subjects in 39 CFR Part 232

Law enforcement.

PART 232—CONDUCT ON POSTAL PROPERTY

In § 232.1(h), the unnumbered first paragraph is designated as paragraph (h)(1) and present paragraphs (1), (2), and (3) are redesignated as (i), (ii), and (iii). In addition, paragraph (h)(2) is added making the section read as follows:

§ 232.1 Conduct on Postal Property.

(h) * * *

(1) * * *

* * * * *

(2) Solicitations and other actions which are prohibited by paragraph (h)(1) of this section when conducted on Postal Service property should not be directed by mail or telephone to postal employees on Postal Service property. The Postal Service will not accept or distribute mail or accept telephone calls directed to its employees which are believed to be contrary to paragraph (h)(1) of this section.

(39 U.S.C. 401)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 82-20091 Filed 7-23-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 2140-1]

Approval and Promulgation of Implementation Plans; Florida: Carbonaceous Fuel Burning Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a Florida State Implementation Plan (SIP) revision pertaining to carbonaceous fuel burning sources. The emission limits which have been applicable to these sources for several years are now being included in the SIP.

EFFECTIVE DATE: This action will be effective on September 24, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

Library, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365;

Library Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005;

Bureau of Air Quality Mgmt., Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Gilbert, Air Programs Branch, EPA Region IV at the above address and telephone number 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On March 18, 1974, the Florida Department of Environmental Regulation (FDER) held a hearing and adopted rule 17-2.04(6)(i) for carbonaceous fuel burners. FDER submitted the rule on May 22, 1974, as a SIP revision. The new limits replaced the process weight table as being applicable to carbonaceous fuel burners. Subsequent to the publication of the proposal notice (August 9, 1974, 39 FR 28646), EPA requested additional information relative to the control strategy, etc. On September 17, 1981, FDER submitted additional information concerning the sources and ambient air quality in their vicinity.

On January 21, 1981, FDER adopted a reasonably available control technology regulation (RACT) for carbonaceous fuel burners in Jacksonville. Other regulations were also adopted which apply to other source categories and nonattainment areas, but those regulations will be addressed in another notice.

On August 11, 1981, FDER submitted a SIP revision reformatting the entire FDER regulation 17-2. The applicable regulations being approved are 17-2.600 Specific Source Emission Limiting Standards, (10) Carbonaceous Fuel Burning Equipment, and 17-2.650 Reasonably Available Control Technology (RACT), (2) Particulate

Matter, (c) Specific RACT Emission Limiting Standards for Stationary Sources, 3. Carbonaceous Fuel Burners.

Rule 17–2.650(f), compliance schedules, is applicable to carbonaceous fuel burners in Jacksonville; however, no compliance schedules are necessary.

Rule 17–2.420, Designation of areas not meeting the NAAQS, identifies a portion of downtown Jacksonville as nonattainment for particulate matter. This is the only area where carbonaceous fuel burning sources are subject to the more strict rule 17–2.650(2)(c)3. There are no carbonaceous fuel burners in the nonattainment portion of Hillsborough County. The remainder of the State is either attainment or unclassified and there is sufficient air quality and modeling data to demonstrate that these regulations are adequate.

Carbonaceous fuel burners with a capacity less than 30 million BTU per hour total heat input are limited to a 20% opacity except that 40% opacity is allowed 2 minutes in any hour. Burners with a capacity equal to or greater than 30 million BTU per hour total heat input are limited to a 30% opacity except that a 40% opactiy is allowed for 2 minutes in any hour. Burners with a capacity equal to or greater than 30 million BTU per hour total heat input and with an operating or construction permit issued prior to July 1, 1974, must meet particulate emission limits of 0.3 pound per million BTU of heat input (#/10^6 BTU) from carbonaceous fuel and 0.1 #/10^6 BTU from fossil fuel. Burners with a capacity equal to or greater than 30 million BTU per hour total heat input and with permits issued after July 1, 1974, or in a particulate matter nonattainment area must meet limits of 0.2 #/10^6 BTU from carbonaceous fuel and 0.1 #/10^6 BTU from fossil fuel.

Action: EPA is approving the Florida State Implementation Plan pertaining to carbonaceous fuel burning sources. The public should be advised that this action will be effective September 24, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under 5 U.S.C. 605(b), I have previously certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Note.—Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502)).

Dated July 14, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

Section 52.520 is amended by adding paragraph (c)(39) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(39) Emission limits for sources burning carbonaceous fuel, submitted on May 22, 1974, and January 21, 1981, and reformatted on August 11, 1981, by the Florida Department of Environmental Regulation.

[FR Doc. 82–20092 Filed 7–23–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–4–FRL–2140–2]

Approval and Promulgation of Implementation Plans; Florida: Florida Plan Revision for Point Source Emission Testing

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves all of the point source emission testing methods in the State Implementation Plan (SIP) revisions which the Florida Department of Environmental Regulation (FDER) submitted on December 30, 1980, and May 29, 1981. These SIP revisions replace the existing regulations on testing which the FDER has not been allowed to enforce due to legal constraints. However, in these revisions FDER did not provide testing regulations (methods) for all sources, thereby leaving numerous regulated sources without a test method. For all source categories for which FDER did not submit a test regulation, EPA will enforce the regulations using EPA test methods identified in 40 CFR Part 60 until the State submits and EPA approves test methods for these source categories.

DATE: These actions are effective August 25, 1982.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Library, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Department of Environmental Regulation, Twin Tower Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32302

FOR FURTHER INFORMATION CONTACT: Mr. Barry Gilbert, Air Management Branch, EPA Region IV, at the above address and telephone number 404/881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1980, and May 29, 1981, the State of Florida submitted SIP revisions that pertain to point source emission testing procedures used to enforce their emission regulations. The previous stationary source sampling procedures, which were adopted in 1971 by the predecessor of the Florida Environmental Regulation Commission and approved by EPA, were based on a wet impingement method and the ASTM in-stack method for particulate sampling and Western Precipitator (WP)–50 Bulletin (containing basic stack sampling procedures). EPA Reference Methods 1–20 (Appendix A of 40 CFR Part 60) have been developed since 1971. Revisions to the Florida sampling manual were adopted in 1974 and 1975,

but not in conformity with the Florida Administrative Procedures Act. These revisions reflected both extant EPA methods and the earlier Florida methods. These sampling procedures were never adopted as a rule under the revised Florida Administrative Procedures Act. As a result, they became void and unenforceable as of October 1, 1975. Present adoption of source sampling procedures by FDER responds to the need to resolve that issue as well as to remedy a deficiency in the SIP.

Discussion

Submittals

The December 30, 1980, submission contained SIP revisions relating to FDER rule Sections 17–2.02 (Definitions), 17–2.08 (Sampling and Testing), 17–2.23 (Stationary Point Source Emissions Test Procedures), and 17–2.24 (Severability). The May 29, 1981, submittal modified and replaced the entire FDER rule Sections 17–2.23 (Stationary Point Source Emissions Test Procedures) and 17–2.24 (Severability). EPA approves FDER rule Sections 17–2.23 (Stationary Point Source Emissions Test Procedures) and 17–2.24 (Severability) as submitted May 29, 1981; and FDER rule Sections 17–2.02 (Definitions: (15) Batch Process and (69) Isokinetic Sampling or Isokinetic Conditions), and 17–2.08 (Sampling and Testing) as submitted December 30, 1980.

Test Methods

Section 17–2.23, Florida Administrative Code (FAC), as adopted by the Florida Environmental Regulation Commission, limits the procedures for source sampling to regulatory provisions required by law. Procedures of FDER adopted in Section 17–2.23, FAC, are brought to agreement with EPA Methods where EPA methods are applicable. The differences between FDER Methods and EPA Methods are minor except for Method 2.

In regulation 17–2.23(6) (a) and (b), FAC, the following EPA Reference Methods are adopted in their entirety: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13A and 13B, 14, 15, 17, 19, and 20. For sources required to use EPA Method 5, flexible tubing may be inserted between the heated filter and the first impinger. The allowable length of the tubing is not specified. In addition the following FDER methods have been adopted: 1, 2, 3, 5, 6, and 9. FDER Methods 1 through 3, and 6 are substantially identical to the EPA Methods of the same number but are designed to apply to existing sources.

EPA approves all these test methods.

FDER Method 2

In regulation 17–2.23(6)(a)2., FAC, FDER Method 2, Stack Gas, Velocity and Volumetric Flow Rate, the State has relaxed the cyclonic flow restrictions for applying Method 2 to existing sources by increasing the allowed deviation from parallel flow from 10 degrees to 20 degrees. The FDER feels the lack of adopted procedures for cyclonic flow sampling, the small number of affected major sources and the exceptional expense for alternate sampling methods and facilities, justifies this exception. This procedure is unacceptable according to the procedure as stated in the Code of Federal Regulations and the EPA Quality Assurance Handbook for Air Pollution System, and supported in the report, "Angular Flow Insensitive Pitot Tube Suitable for Use with Standard Stack Testing Equipment," EPA Report 600/4–79–042. Because the pollutant emission rate it is based upon the average stack gas velocity and volumetric flow rate measurements, it is critical to obtain accurate velocity reading. Unless the true direction of the flow is known and the "S" pitot tube is aligned with the flow, the flow cannot be accurately measured. For this reason, the USEPA Method 2 limits the "S" pitot tube to conditions of angular flow less than 10° from the stack axis. Exception to the 10° maximum limit may be considered on a case-by-case determination in advance of the test when EPA's proposed method to adjust for cyclonic flow is incorporated into the test procedure. Otherwise, there should be no deviation from this maximum allowable limit as stipulated in Method 2 and in the "Quality Assurance Handbook for Air Pollution Measurement Systems, Vol. III."

In a June 17, 1981, letter to EPA, FDER stated that it has agreed to make the following changes in the FDER procedure:

1. Measure the angle of flow at each traverse point and record the maximum angle observed.
2. Select the proper nozzle by conventional determination.
3. If maximum angle is less than ten degrees, do nothing since the percent error is only 1.5 percent for a maximum angle of 10°.
4. If maximum angle is more than ten degrees, multiply the actual nozzle diameter by the cosine of the largest angle observed in order to calculate the effective apparent nozzle diameter.
5. Put the effective apparent nozzle diameter on the nomograph and on the data sheet to figure isokinetic flow.

Comment: A comment was received on EPA's proposed action. FDER stated that it had agreed to make proposed changes in a procedure for stack testing cyclonic flows, but had not as yet adopted those changes as was implied in the proposal notice.

EPA Response: EPA accepts the FDER commitment to make the necessary changes to this regulation.

EPA therefore approves FDER Method 2 with the understanding that this procedure will be used to correct cyclonic flow.

Other FDER Regulations

Sections 17–2.600 (5) and (6) and 17–2.650 (2)(c)1. allow the use of certified transmissometers in determining compliance with the visible emissions standard. This special condition does not preclude the use of a certified visible emission reader in determining compliance with the applicable visible emission standard.

Sections 17–02.23(1)(c) and 17–2.23(3) provide that the FDER Secretary can, at his discretion, approve alternative test procedures. Further, the document entitled "Comparative Appraisal of SIP Revision With Previous Source Sampling Procedures," which accompanies the SIP submittal, provides in paragraph 5.e. that "for EPA test methods which are adopted by reference, the Secretary of the Department or his designee may approve alternative procedures whenever the EPA Method authorizes the Administrator to make such a determination."

Any alternative procedures adopted by FDER will not be effective under the SIP unless and until they are submitted to and approved by EPA as SIP revisions.

FDER Reserved Methods

FDER previously submitted SIP revisions containing test methods which were intended to replace test methods developed in the original SIP. EPA has never approved those revisions because of certain deficiencies. The present EPA-approved Florida SIP is out of date since the EPA-approved test methods are applicable to emission limits which have been extensively modified, i.e., emission limits now apply to each specific types of source rather than to processes in general.

The regulations submitted December 30, 1980, and May 29, 1981, completely replace the State's previously adopted test method regulations. EPA approves all the regulations submitted, as proposed on September 8, 1981 (46 FR 44783). However, in these revisions FDER did not submit testing regulations (methods) for all sources, but instead

reserved sections, thereby leaving numerous regulated sources wihout a test method. For clarity, the applicable regulations (emission limiting standards) are identified below by both the rule numbers in effect when these revisions were submitted and when the entire regulations were reformated on August 11, 1981. FDER did not submit test methods for the following source categories:

Particulate emissions from citrus plants controlled by a scrubber and subject to the process weight table (submitted as 17–2.05(2) and reformated as 17–2.610(1)1.a.).

TRS emissions from recovery furnaces at kraft pulp mills (submitted as 17–2.05(6)D and reformated as 17–2.600(4)1.).

Sulfur dioxide emissions from fossil fuel steam sources (submitted as 17–2.05(6)E and reformated as 17–2.600 (5) and (6)).

Emissions from portland cement plants (submitted as 17–2.05(6)F and reformated as 17–2.600(7)).

Particulate and visible emissions from carbonaceous fuel burning equipment (submitted as 17–2.05(6)I and reformated as 17–2.600(10)).

Comments: The Region IV office of EPA has received several comments from the pulp and paper industry objecting to EPA's proposed use of EPA test methods for source categories without a specified FDER test procedure and suggesting that EPA utilize unspecified test methods which were used to set the FDER emission standards. FDER has asked EPA for time for the industry to stack test to determine the correct and fair test methods.

EPA Response: Section 110(a)(2)(C) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(C) requires each SIP to contain "devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality * * *." Section 110(a)(2)(B) requires each SIP to include "emission limitations, schedules, and timetables for compliance * * * and such other measures as may be necessary to insure attainment and maintenance of [primary and secondary ambient air quality standards] * * *" 42 U.S.C. 7410(a)(2)(B). These statutory sections of the Clean Air Act provide ample authority for EPA to require test methods in state-submitted SIP revisions, or where none are adopted, to require by enforcement of EPA test methods. Without stated test methods for certain source categories, an SIP deficiency exists because there is no way EPA can determine source compliance with individual source emission limitations. If EPA cannot determine by test methods the compliance status of a source with the individual emission limitations applicable to it, then the Agency cannot insure that such individual emission limits in the SIP will achieve and maintain ambient air quality standards. EPA cannot enforce unidentified test methods used by FDER to develop certain emission standards, unless FDER officially adopts the test methods and forwards them in an SIP revision to EPA for approval.

Finally, 40 CFR 52.12(c)(1) (1980) expressly provides that EPA test methods (found at 40 CFR Part 60) will be enforced by the EPA when an SIP does not specify a test procedure.

FDER can replace EPA test methods by submitting acceptable test methods to EPA for inclusion in the SIP. EPA will enforce the regulations listed above using EPA test methods identified in 40 CFR Part 60 until the State has adopted and submitted approvable test methods for these source categories.

Action. Based on the foregoing, EPA hereby approves all of the point source emission testing methods which the FDER has submitted to provide procedures for point source emission sampling. For all source categories for which FDER did not submit a test regulation, EPA will enforce the regulations listed above using EPA test methods identified in 40 CFR Part 60 until the State has adopted and submitted approvable test methods for these source categories.

This action is effective August 25, 1982.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

1. Section 52.520 is amended by adding paragraph (c)(47) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(47) Point source emission testing methods submitted on December 30, 1980, and May 29, 1981, by the Florida Department of Environmental Regulation.

2. A new § 52.533 is added as follows:

§ 52.533 Source surveillance.

The plan lacks test methods for several source categories. As required by § 52.12(c)(1) of this part, EPA test methods (found at 40 CFR Part 60) will be used by EPA to determine compliance with the following emission limiting standards:

(a) Particulate emissions from citrus plants controlled by a scrubber and subject to the process weight table (submitted as 17–2.05(2) and reformatted as 17–2.610(1)1.a).

(b) TRS emissions from recovery furnaces at kraft pulp mills (submitted as 17–2.05(6)D and reformatted as 17–2.600(4)1).

(c) Sulfur dioxide emissions from fossil fuel steam sources (submitted as 17–2.05(6)E and reformatted as 17–2.600 (5) and (6)).

(d) Emissions from portland cement plants (submitted as 17–2.05(6)F and reformatted as 17–2.600(7)).

(e) Particulate and visible emissions from carbonaceous fuel burning equipment (submitted as 17–2.05(6)I and reformatted as 17–2.600(10)).

[FR Doc. 82–20090 Filed 7–23–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–FRL–2167–2]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces final approval of a revision to the Michigan State Implementation Plan (SIP) for ozone. The revision pertains to the State's strategy to control volatile organic compound (VOC) emissions from stationary industrial sources of VOC emissions addressed in EPA's Group II Control Technique Guidelines (CTGs). EPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

EFFECTIVE DATE: This final rulemaking becomes effective on August 25, 1982.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of Section 107 of the Act, the EPA designated certain areas in Michigan as not attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Part D of the Act requires each State to revise its SIP for areas that have not attained the NAAQS. These SIP revisions must demonstrate attainment of the primary NAAQS by December 31, 1982, or in certain cases, by December 31, 1987. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemaking published on April 4, 1979 (44 FR 20372) as supplemented at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979) and 44 FR 67182 (November 23, 1979).

In response to the requirements of Part D of the Act, the State of Michigan amended the Michigan Administrative Code to require control of VOC emissions from stationary industrial sources addressed in EPA's Group II CTGs issued between January 1978 and January 1979. The State submitted the amendments to the EPA as a SIP revision on September 2, 1981. The regulations and definitions are codified as follows:

•R336.1101–3, R336.1105–9, R336.1114–16, R336.1118–21 and R336.1123	Definitions
•R336.1601	Definition of Existing Source
•R336.1603	Compliance Program
•R336.1604	Storage of Organic Compounds
•R336.1610	Existing Coating Lines
•R336.1619	Perchloroethylene Dry Cleaning
•R336.1620	Flat Wood Paneling Coating
•R336.1621	Metallic Surfaces Coating
•R336.1622	Petroleum Refinery; Refinery Monitoring Program
•R336.1623	Petroleum Liquid Storage
•R336.1624	Graphic Arts Lines
•R336.1625	Synthesized Pharmaceutical Products
•R336.1626	Pneumatic Rubber Tire Manufacturing
•R336.1627	Delivery Vessels and Vapor Collection Systems
•R336.2005	Other Reference Test Methods

On April 13, 1982 (47 FR 15810), EPA proposed to approve the SIP revision with the understanding that the State change section 2(a) of Rule 336.1624 regulating Graphic Arts Lines. The reader is referred to the notice of proposed rulemaking for further details. In a letter dated January 5, 1982, the State of Michigan committed to change the rule to substantially shorten the averaging time contained in section 2(a). EPA received no public comments on the proposed rulemaking; therefore, EPA finally approves the revision to Michigan's SIP as outlined in 47 FR 15810 with the understanding that the State change R336.1624 section 2(a), as committed.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Note.—Incorporation by reference of the State Implementation Plan for the State of Michigan was approved by the Director of the **Federal Register** on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, 172 and 301(a) of the Clean Air Act)

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Subpart X—Michigan

1. Section 52.1170 is amended by adding paragraph (c)(56) as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(56) On September 2, 1981, the State of Michigan submitted a revision to the ozone plan consisting of RACT requirements for the control of volatile organic compound emissions from stationary industrial sources (Group II) referenced in Rules R336.1101–3, 5–9, 14–16, 18–21, 23; R336.1601, 3–4, 10, 19–27; and R336.2005.

[FR Doc. 82-20131 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL 2170-4]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In a May 6, 1982, **Federal Register** notice (47 FR 19556) EPA proposed to approve the deadline by which the State of Minnesota committed itself to remedy the conditionally approved item in the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). No public comments were submitted during the thirty-day comment period. Therefore, EPA takes final action today to approve the deadline.

EFFECTIVE DATE: This final rulemaking becomes effective August 25, 1982.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 24060

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis

Section, Air Programs Branch, EPA, Region V, 230 South Dearborn Street, Chicago Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: On May 6, 1982 (47 FR 19520) EPA approved the State of Minnesota's Part D plan to attain the primary and secondary TSP standards in the Twin Cities Seven County Metropolitan Area and the City of Duluth with the exception of Rule APC–29 which is conditionally approved. APC–29 contains standards of performance for grain handling facilities. A conditional approval requires the State to remedy identified deficiencies by specified deadlines. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 67182).

Based on negotiations with EPA, the State of Minnesota in a letter dated January 22, 1982, committed itself to submit an amended Rule APC–29, containing opacity limits, to EPA by December 31, 1982. EPA proposed approval of this deadline on May 6, 1982 (47 FR 19556). No public comments were submitted during the thirty day public comment period. Therefore, EPA approves the December 31, 1982 date.

This action is not required to undergo review by the Office of Management and Budget.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.1230(a) is revised to include the December 31, 1982, deadline.

§ 52.1230 Control strategy and rules: Particulates.

(a) Part D—Conditional Approval.

(1) The attainment demonstration for the Twin Cities Seven County Metropolitan Area and the City of Duluth is approved provided that the following condition for Rule APC–29 is satisfied by December 31, 1982.

(2) The State must submit either an amended APC–29 which contains specific opacity limits that are representative of RACT levels of control; or operating permits and/or stipulation agreements which contain opacity limitations equivalent to reasonable available control technology levels.

[FR Doc. 82–20093 Filed 7–23–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–4–FRL 2144–1]

Approval and Promulgation of Implementation Plans; North Carolina: New Source Review, Bubble Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA announces its approval of implementation plan revisions which North Carolina submitted on April 16 and September 14, 1981. These revisions include regulations providing for new source review in nonattainment areas, alternative emission reduction options ("bubbles"), the State's permit regulations, and miscellaneous regulatory changes. This action by EPA means that the North Carolina plan meets the requirements of 40 CFR 51.18(j); it also means, among other things, that the State can approve bubbles for volatile organic compounds (VOC) which do not need EPA approval to be Federally enforceable.

DATE: This action is effective August 25, 1982.

ADDRESSES: Copies of the materials submitted by North Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20005

Air Management Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 N. Salisbury Street, Raleigh, North Carolina 27611, Archdale Building.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the Region IV, Air Management Branch, at 404/881–3043 (FTS 257–3043).

SUPPLEMENTARY INFORMATION: Following notice and public hearing in conformity with 40 CFR 51.4, the North Carolina Environmental Management Commission adopted numerous regulation changes which were submitted to EPA on April 16 and September 14, 1981, for approval as implementation plan revisions.

New Source Review in Nonattainment Areas

On November 24, 1981 (46 FR 57572), EPA proposed to approve North Carolina regulations 2D.0531 and .0532, which replace old regulation 2H.0608, Permits for Sources Impacting Nonattainment Areas. As indicated in the proposal, the two new regulations satisfy the requirements of 40 CFR 51.18 (j) and (k) as promulgated on May 13 and August 7, 1980 (45 FR 31307 and 52743 ff.). However, the State was asked in the proposal to clarify the waiver provided in 2D.0531(e)(3)(B) for sources requiring modification as a result of EPA regulations. This waiver was taken from EPA's offset policy (Appendix S to 40 CFR Part 51). EPA's initial review of the North Carolina revisions failed to note that this waiver had been superseded by the August 7, 1980, promulgation. Nevertheless, the effect of the waiver is expected to be minimal and presents no obstacle to approval of North Carolina's regulation.

As the State has shown, the partial waiver applies only to the requirement for emission offsets and net air quality benefit and is available only to sources required to be modified as a result of EPA regulations, e.g., lead-in-fuel requirements, and only when no exemption from such regulations is available. There are no such sources in the only affected area, Mecklenburg County, which is nonattainment for carbon monoxide and ozone only. This area has no petroleum refineries.

Bubble Concept, etc.

On March 29, 1982, EPA proposed approval of "bubble" provisions and a number of other regulation changes. The changes include those noted in the next section on "other permits", the State's permit regulations and an ambient particulate standard revised to be consistent with the Federal standard. For a fuller description of the changes, the reader may refer to the proposal notice (47 FR 13172). One comment was

received in response to the proposal; it favored approval of the changes.

The North Carolina provisions for alternative emission reductions allow industrial plants to choose a less costly way of achieving the air quality benefit provided by traditional controls on individual emission points. Using such an approach, a source will control some emission points more than ordinarily required while controlling other points less or not at all. The changes approved today will allow North Carolina to approve individual bubbles for VOC emissions under a generic bubble rule. The VOC bubble revisions approved by the State will not need EPA approval as implementation plan revisions. The changes approved today also set procedures for developing bubble plans for other pollutants. Such bubble revisions must be submitted to EPA for approval as implementation plan revisions.

Other Permits

The State amended regulation 2H.0603(f) to require a public hearing for source permits involving any of the following:

1. A requirement for controls more stringent than the applicable emission standards in Section 15 NCAC 2D .0500 in accordance with Regulation 15 NCAC 2D .0501,
2. an allowance of controls different than the applicable emission standards in Section 15 NCAC 2D .0900 in accordance with Regulation 15 NCAC 2D .0905,
3. an alternate compliance schedule promulgated in accordance with Regulation 15 NCAC 2D .0910,
4. a limitation on production rate, throughput, hours of operation or other similar operational factors in accordance with Regulation 15 NCAC 2D .0902, or
5. the quantity of solvent-borne ink that may be used by a printing unit or printing systems in accordance with Regulation 15 NCAC 2D .0936.

For clarification, it should be noted that such permits become federally enforceable only after being submitted to and approved by EPA as a SIP revision. In addition, subdivision (h) was added to regulation 2H.0603. Its effect is to make the permit conditions just listed federally enforceable without going through the implementation plan revision process. As EPA indicated in its proposal notice of March 29, 1982, this provision conflicts with current Agency policy on the enforceability of State permits. No action is being taken today on 2H.0603(h) since the State plans to repeal it.

Action. Except for regulation 2H.0603(h), on which no action is taken, these changes in the North Carolina plan are approved, effective August 25, 1982.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OBM) for review.

Note.—Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502)

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart II—North Carolina

§ 52.1770 is amended by adding paragraph(c)(31) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(31) Addition of regulations 2D.0531 and 2D.0532 to replace repealed regulation 2H.0608, regulations providing for alternative emission reduction options, revised permit regulations (no action is taken on the addition of subdivision (h) to regulation 2H.0603), and miscellaneous other regulation changes, submitted on April 16, 1981, and relaxed annual ambient standard for particulate matter, submitted on September 14, 1981, by the North Carolina Department of Natural Resources and Community Development.

[FR Doc. 82-20095 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-2159-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The EPA announces approval on a revision to the Total Suspended Particulate (TSP) Ohio State Implementation Plan (SIP). This revision is in the form of an alternative emission reduction plan ("bubble") for eighteen sources at the General Motors Central Foundry (GM) located in Defiance County, Ohio. EPA's approval of this revision is based on a modeling analysis submitted by the State which shows that this revision will result in an overall improvement in TSP air quality.

EFFECTIVE DATE: This final rulemaking becomes effective on August 25, 1982.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone the contact person given below before visiting the Region V Office).

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Environmental Protection Agency, Region V, Chicago, Illinois 60604, 886-6088.

SUPPLEMENTARY INFORMATION: On March 27, 1981, the State of Ohio submitted a revision to the total suspended particulate (TSP) portion of the Ohio State Implementation Plan (SIP). The SIP revision was in the form of an alternative emissions reduction plan for the GM Central Foundry located in Defiance County, Ohio. This county is a designated attainment area for TSP. (40 CFR 81.336)

The GM Bubble trades TSP emission reductions from eighteen sources located at the GM Central Foundry. The

sources affected by this bubble are six Brown-Bovier electric induction furnaces, six Ajax electric induction furnaces and six material handling processes (i.e., mold shakeout, casting/mold separation equipment, sand reclamation and preparation devices, mold cooling and spudding operations and other material handling equipment). To ensure that the emission reductions for all eighteen sources are enforceable, Ohio EPA submitted variances and modified operating permits for each of the eighteen sources subject to the GM bubble.

TSP emissions from these sources are regulated by rule 11 of Chapter 3745–17 of the Ohio Administrative Code. For the six Ajax furnaces and the six Brown-Bovier furnaces, rule 3745–17–11 specifies for each furnace TSP emission limitations 2.3 lbs./hr and 1.9 lbs./hr respectively. The total TSP emissions allowed by rule 3745–17–11 from the six Ajax and the six Brown-Bovier furnaces are 25.2 lbs./hr.

Present actual TSP emissions are 22.5 lbs./hr, from each of the Ajax furnaces and 16.9 lbs./hr, from each of the Brown-Bovier furnaces. Total actual TSP emissions from these furnaces are 236.4 lbs./hr.

Through the installation of additional air pollution control equipment, the GM bubble will reduce TSP emissions from the Ajax and Brown-Bovier furnaces to 14.0 lbs/hr and 8.4 lbs/hr respectively, for each furnace. Total TSP emissions for all of the furnaces would then be reduced to 134.4 lbs/hr.

To achieve the emission reduction goal of 25.2 lbs/hr specified in rule 3745–17–11, an additional TSP reduction of 109.2 lbs/hr needs to be achieved. The GM bubble will achieve this goal by reducing TSP emissions from the six material handling processes previously mentioned by a total of 144 lbs/hr beyond what is presently required for these sources. Under the GM bubble plan, the 144 lbs/hr reduction achieved as a result of implementing additional controls on the six material handling processes will more than adequately offset the 109.2 lbs/hr reduction needed as a result of the new limits specified for the Ajax and Brown-Bovier furnaces. Therefore since this revision will reduce the TSP emissions by an additional 34.8 lbs/hr, EPA on October 29, 1981 (46 FR 53461) proposed to approve this revision as part of the Ohio TSP SIP.

On March 10, 1982, Ohio submitted to EPA revised operating permits for six of the furnaces which are part of the GM bubble SIP revision. The sources involved are Ajax electric induction furnaces. According to the terms of the GM bubble, these sources are to achieve final compliance by September 1, 1982.

The revised operating permits for these six sources extend the compliance date from September 1, 1982 to September 1, 1983. The purpose for the extension is to allow additional time to resolve engineering problems arising from research and development of the Inmold Innoculation process. Since EPA believes that the new final compliance dates will not interfere with the area's ability to maintain its present TSP attainment status, on March 31, 1982 (47 FR 13535) EPA published a supplemental notice of proposed rulemaking proposing to approve these revised operating permits as part of the GM bubble.

EPA received a public comment from the State of Connecticut regarding the alternative emission reduction plan, however, no comments were submitted regarding the compliance date extension. The Agency's evaluation of the issues raised in the public comment is summarized below.

Comment: The particulate emissions from the induction furnaces are finer, more respirable and more toxic than the emissions from the material handling operations. As a result, these particulates do not settle out quickly and add to the background TSP levels in Connecticut. Therefore, as far as impacts on the State of Connecticut are concerned, control of the emission from the handling operations is not equivalent to control of the emissions from the induction furnaces.

Response: Although the current TSP NAAQS does not make a distinction with respect to particle size in the control of particulate matter, EPA is currently reviewing changes to the standard. Until these changes are promulgated, however, the current TSP NAAQS are applicable. Based on the current TSP NAAQS, this revision is approvable. It reduces the total TSP emissions from the facility by 34.8 lbs/hr and does not threaten the attainment and maintenance of the NAAQS. Additionally, the modeling analysis shows that the maximum impact from the foundry occurs close to the facility and decreases significantly within a short distance from the plant. Although it can not be quantified by available models, the TSP impact on Connecticut's air is expected to be minimal or nonexistent.

With regard to the commentor's concerns regarding trading of suspected toxic emissions, EPA's national policy does not at this time prohibit trades which will result in increased emissions of suspected toxic pollutants, unless those pollutants have been officially designated as "hazardous" under section 112 of the Clean Air Act. Based on EPA's review of the emissions resulting from this SIP revision, EPA does not believe it is likely that more toxic emissions are being substituted for less toxic emissions. EPA has considered the composition of input metal, typically charged to the induction furnaces at GM's foundry and concluded that the potential for toxic emissions is low.

Comment: The commentor objected to the lack of detail in EPA's rulemaking notice regarding stack heights and details of the modeling analysis.

Response: EPA maintains that the **Federal Register** notice provided an adequate summary of the rulemaking action and its technical basis. In addition, more detailed technical information relating to EPA's rulemaking action can be found in associated technical support documents as well as the SIP revision request itself. These documents were available during the public comment period and are available to the public for review at the addresses indicated in the rulemaking notice. Furthermore, a contact person is provided in each notice in order to provide any additional information or answer any questions the public may have.

Since EPA's review of the GM bubble indicates that it satisfies the criteria specified in the April 7, 1982 (47 FR 15076) **Federal Register**, EPA approves the alternative control plan as part of the Ohio SIP. Additionally, since EPA believes that the revised compliance date of September 1, 1983 for the six Ajax electric induction furnaces will not interfere with the area's ability to maintain its present TSP attainment status, EPA approves this extension as part of the Ohio SIP.

This approval includes the emission limitations, interim and final compliance milestones, control equipment requirements and the testing procedures specified in the variances and permits submitted for the GM bubble. Any change in the permits or variances represents a revision to the SIP and as such must be submitted to EPA for review and approval.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.1870 is amended by revising paragraph (c)(31) as follows.

§ 52.1870 Identification of plan.

(c) * * *

(31) On March 27, 1981 and March 10, 1982 the State of Ohio submitted revisions to the total suspended particulate (TSP) portion of its State Implementation Plan (SIP). These revisions are in the form of an alternative emissions reduction plan (bubble) for the General Motors (GM) Central Foundry located in Defiance County, Ohio. Incorporated into Ohio's SIP are the emission limitations, interim and final compliance milestones, control equipment requirements and testing procedures specified in the variances and permits submitted for the GM bubble.

* * * * *

[FR Doc. 82-20125 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2134-1]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice revises the sulfur dioxide (SO_2) emission limitation in the federally promulgated Ohio State Implementation Plan (SIP) for the Ohio Power Company Gavin plant in Gallia County, Ohio. EPA's action is based on a reanalysis of the sulfur dioxide plan for Gallia County.

EFFECTIVE DATE: This final rulemaking becomes effective on August 25, 1982.

ADDRESSES: The docket for this revision (#5A-81-1) is on file at the following locations and may be inspected and copied during normal business hours.

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Central Docket Section, U.S. Environmental Protection Agency, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio at (312) 886-6088.

SUPPLEMENTARY INFORMATION: On February 23, 1982 (47 FR 7856), EPA proposed to revise the emission limitation for the Ohio Power Gavin plant located in Gallia County from 9.50 lbs SO_2/MMBtu to 7.41 lbs. SO_2/MMBtu. EPA's action was in response to a remand by the United States Court of Appeals for the Sixth Circuit in *Northern Ohio Lung Association v. EPA*, 572 F. 2d 1182 (1978). The Court held that the Ohio sulfur dioxide plan did not comply with the requirements of section 110(a)(2)(F) of the Act and did not include specific provisions for meeting the secondary ambient air quality standards for SO_2. EPA's proposed rule addressed the secondary standard portion of the remand as it applied to Gallia County.

EPA reanalyzed the emission limitation for the Ohio Power Company Gavin plant and the Ohio Valley Electric Company Kyger Creek plant, both located in Gallia County. This reanalysis demonstrated that to attain the secondary standard in Gallia County, it is possible to leave Kyger Creek at its existing SIP limit and to reduce only Gavin's emission limit. This approach is reasonable since Gavin is the dominant contributor to the predicted violations. Therefore, on February 23, 1982 (47 FR 7856), EPA proposed to revise the emission limitation for the Gavin plant from 9.50 lbs. SO_2/MMBtu to 7.41 lbs. SO_2/MMBtu. A detailed discussion of the modeling analysis is contained in the technical support document which is available at Region V.

Public Comment

During the public comment period, EPA received comments from the State of Connecticut, a public interest group, and the Ohio Power Company. The Agency's evaluation of the comments is summarized below.

Comment: The State of Connecticut modeled the combined impact of the Gavin and Kyger Creek power plants using the MPTER model used by EPA. Although Connecticut stated that their results compared favorably with EPA's results, the State questioned the adequacy of the assumed background concentration of 40 $\mu g/m^3$, especially in its application to both short-term averaging times. The commentor claimed that recent SO_2 monitored data collected in the general area of the power plants would produce much higher background levels (e.g., 146 $\mu g/m^3$). The commentor claimed that the higher background in conjuction with EPA's modeling results indicate violations of the 3-hour standard.

Response: As part of EPA's development of the Ohio SO_2 SIP, a detailed review was undertaken to determine county-specific background levels based on ambient monitoring and modeling data. The Gallia County background concentration (40 $\mu g/m^3$) devised from that analysis was used by EPA in its original modeling as well as in its recent remodeling of the Gavin and Kyger Creek power plants. The background value is discussed further in the "Technical Support Document: Sulfur Dioxide Control for the State of Ohio, Vol I" (EPA-905/2-76-002, August 1976).

The same background level can be used for both the 3-hour and 24-hour average concentrations, provided the modeled emissions inventory is complete. EPA's remodeling included both the Gavin and Kyger Creek plants. There are no other significant SO_2 sources in the immediate vicinity of these two power plants. The next closest major source is the Gallipolis State Institute, located over 12 km away. The Gallipolis State Institute does not, have any significant impact beyond 12 km. Thus, EPA's modeling includes all source contributions except those due to natural sources and small and distant man-made sources (i.e., background sources). Little variation in the contribution from these types of sources is expected over a short-term period, such as a day.

Consequently, use of the same background level for both short-term averaging times is acceptable in this case.

The background value suggested by the commentor has not been shown to be a true background concentration. EPA modeling guidelines specify that the monitored concentrations used in computing a short-term background for isolated point sources such as Gavin and Kyger Creek should occur on days with meteorological conditions similar to those associated with the constraining modeled concentration. In addition, the measured concentrations must not include impacts from the

modeled sources. Without a demonstration that these conditions are met, EPA cannot accept the proposed alternate background level. Therefore, for the reasons stated above, the application of a 40$\mu g/m^3$ background level is sufficient to account for the impact of all natural sources and small and distant man-made sources.

Comment: The State of Connecticut claimed that "adjacent" major sources should have been included in the modeled emissions inventory. The commentor claimed that large sources located south of Gavin are not part of EPA's assumed background and may add considerably to the constraining 3-hour concentrations.

Response: As noted above, the closest major SO_2 source to the Gavin and Kyger plants does not significantly interact with the two power plants. The only other major sources within 30 km are two West Virginia power plants located over 17 km east. EPA determined that the two West Virginia plants did not need to be included in the remodeling for the following reasons. First, one of these plants, Sporn, was modeled in EPA's initial SIP development for Gallia County. This modeling showed that Sporn did not significantly interact with Gavin or Kyger Creek at the critical receptors in the area of the two Ohio plants. Second, the high concentrations in the remodeling occurred north of Gavin and Kyger Creek. The two West Virginia plants will not add to these high concentrations because they are located east, not south, of Gavin and Kyger Creek. Consequently, EPA's modeled emissions inventory was complete.

Comment: The State of Connecticut also argued that EPA should have modeled multiple operating load conditions (i.e., 50%, 75%, and 100%).

Response: EPA did perform a reference screening analysis to assess the individual and combined impacts of the Gavin and Kyger Creek Plants at 50%, 75%, and 100% load. This analysis was summarized in an EPA memo entitled "Gavin/Kyger Creek Operating Loan Analysis" which is available for review in the docket. As noted in that memo, the screening demonstrated that maximum impacts occurred under 100% load conditions.

Note.—Since the terrain elevation variations in the immediate vicinity of the two plants is not significant, the screening results are appropriate.

Thus, all refined modeling was based on 100% load.

Comment: The State of Connecticut also objected to EPA allowing emission levels which they felt were unnecessarily high. The commentor claimed that emissions from Region V sources adversely affect air quality in Connecticut, impart acidity to their rainwater and aquatic environment, and put their utilities at a competitive disadvantage due to the additional control equipment necessary to compensate for high background levels.

Response: According to section 110 of the Clean Air Act as amended (CAAA), EPA shall approve emission limitations necessary to insure attainment and maintenance of the ambient standards. The revised emmission limit for Gavin, in conjunction with the existing limit for Kyger Creek, have been demonstrated by EPA reference methods to protect the ambient standards.

The commenter's claims regarding adverse impacts in Connecticut are part of the long-range transport issue. EPA wishes to note that its review and approval of the Gavin and Kyger Creek SO_2 emission limitatons are consistent with section 110(a)(2)(E) and section 126 of the CAAA for the following reasons:

(1) The revised emission limit for Gavin represents a reduction in allowable emissions. Thus, there should be no increase in ambient SO_2 concentrations downwind.

(2) EPA has not yet established any techniques to evaluate impacts beyond 50 km from a source. The only other state within 50 km of Gallia County is West Virginia. EPA's modeling at receptors in West Virginia demonstrated that this revision would protect the ambient standards there.

(3) Because the revision does not represent an increase in actual (baseline) emissions, this revision will not interfere with PSD requirements in Ohio or any other state.

(4) On June 18 and 19, 1981, as a result of petitions filed by the States of New York and Pennsylvania under Section 126 of the CAA, EPA held a hearing in Washington, D.C. to consider the possible interstate impact of a number of proposed and final SO_2 revisions for sources located in Indiana, Tennessee, Ohio, and West Virginia (Docket No. A–81–9). To the extent that Connecticut's comments on the Gallia County action relate to the same aggregate air quality impact issues as in the section 126 action, they will be addressed in the Agency's section 126 determination.

EPA believes it is not appropriate to withhold the Gallia County rulemaking until EPA acts on the section 126 petitions. At the time the Agency makes such a determination and to the extent necessary, EPA can and will reevaluate the adequacy of the Gallia County plan.

Comment: The public interest group which commented on this action, was pleased to see that EPA was reducing Gavin's emission limit. The commentor, however, felt that the revised limit was still too high. The commentor urged that the plant be retrofitted now with a flue gas desulfurization unit.

Response: Under the CAA, each State is required to have a State Implementation Plan (SIP) which will provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, EPA's basis for approval of disapproval of a SIP is whether or not it is adequate to protect the NAAQS. As noted earlier, the revised emission limit for Gavin, in conjunction with the existing limit for Kyger Creek, have been demonstrated to be adequate to protect the primary health and the secondary welfare standards for sulfur dioxide. Therefore, these emission limits are approvable under the CAA and the source can choose what controls it will utilize to achieve the limit.

Comment: The commentor also questioned why under Executive Order 12291 this revision was not considered a major action.

Response: Under Executive Order 12291 of February 17, 1981, a major rule is defined as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since the Gavin revision does not meet any of the above criteria, it is not considered a major rule under Executive Order 12291.

Comment: The Ohio Power Company claimed that the degree of spatial resolution in EPA's remodeling is beyond the analytical capability of the model.

Response: The receptor network utilized in EPA's remodeling consisted of two initial polar grids with 0.5 km spacing from 0.5 to 4.0 km from each source and 1.0 km spacing from 4 to 7 km from each source and a refined 0.1 km Cartesian grid in a few "hot spot" areas. Such a network is not beyond the analytical capability of the model and is consistent with EPA modeling guidelines.

Comment: The Ohio Power Company also noted a few minor errors in EPA's

initial technical support document. On page one of the technical support document Ohio Power pointed out that footnotes a and b should be reversed. Additionally, Ohio Power felt that on page two of the same document, the American Electric Power Service Corporation (AEP) is implied to be the sole owner of the Ohio Valley Electric Corporation, when in fact, AEP, through its subsidiaries, is a joint owner along with a number of other utilities.

Response: EPA acknowledges these errors and stands corrected. These errors have no effect on this rulemaking.

Final Determination

Based on EPA's modeling analysis and the public comments received, EPA has determined that approval of the revised emission limitation for the Ohio Power Gavin Plant from 9.50 lbs. SO_2/MMBTU to 7.41 lbs SO_2/MMBTU in conjunction with the existing limit for Ohio Valley Electric Company Kyger Creek plant is adequate to attain and maintain both the primary and the secondary sulfur dioxide standards. Since this revision represents a more stringent emission limitation for the Ohio Power Gavin plant, the plant will have three years from the effective date of this action to comply with this revised emission limitation in accordance with the compliance schedule set forth at 40 Code of Federal Regulations Section 52.1882(k).

No matter what rules the State of Ohio now enforces, the existing federally-approved SIP regulations for any source will apply, and be fully enforceable, until the source complies with the new regulations which EPA is approving today. Further, the existing SIP will continue in force if there is any delay or lapse in the applicability of the new regulations. However, if the existing and new regulations conflict, so that a source cannot comply with the existing SIP while moving toward compliance with the new regulations, the State may exempt the source from the existing SIP. EPA will review and act on any such exemption.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410).)

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart KK—OHIO

1. Section 52.1875 is amended by revising footnote "f" to the table in § 52.1875 paragraph (a) as follows:

§ 52.1875 Attainment dates for National standards.

(a) * * *

f. August 27, 1979, except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983, the utilities listed in (3) which are subject to an attainment date of June 19, 1983, and the Portsmouth Gaseous Diffusion Plant in Pike County which is subject to an attainment date of November 5, 1984, and the Ohio Power Company Gavin plant in Gallia County which is subject to an attainment date of (3 years from the effective date of this action).

2. Section 52.1881(b)(28) is revised as follows:

§ 52.1881 Control strategy: sulfur oxides (sulfur dioxide).

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

* * * * *

(28) In Gallia County

(i) The Ohio Power Company or any subsequent owner or operator of the Gavin Power Plant in Gallia County, Ohio shall not cause or permit the emission of sulfur dioxide from any stack at the Gavin facility in excess of 7.41 pounds per million Btu actual heat input.

* * * * *

3. Section 52.1882 is amended by adding paragraph (k) as follows:

§ 52.1882 Compliance schedules.

* * * * *

(k) The Federal compliance schedule for the Ohio Power Company Gavin Power Plant in Gallia County is set forth in § 52.1882(b) except that all references to June 17, 1977 are changed to August 25, 1982.

[FR Doc. 82-20126 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL 2166-3; SC-001]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The State of South Carolina submitted to the Environmental Protection Agency (EPA) a revision in South Carolina Air Pollution Control Regulation No. 62.1, Section II, Operating Permits. This change will allow the South Carolina Department of Health and Environmental Control (DHEC) to alter operating permits, compliance schedules, or other restrictions upon request from a source.

This revision was presented to the public at a hearing held on April 2, 1981, and became State-effective on May 28, 1982. EPA has reviewed this submittal and is today announcing its approval.

EFFECTIVE DATE: This action will be effective on September 24, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Denise W. Pack of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, Columbia, South Carolina 29201

Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, D.C. 20005

FOR FURTHER INFORMATION CONTACT: Denise W. Pack at the EPA Region IV address above or call 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On May 28, 1982 the South Carolina Department of Health and Environmental Control (DHEC) submitted to EPA a revision to South Carolina Air Pollution Control Regulation No. 62.1, Section II, Operating Permits. The revision allows the DHEC to alter the operating permits, compliance schedules or other restrictions on operations of a source without presenting the proposed change to the State legislature. This regulation will allow for more efficient handling of these types of requests. A source requesting a variance under this section must show that: (1) Good faith efforts have been made to comply with applicable state requirements; (2) necessary technology or other methods of control are not reasonably available for the source to comply with applicable state requirements; (3) all available operating procedures or control measures possible have been implemented; and that (4) the request has been submitted in a timely manner. The regulation also provides for permanent increases of allowable visible emissions and for the expeditious compliance of sources operating in accordance with alternative compliance schedules. All requests under the revision shall be subject to a public notice and opportunity for a public hearing and concurrence by EPA.

The provisions of this revision cannot supersede emission limitations established under the Federal New Source Performance Standards, Federal National Emission Standards for Hazardous Air Pollutants, Federal or State Prevention of Significant Deterioration Regulations, or nonattainment requirements.

ACTION: EPA has reviewed this submittal and is today announcing its approval of this revision to the South Carolina Air Pollution Control Regulation No. 62.1, Section II, Operating Permits.

This approval is being made without prior proposal because the revision is noncontroversial, is based on accepted procedures, has limited impact, and no comments are expected. The public should be advised that this action will be effective September 24, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Note.—Incorporation by reference of the State Implementation Plan for South Carolina was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110, Clean Air Act (42 U.S.C. 7410))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart PP—South Carolina

Section 52.2120 is amended by adding paragraph (c)(22) as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(22) Provision for variance from conditions of operating permits, submitted on June 7, 1982, by the South Carolina Department of Health and Environmental Control.

[FR Doc. 82-20127 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-2139-3]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Metropolitan Nashville-Davidson County Set II Volatile Organic Compounds (VOC) Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is announcing full approval of Set II Volatile Organic Compounds (VOC) revisions for Regulation No. 7, "Regulation for Control of Volatile Organic Compounds," which Tennessee submitted for Metropolitan Nashville-Davidson County pursuant to requirements of Part D, Title I, of the Clean Air Act (CAA).

EFFECTIVE DATE: This action will be effective on September 24, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: The submittals may be examined during normal business hours at the following offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington D.C. 20005

State of Tennessee, Department of Public Health, Division of Air Pollution Control, Terra Building, 6th Floor, 150 9th Avenue North, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Waymond A. Blackmon, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, 404/881-2864 (FTS 257-2864).

SUPPLEMENTAL INFORMATION:

The Tennessee Revision

After public hearing, the Metropolitan Board of Health of Nashville-Davidson County, Tennessee adopted regulations for Set II volatile organic compounds (VOC). On August 27, 1980 and January 23, 1981, Tennessee submitted Metropolitan Nashville-Davidson Set II VOC revisions for Regulation No. 7, "Regulation for Control of Volatile Organic Compounds," for approval as a plan revision. EPA's review of these

regulations indicates they are consistent with the Set II VOC control techniques guidelines (CTGs) issued by the Agency. Therefore, EPA is today approving the following Metropolitan Nashville-Davidson County Health Department Air Pollution Control's Set II VOC regulations.

Section 7–2, "Prohibited Act."
Section 7–11, "Bulk Gasoline Plants."
Section 7–16, "Emission Standards for Miscellaneous Metal Parts and Products."
Section 7–17, "Manufacture of Pneumatic Rubber Tires."
Section 7–18, "Graphic Arts."
Section 7–19, "Perchloroethylene Dry Cleaning."
Section 7–21, "External Floating Roof Tanks."
Section 7–22, "Compliance Schedules."
Section 7–23, "Special Provisions for Volatile Organic Compound Sources and Modifications."
Section 7–24, "Test Methods and Procedures."

Nashville-Davidson County does not have regulations for petroleum refinery fugitive emissions (leaks), factory surface coating of flatwood paneling, or synthetic pharmaceutical production because these sources do not exist in the area. Also, Metropolitan Nashville-Davidson County did not submit a regulation for leaks from gasoline tank trucks and vapor collection systems. This omission is based on the fact that most of the tank trucks that enter the nonattainment area come from outside the jurisdictional boundaries of the Metropolitan Board of Health. Since all tank trucks must be regulated, the State of Tennessee has agreed to adopt an approved regulation for gasoline tank trucks and collection systems by September 1, 1982 (November 24, 1981, **Federal Register**, 46 FR 57486).

The public should be advised that this action will be effective September 24, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Note.—The Director of the Federal Register approved the incorporation by reference of the Tennessee State Implementation Plan on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: July 19, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. Section 52.2220 is amended by adding paragraph (c)(47) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

(47) Metropolitan Nashville-Davidson County Set II VOC Regulation, submitted on August 27, 1980 and January 23, 1981, by the Tennessee Department of Public Health.

[FR Doc. 82–20132 Filed 7–23–82; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 52

[A–6–FRL–2167–1]

Approval and Promulgation of Revisions to the Texas State Implementation Plan

AGENCY: Environmental Protection Agency.
ACTION: Final rulemaking.

SUMMARY: This action approves revisions to the Texas State Implementation Plan (SIP) which were submitted by the Governor on April 13, 1979. This action is taken based upon the State's request to revise its regulations concerning outdoor burning, visible emissions, particulate matter and compliance. This notice approves these revisions to the SIP and amends 40 Code of Federal Regulations (CFR) Part 52.

EFFECTIVE DATE: This rulemaking will be effective on September 24, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Carol D. Peters of the EPA Region 6 Air Branch (address below). Copies of the State's submittal may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Branch, 1201 Elm Street, Dallas, Texas 75270
Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723
U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Room 2922, Washington, D.C. 20460
The Office of the Federal Register, 1100 L Street, NW., Rm. 8401, Washington, D.C. 20005

FOR FURTHER INFORMATION CONTACT: Carol D. Peters, State Implementation Plan Section, Air & Waste Management Division, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION: The Governor of Texas has submitted to the Environmental Protection Agency (EPA) amendments to Texas Air Control Board (TACB) Regulation I and requested that they be reviewed and processed as revisions of the Texas SIP.

Regulation I, which is titled "Control of Air Pollution from Visible Emissions and Particulate Matter", was amended December 19, 1973, October 31, 1975 and March 30, 1979. The present version was submitted to EPA on April 13, 1979 by the Governor of Texas and incorporates all earlier revisions. The State of Texas has met all applicable requirements regarding the conduct of public hearings concerning these revisions, including a thirty-day public notice.

EPA has reviewed the State's submittal and developed an evaluation report[1] which discusses the revisions in detail. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 and TACB Offices listed above. The following is a summary of EPA's evaluation.

In this revision, the rule numbers and some words in the text were changed to conform to a new format prescribed by the Texas Secretary of State. Regulation

[1] EPA Review of Texas SIP Revisions to Regulation I, June 1982.

I is now contained in Chapter 111. EPA views these changes as minor administrative changes, which are acceptable.

Sections 111.1–111.4 deal with outdoor burning. This revision changes some of the conditions under which outdoor burning is allowed. EPA has determined that these changes are either more restrictive or will have no significant impact.

Sections 111.11 and 111.12, concerning incineration, have only minor administrative changes made to them. EPA has determined that these changes are acceptable.

Sections 111.21–111.27 contain the regulations for visible emissions. These have not been substantively changed since the original regulation was submitted. The changes are mainly administrative and minor. Therefore, EPA finds the changes acceptable.

Sections 111.61–111.65, "Transient Operations," Sections 111.71–111.76 "Agriculture Process," and Sections 111.91–111.92, "Compliance," contain minor administrative changes and changes to State procedures. EPA has determined that these changes are acceptable.

Sections 111.41–111.45, as submitted on April 13, 1979, regulate particulate matter in nonattainment areas. EPA approved these sections on March 25, 1980 (at 45 FR 19231). Rule 104 as submitted in the January 28, 1972 version regulates particulate matter in Standard Metropolitan Statistical Areas (SMSAs) where the federal air quality standards for particulate matter are exceeded. According to the April 4, 1979 General Preamble (at 44 FR 20373), existing requirements may not ordinarily be relaxed or revoked, even when new requirements are being added to the SIP. Since no demonstration accompanied the April 13, 1979 revision showing that there would be no significant adverse impact resulting from the change, EPA can not allow Rule 104 to be superseded. Therefore both versions of these sections will remain in the federally enforceable SIP.

Based on the Agency's review, EPA has determined that the revisions meet the requirements of Section 110(a)(3)(A) of the Clean Air Act and is hereby approving these revisions to the Texas SIP.

The public should be advised that this action will be effective September 24, 1982. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This action only approves State actions. It imposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Note.—Incorporation by reference of the State Implemenation Plan for the State of Texas was approved by the Director of the Federal Register on July 1, 1982.

(Sec. 110(a) and 172 of the Clean Air Act, 42 U.S.C. 7410(a) and 7520)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart SS—Texas

1. In § 52.2270, paragraph (c)(20) is revised and new paragraphs (c)(44), (45) and (46) are added to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(20) Revision to the plan for attainment of standards for particulate matter, carbon monoxide, and ozone (Part D requirements) were submitted by the Governor on April 13, 1979.

Note.—The provisions of Rule 104 submitted by the Governor on 1/28/72 and approved by EPA on 5/31/72 remain in effect in other than nonattainment areas.

* * * * *

(44) Revisions to Regulation I, Sections 111.2(7), 111.3, 111.11, 111.12, 111.26, 111.61–111.65, and 111.71–111.76, for control of particulate matter and visible emissions as submitted by the Governor on January 22, 1974.

(45) Revisions to Regulation I, Section 111.2 for control of particulate matter and visible emissions as submitted by the Governor on December 29, 1975.

(46) Revisions to Regulation I, Sections 111.2(8), 111.2(9), 111.22, 111.91 and 111.92 for control of particulate matter and visible emissions as submitted by the Governor on April 13, 1979.

[FR Doc. 82-20128 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL 2167-7]

Designation of Area for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: EPA is today approving as a revision to the Ohio State Implementation Plan (SIP) the redesignation of Jefferson County for carbon monoxide (CO) from non-attainment to attainment. This revision is based on a request from the State of Ohio to redesignate this area and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: This action will be effective on September 24, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

Copies of the SIP revision, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone the contact person given below before visiting the Region V Office.)

Environmental Protection Agency, Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604;

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written Comments on this action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser at EPA, Region V, address listed or call (312) 886–6037.

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) amendments of 1977

added Section 107(d) to the Act. This section directed each State to submit to the Administrator of EPA a list of the National Ambient Air Quality Standards (NAAQS) attainment status for all areas within the State. On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of Section 107 of the Act, EPA designated certain areas in each State as nonattainment with respect to NAAQS for several pollutants including CO.

EPA may redesignate an area to attainment if eight consecutive quarters of the most recent quality assured representative ambient air quality data show no violation of the appropriate NAAQS. The primary NAAQS for CO is violated if more than once in a calendar year, maximum monitored CO concentrations exceed either: (1) The maximum allowable eight-hour concentration of 10 milligrams per cubic meter of air (10 mg/m_3), or (2) the maximum allowable one-hour concentration of 40 mg/m_3.

On April 19, 1982, the Ohio Environmental Protection Agency (Ohio EPA) requested that Jefferson County be redesignated from non-attainment to attainment for CO. To support their request, Ohio EPA submitted eight quarters of quality assured monitored data for 1980 and 1981.

EPA has completed its review of the monitored data submitted by the Ohio EPA. The second high CO concentrations for the 814 Adams Street site were 8.3 milligrams/cubic meter in 1980 and 9.5 milligrams/cubic meter in 1981 (eight-hour averages). Therefore, a violation of the eight-hour NAAQS has not been recorded during the most recent two years. No exceedances of the one-hour NAAQS (40 milligrams/cubic meter) were recorded during 1980 and 1981.

EPA is therefore redesignating Jefferson County from non-attainment to attainment of the national standards for CO, without prior proposal. This action will be effective September 24, 1982. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, then this action will be withdrawn and a new rulemaking will propose the action and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under Section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C of Part 81 of Chapter 1, Title 40, Code of Federal Regulations.

§ 81.336 [Amended]

1. Section 81.336 is amended by revising the table for "Ohio-CO" the entry for Jefferson County to read as follows:

OHIO—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
. . . . .		
Jefferson		X
. . . . .		

[FR Doc. 82-20129 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL 2167-4]

Redesignations of Areas for Air Quality Planning Process; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises the carbon monoxide (CO) designation for Mahoning County from non-attainment to attainment. This revision is based on a request from the State of Ohio to redesignate this area and on the supporting data the State submitted. Under the Clean Air Act (the Act), designations can be changed if sufficient data are available to warrant such change.

DATE: This action is effective September 24, 1982.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Air Programs Branch, Region V, Environmental Protection Agency, Chicago, Illinois 60604, 886-6037.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrants.

EPA's criteria for data that warrant redesignating an area are set out in the June 12, 1979 memo, "Section 107 Redesignation Criteria," by Richard G. Rhoads, Director of EPA's Control Program Development Division. In general, a change from a primary nonattainment designation to either secondary nonattainment or attainment must be supported by either:

(1) Eight consecutive quarters of recent data on ambient air quality which show no violations of the appropriate NAAQS, or

(2) four consecutive quarters of the most recent data on ambient air quality which show both (a) no violation of the appropriate NAAQS and (b) air quality improvement that results from legally enforceable emission reductions.

On May 5, 1982, the Ohio EPA (OEPA) requested the redesignation of Mahoning County for carbon monoxide from non-attainment to attainment.

The primary NAAQS for carbon monoxide (CO) is violated if, more than once in a calendar year, maximum monitored CO concentrations exceed either: 1) the maximum allowable eight-hour concentration of 10 milligrams per cubic meter of air (10 mg/m^3), or 2) the maximum allowable one-hour concentration of 40 mg/m^3.

CO has been monitored at a single site in Mahoning County, 24-36 Phelps

Street in Youngstown, since the implementation of CO monitoring in 1975. Prior to 1980, a number of exceedances of the eight-hour CO NAAQS (10 milligrams/cubic meter) were observed at this site, forming the basis for the present nonattainment designation. No exceedance of the one-hour CO NAAQS (40 milligrams/cubic meter) has ever been recorded at this site.

EPA's review of the monitoring data supplied with the redesignation request indicates that these data are quality assured and that no exceedance of the one hour and the eight-hour CO NAAQS occurred during 1980 and 1981. Therefore, EPA is approving the State's request for the redesignation of Mahoning County to attainment for CO.

We are approving today's action without prior proposal. The action will become effective on September 24, 1982. If, however, we receive notice by August 25, 1982 that someone wishes to submit critical comments, then EPA will publish: (1) a notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

The Office of management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Pursuant to Executive Order 12291 (Order) EPA must judge whether a regulation is "Major" and therefore subject to the requirement of preparing a regulatory impact analysis. Today's action does not constitute a major regulation because it only changes an area's air quality designation; it does not impose any new regulatory requirements.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

PART 81—REDESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.336 [Amended]

1. Section 81.336 is amended by revising the table for "Ohio-CO" Mahoning County to read as follows:

OHIO—CO

Designated area	Does nor meet primary standards	Cannot be classified or better than national standards
* * * * *		
Mahoning County		X
* * * * *		

[FR Doc. 82-20130 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 120

[WH-FRL 2152-2]

Water Quality Standards; State of Nebraska; Withdrawal of Regulation

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of a rule.

SUMMARY: EPA is withdrawing a rule that established beneficial uses for eleven water segments that superseded those established by the 1976 State of Nebraska Water Quality Standards. EPA believes that revisions adopted in the 1982 Nebraska Water Quality Standards obviate the need for the Federal Rule.

DATE: This withdrawal is effective August 25, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. Allan S. Abramson, Director, Water Management Division, EPA Region VII, 324 East 11th Street, Kansas City, Missouri 64106, (816) 374-6401.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1978, the Environmental Protection Agency (EPA) promulgated a rule establishing beneficial use designations for eleven water bodies in the State of Nebraska (43 FR 24529, codified at 40 CFR 120.37). These beneficial use designations superseded the use designations adopted by the Nebraska Environmental Control Council, which had previously been disapproved by EPA pursuant to section 303(c) of the Clean Water Act.

The uses and segments covered by EPA's 1978 promulgation are:

I. Full Body Contact, Partial Body Contact, and Fish and Wildlife Protective

1. Bowman Lake State Recreational Area,
2. Crystal Lake State Recreational Area,
3. Diamond Lake Special Use Area,
4. Memphis Lake State Recreational Area,
5. Pibel Lake State Recreational Area,
6. Plattsmouth Special Use Area,
7. Ravenna State Recreational Area,
8. Victoria Spring State Recreational Area.

II. Partial Body Contact and Fish and Wildlife Protective

1. Pawnee Prairie Special Use Area,
2. Yellowbanks Special Use Area,
3. Limestone Bluffs Special Use Area.

The water quality standards applicable to these waters were those contained in Rules 2 and 7 of the 1976 Nebraska Water Quality Standards. As a result of revisions, the applicable standards are now contained in Rules 1 through 6, and in Rule 8 of the 1982 Nebraska Water Quality Standards.

On May 5, 1982, the governor of Nebraska approved revised State water quality standards, which became effective on May 10, 1982. These revised State water quality standards designate beneficial uses for the eleven water bodies in question which are identical to the uses designated by EPA in its June 6, 1978, promulgation. (See Rule 8, Nebraska Water Quality Standards for Surface Waters of the State). The Regional Administrator, EPA Region VII, approved Nebraska's revised water quality standards on May 12, 1982, in accordance with section 303(c) of the Clean Water Act.

Statement of Basis and Purpose

EPA's 1978 promulgation is now duplicative of an EPA-approved State water quality standard, and is no longer needed to meet the requirements of the Clean Water Act. As the Act contemplates Federal promulgation of water quality standards only where a State fails to adopt standards which meet the requirements of the Act, it is EPA's policy to withdraw promulgated water quality standards when the State adopts new or revised standards which meet the requirements of the Act. Accordingly, because EPA's 1978 promulgation for Nebraska is no longer necessary to meet the requirements of the Act, the 1978 promulgation which established Federal use designations for eleven Nebraska water bodies is withdrawn.

Availability of Record

The administrative record for the consideration of Nebraska's revised Water Quality Standards is available for public inspection and copying at the

Environmental Protection Agency, Region VII Office, Water Management Division, 324 East 11th Street, Kansas City, Missouri 64106, during normal weekday business hours of 8:00 a.m to 4:30 p.m. The approved Nebraska Water Quality Standards are available for inspection and copying from the Criteria and Standards Division (WH–585), 401 M Street, SW., Washington, D.C. 20460, in Room 2818 of the Mall.

Regulatory Analysis

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

This regulation imposes no new regulatory requirements but merely withdraws a Federal regulation that now duplicates a State regulation. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Administrative Procedure

Because Nebraska has adopted, and EPA has approved, beneficial use designations identical to those in the Federal promulgation, withdrawal of the Federal promulgation will have no effect on water quality or on the regulated public. Nebraska complied with the public participation requirements of the Act during its review and revision of its water quality standards. Therefore, EPA has determined that notice of proposed rulemaking and public procedure thereon is unnecessary for this action to withdraw 40 CFR 120.37

List of Subjects in 40 CFR Part 120

Water pollution control.

(Sec. 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act (Pub. L. 92–500, as amended (33 U.S.C. 1251, *et seq.*))

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator

40 CFR PART 120—WATER QUALITY STANDARDS

§ 120.37 Nebraska [reserved]

Section 120.37 of Part 120 of Chapter I, Title 40 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 82–20094 Filed 7–23–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 122 and 146

[WH–FRL 2170–8]

Underground Injection Control Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule; Effective date for information collection requirements.

SUMMARY: This document serves as notice that certain information requirements in the Environmental Protection Agnecy's Underground Injection Control (UIC) Program Regulations were approved by the Office of Management and Budget (OMB), and amends the regulations to include the OMB control numbers at the places in the regulations where current information collection requirements are described.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas E. Belk, Chief, Ground Water Protection Branch, Environmental Protection Agency, (202) 426–3934.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below were approved on May 11, 1982, by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control number contained in the listing.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

Accordingly, 40 CFR Parts 122 and 146 are amended as follows.

§§ 122.42, 146.13, 146.23, 146.33 [Amended]

40 CFR Parts 122 and 146 are amended by adding the OMB clearance number 2000–0456 parenthetically after each paragraph listed below.

CFR Citation	*OMB Control Number*
122.42(e)	2000–0456
146.13	2000–0456
146.23	2000–0456
146.33	2000–0456

Dated: July 19, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–20097 Filed 7–23–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2507]

43 CFR Part 1810

Introduction and General Guidance; Public Land Records; Amending the Notation of the Public Land Records Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations relating to notation of the public land records by eliminating the requirement to note applications to the record which do not segregate, designate or otherwise withdraw Federal lands from other forms of entry, application or location. This change is a result of the delegation of decisionmaking authority for most land use decisions to those offices closest to the activity, the District and Area Offices. The change made by the final rulemaking will shorten the time required for issuance of land use authorizations and patents and will substantially reduce the administrative costs involved in the notation of certain applications to the land records.

EFFECTIVE DATE: August 25, 1982.

ADDRESS: Any suggestions or inquiries should be addressed to: Director (320), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Steele, (202) 343–8693.

SUPPLEMENTARY INFORMATION: In order for the Bureau of Land Management to be more responsive to the public, decisionmaking authority is being delegated to those managers that are closest to the actual activity on-the-ground, namely District and Area Managers. Existing regulations require notation of all applications at the time the application is filed and again at the time the application is approved or denied. Notation of certain applications prior to issuance, both increases processing time and administrative costs to the public and the Bureau of Land Management. Although this final rulemaking continues to require noting on the record of applications for withdrawals, designations and other segregative actions, the rulemaking also provides that lands disposal actions, use authorization applications and proposals which do not designate, segregate or otherwise withdraw public

lands shall be noted only after issuance of the patent or use authorization.

This final rulemaking will make a change in existing procedure that is administrative in nature. The change will accelerate the processing of certain applications and result in lower administrative costs to the public and the Bureau of Land Management, while maintaining, in a different form, the information on land status of the public lands. Under the change made by this final rulemaking, pending applications will be posted on serial register pages. These serial register pages will be available to the public for their use in obtaining the same information regarding the status of pending applications which is currently noted on the plat books. Therefore, land status records relating to the filing of applications will be available through the serial register page, and in some Bureau of Land Management offices through automated systems and computer printouts, and the public will continue to receive the same information it now receives on the status of public lands, only in a different form.

The author of this final rulemaking is Jeff Steele, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The change made by this final rulemaking, which is administrative in nature, will have no impact on any segment of the public, including small entities, except to accelerate the processing of some applications and reduce administrative costs.

List of Subjects in 43 CFR Part 1810

Administrative practice and procedure, Archives and records, Disaster assistance, Forest and forest products, Public lands.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Subpart 1813, Part 1810, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

July 2, 1982.

Frank A. DuBois,

Acting Assistant Secretary of the Interior.

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

1. Section 1813.1–1 is revised to read:

§ 1813.1–1 Notations to records.

(a) The authorized officer shall cause the proper notation to be made on the plats in order that the status of a tract may be readily ascertained by the person examining the plat.

(b) All withdrawals, reservations, classifications, designations, segregations and orders affecting the disposition of lands shall be noted on the tract books and plats.

(c) Use authorizations in excess of 1 year and other leases, easements and permits shall be noted on the tract books and plats upon issuance. Title transfers shall be noted upon issuance of patent.

[FR Doc. 82–20121 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–84–M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 600, 680, 681, 682, 683, and 684

Conflict of Interests

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: These final regulations are issued in accordance with E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104. They apply to all employees of the National Science Foundation (NSF) and consolidate all the conflict-of-interests rules of the NSF into one document. They replace the current NSF conflict regulations at 45 CFR 600.735.

EFFECTIVE DATE: July 26, 1982.

FOR FURTHER INFORMATION CONTACT: General Counsel, National Science Foundation, 1800 G Street NW, Washington, D.C. 20550, Attention: Harriet E. Tucker (202/357–7483).

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 193–215 of the **Federal Register** of January 5, 1982, and invited comments for 60 days ending March 8, 1982. No comments were received from the public. The Office of Government Ethics and NSF employees offered suggestions for technical changes. Based on these comments and further review several minor changes were made.

Classification

The National Science Foundation does not consider this regulation significant for the purposes of Executive Order 12044.

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not affect the environment. An environmental statement is not required under the National Environmental Policy Act of 1969.

Background and Purposes of These Regulations.

Federal employees are subject to a variety of conflicts rules from several different sources. There is a series of criminal statutes (18 U.S.C. 201–209) covering several pages in the United States Code. There is the Hatch Act. There is an Executive Order (11222). There are Office of Personnel Management/Office of Government Ethics regulations memoranda interpreting the laws and implementing the Executive Order. There are memoranda from the Attorney General on the effect of the laws. There are two appendices in the Federal Personnel Manual. Every Federal Employee is theoretically responsible for knowing about, understanding, and observing the laws and many of the rules that come out of the Executive Order and an implementing regulation.

Many of these sources treat the same or similar subject, but they are nowhere consolidated into a coherent whole, with all the provisions that bear on the same subject brought together. Many of them, particularly the criminal statutes, are drafted in traditional technical legal language that is difficult for employees to understand. Moreover, they are drafted to cover diverse problems that arise all over the Government; the ones that predominate at the NSF are a small and rather unusual subset of those to which the Governmentwide rules are written. At the same time, none of these multitudinous authorities covers some unique problems the NSF repeatedly confronts particularly those that have to do with short-term employees usually known as "rotators."

The NSF has had a number of different conflicts documents of its own, both to implement other laws and regulations and to add a few special rules of its own. The Foundation's formal conflict regulations (45 CFR

600.735) implement the requirements of Executive Order 11222 and the associated OPM regulations. There is a National Science Board resolution, amended by another resolution, on special conflicts problems that arise for National Science Board members, and the Director of the NSF has issued at least four currently effective Staff Memoranda (O/D 74–48, O/D 74–51, O/D 80–5, and O/D 80–27) that concern one or another conflicts problem.

These regulations represent our effort to create a single conflicts document to coherently consolidate all these conflicts rules and replace the multiple documents we have now. They replace all the existing regulations and internal documents. Moreover, though we cannot relieve employees of legal responsibility for observing the primary external authorities, particularly the criminal statutes, the regulations are designed so that an employee who observes the NSF regulations should by the same token observe the other laws.

For the benefit of National Science Foundation employees and other readers, we include an index to terms and sections of the regulations. The index will appear in the *Code of Federal Regulations.*

List of Subjects in 45 CFR Parts 680, 681, 682, 683, and 684

Conflict of interests.

For the reasons set out in the preamble, Chapter VI of Title 45 CFR is amended as set forth below:

PART 600—STANDARDS OF CONDUCT OF EMPLOYEES AND CONSULTANTS

§ 600.735 [Removed]

1. 45 CFR 600.735 is removed; and

2. 45 CFR Chapter VI is amended by adding Parts 680–684 as follows:

Dated: July 15, 1982.

John B. Slaughter,

Director.

PART 680—NSF CONFLICT-OF-INTERESTS RULES AND STANDARDS OF CONDUCT: INTRODUCTION AND GENERAL PROVISIONS

Subpart A—Introduction to Regulations

Sec.

680.10 Introduction.
680.11 Summary of conflicts rules.
680.12 Underlying purposes and considerations.
680.13 Summary of additional responsibilities.
680.14 Summary of special rules for full-time presidential appointees.
680.15 General standards of employee conduct.
680.16 Key terms.

Subpart B—Statutory Exemptions

680.20 Necessity and effect of formal exemptions.
680.21 Exemptions under 18 USC 208(b).
680.22 Certification under 18 USC 205.

Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

Subpart A—Introduction to Regulations

§ 680.10 Introduction

(a) Parts 680 through 684 of this Title 45 contain conflict-of-interests rules and standards of conduct for employees and former employees of the National Science Foundation.

(b) *"You", the NSF Employee.* The principal audience for these regulations is the NSF employee who must comply with and understand them. They are therefore addressed directly to you. Except where provisions plainly indicate otherwise, "you" includes every NSF employee. It includes not only permanent civil service employees, but "rotators" and persons working at the NSF under the Intergovernmental Personnel Act. It includes rehired annuitants. It includes part-time employees. It also includes any intermittent employees, temporary consultants, or members of the National Science Board who work or will work for the Government more than 130 days a year.

(c) *What is expected of you.* You are not expected to be familiar with every section of the regulations. You are expected to be thoroughly acquainted with a number of basic conflict-of-interests rules, which are summarized for you in § 680.13. You are also responsible for adhering to general "standards of employee conduct" that are laid out in § 680.16. (Full-time Presidential appointees should also be thoroughly acquainted with the special rules in § 680.15.) Beyond that the regulations are designed as a reference document and you need not cope with more detail than you find helpful until a problem or question comes up. Then, you should be able to find the detail you may need in Parts 681–683.

(d) *Consultants, Board members, and other "special employees".* Most consultants, members of the National Science Board, and other temporary or intermittent employees work for the Government *fewer* than 130 days a year and are therefore what the law calls "special Government employees". If you are such a "special employee", see Part 684 of these regulations. Part 684 states and explains the rules and standards you must observe. If you are a member of the National Science Board, Part 684 applies to you as to any other "special employee". Subpart B of Part 684 states and explains special rules of the National Science Board that apply only to its members.

(e) *Ethics counselors.* Within the Office of the General Counsel is an attorney designated by the General Counsel who has primary responsibility for conflict-of-interests matters and for liaison with the Office of Government Ethics. This attorney is the "ethics counselor". Working with the ethics counselor are one or more deputy ethics counselors. Whenever you have a conflict-of-interests problem or question and cannot find a clear answer in these regulations, consult an ethics counselor.

§ 680.11 Summary of conflicts rules.

(a) This section summarizes the principal conflicts rules that NSF employees (other than "special employees") are expected to observe. Section 680.13 summarizes specific conflicts-related responsibilities assigned to particular organizational units or officials by the regulations. Section 680.14 summarizes special rules for full-time Presidential employees. Rules for consultants, Board members, and other employees who work for the NSF 130 days a year or less are covered in Part 684.

(b) *Rules on handling proposals and awards.* (§§ 681.10–681.44) (1) If you would normally handle a proposal or other application, but possess with respect to it an affiliation or relationship listed in § 681.21, you must bring the matter to the attention of a conflicts official in your directorate or staff office. The conflicts official will determine how the matter should be handled and will tell you what further steps to take.

(2) If you become aware that a prospective, current, or recent NSF employee has an involvement or interest in any proposal or other application you are handling, you must bring the matter to the attention of a directorate conflicts official. The conflicts official will decide how the matter should be handled and tell you what further steps to take. If the file reflects that a conflicts official has already been consulted and has decided how the matter should be handled, you may proceed as the conflicts official has directed, unless something of possible significance has changed.

(3) You must ask each peer reviewer of any proposal you are handling to indicate any possible conflicts of interests the reviewer may have. You should record in the proposal file all interests, affiliations, or relationships revealed by reviewers; determine how,

if at all, they ought to affect the use of the review; and describe your determination in the file.

(c) *Representational restrictions and involvement with proposals and projects during and after NSF service.* (§§ 682.10–682–23) (1) *Current-employee restriction.* During your Federal employment you must not represent anyone (including yourself) in dealings with any Federal official on any proposal, project, or other matter.

(2) *One-year NSF restriction.* For one year after you leave NSF employment you must not represent anyone (including yourself) in dealings with any NSF official on any proposal, project, or other matter.

(3) *"Official responsibility" two-year restriction.* For two years after you leave NSF employment you must not represent anyone else in dealings with any Federal official on any proposal, project, or other matter involving specific parties if the same matter was active under your official responsibility during your last year at the NSF.

(4) *"Personal involvement" permanent restriction.* You must never represent anyone else in dealings with any Federal official on any proposal, project, or other matter involving specific parties if you were personally involved with the same matter as an NSF employee.

General effect: These representational restrictions do not preclude you from being involved as a researcher or educator with proposals submitted to the Government or projects supported by the Government. They do preclude you from negotiating with NSF officials or other Federal officials and from engaging in other representational activities intended to influence their decisions on certain proposals and projects. They do not preclude you from representing yourself before the Government on personal matters, such as audits of your individual tax returns or personnel decisions that affect you.

(d) *Financial disclosure.* (§§ 683.10–683.12)

(1) If you are an executive level, SES, or supergrade (GS–16 or equivalent and above) employee, you are a "senior employee" and must file public Financial Disclosure Reports.

(2) Otherwise, if you serve as either a program officer, a directorate administrative official, a grants officer, a contracts officer, an auditor, or a lawyer, you must file confidential Statements of Employment and Financial Interest.

(3) If you fit neither of these categories, no general financial disclosure is required of you.

(4) If you are required to file Financial Disclosure Reports or Statements of Employment and Financial Interests, the Foundation will supply the necessary forms. You may ask for them when you need them, but normally they will be sent to you automatically, with instructions.

(e) *Acts affecting your financial interests.* (§ 683.20) You must not be personally involved as a Federal employee in the handling of any matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest.

(f) *Outside employment, compensation, gifts, etc.* These rules are too numerous to summarize but they are not difficult to use. Refer to the referenced sections whenever you contemplate any of the following:

(1) Outside employment and income (§ 683.30);

(2) Compensation from private sources (§ 683.31);

(3) Honoraria (683.32);

(4) Reimbursement of expenses or receipt of meals, lodging, or travel tickets from private sources (§ 683.33);

(5) Use of inside Government information in connection with speeches, articles, or other private activities (683.34);

(6) Participation in an NSF-supported conference or workshop (§ 683.35); or

(7) Receipt of a gift, favor, loan, prize, or award (§ 683.36).

(g) *Political activity (Hatch Act).* (§§ 683.40–683.45)

(1) You may not run for public or party office, except in nonpartisan elections and certain local elections.

(2) You may not participate in election campaigning, except in nonpartisan elections and certain local elections.

(3) You may not take an active part in leading or managing a political party.

(4) You must not use your official authority or influence for political purposes.

§ 680.12 Underlying purposes and considerations.

(a) *Conflicts sensitivity.* This section outlines the primary sources of conflicts of interests and explains other considerations that underlie the conflicts rules. If you are sensitive to those considerations and identify situations in which someone might at least think that you have a conflict of interests, you will not be likely to violate the conflict-of-interests rules. When you do identify such a situation, of course, you can and should consult these regulations.

(b) *Effect of conflicts of interests.* There are two principal reasons why you and the NSF should avoid or minimize actual or apparent conflicts of interests.

(1) The success of the NSF in performing its scientific and other functions depends on the effectiveness of its proposal review process in ensuring that the best and most important work is supported. If judgments are warped because of conflicting interests, that effectiveness is compromised. The same is true of other NSF decision processes.

(2) The NSF must earn the confidence of the scientific community, the Congress, and the general public in the integrity, effectiveness, and evenhandedness of its proposal-review and other decision processes. It will not do so if the processes are seen to be compromised by conflicts of interests.

(c) *What is a conflict of interests?* A conflict of interests is a clash between an official's concern for the public interest and his or her private interests or allegiances. There are three primary sources: (1) personal interests; (2) outside affiliations or relationships; and (3) gifts or favors. The examples that follow deliberately present situations that are not clear cut and do *not* illustrate specific rules you must follow. The pertinent rules appear elsewhere in these regulations.

(1) You might use your government position to further your *personal interests,* in conflict with the public interest.

Example: If as an NSF program official you recommended a conference of scientists in your field to discuss current issues, then chaired the conference yourself and delivered the principal paper, at least a inference suspicion would arise that you had used your Government position to further your own professional prestige or other personal interests.

(2) *Outside affiliations or relationships* could affect the objectivity of your judgments as a public official.

Example: A proposal comes to you for handling. You received your degree from the applicant institution and were a professor there until recently. The proposed principal investigator is your cousin. You have potential conflicts of interests arising from both your academic affiliation and your family relationship.

(3) *Gifts or favors* from those interested in agency decisions could affect the objectivity or integrity of your contribution to those decisions.

Example: The chairman of a university department that regularly sends proposals to your unit is in town. After a late afternoon meeting he proposes dinner at a restaurant on his expense account. Acceptance of the dinner would create a potential conflict between your debt of gratitude towards him

and your disinterested pursuit of the public interest.

(d) *Inside access and influence.* A special concern that underlies many of the conflicts rules is that your insider's access to other Federal officials and your inside influence with them might allow you to sway their decisions or actions where you or those with whom you have ties are interested.

Example: A personal friend is principal investigator on a proposal pending in another part of your NSF unit. He asks you to check how things are going with that proposal. You talk with the program officer and division director handling the proposal. You not only check the status of the review, but mention what a fine scientist your friend is and how excellent his recent work has been. Your friendship with the investigator may influence your judgment on these points, and your inside influence may affect the actions and judgments of those with whom you talk. This creates a potential conflict between your private allegiance to your friend and the public interest.

(e) *Conflicts that require prohibition or disqualification.* Some conflicts of interests would so warp the performance of a Government agency or damage its credibility that they simply cannot be allowed to occur. (If a proposal from a member of your family or from your home institution comes into your program, for instance, you would clearly have to disqualify yourself from handling it.) Most Federal conflict-of-interests laws and a few conflicts rules special to the NSF deal with conflicts or potential conflicts of this sort. They therefore either flatly prohibit you from doing certain things that could give rise to such conflicts or disqualify you from participating in matters where you would have a potentially serious conflict.

(f) *Other conflicts.* By no means all conflicts of interests are so serious and clear that flat prohibitions or disqualifications are appropriate. Many conflicts, though real, are subtle, even remote. The seriousness of others so depends on circumstances of the particular case that unvarying rules would be impractical. There are also countervailing considerations. When we flatly prohibit Federal employees from doing things others who are not Federal employees are free to do, we tend to make Federal employment unattractive and so reduce the competence of Government. Also, disqualifying officials from being involved with particular matters may remove those who are best qualified by expertise or experience to make the required judgments or effect the required actions. For these reasons, the conflicts laws and regulations do not specifically address many potential or actual conflicts that are not serious enough to require flat prohibitions or disqualifications or not easily enough identified by general rule to permit them.

(1) In the handling of the proposals and other award-related applications, these regulations require that some such potential conflicts receive special attention from a designated directorate "conflicts official." The conflicts official considers the circumstances of each case and decides whether to require either a disqualification or some form of special handling. See Part 681.

(2) Other actual or potential conflicts may not be covered by any specific rule. You should nonetheless be sensitive to them and do whatever seems wise either to avoid them altogether or to ensure that they affect neither the quality of NSF decisions nor public trust in those decisions.

§ 680.13 Summary of additional responsibilities.

Apart from the conflicts rules for all employees summarized in the preceding section, these regulations impose the following additional responsibilities:

(a) *Directorates and staff offices.* Each directorate and staff office is responsible for designating "conflicts officials" and for making sure that all staff who handle proposals and other applications know who the conflicts officials are (§ 681.10(d)).

(b) *Directorate (and staff-office) "conflicts officials".* If your directorate or staff office has designated you as a conflicts official, your responsibilities are described in Part 681, Subpart D, (§§ 681.40–681.44).

(c) *Officials who are recruiting new professional employees.* If NSF officials who are recruiting determine that a person has become a "prospective employee", they are responsible for bringing that fact and subsequent developments to the attention of a directorate (or staff-office) conflicts official. Whenever a person currently listed in the NSF principal investigator/project director file seems likely to become an NSF employee, the directorate or office which has recruited that person must inform the Division of Information Systems by memo (so that the principal investigator/project director file can be "flagged" accordingly). It must also send copies of the memo to each NSF division or office that is responsible for an active award or pending proposal involving that person. These and related requirements are further described in Part 681, Subpart C, (§§ 681.30–681.33).

(d) *Directorate for Administration.* The Assistant Director for Administration is responsible for "flagging" the principal investigator/project director file to indicate those who are incoming, current, or recent employees (§ 681.33(d)).

§ 680.14 Summary of special rules for full-time Presidential appointees.

If you are a Presidential appointee, you are subject to special additional rules:

(a) You must file a public Financial Disclosure Report within 5 days of your nomination to your position by the President. (§ 683.11)

(b) You may not hold office in or act for any institution that has or is seeking NSF awards without the approval of the National Science Board. (§ 683.30)

(c) You must not engage in any other business, vocation, or employment while serving the NSF in a full-time Presidential position. (§ 683.30)

(d) You may not earn from other outside activities income totalling more than 15 percent of your Government salary in any calendar year. (§ 683.30)

(e) You are not subject to the restrictions on political activity, except to those concerning use of official authority or influence for political purposes. (§ 683.40)

§ 680.15 General standards of employee conduct.

(a) *Summary.* This section covers some standards of conduct for Government employees that are not covered elsewhere in the NSF regulations. Most of them are basic standards of integrity, decency, and obedience to law. Violation of any of these standards is grounds for serious disciplinary action.

(b) *Underlying intent.* The intent of these regulations generally is that you should not:

(1) Engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or in any other conduct prejudicial to the Government or to Government efficiency or economy;

(2) Use your public office for private gain;

(3) Give preferential treatment;

(4) Have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with your Government duties and responsibilities;

(5) Engage directly or indirectly in financial transactions based on information obtained through your Government employment that is not available to the general public;

(6) Lose your independence or impartiality; or

(7) Make Government decisions outside of the proper official channels.

(c) *Preserving public trust.* You are responsible for helping to earn and maintain the confidence of the public in the integrity of the Government. This requires you to be concerned with appearances of as well as actual conflicts.

(d) *Payment of taxes and debts.* You are expected to pay your taxes and your just debts properly and on time. ("Just debts" means those you acknowledge or that have been reduced to final judgment. The Government will not try to determine the validity or amount of any disputed debt.)

(e) *Gambling.* You must not gamble in a Government office or while on duty. This includes participating in a sports pool or a lottery not officially sanctioned by the NSF.

(f) *Familiarity with statutory provisions.* You are legally responsible for acquainting yourself with each statute that relates to your conduct as an NSF and Federal employee. Principal among these are the criminal statutes relating to bribery, graft, and conflicts of interests contained in 18 U.S.C. 201–209; these regulations cover those provisions as they apply to NSF employees. These regulations also cover the provisions of Executive Order 11222, which prescribes standards of ethical conduct for Government officers and employees. They cover regulations of the Office of Personnel and Management that implement both the criminal statutes and the Executive Order. If you follow these regulations, you should have no trouble with any of those provisions. Not covered in these regulations, however, are the following statutory provisions:

(1) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(2) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(3) The prohibitions against disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and disclosure of confidential information (18 U.S.C. 1905).

(4) The provision relating to habitual use of intoxicants to excess (5 U.S.C. 7352).

(5) The prohibition against misuse of a Government vehicle (31 U.S.C. 638a(c)).

(6) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(7) The prohibition against use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(8) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(9) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(10) The prohibition against counterfeiting or forging transporation requests (18 U.S.C. 508).

(11) The prohibitions against embezzling Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzling the money or property of an employee by reason of his employment (18 U.S.C. 654).

(12) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(13) The prohibition against acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§ 680.16 Key terms.

Except where provisions plainly indicate otherwise, certain other terms are used throughout these regulations in standard meanings:

(1) "Award" means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) "Project" means the unit of work that an award supports or helps support.

(3) "Proposal" means an application for an award and includes a bid.

(4) "Other award-related application" means a request for an award amendment, for an increment to a continuing grant, for a no-cost extension, or for an administrative approval.

(5) "Institution" means any university, college, business firm, research institute, professional society, or other organization. It includes any university consortium or joint corporation such as AUI, AURA, or JOI, Inc., but not the universities that belong to it. It includes all parts of a university or college, including separate campuses. It does not include other universities or colleges in a multi-institution state or city system, unless you are an employee of the central system offices or an officer, trustee, or equivalent of the system as a whole.

(6) "Directorate" means an NSF directorate, staff office, or other organization that reports immediately to the NSF Director.

(7) "Program Officer" includes assistant and associate program officers or program managers.

Subpart B—Statutory Exemptions

§ 680.20 Necessity and effect of formal exemptions.

The exemptions described in this subpart are provided for by statute, which requires that they be formally promulgated. This subpart provides the formal promulgation and gives notice to the public. If you are an NSF employee, you need not be concerned with them. Anything you need to know that follows from them is either covered elsewhere in these regulations or will be explained if occasion arises by an ethics counselor.

§ 680.21 Exemptions under 18 U.S.C. 208(b).

(a) The Foundation exempts the interests described in the remainder of this section from the operation of section 208(a) and from case-by-case formal determinations under section 208(b)(1) of Title 18, United States Code.

(b) *Minor interests.* The following financial interests are too inconsequential to affect the integrity of an employee's services to the Government:

(1) Noncorporate bonds;

(2) Shares in a well-diversified money market or mutual fund;

(3) Stocks, bonds, or other securities of a corporation listed on the New York or American Stock Exchange if the aggregate market value of all the securities you hold in that corporation does not exceed $1,000;

(4) Vested pension rights to which no further contributions are being made by your former employer.

(c) *Indirect interests.* An NSF employee may be a stockholder, partner, employee, officer, or director of an institution, such as a mutual fund, that owns a financial interest in a second institution. If the owning institution's financial interest consists of securities or other evidences of debt of the second institution that amount to:

(1) Less than 5 percent of the total portfolio of investments of the owning institution,

(2) Less than 5 percent of the total outstanding amounts of the same classes of securities of the second institution, and

(3) Less than would be needed to obtain effective control of the second institution,

then the interest is too remote and inconsequential to affect the integrity of the employee's services to the Government.

(d) *Policy determinations.* Where a general policy determination of the Government might constitute a "particular matter" under 18 U.S.C.

208(a) and might affect the home institution of an NSF officer or employee, but only in the same manner as all similar institutions, the officer or employee may participate in that determination.

(e) *Support services for National Science Board tasks and responsibilities.* A member of the National Science Board may need professional, clerical, and administrative services to support the member's personal efforts to carry out Board tasks and responsibilities. With the approval of the Director and the Chairman of the National Science Board and in accordance with other laws and regulations, the NSF may contract with the home insitution of the member to provide such services. The institution may receive reimbursement of all allowable costs, but no profit or fee. In such circumstances any financial interests the institution might have are normally too inconsequential to affect the integrity of the services provided by the Board member to the Government.

PART 681—CONFLICTS OR POTENTIAL CONFLICTS IN HANDLING PROPOSALS AND AWARDS

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Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

Subpart A—Summary

§ 681.10 Summary.

(a) Two types of problems could affect the judgments of program officers and other NSF officials who handle proposals and other applications:

(1) The official might possess outside interests, affiliations, or relationships that could create bias; or

(2) Another NSF employee could have an involvement or interest in the proposal or application.

Whenever either of these problems arises, the official who would normally handle the proposal or other application is asked to bring the problem to the attention of a "directorate conflicts official". This conflicts official examines the case; decides what disqualifications or special handling arrangements, if any, are called for; and places a memo in the file explaining the circumstances and any arrangements made to deal with them. In some cases disqualifications are routine or automatic.

(b) Peer reviewers can also have interests, affiliations, or relationships that might affect their reviews. Reviewers are asked to reveal any such interests, affiliations, or relationships. Those are then taken into account by NSF officials in making decisions or recommendations based on the reviews.

(c) If you are a program officer or other NSF official who handles proposals and other award-related applications, your responsibilities in these matters are explained in Subpart B (§§ 681.20–681.26).

(d) Each directorate or staff office of the Foundation is responsible for designating "conflicts officials" and for making sure that all staff who handle proposals and other applications know who the conflicts officials are. The conflicts officials need not be in the directorate front office. They could, for example, be division directors.

(e) If you have been designated as a directorate (or staff office) conflicts official, your responsibilities in these matters are explained in Subpart D (§§ 681.40–681.44) of this part, which also provides guidance to help you carry out those responsibilities.

Subpart B—Guidance for Program Officers and Other Decision-making Officials

§ 681.20 Introduction.

(a) If you are a progam officer or other NSF official who would normally handle a proposal or other application, but you possess with respect to it a potentially biasing affiliation, listed in § 681.21, that section explains what you should do.

(b) If you become aware that another NSF employee—including a prospective employee or a recent employee (one who has left the NSF within the past year)—has an involvement or interest in a proposal or other application you are handling, § 681.23 explains what you should do.

(c) You must ask each peer reviewer of any proposal or project you are handling to indicate any possible conflicts of interest the reviewer may have. Section 681.25 suggests how you should do that and explains what you should do when a reviewer does have a possible conflict.

(d) Should an employee of another Government agency have an interest in a proposal or other application submitted by anyone other than that agency, do not talk or correspond with that employee at all without first consulting an ethics counselor. He or she could inadvertently violate a criminal statute.

(e) You "handle" a proposal or other applicaton if you recommend a decision on it, make or approve the decision, or otherwise substantially influence the decision. If you are a grants officer, contracts officer, financial official, or lawyer you are affected if you play a significant role in decisions on award budgets or terms. If in doubt, consult an ethics counselor in the Office of the General Counsel.

(f) This Part covers only conflicts and potential conflicts in handling proposals and other award-related applications. Conflicts or potential conflicts in handling other matters are covered in § 683.20.

§ 681.21 When you have a potentially biasing affiliation or relationship.

(a) If you would normally handle a proposal or other application, but possess with respect to it a potentially biasing affiliation or relationship listed below, you must bring the matter to the attention of a conflicts official in your directorate or staff office. You must do so whether or not the affiliation or relationship is also designated "normally disqualifying" or "automatically disqualifying". (Some affiliations or relationships are neither.)

The conflicts official will determine how the matter should be handled and will tell you what further steps to take.

(b) *Affiliations with an applicant institution.* (1) Current appointment at the institution as professor, adjunct professor, visiting professor, or the like [automatically disqualifying].

(2) Current employment or being under consideration for employment at the institution [automatically disqualifying].

Note.—This may include employment via a consulting or advisory arrangement; check with an ethics counselor.

(3) Any formal or informal reemployment arrangement with the institution [automatically disqualifying].

(4) Current membership on a visiting committee or similar body at the institution [automatically disqualifying, but only for proposals or applications that originate from the department, school, or facility that the visiting committee or similar body advises].

(5) Ownership of the institution's securities or other evidences of debt [automatically disqualifying].

Note.—Minor or indirect holdings may be exempted; see § 680.21 or check with an ethics counselor.

(6) Any office, governing board membership, or *relevant* committee chairmanship in the institution [automatically disqualifying].

Note.—Ordinary membership in a professional society or association is not considered an office.

(7) Current enrollment as a student [normally disqualifying, but only for proposals or applications that originate from the department or school in which one is a student].

(8) Receipt and retention of an honorarium or award from the institution within the last twelve months [automatically disqualifying].

(c) *Relationships with an investigator, project director, or other person who has a personal interest in the proposal or other application.* (1) Known family or marriage relationship [automatically disqualifying if the relationship is with a principal investigator or project director].

(2) Business or professional partnership [automatically disqualifying].

(3) Employment at the same institution within the last 12 months.

(4) Past or present association as thesis advisor or thesis student.

(5) Collaboration on a project or on a book, article, report, or paper within the last 48 months.

(d) *Other affiliations or relationships.* (1) Any affiliation or relationship of your spouse, of your minor child, of a relative living in your immediate household or of anyone who is legally your partner that you are aware of and that would be covered by (b) or (c) of this section, if it were yours [disqualifying just as if the affiliation or relationship were yours, except for receipt by your spouse or relative of an honorarium or award, which is not necessarily disqualifying].

(2) Any other relationship, such as close personal friendship, that you think might tend to affect your judgments or be seen as doing so by a reasonable person familiar with the relationship.

§ 681.22 "Automatically disqualifying"; "normally disqualifying".

(a) *"Automatically disqualifying".* If you have an interest, affiliation, or relationship that § 681.21 designates "automatically disqualifying", you should disqualify yourself from handling the affected proposal or other application. You must not participate in handling it *under any circumstances.* BE CAREFUL: in most cases a violation of this rule would be a Federal crime.

(b) *"Normally disqualifying".* If you have an interest, affiliation, or relationship that § 681.21 designates "normally disqualifying", you should disqualify yourself from handling the affected proposal or other application, *unless specifically directed to do otherwise by the conflicts official.*

§ 681.23 When a prospective, current, or recent NSF employee has an involvement or interest.

(a) If you become aware that a prospective, current, or recent NSF employee has an involvement or interest in any proposal or other application you are handling, you must bring the matter to the attention of a directorate conflicts official. The conflicts official will decide how the matter should be handled and instruct you accordingly. If the file reflects that a conflicts official has already been consulted and has decided how the matter should be handled, you may proceed as the conflicts official has directed unless something of possible significance has changed.

(b) *What constitutes "an involvement or interest".* A prospective, current, or recent NSF employee "has an involvement or interest" in a proposal or other application if the employee is, was, or will be a member of the research group or project staff involved. If the employee was a member of a research group, but has since ceased working on the project and with the group, the employee no longer has an involvement or interest. Unless there has been such a severance, however, appointment of a substitute principal investigator or substitute negotiator would not affect the requirement for consulting a conflicts official.

(c) *Finding out about it.* How do you find out that someone who has an involvement or interest in a proposal or application is a current, prospective, or recent NSF employee? There are four possibilities:

(1) The proposal or application might say so.

(2) The Foundation's principal investigator/project director file that you routinely check when beginning work on a new proposal will usually indicate that a listed investigator is a current, prospective, or recent NSF employee if that is the case. The mechanism by which this is arranged is explained in § 681.33.

(3) You might receive a copy of a memorandum from another NSF official indicating that an investigator on a proposal already pending or an award already active has become a prospective employee. The circumstances under which such a memorandum will be sent to you are also explained in § 681.33.

(4) You might happen to know or learn of the person's NSF employment or prospective employment through your other activities.

(d) *Your responsibility.* No matter how you find out, once you do, it is your responsibility to bring the matter to the attention of a directorate conflicts official—unless, of course that has already been done. If in doubt, consult the conflicts official or an ethics counselor.

§ 681.24 Directorate conflicts officials.

Your directorate or office is responsible for letting you know who your conflicts officials are. If you do not know, check with the office of the assistant director or office head. Subpart D (§§ 681.40–681.44) explains the responsibilities of the conflicts officials and provides guidance for them.

§ 681.25 Possible conflicts of peer reviewers.

(a) You must ask each peer reviewer of any proposal or similar application you are handling to indicate any possible conflicts of interests the reviewer may have.

(b) In the case of mail review, you may do this by including in the letter requesting the review the following language:

If you have any relationships with the institution or the persons submitting this proposal, please consider whether they could be construed as creating a conflict of interests for you. Please describe in your own words any relationship that might be so construed. You may use a separate piece of

paper and attach it to your review. Regardless of any such relationships, we would like to have your review unless you believe you cannot be objective.

(c) In the case of panel review, you should make an oral request of the panel members, essentially as follows:

If when we come to consider any particular proposal, you recognize that you have a relationship with the institution or persons submitting the proposal that could be construed as creating a conflict of interests, please let me know. I'll ask you to describe the relationship in your own words and will determine from your description what to do about the situation. You must not participate in reviewing any application in which you or a member of your immediate family or an organization of which you are or may become a part has a financial interest. Otherwise, we'll often just make a note in the file to consider when making final recommendations.

(d) You may use the list in § 681.21 as a guide in responding to reviewer questions about the relationships that should be considered. Section 684.15 explains when a panel reviewer, like any other "special employee", must be excused from review of an application because of a financial interest. Otherwise, no advance disqualification of reviewers is required. There may be other circumstances, though, in which you and the reviewer will conclude that the review would have to be disregarded and would thus be a waste of the reviewer's time.

(e) You should record in the proposal file all interests, affiliations, and relationships revealed by reviewers or otherwise known to you. You should determine how, if at all, those interests, affiliations, or relationships ought to affect the use of the review in assessing the proposal. You should describe in the file both your determination and the reasoning behind it.

Subpart C—Identifying Prospective, Current, or Recent NSF Employees and Proposals or Awards in Which They Have an Interest

§ 681.30 General.

Sections 681.23 and 681.43 provide for special handling of any proposal or other application in which a prospective, current, or recent NSF employee has an involvement or interest. Section 681.23(c) explains generally how an official who handles a proposal or application might learn that a person who has an involvement or interest is a prospective, current, or recent employee. This Subpart:

(a) Explains more precisely who is a "recent employee", or "prospective employee" (§ 681.31);

(b) Identifies responsibilities of the recruiting directorate or office when a person becomes a "prospective employee" (§ 681.32);

(c) Explains how the recruiting directorate should inform others when it becomes clear that a prospect will become an NSF employee (§ 681.33(a)); and

(d) Requires the Assistant Director for Administration to provide for "flagging" the principal investigator/project director (PI/PD) file to indicate that a person listed there is a prospective, current, or recent NSF employee (§ 681.33(d)).

§ 681.31 "Recent employee"; "prospective employee".

(a) *"Recent employee".* Any former NSF employee who left the NSF within the year before the affected proposal or other application is filed with the NSF should be considered a recent NSF employee.

(b) *"Prospective employee" threshold.* As soon as those recruiting have expressed interest in a particular person in connection with a specific opening and have received some indication of reciprocal interest, that person should be considered a prospective NSF employee—even though no actual offer has been made and even though there is substantial doubt that one would be accepted if it were made. More specifically:

(1) NSF officials who have an opening on the horizon often discuss it with persons outside the NSF. If the discussion is just a general effort to make members of the appropriate community aware of the opening in the hope that applicants will appear, it makes no one a prospective employee. But if the discussion is with a particular individual whose candidacy is sought for a particular position, that individual should be considered a prospective employee if (but only if) the candidate expresses some interest. The expression of interest need not be strong. It could amount to no more than a willingness to "think it over" or come in for a talk. After such an expression of interest NSF officials could be influenced in decisions on proposals or other applications by their hopes of getting the candidate to consider the job or to take it.

(2) When a specific vacancy is imminent, the NSF usually solicits and receives applications. Some applications may come from persons in whom there is little or no interest. Others may come from persons the recruiters have never met. Conflicts are unlikely to arise in such cases unless and until the recruiters become sufficiently interested to initiate some direct contact with the applicant, typically by suggesting an interview. At that point the applicant should be considered a "prospective employee". If no direct contact is ever initiated outside the personnel mechanics, the applicant need not be considered a prospective NSF employee.

§ 681.32 What the recruiting directorate or office should do when a person becomes a "prospective NSF employee".

(a) Special attention and special handling of proposals or other applications in which a prospective NSF employee has an involvement or interest are not required automatically. They are required under § 681.23(a) only if an official handling the proposal or application actually becomes aware that a person involved or interested is a prospective employee. Whether to inform other officials that a person is a prospective employee is within the discretion of a conflicts official of the recruiting directorate or office.

(b) If those who are recruiting determine that a person has become a prospective employee under these guidelines, they are responsible for bringing that fact and subsequent developments to the attention of a directorate or office conflicts official. This should be an official who is not directly involved in the recruitment and does not immediately supervise the position for which the prospective employee is being considered.

(c) The conflicts official is responsible for deciding whether, when, and to what extent proposals or other applications involving the prospect require special attention and special handling. See § 681.44.

§ 681.33 Informing others about incoming employees; "flagging".

(a) *When a "prospective employee" becomes an "incoming employee".* Each directorate is responsible for informing the Division of Information Systems by memo whenever a prospective employee listed in the NSF PI/PD (principal investigator/project director) file seems likely in fact to become an NSF employee. The memo should be sent at least as soon as the incoming employee enters into discussions of grade and salary with personnel officials. It might be sent sooner should the responsible conflicts official of the recruiting directorate or office find that appropriate. The memo should identify all active NSF awards and pending NSF proposals with which the prospective employee has an association. This should be checked with the PI/PD file *and* with the prospective employee.

(b) *Informing other divisions.* The recruiting directorate is also responsible for sending copies of its memo to each NSF division or office that is responsible for such an active award or pending proposal.

(c) *"Signals off".* If the prospect does not become an NSF employee after all, the recruiting directorate is responsible for notifying by memo all those who received its original memo.

(d) *"Flagging".* The Assistant Director for Administration is responsible for "flagging" the PI/PD file to indicate every person listed there who is a current or recent NSF employee or who has been identified in a memo from the recruiting directorate or office as an incoming NSF employee.

Subpart D—Guidance for Directorate Conflicts Officials

§ 681.40 Summary; responsibilities of conflicts officials.

(a) If your directorate or staff office has designated you as a conflicts official, you have three responsibilities under these regulations:

(1) You determine how to handle a proposal or other application when an official who would normally handle it possesses with respect to it an affiliation or relationship listed in § 681.21. The potential conflicts you should be concerned with in such a case are generally apparent from the nature of the affiliation or relationship.

(2) You determine how to handle a proposal or other application when a prospective, current, or recent NSF employee has an involvement or interest in it. Section 681.43 describes the potential conflicts you should be concerned with in such a case.

(3) You determine whether, when, and to what extent proposals or other applications involving a prospective NSF employee require special attention and special handling. Section 681.44 offers guidance for such determinations.

(b) Section 681.41 describes the underlying considerations you are called upon to accommodate and balance in making these determinations. Section 681.42 describes the disclosure that is required in all cases that come to you for determination and the forms of special handling you might require in such cases. It also explains what you should do when a particular relationship is considered "automatically disqualifying" or "normally disqualifying".

§ 681.41 Making determinations: underlying considerations.

When you are called upon to make any of the determinations described in § 681.40, what considerations should influence you in deciding what to do?

(a) The primary purpose of your involvement is to remove or limit the influence of any ties to an applicant institution, investigator, etc. that you think could affect the decisions of an NSF official. Keep in mind that an official may be influenced by such ties without deliberate bias Do not, however, "strain at gnats".

(b) A secondary purpose is to preserve the trust of the scientific community, the Congress, and the general public in the integrity, effectiveness, and even-handedness of the NSF and its award-review processes. This requires you to be concerned with appearances as well as actualities.

(c) An important countervailing consideration is to avoid distorting NSF judgments on proposals and other applications by disqualifying those who are most competent to make the judgments. So far as possible, you should ensure that those who handle a proposal or other application are competent in the scientific or technical fields involved and are capable of judging the standing of a proposal in comparison with other proposals in the same field.

(d) Occasionally, action on a proposal or other application raises significant policy questions. As far as possible, you should avoid preventing an official who is responsible for the policy judgments in question from exercising that responsibility.

(e) Finally, you can and should consider the extra paperwork, effort, and expense to the taxpayer required by any special handling you might require. Except where an interest, affiliation, or relationship is designated "normally disqualifying" or "automatically disqualifying", finding ways to accommodate and balance these competing considerations is left to your ingenuity and judgment.

§ 681.42 Disclosure, disqualification, and other special handling.

(a) *Disclosure.* In every case brought to you as a conflicts official, you should prepare a simple memo for the file. The memo need not be in any particular format and may be handwritten. It should identify the potential conflicts problem involved and should explain what special handling, if any, you have required. Even if you require no additional special handling, the memo will ensure that the Foundation is open about the potential conflict and attentive to it. It will allow those reviewing the recommended action at higher levels to consider any effect the potential conflict might have had and alert them to scrutinize the action more closely. It will allow meaningful audit and oversight and so protect those involved, including you. And it will help preserve public trust in the NSF and in NSF decisions.

(b) *Disqualification.* In some cases disclosure alone will be insufficient to protect against distortion of NSF decisions or undermining of public trust in the NSF and NSF decisions. On conflicts considerations alone, disqualification of the official who possesses the potential conflict is the best solution. But if the official has unique scientific or technical competence, is uniquely qualified to judge the competitive standing of a proposal, or has responsibility for policy judgments raised in the decision—disqualification of that official would have serious disadvantages. Although decisions on the kind and degree of special handling that should be required are often left to your discretion, more inflexible disqualification rules do apply in the case of certain interests and affiliations.

(1) If an interest or affiliation is labelled "automatically disqualifying" in § 681.22, you *must* disqualify any official who possesses such an interest or affiliation with respect to the proposal or application concerned. In most cases, the disqualification is required by criminal law. If you were to allow the official to take any part in the handling of the proposal or application, you would place him or her (and conceivably even yourself) in jeopardy of fine or imprisonment.

(2) If an interest or affiliation is labelled "normally disqualifying" in these regulations, you should normally disqualify any official who possesses such an interest or affiliation with respect to the proposal or application concerned. If unusual circumstances require that such an official be allowed to act on the proposal or application, your memo to the file should carefully explain those circumstances and what other precautions you have taken to minimize the potential for bias. Even then, you should not proceed until you have consulted an ethics counselor and the ethics counselor concurs.

(3) Even if an interest or affiliation is *not* labled "automatically" or "normally" disqualifying, disqualification may be called for. Your judgment should depend heavily on the extent to which someone else who will be able to substitute effectively for the official might be disqualified.

(c) *Other special handling.* You are not confined to relying either on

disclosure only or on complete disqualification. Other, intermediate solutions can also go a long way toward removing or minimizing any potential for bias. For example:

(1) Sometimes you might allow a case to be handled normally, but provide for extra peer reviews or extra review within the NSF.

(2) Sometimes you might have an official perform some functions but not others. The official might be able to supply a list of potential reviewers, for example, without running into serious conflicts. Or the official might be consulted by a substitute official on the competitive range in the program where the substitute is competent enough to read reviews and judge the merit of a proposal, but ill-prepared to determine where that places the proposal among those competing for funds within the same program.

(3) In some cases scientists from outside the NSF could be relied on to a greater extent than usual. For example, suppose a substitute NSF official has less than optimal technical competence or less than optimal sense of the competitive range in the affected program. Such a substitute might nonetheless be able to stand in if aided by an outsider who is more familiar with the scientific subfield or the affected program or both. The outsider might be a former NSF official, a panel member, a scientist from a sister agency, or in an unusual case, a special consultant.

(d) *Consolidated handling of related cases.* If you anticipate a number of cases that will involve the same person and the same general circumstances, you may make a single determination and issue a single memo covering all of the cases. For example, you might issue a memo indicating that a rotator will be disqualified from handling any proposal or application from his or her home institution, and saying who will handle any such proposal or application instead. A copy of this memo should be placed in the file for each affected proposal or award.

§ 681.43 Potential conflicts when an NSF employee has an involvement or interest.

(a) When a prospective, current, or recent NSF employee has an involvement or interest in a pending proposal or other application, you should look for and deal appropriately with the five types of potential conflicts described in the rest of this section.

(b) *Recruiter's conflicts.* These are potential conflicts that could arise if an NSF official who is recruiting a prospective employee were simultaneously to handle a proposal or other application in which the prospective employee has an interest. You should identify those actively interested in recruiting the prospective employee and look for ways to limit their involvement in the handling of the proposal or other application. In particular:

(1) The person who would be the immediate supervisor of the prospective employee usually will have an especially active interest in successful recruiting. You should treat that interest as "normally disqualifying".

(2) Those directly involved in discussions with the prospective employee will also have an interest in successful recruiting. You should consider their possible conflicts.

(3) Officials at higher echelons who are not directly involved in the particular recruitment may still have an interest in successful recruiting within their organizations. You should consider their possible conflicts.

(c) *Superior's conflicts.* These are potential conflicts that could arise if an NSF official were to handle a proposal or other application in which one of the official's subordinates has an interest. In particular:

(1) The immediate supervisor of an employee usually will have an especially active interest in having the employee happy and in maintaining good relations with the employee. You should treat the immediate supervisor's interest as "normally disqualifying" if the interested employee is a prospective or current employee. You need not do so, however, in the case of a recent employee, for the supervisor's interest diminishes when the employment relationship ends.

(2) Persons at higher echelons might also be influenced by an interest in having the employee happy. You should consider whether their involvement in handling the proposal or application can or should be limited.

(d) *Subordinate's conflicts.* These are potential conflicts that could arise if an NSF official were to handle a proposal or other application in which the official's immediate superior or someone at a higher echelon in the official's "chain of command" has an interest. In particular:

(1) An NSF official would be placed in a particularly difficult position if asked to act on a proposal or other application in which the official's boss has an interest. Thus you should treat the immediate subordinate of a prospective or current employee as having a "normally disqualifying" relationship and only under the most special circumstances allow him or her to have any part in handling the proposal or application. You need not necessarily disqualify one who was the immediate subordinate of a recent employee, however, since the potential conflict would be substantially diminished once the supervisor-subordinate relationship ends.

(2) You may sometimes have to allow less immediate subordinates at lower echelons to play a role if there is not to be serious loss of technical competence and awareness of competitive range in the program affected. But you should take particular care in involving such lower-echelon subordinates. Disqualification would be preferable if it is workable. One possibility if disqualification is not workable may be to allow the official handling the proposal to stay anonymous, dealing with investigators and the grantee institution through another NSF official—perhaps a senior official or a grants officer. Other types of special handling that might be useful in such a case are described in § 681.42(c).

(e) *Professional associate's conflicts.* These are potential conflicts that could arise if an NSF official were to handle a proposal or other application in which a close professional associate at the NSF has an interest. In particular:

(1) You may have to consider disqualification of a very close associate of the interested employee, particularly where professional association may have led to personal friendship.

(2) When the degree of professional association and personal acquaintance involved is only what normally arises from service within the same organizational unit, little more than disclosure should normally be required.

(f) *Reviewer's conflicts.* These are potential conflicts that could arise when reviewers are asked to pass upon a proposal involving the interests of a scientist who will later be passing upon their proposals as an NSF program official. To avoid them:

(1) All files, active and inactive, that involve research or a research group with which the employee was or is associated should be sequestered to protect the anonymity of reviewers.

(2) To the extent possible you may want to provide more protection by selecting as peer reviewers persons who are not supported by any program for which the interested official is responsible.

§ 681.44 Handling prospective-employee determinations.

(a) You may be called upon to determine whether, when, and to what extent proposals or other applications that involve a prospective employee require special attention and special

handling. You should be consulted as soon as a person becomes a prospective employee. The procedure for this is described in § 681.32.

(b) *Nature of possible conflicts.* Actual or potential conflicts of interests can arise in such a situation if any of those who would handle a proposal or other application either is trying to recruit the prospective employee or would be a subordinate, supervisor, or close colleague of the potential employee.

(c) *When you should take action.* If there is a significant possibility that such actual or potential conflicts could improperly influence decisions on proposals or other applications or awards, you must institute special handling as described in §§ 681.42 and 681.43. In the case of proposals and awards outside your own directorate or office, you should do that by notifying officials of the other directorate. A conflicts official of that directorate or office will determine what special handling may be necessary there.

(d) *Avoid premature action.* However, you should avoid unnecessarily early disclosure that a person is under consideration for an NSF position, for two reasons:

(1) That a person is considering a change of jobs is often confidential, particularly in earlier stages; and

(2) That an interested person is a prospective NSF employee cannot affect an official's judgment on a proposal or other application if the official has no knowledge of the prospective employment.

Since an official who works in one NSF organizational unit is less likely to know that a person is under consideration for employment in a different unit, and is also less likely to be influenced by any such knowledge, it normally makes sense to delay notifying officials outside the recruiting unit until it seems quite likely that the prospect will indeed become an NSF employee.

PART 682—REPRESENTATIONAL RESTRICTIONS AND INVOLVEMENT WITH PROPOSALS AND PROJECTS DURING AND AFTER NSF SERVICE

Subpart A—The Representational Restrictions Generally

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Subpart B—Involvement With Proposals and Projects During and After NSF Service

682.20 General; restricted representational activities vs. permitted research or educational activities.
682.21 Proposals and projects over which you had official responsibility or with which you were personally involved.
682.22 When you are or would be principal investigator.
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Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

Subpart A—The Representational Restrictions Generally

§ 682.10 Summary; the four basic representational restrictions.

(a) NSF employees are subject to four basic restrictions on representing private parties (not the Government) in dealings with other Federal officials. The first of these applies while you are working for the Government. The other three apply for varying periods afterward; they are thus known collectively as the post-employment restrictions.

(1) *Current-employee restriction.* During your Federal employment you must not represent private parties in dealings with any federal official on any proposal, project, or other matter.

(2) *One-year NSF restriction.* For one year after you leave NSF employment you must not represent private parties in dealings with any NSF official on any proposal, project, or other matter.

(3) *"Official responsibility" two-year restriction.* For two years after you leave NSF employment you must not represent private parties in dealings with any Federal official on any proposal, project, or other matter involving specific parties if the same matter was active under your official responsibility during your last year at the NSF.

(4) *"Personal involvement" permanent restriction.* You must never represent private parties in dealings with any Federal official on any proposal, project, or other matter involving specific parties if you were personally involved with the same matter as an NSF employee.

All four restrictions have to do with representing private parties in dealings with NSF officials or other Federal officials. Here are the distinguishing features:

Current employee restriction.	During Federal employment	Any Federal official	Any matter.
One-year NSF restriction	For one year after NSF employment.	Any NSF official	Any matter.
"Official responsibility" two-year restriction.	For two years after NSF employment.	Any Federal official	Any matter involving specific parties that was under your official responsibility.
"Personal involvement" permanent restriction.	Forever	Any Federal official	Any matter involving specific parties in which you were personally involved.

(b) *Examples.* The following examples illustrate the application of these rules.

Example 1: You have been on the Physics faculty at the University of Wyoming and have been principal investigator on grants from the NSF and from the Department of Defense. You come to the NSF for a two-year stint as a section head. While you are away a colleague acts as principal investigator on both your grants. During your stint at the NSF the Department of Defense grant is about to expire. The substitute principal investigator files a new proposal with DOD. She asks you to call the DOD program officer, with whom you have great credibility from past dealings, to vouch for her excellence and to urge that he continue to fund the Wyoming work. The current-employee restriction prohibits you from doing so.

Example 2: Same underlying facts as Example 1. After your stint at the NSF you return to Wyoming and want again to become principal investigator on the NSF-supported work. You may do so, but the one-year NSF restriction prohibits you from calling, writing, or visiting NSF officials to represent yourself or your institution on the award.

Example 3: Same facts as Examples 1 and 2. A few months after your return it comes time to file a new proposal for another NSF award so that you can continue the line of investigation you have been pursuing with the NSF support. You may prepare a proposal for your institution and may be listed as principal investigator, but the one-year NSF restriction prohibits you from calling, writing, or visiting NSF officials to represent yourself or your institution on the proposal.

Example 4: Same underlying facts as Example 1. During the last year of your tenure as section head another physics proposal came in from the University of Wyoming. Though the program officer who handled the peer review and submitted a recommendation was in your section, you disqualified yourself from any participation in handling the proposal. A three year continuing grant was awarded. *Within two years* after you return to Wyoming a problem comes up with the last increment of the continuing grant. You have meanwhile become department chairman. As department

chairman you would normally confer with NSF officials about the problem and try to resolve it. The "official responsibility" two-year restriction prohibits you from doing so. If the problem came up more than two years after you left the NSF, however, you would be free to confer with NSF officials. The "official responsibility" two-year restriction would no longer apply, and the "personal involvement" permanent restriction would not apply because you had no personal involvement in handling the proposal while at the NSF.

Example 5: While you were Director of the Division of Grants and Contracts at the NSF you personally approved the terms of a contract to the Solar Equipment Company for development of solar heating equipment. Subsequently, responsibility for this contract was transferred to the Department of Energy. After you retire from your NSF position, you accept a position with the Solar Equipment Company. A problem comes up under the same contract, and you would normally be responsible for resolving it in discussions with DOE officials. The "personal involvement" permanent restriction prohibits you from doing so. That you would be dealing with DOE officials, not NSF officials, makes no difference: the restriction applies to dealings with any Federal official.

(c) *Proposals and projects.* Subpart B (§§ 682.20–682.23) is devoted entirely to the application of the representational restrictions in relation to proposals and projects. In relation to proposals and projects you may rely entirely on Subpart B.

(d) *Other matters.* For most current and former NSF employees the representational restrictions will rarely apply except in relation to proposals and projects. You are nonetheless responsible for making yourself familiar with the restrictions and abiding by them in relation to all covered matters.

(e) *Terms and effect.* The wording of the restrictions as presented in this section and § 682.20 has been simplified substantially from the wording of the underlying statutes, so that they will be easier to understand. In the process, they have also been deliberately overstated, with exceptions and "escape hatches" left out, so that your initial reaction will be to interpret them conservatively. The next three sections fill in critical concepts: what it means to have "official responsibility" or to be "personally involved" (§ 682.11); what is and is not representation subject to the restrictions (§ 682.12); and which are the matters on which representation is restricted (§ 682.13). In the process they explain the exceptions and refinements left out in this section.

(f) *Partners.* During your Federal service only, there is a further restriction that applies to any partner of a business or professional partnership to which you belong. If you belong to any such partnership, see § 682.14.

(g) *Source statutes and penalties for violation.* For the most part these restrictions derive from Federal criminal statutes and apply to officials of all Federal agencies. In one respect the NSF rules are stricter. At other agencies the one-year agency restriction applies only to former high-ranking officials; the one-year NSF restriction applies to all former NSF employees. Violation of the statutory provisions can lead to criminal prosecution (the penalties are a fine of up to $10,000 or imprisonment for up to two years of both) or to civil debarment from dealings with the NSF (for up to five years). A violation of the NSF's current-employee restriction can lead to disciplinary personnel action against an employee.

(h) *Consultation.* If in doubt about any of the rules in this part, consult an ethics counselor in the Office of the General Counsel. You are welcome to consult an ethics counselor for this purpose even after you leave the NSF.

§ 682.11 "Official responsibility"; "personally involved".

(a) The "official responsibility" two-year restriction applies only if you had official responsibility for the matter in question during your last year at the NSF. The "personal involvement" permanent restriction applies only if you were personally involved with the matter in question while at the NSF. This section elaborates the concepts of "official responsibility" and "personal involvement".

(b) *"Official responsibility".* You had "official responsibility" for a matter if you had direct authority to approve, disapprove, or otherwise direct Government actions regarding that matter, and it was actually pending during your tenure. It does not matter whether your authority was intermediate or final, whether it was exercisable alone or with others, or whether it was exercisable personally or through subordinates. Specifically:

(1) The scope of your "official responsibility" is ordinarily determined by the responsibilities of position you filled or the organization you headed.

(2) Any matter under consideration in the NSF is under the "official responsibility" of the Director and of each intermediate supervisor who has responsibility for any employee who actually participates in the matter within the scope of his or her duties.

Example: A proposal under consideration within a particular program is under the "official jurisdiction" of the program officer who actually handles it, of the program director for the program, of the responsible section head, of the responsible division director, of the responsible assistant director, and of the Director of the NSF. Whether it is under the "official responsibility" of any of their deputies depends on the responsibilities assigned to the deputies by their position descriptions, by any formal delegations to them, or by an other legally effective means.

(c) *"Personal involvement".* "Personally involved" is short for the following statutory language:

> "Participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise".

In other words:

(1) You may have "participated" and so have been "personally involved" even though you actually made none of the important decisions. You "participated" if you made recommendations, rendered advice, conducted an investigation, or otherwise contributed. Moreover, "approval" is specifically covered. Giving a required approval, however perfunctorily, is covered if the action could not have been taken over your objection.

(2) On the other hand, there is a distinction between personal involvement and official responsibility. If you could have intervened in the matter because of your position, but in fact did not, you were not "personally involved".

(3) You must have participated "personally". You participated personally if you gave directions or instructions about the matter to a subordinate who participated directly. If a subordinate participated without any direction or instruction from you about that particular matter, and you did not otherwise participate, you did not participate personally.

(4) You must have participated "substantially". That requires more than knowledge of what was going on, perfunctory involvement, or involvement on an administrative or peripheral issue. Your participation was "substantial" if it was significant to the outcome or would have seemed so to a reasonable outside observer, considering not only the effort you devoted to the matter but the influence of your effort on the outcome. A single act of a critical step, such as an approval, may be substantial. A series of time-consuming peripheral involvements, such as review solely for compliance with administrative or budgetary controls, may be insubstantial.

§ 682.12 Representation covered.

(a) *Representational dealings.* All four of the basic representational restrictions are restrictions on representing private parties in dealing with NSF officials or

other Federal officials. The dealings covered are encompassing. They include any formal appearance before an official; any meeting with an official; and any letter, phone call, or other communication with an official.

(b) *Intent to influence and potential controversy required.* Contacts as a representative without intent to influence the officials contracted are not prohibited. Nor are contacts as a representative in connection with a routine request not involving a potential controversy. For example, you may ask a question about the status of a particular matter, as long as there is no implicit attempt to influence the outcome. You may request publicly available documents. You may communicate with an official to impart purely factual information as long as the communication has no connection with an adversary proceeding.

Example: While an NSF employee you helped write the current contract for the Kitt Peak National Observatory, with which you are now a staff scientist. You are asked to make a scientific presentation to NSF officials at the annual review of the Kitt Peak program. You may do so. You may not, however, participate in or support any appeal for more funds for Kitt Peak during the review. Indeed, it would be better for you to not be present at all when funding and other contractual subjects are discussed. If you were not a staff scientist at Kitt Peak, but only a user, that would not change things for this purpose.

(c) *Assisting without appearing or communicating with officials.* You are not prohibited from helping those who are representing a private party with Federal officials, as long as you do not yourself make an appearance or otherwise communicate with the officials. You may advise officials or representatives of the party, may make suggestions about whom they should contact and what they should say, and may even draft documents and letters, as long as you do not personally sign or transmit them. CAUTION: What is permitted under Federal law may be prohibited by rules of professional ethics, particularly if you are a lawyer.

(d) *Assisting by personal presence at an appearance or meeting.* A former high-ranking employee (SES, GS–17, or above) who had official responsibility for a matter or was personally involved while a Federal employee may violate the criminal statutes by being present to assist others at a meeting with Federal officials or an appearance before them, even though the former employee never speaks with the Federal officials. The NSF goes further and asks that (whether high-ranking or not) if you would be barred from directly representing anyone in connection with any matter, you refrain from being personally present while others are meeting with NSF officials. In rare cases where there are special circumstances the General Counsel or the Director may waive this restriction to the extent consistent with the Government-wide law and regulations.

(e) *Dealings with officials of the legislative branch not covered.* Where the basic representational restrictions refer to dealings with "Federal officials", that covers officials of a Federal Executive-branch or administrative agency and officials of Federal courts or administrative tribunals. It does not, however, encompass Members of Congress, their staffs, or other officials of the legislative branch.

(f) *Representing the United States.* During your Government service, you may naturally represent your office, the NSF, or the Government (or anyone else, for that matter) with other Federal officials if the representation is part of your official duties. After your Government service, moreover, you may represent an office or agency of the Government in dealings with officials of another office or agency any time you are asked to do so.

(g) *Representing yourself.* The "official responsibility" two-year restriction and the "personal involvement" permanent restriction do not apply if you represent only yourself. They would apply, however, if you were to represent yourself *and* another person, such as an institution or organization with which you are employed or affiliated. The current-employee representational restriction and the one-year NSF restriction *would* apply even if you were to represent only yourself. Even they, however, would not apply to:

(1) Any expression of your views on policy issues, where the circumstances make obvious that you are only speaking as an informed and interested citizen, not representing any financial or other interests of your own or of any other person or institution with whom you are associated;

(2) Any appearance or communication concerning matters of a personal and individual nature, such as your income taxes; your salary, benefits, or rights as a Federal employee; or the application of conflict-of-interests rules to something you propose to do; or

(3) Any appearance on your own behalf in any litigation or administrative proceeding.

They do apply, though, to contacts seeking grants or business, except for discussions about employment with an agency as a consultant or otherwise and to scientific or technical proposals, presentations, or communications. See § 682.20.

§ 682.13 "Matters" covered.

(a) *Matters involving specific parties.* The "official responsibility" two-year restriction an the "personal involvement" permanent restriction both cover only a "matter involving specific parties". Generally, such a matter is a specific proceeding affecting the legal rights of the parties to the proceeding or an isolatable transaction or related set of transactions between identifiable parties. A "party" may be either a person or an institution, and one such party other than the Government is enough.

(1) In the context of the NSF a "matter involving specific parties" will usually consist of a proposal or bid, the award-or-declination decision process with respect to it, any award that results, and any subsequent administrative action related to the project. Such "matters" are covered in Subpart B of this part.

(2) Otherwise, typical "matters involving specific parties" include other kinds of contracts or agreements; applications for permits, licenses, or the like; requests for rulings or similar official determinations; claims; investigations or audits; charges or accusations against individuals or firms; adjudicatory hearings; and court cases. These are relatively uncommon at the NSF, but when current or former NSF employees have been officially responsible for such matters or personally involved in them, the representational restrictions may apply. If in doubt consult an ethics counselor in the Office of the General Counsel.

(b) *Same or different matter.* The "official responsibility" two-year restriction and the "personal involvement" permanent restriction cover such a matter only if during your NSF service the *same* matter was under your official responsibility or you were personally involved in it. Except where guidance is provided in Subpart B of this part, you should not decide for yourself whether a "matter involving specific parties" is the same as one for which you had "official responsibility" or with which you were "personally involved" while at the NSF. Consult an ethics counselor in the Office of the General Counsel.

(c) *Other "matters".* The current-employee restriction and the one-year NSF restriction both cover matters that do *not* "involve specific parties" as well

as those that do. Such broader "matters" include:

(1) Determinations to establish or disestablish a particular program or set its budget level for a particular fiscal year;

(2) Decisions to undertake or terminate a particular project;

(3) Decisions to open or not open a contract to competitive bidding;

(4) Decisions on particular NSF rules or formal policy, such as adoption or amendment of a resolution by the National Science Board, promulgation or amendment of an NSF regulation or circular, amendment of standard grant or contract terms, or changes to such NSF policy documents as *Grants for Scientific Research* and the *Grants Policy Manual;* and

(5) Agency positions on particular legislative or regulatory proposals. .

On the other hand, the statutory term is really not just "matter", but "particular matter". The word "particular" is intended to exclude broad technical areas, policy issues, and conceptual work done before a program has become particularized into one or more specific projects. You should not, however, rely on this hazy distinction alone to take you out from under either of the representational restrictions that cover matters not involving specific parties without checking with an ethics counselor in the Office of the General Counsel.

(d) *Boundaries of matters not involving specific parties.* In connection with the current-employee restriction and the one-year NSF restriction, you need not consider whether a "matter" is the same as or separate from any other matter. Those two restrictions cover any "matter", whether or not you have previously had any responsibility for or involvement with it.

§ 682.14 Restriction on your partners.

While you are a Federal official no person who is legally your partner in a business or professional partnership may act as agent or attorney for anyone in dealings with any other Federal official on any matter under your official responsibility or with which you are or have been personally involved as a Federal official. A partner who violates this rule commits a Federal crime punishable by a fine of up to $5000 or imprisonment for up to one year or both. In general, your partners may safely steer clear of this restriction by using the definitions and guidance in the earlier sections of this Subpart A, treating "act as agent or attorney" as equivalent to "represent" (it may actually be slightly less encompassing). They may consult on this restriction with attorneys in the Office of the NSF General Counsel. If they prefer to consult other counsel, the counsel should be directed to 18 U.S.C. 207(g).

Subpart B—Involvement With Proposals and NSF-Supported Projects During and After NSF Service

§ 682.20 General; restricted representational activities vs. permitted research or educational activities.

(a) *Basic representational restrictions.* The same four representational restrictions described in Subpart A of this part apply to representational activities involving proposals or projects.

(1) *Current-employee restriction.* During your Federal employment you must not represent anyone (including yourself) in dealings with any Federal official on any proposal or project.

(2) *One-year NSF restriction.* For one year after you leave NSF employment you must not represent anyone (including yourself) in dealing with any NSF official on any proposal or project.

(3) *"Official responsibility" two-year restriction.* For two years after you leave NSF employment you must not represent anyone else in dealing with any Federal official on any proposal or project if the same proposal or project was active under your official responsibility during your last year at the NSF.

(4) *"Personal involvement" permanent restriction.* You must never represent anyone else in dealings with any Federal official on any proposal or project if you were personally involved with the same proposal or project as an NSF employee.

(b) *Examples.* Examples 1 through 4 in § 682.10(b) illustrate the application of these restrictions.

(c) *General effect.* These representational restrictions do not preclude you from being involved as a researcher or educator with proposals submitted to the Government or projects supported by the Government. They do preclude you from negotiating with NSF officials or other Federal officials and from engaging in other representational activities intended to influence their decisions on certain proposals and projects.

(d) *Restricted representational dealings.* If you write, call, visit, or otherwise communicate with an official you have "dealt" with the official. Those dealings are representational if you try to influence the official to suggest, recommend, or approve:

(1) An award;

(2) An award amount, a budget, or particular budget items;

(3) Particular award terms or conditions;

(4) An award amendment, increase, or extension;

(5) An administrative approval; or

(6) Any other action affecting a proposal or project.

(e) *Permitted research and educational activities.* You do not engage in representational dealings, and so you violate none of the representational restrictions, by:

(1) Participating in research or other work supported under an award from the NSF or another Federal agency;

(2) Being listed as an investigator in a proposal or award;

(3) Preparing a proposal that will be submitted to the NSF or another Federal agency (but if you prepare it during your NSF tenure, you must do so entirely on your own time);

(4) Making a scientific or technical presentation to officials of the NSF or another Federal agency (at a site visit, for example) or otherwise communicating scientific or technical information to them on the work being proposed or conducted; or

(5) Communicating with officials of the NSF or another Federal agency, with no intent to influence them, to request routinely available and noncontroversial information, such as the status of the decision process on a proposal.

Be very careful with these last two activities particularly; it would be easy to fall into trying to influence actions of the officials involved. If you can, let someone else make the presentation or request. If in any doubt, consult an ethics counselor in the Office of the General Counsel.

(f) *Specifics on proposals.* You may prepare a proposal for submission to the NSF or another Federal agency even though you would be precluded by one of the three post-employment restrictions from any representational dealings with agency officials about it. You may sign the cover sheet to signify your agreement to assume responsibility for the scientific and technical direction of the project and for the preparation of required technical reports. You may not, however, sign the cover sheet as "authorized official" or sign any cover letter submitting the proposal for the institution. Nor may you call, write, or visit the agency program officer who is handling the proposal to urge an award, haggle over budgets, or the like. You may respond to requests from the program officer or another NSF official for scientific and technical information relating to the proposal, such as might

be needed to respond to reviewer comments. You must not, however, couple the information you supply with any attempt to influence the decision on the proposal other than what inheres in the provision of the information itself. (If possible, have someone else respond.) At the NSF the proposal will receive special scrutiny and may require special handling to avoid conflict of interests, but you have no special responsibility in that connection.

(g) *Other issues related to representation.* Section 682.12 covers a number of other issues related to representation. Among these are assisting in representation without appearing or communicating with official (generally permitted); assisting by personal presence at an appearance or meeting (generally prohibited); representating the Government (generally permitted); and representing yourself along (depends). The rules and explanations given there apply to proposals or projects just as to other matters. If any confusion persists after you read them, consult an ethics counselor in the Office of the General Counsel.

§ 682.21 Proposals and projects over which you had official responsibility or with which you were personally involved.

(a) The "official responsibility" two-year restriction applies only if you had official responsibility for the proposal or project in question during your last year at the NSF. The "personal involvement" permanent restriction applies only if you were personally involved with the proposal or project while at the NSF. You will therefore need to know: (1) When a project is the same as one proposed or active while you were at the NSF, and (2) whether you had official responsibility for the project or were personally involved with it.

(b) *When is a project the same project?* All usual aspects of handling a particular proposal and any award based on it relate to the same "project". These include:

(1) The initial peer review and award-or-declination decision process;

(2) Review and approvals of an award recommendation;

(3) Negotiation of budget and award terms;

(4) Negotiation of award amendments;

(5) Consideration of continuing-grant increments; and

(6) Consideration of any extensions or administrative approvals.

(c) *Exceptions.* (1) A negotiation or determination on disposition of rights in any invention or publication that arises out of an award normally is a separate matter from the processing and monitoring of the award, but not from discussions or negotiations about disposition of rights that took place before the invention was made or the publication written.

(2) Separate task orders under a continuing order agreement or the like constitute separate "matters" if the tasks and the negotiations are actually separate.

(3) An ethics counselor may determine that other matters arising from a particular proposal or award constitute separate "matters" if the circumstances warrant.

(d) *Renewals.* An application that involves a continuation or outgrowth of work that the investigators have been doing under a previous NSF and award is part of the same "project" as the original proposal and project unless:

(1) A complete new proposal and a new budget are submitted;

(2) They are subjected to a complete new competitive peer review or evaluation; and

(3) The review or evaluation involves a new group of reviewers, a substantial fraction of whom did not review the earlier proposal.

(e) *"Official responsibility".* You had "official responsibility" for a proposal or project if you were personally responsible for handling it or if you headed a directorate, division, section, or program that was responsible for handling it. (The Director has "official responsibility" for every proposal or project active at the NSF during his or her tenure.) You will find further elaboration of "official responsibility" in § 682.12(b).

(f) *"Personal involvement".* You were "personally involved" with a proposal or project if you handled the peer review of the proposal; if you made any formal recommendation or decision on it, including any approval of an award recommendation or other action; if you reviewed the proposal or made a site visit; or if you otherwise made a substantial contribution to the handling of the proposal or project. You will find further elaboration of "personally involved" in § 682.12(c).

§ 682.22 When you are or would be principal investigator.

(a) *Retention of ties to research, etc. permitted.* Many scientists and educators interrupt active research and teaching careers to spend a year or two at the NSF as "rotators" and then return to research and teaching, usually at the same institution from which they came. Many such rotators (and a few permanent employees) who have been principal investigators under NSF awards before coming to the NSF, retain some interest or association with the work. If you have been the principal investigator under an NSF award, you are not precluded from retaining ties to the work under the award after you become an NSF employee. Subject to the restrictions on outside employment explained in Part 683 of the NSF conflict-of-interests regulations, you may stay in contact with those who are continuing the work in your laboratory or on your project. You may continue to supervise graduate students. And you may visit and work in the laboratory on your own time for these purposes.

(b) *Substitute principal investigator.* Before you come to the NSF, however, the NSF requires that you and your institution designate, subject to NSF approval, a substitute principal investigator—*i.e.*, another scientist who will be responsible for the work and equipment and will represent the project and the institution in any dealings with NSF officials while you are at the NSF.

(c) *Suspension of work on an NSF award.* Appointment of a substitute principal investigator is unnecessary if all work under an award is to be completely suspended while you are at the NSF. If the work is to be suspended, you and your institution should so inform the NSF by letter before your NSF employment begins. Work under the award may be resumed when you complete your NSF employment, and its term may be extended to account for the time lost during your NSF employment.

(d) *Substitute negotiator.* As soon as you leave the NSF, you may again be principal investigator on an NSF project, may be listed as principal investigator in any proposal or award, and may sign a proposal as principal investigator. However, the NSF asks that you and your institution formally designate (subject to NSF approval) a "substitute negotiator" who, though not principally responsible for the work, will represent the project and the institution in dealings with NSF officials from which you would be restricted. In the typical case, the one-year NSF restriction will require that a substitute negotiator continue to serve that function for one year after you leave the NSF. In the rarer case of a proposal or project for which you had official responsibility or with which you were personally involved, there should be a substitute negotiator for as long as the "official responsibility" two-year restriction or the "personal involvement" permanent restriction bar you from such representational dealings.

(e) *Renewal proposals submitted during your NSF service.* During your NSF service a proposal may be

submitted for continuation or extension of work on which you were principal investigator before coming to the NSF and to which you intend to return. The role you will play in the work proposed should be clearly spelled out in the proposal, and the proposal should prominently indicate that you are currently an NSF employee. If work under a resulting award would begin before you leave the NSF, a substitute principal investigator must be named. If the work would not begin until after you leave the NSF, you may be named as principal investigator, but a substitute negotiator must be named.

(f) *Your involvement or interest in project to be open.* The appointment of a substitute principal investigator or a substitute negotiator is not intended to conceal or obscure your continued involvement or interest in the project. Just the opposite: your involvement or interest should be made unmistakably plain. This will ensure that any proposal or other award-related application will be given the special attention and special handling called for under Part 681.

(g) *Purposes of "substitute" requirements.* The appointment of a "substitute principal investigator" or "substitute negotiator" ensures against unthinking violation of the restrictions on dealings with NSF officials. It serves this purpose by flagging proposals or awards affected by the restrictions and by identifying someone else with whom NSF officials can properly discuss them or negotiate over them. Designation of a substitute principal investigator while you are at the NSF has two additional functions: it identifies another person to be responsible for the work and equipment, and it reminds all concerned that during your NSF service your primary attentions must be on your NSF duties.

(h) *Proposals and awards of other agencies.* The "substitute principal investigator" and "substitute negotiator" requirements described in this section are specific to the NSF. If you are or would be a principal investigator under a project proposed to or supported by another Federal agency, however, you should carefully observe the representational restrictions as they apply to dealings with officials of other Federal agencies. The current-employee restriction is particularly likely to apply.

§ 682.23 Compensation or reimbursement of expenses from Federal awards.

(a) *Compensation from NSF awards.* While you are an NSF employee, you may not receive any salary, consulting fee, honorarium, or other form of compensation for your services from an NSF award or any other Federal award either directly or indirectly. In other words, you may not receive money for your services in connection with a project, a conference, or other work that was supported in whole or in part by funds provided from an NSF award. After you cease to be an NSF employee, you may again receive compensation from an NSF award.

(b) *Expenses from an NSF award.* While an NSF employee you may not receive any reimbursement of expenses from an NSF award except as provided for in § 682.23(c). You may receive reimbursement of expenses from other Federal awards to the extent consistent with § 683.33.

(c) *Rotators home visits.* Authorized travel and related expenses may be charged to your NSF award.

PART 683—OTHER CONFLICTS RULES

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Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

Subpart A—Financial Disclosure

§ 683.10 Who must make general financial disclosure

(a) If you are an executive level, SES, or supergrade employee, you are a "senior employee" and must file public Financial Disclosure Reports. See § 683.11.

(b) If you are not a "senior employee", but serve as either a program officer, a directorate administrative official, a grants and contracts officer, an auditor, or a lawyer, you must file confidential Statements of Employment and Financial Interests. See § 683.12.

(c) If you are in neither of these categories, no general financial disclosure is required of you. You may ignore the rest of this subpart.

(d) If you are required to file Financial Disclosure Reports or Statements of Employment and Financial Interests, the Foundation will supply you with the necessary forms. You may ask for them when you need them, but normally they will be sent to you automatically, with instructions.

§ 683.11 Financial disclosure requirements for senior employees.

(a) If you are a "senior employee" you must file an initial Financial Disclosure Report within 30 days after you first come to the Foundation or are promoted into a senior-employee position. You must thereafter file a Financial Disclosure Report by May 15 of each year. And you must file a termination Financial Disclosure Report within 30 days after you leave the Government.

(b) File your Reports with an ethics counselor. The ethics counselor will help with problems or questions that arise in completing the forms, and is required by law to review your Report after you file it. The ethics counselor may contact you about any errors you make in filling out the form or about questions that are raised by what you report.

(c) The law requires the NSF to make each Report you file available to the public within 15 days after you file it.

(d) Any person who wants to see or copy your Report must make a written request. A copy of any such request will be sent to you.

(e) If you are nominated by the President to an NSF position and must be confirmed by the Senate, your initial Report must be filed with the NSF within five days after your nomination.

(f) If you fail to file a required Report, fail to file information required to be reported, or file false information, you are subject to disciplinary action. If you do any of those things willfully, the law requires the Director of the Foundation to report to the Attorney General, who has authority to enforce the disclosure requirements against any knowing or willful violation by suits seeking civil penalties of up to $5,000.

§ 683.12 Financial disclosure requirements for program officers, grants and contracts officers, auditors, and lawyers.

(a) § 683.10(b) indicates that you are one of those who must file Statements of Employment and Financial Interests, you must file an initial Statement within 30 days after you are first appointed to a covered position either by promotion or as a new NSF employee. You must thereafter file a Statement each year by July 31.

(b) File your Statements with the Personnel Office.

(c) Your Statements will be held in the strictest confidence allowed by law. The Personnel Office will keep them in a locked file and will release them or allow disclosure of information from them only with your written approval or that of the General Counsel. Before any release or disclosure on the authority of the General Counsel you will be notified and will have an opportunity to comment, except when information is requested for an official investigation of a possible criminal violation.

(d) If you fail to file a required Statement, fail to file information required to be reported, or file false information, you are subject to disciplinary action.

Subpart B—Acts Affecting Financial Interests

§ 683.20 Acts affecting your financial interests.

(a) *No acting as a Federal employee where you have a financial interest.* You must not be personally involved as a Federal employee in handling of any proposal, award, or other matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest. BE CAREFUL: Violation of this rule may also result in a violation of a criminal statute for which the penalties are a fine of up to $10,000, imprisonment for up to two years, or both.

(b) *Proposals and awards.* You will not violate this restriction in handling proposals and awards as long as you abide by the requirements on handling proposals and awards described in Part 681 of these regulations.

(c) *Policy determinations.* Broad policy determinations that might affect your home institutions, but only in the same manner as all similar institutions, are not covered.

(d) *"Matter".* Otherwise, the term "matter" has the same meaning here as in connection with the representational restrictions described in Part 682 of this chapter. It is elaborated in § 682.13 of this chapter. Note that here specific parties need not be involved.

(e) *"Personally involved".* The term "personally involved" has exactly the same meaning here as in connection with the representational restrictions described in Part 682 of this chapter. It is elaborated in § 682.12(b) of this chapter. In general, you can be "personally involved" in the handling of a matter even though you actually make none of the critical decisions, if you contribute by recommendations, advice, approval, or the like, and your contribution is substantial.

(f) *Immediate family.* Only your spouse and minor children are considered members of your "immediate family" under this rule.

(g) *"Organization of which you are or may become a part".* You are a part of an organization if you are an officer, director, trustee, partner, or employee. You "may become" part of an organization if you are negotiating with it or have an arrangement with it concerning a position.

(h) *Waiver.* This provision may be waived where the interest is so insubstantial as to be unlikely to affect the integrity of your services to the Government. If you think such a waiver is called for, consult an ethics counselor in the Office of the General Counsel. The ethics counselor will advise you and will make a recommendation to the official who would have to approve such a waiver.

Subpart C—Outside Employment, Compensation, Income, Gifts, etc.

§ 683.30 Outside employment ("moonlighting") and income.

(a) *Permitted within limits; duty first.* While not on official duty, you may work for private firms or organizations either for pay or as a volunteer, within limits established by the rest of this Subpart. Be sure that you understand all those limits before undertaking any such outside work. Those that do not relate to compensation apply whether or not you work for pay. A basic limit, of course, is that duty comes first. You should not engage in any outside activity that impairs your health, exhausts your energies, or otherwise prevents you from doing your NSF job.

(b) *Policymaking or administrative work for certain organizations.* You may not participate as a policymaking officer for any research or educational institution, any scientific society, or any professional association without the written approval of an ethics counselor. Whenever a major policy question is presented by a request for such approval, you or the ethics counselor may raise the matter with the General Counsel and, if appropriate, with the Director of the Foundation.

(c) *Visiting Committees.* Employees should not participate in the deliberations of a college or university visiting committee. However, an employee may meet with such groups as a Foundation official where it would be appropriate to attend a similar meeting with any other comparable group requesting his or her assistance.

(d) *Special rules for full-time Presidential appointees.* If you are a Presidential appointee:

(1) You may not hold office in or act for any institution that has or is seeking NSF awards without the approval of the National Science Board.

(2) You must not engage in any other business, vocation, or employment while serving in the Presidential position.

It does not include investment income (dividends, interest, or the like). It does not include reimbursement for meals, lodging, travel, or other expenses. And it does not include prizes or awards, even if an award carries an obligation to give lectures.

§ 683.31 Compensation.

(a) *Basic restrictions on outside compensation.* Three basic rules restrict compensation (not including reimbursement of expenses) you can accept from sources other than your Federal salary:

(1) *No extra compensation for official duties.* You must not seek or accept any contribution or supplement to your Government salary for doing any part of your NSF job.

(2) *No compensation out of any Federal award.* You must not seek or accept any compensation out of funds that come wholly or partly from a Federal award.

(3) *No compensation in connection with any matter involving the Government.* You must not seek or accept any compensation for services by you or anyone else in connection with any proposal, project, or other matter in which the United States is a party or has a direct interest.

BE CAREFUL: Breaking any of these rules would be a Federal crime.

(b) *Pensions and other employee benefits.* These rules do not preclude you from continuing to participate in a bona fide pension or other employee benefit plan maintained by a former employer.

(c) *Wording and terms.* The wording of these restrictions has been simplified here substantially from the wording of the underlying statutes, so that they will be easier to understand. Interpret them

conservatively. If you have any doubt about the meaning of terms, consult an ethics counselor in the Office of the General Counsel.

§ 683.32 Honoraria.

(a) *Honoraria on official duty.* You must not accept any honoraria for speeches, papers, lectures, or the like delivered in the course of your official duties. However, if declining an honorarium would appear embarrassing or insulting to the offeror, particularly one from another country, you may accept the honorarium on behalf of the Foundation and deposit it into a special trust fund account or into the Treasury. Under no circumstances may you accept an honorarium for yourself for acts performed in your official capacity.

(b) *Honoraria—while not on official duty.* You may accept honoraria for speeches, papers, or lectures delivered while you are not on official duty, subject to general limits on outside employment described in § 683.30, general restrictions on receipt of compensation described in § 683.31, and prohibitions against misuse of inside information described in § 683.34. You will be disqualified for one year from handling proposals and other award-related applications that involve the interests of the person or institution from which you received any honorarium. See § 681.21 of this chapter. Moreover, the law restricts the amounts of honoraria you may accept:

(1) You must not accept an honorarium of more than $2,000 for any speech, paper, lecture, or the like (excluding reimbursements for meals, lodging, and travel).

(2) If you are a Presidential employee, honoraria count toward the fifteen-percent limit on your outside income. See § 683.30(d)(3).

§ 683.33 Reimbursements and services in kind.

(a) *For official travel.* You may not accept money from private sources to reimburse you for expenses incurred during travel on official NSF business, though private sources may reimburse the NSF for your expenses. You may accept meals, lodging, or travel tickets (not money) from private sources when you are traveling on official NSF business, but not if they would be paid for out of funds that come wholly or partly from an NSF award. There is one exception to the reservation about funds that come from an NSF award: if you are attending a conference, symposium, or other meeting funded by the NSF, you may accept meals and lodging (but NOT travel tickets) if they are offered to everyone attending the meeting and alternate arrangements for meals and lodging are unavailable or would cause an unusual inconvenience. If you do accept meals or lodging while on official travel, your per diem must be reduced accordingly.

(b) *For travel, etc. when not on duty.* If you are on leave, not representing the Foundation, and not expected primarily to discuss NSF policy or procedures, these restrictions do not apply. However, you may not accept services in kind or reimbursement for travel expenses if the sources would be funds that come wholly or partly from an NSF award EXCEPT as provided for rotators in § 682.23(c).

§ 683.34 Misuse of inside information or Government Property.

(a) *No misuse of inside information.* If your Government job gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or institution.

(b) *Consulting, lecturing, etc. about the NSF.* You must not receive anything of monetary value for consulting, lecturing, writing, or public discussion that concerns the responsibilities, the programs, or the operations of the NSF or that draws on official information or ideas not generally available to the public.

(c) *Waivers.* The Director, the Deputy Director, or an assistant director may waive application of these rules and authorize use of non-public information in the public interest. Any such authorization must be in writing. Consult an ethics counselor in the Office of the General Counsel.

(d) *Private use of public property or services.* You must not use Government property or services for your private benefit or for the private benefit of others, except as your normal public duties benefit particular members of the public in intended ways.

§ 683.35 Participation in NSF-supported conferences and workshops.

You may participate in a conference, workshop, or similar event supported by NSF funds, provided you do not receive any compensation, honorarium, or the like for your participation. You may not serve as an organizer or director of such an NSF-supported event, unless its purpose is to plan, assess, or publicize NSF programs. Nor, ordinarily, should you chair a session or give a paper except to describe NSF programs or NSF needs. You may discuss arrangements with the organizers or directors as long as you do not use the influence that derives from your NSF position to pressure them.

§ 683.36 Gifts, favors, loans, prizes, and awards.

(a) *Gifts and favors generally.* You may not directly or indirectly solicit or accept a gift, a favor, or a loan from any person or organization that has or is seeking NSF awards, that has other interests potentially affected by what you do in your NSF job, or that may be trying to affect your official actions. (You may, however, accept promotional things of trivial value such as pens, pencils, note pads, and calendars.)

(b) *Meals or entertainment.* By extension, you should ordinarily avoid accepting meals or entertainment from such persons or organizations if you can avoid doing so within the reasonable bounds of politeness. You may, however, occasionally accept a modest meal offered as a courtesy or convenience during a site visit or a luncheon or dinner meeting.

(c) *Prizes and awards.* The restrictions in paragraph (a) of this section do not prevent you from accepting a prize or award for scientific or other public achievement given by a university, scientific society, or other organization. However, you may accept anything of value that accompanies the prize or award only if it is not paid for out of funds that come wholly or partly from an NSF award. You will be disqualified for one year from handling proposals and other award-related applications that involve the interests of the person or institution from which you received any such prize or award. See § 681.21 of this chapter.

(d) *From foreign governments.* You may not accept a gift or decoration from a foreign government except one of "minimal value". Minimal value means retail value in the United States of $140 or less. If the gift is of more than minimal value you may accept it only if not accepting it would be likely to cause offense or embarrassment. Even then, any gift of more than minimal value becomes the property of the United States. Consult an ethics counselor for help in depositing the gift with the State Department.

Subpart D—Political Activity

§ 683.40 Introduction; who's covered.

(a) *Hatch Act.* In order to ensure that day-to-day government actions (such as award of grants) are not affected by political motives and in order to preserve a nonpolitical civil service that is selected on merit, not on political considerations, the law restricts the

involvement of Federal civil service employees with partisan politics. These restrictions derive from a law popularly known as "the Hatch Act".

(b) *Summary of Hatch Act restrictions.* (1) You may not run for public or party office, except in nonpartisan elections and certain local elections. See § 683.42(a).

(2) You may not participate in election campaigning, except in nonpartisan elections and certain local elections. See § 683.42(c).

(3) You may not take an active part in leading or managing a political party. See § 683.43.

(4) You must not use your official authority or influence for political purposes. See § 683.44.

(c) *Presidential appointees.* You are subject to these restrictions if you are an NSF employee, unless you are a Presidential appointee whose appointment was subject to Senate confirmation. If you are such a Presidential appointee, you are subject only to the restrictions decribed in § 683.44. You need not be concerned with the rest of this Subpart except as it affects your colleagues and subordinates.

(d) *Employee coverage.* If you are subject to the "Hatch Act" restrictions, they apply even while you are on leave while you are on detail or assignment to a non-Federal post. They apply even if you work for the Government only part-time. If you work for the Government as a temporary employee, the restrictions apply as long as your temporary employment lasts. If you work for the Government as an intermittent employee, the restrictions apply only while you are in the active-duty status, but that includes the entire 24 hours of any day on which you work for the Government at all. (If in doubt about the employment category to which you belong, check with Personnel.)

(e) *Political party.* Any political party or political club, national or state, is a "political party" under this Subpart, except where provisions specifically refer to a "national political party".

§ 683.41 Basic political rights unaffected.

The Hatch Act restrictions do not affect your basic political rights. Specifically:

(a) You may register and vote as you choose in any election.

(b) You may contribute to a political party or candidate, though you may not be pressured to do so because of your Federal employment.

(c) You may be a member of a political party or other political organization. You may attend party meetings and vote on issues. You may not, however, be involved in managing or leading the organization. See § 683.43.

(d) You may write, call, or visit any Federal, state, or local political official (including, for example, your Congressman) to express your views on any political issue and on how the official should vote or act on the issue.

(e) You may sign political petitions, including nominating petitions, but you may not circulate such petitions for others to sign. See § 683.42(d)(2).

§ 683.42 Candidacy and campaigns.

(a) *Running for office.* You may not run for nomination or election to public office. There are two exceptions:

(1) You may run in an election in which no candidate runs as representing any national political party. (Currently, this means the Democratic or Republican party, but if another party wins electoral votes in a Presidential election, that could change.)

(2) You may run for office in most of the local political jurisdictions in the Washington, D.C. area if you run as an independent not representing any political party, national or otherwise. (To be sure that your jurisdiction is among those in which this is permitted, check with an Ethics Counselor in the Office of the General Counsel.)

(b) *No partisan campaigning.* You may not campaign for or against a political party or candidate in an election for public office or in an election for party office. Essentially the same two exceptions apply:

(1) You may campaign for a candidate in an election in which no candidate runs as representing any national political party.

(2) If you could be an independent candidate in a local election described in (a)(2) of this section, you may campaign for an independent candidate in such an election.

You may not campaign for any side of a question or issue that is specifically identified with a political party.

(c) *What constitutes campaigning.* You "campaign" when you:

(1) Actively participate in management of a campaign;

(2) Initiate nominating petitions or canvass for signatures on nominating petitions;

(3) Endorse or oppose a candidate or a position through political advertisements, broadcasts, campaign literature, or the like;

(4) Speak at rallies, candidate nights, party caucuses, or other political gatherings;

(5) Solicit campaign contributions, promote political dinners or similar events, sell tickets for such events, or otherwise participate in campaign fundraising;

(6) Help to handle campaign finances;

(7) Distribute campaign material;

(8) Host a coffee, cocktail party, or buffet for a candidate or a candidate's surrogate;

(9) Drive voters to the polls;

(10) Work at the polls as a checker, challenger, pollwatcher, or the like, or

(11) Do any other work on behalf of a candidate.

(d) *Nonpartisan election duties.* In connection with an election, you may perform nonpartisan duties provided for by law as an election clerk, judge, or the like.

(e) *Appointment to nonelective office.* You may accept appointment to nonelective public office, subject to the same limits that apply to any other outside employment. See Subpart C, §§ 683.30–683.36.

§ 683.43 Party activities.

You may not take an active part in leading or managing a political party. You do that when you:

(a) Participate in organizing or reorganizing it;

(b) Serve as a party officer or as a member of a national, state, or local party committee (or stand as a candidate for such a position);

(c) Participate in party fundraising or in handling party finances;

(d) Serve as a delegate, alternate, or proxy to a party convention (though you may attend such a convention); or

(e) Take an active part in conducting or running a meeting, rally, fund-raising function, convention, or other party gathering (though you may attend such a gathering).

§ 683.44 Political use of official authority or influence.

You must not use your official authority or influence for political purposes. Thus:

(a) You must not use your official position or authority to interfere with an election or to affect the result of an election.

(b) You must not solicit political contributions from other Federal employees, allow your name to appear on any fundraising appeal likely to be sent to Federal employees, or authorize anyone to solicit or receive political contributions in a building where Federal employees work.

(c) You must not discriminate against any other employee because of his or her political opinions or affiliations. This is a "prohibited personnel practice". See regulations of the Merit Systems Protection Board at 5 CFR 1250.3(b)(3).

PART 684—RULES FOR CONSULTANTS, BOARD MEMBERS, AND OTHER "SPECIAL EMPLOYEES"

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684.21 Participation in Board deliberations.
684.22 Participation in NSF-Supported Projects.

Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965 Supplement and Regulations of the Office of Personnel Management, 5 CFR 735.104.

Subpart A—General Rules for Consultants, Board Members, and Other "Special Employees"

§ 684.10 "Special employees".

(a) "*Special employees*". Any NSF consultant, National Science Board member, or other temporary or intermittent employee (including a rehired annuitant) who works or is expected to work for the NSF 130 days a year or less is a "special Government employee." The rules in this Subpart apply to you *only* if you are such a "special employee". Other employees should see Parts 680 through 683 of the NSF conflict-of-interests regulations.

(b) *Days worked.* If you have any uncertainty about how many days you work or are expected to work for the NSF, consult an ethics counselor in the Office of the General Counsel. There are specific rules for counting the days, and the rules that apply while you are still employed differ somewhat from those that apply afterward.

§ 684.11 Summary of rules for "special employees".

(a) This section summarizes the principal conflicts requirements that you are expected to observe as an NSF "special employee". It references the subsequent provisions of this Subpart in which these requirements are elaborated. You are encouraged to read as well sections 680.10 and 680.12, which introduce the NSF conflict-of-interests regulations and explain their purposes. Members of the National Science Board are committed to observe, besides the requirements summarized here, the special rules of the Board for its members. See Subpart B, §§ 684.20–684.22.

(b) *NSF work on proposals and awards of others.* (1) If you serve on a panel that reviews proposals or otherwise serve as a peer reviewer, you will be given instructions designed to deal with any conflict of interests you may have.

(2) If you participate in action on proposals and awards as a National Science Board member, see § 684.21.

(3) If you should otherwise become involved with the handling of a proposal of other award-related application you should follow the same rules and procedures on conflicts or potential conflicts in handling proposals and awards as regular NSF employees. They are set out in Part 681 of the NSF conflicts regulations, § 681.20–681.26.

(c) *Financial disclosure* (§ 684.12). (1) If you are compensated at a rate at or above the lowest rate for a GS–16 regular employee and plan to work or actually do work more than sixty days in any calendar year, you must file public Financial Disclosure Reports.

(2) If you are not required to file public Financial Disclosure Reports, you must file a confidential Statement of Financial Interests at the time of your appointment (or reappointment).

(3) You may ask for forms if you need them. Normally, however, they will be provided to you automatically, with instructions.

(d) *Political activity (Hatch Act)* (§ 684.13). The Hatch Act prohibits you from being involved in an election campaign or in political-party activity on any day when you work for the Government.

(e) *Representational restrictions and involvement with proposals and awards during and after NSF service* (§ 684.14). (1) You must never represent any private party in dealings with any Federal official on any proposal, project, or other matter if you have been personally involved with that matter at or for the NSF.

(2) If you have been employed with the NSF more than sixty days a year, you must not represent anyone in dealings with any NSF official during your NSF service and for one year thereafter on any proposal, project, or other matter involving specific parties.

General effect: These restrictions do not preclude you from preparing a proposal for your institution, from serving as principal investigator under an NSF proposal or award, from otherwise working under an NSF award, or from receiving compensation or expenses out of an NSF award. If you are a member of the National Science Board, however, see § 684.22.

(f) *Compensation* (§ 684.15).

(1) While you are an NSF "special employee" you must not seek or accept (except from the Government) any compensation for services by you or anyone else in relation to any matter involving specific parties if you have been personally involved for the Government.

(2) If you have been employed with the NSF for more than sixty days in the last 365, you must not seek or accept (except from the Government) any compensation for services by you or anyone else in relation to any matter involving specific parties that is pending in the NSF.

(g) *Acts affecting your financial interests* (§ 684.16). You must not be personally involved as a Federal employee in the handling of any proposal, award, or other matter in which you, a member of your immediate family, a business partner, or an organization of which you are or may become a part has a financial interest. You will not violate this restriction with respect to proposals and awards as long as you follow the instructions provided in paragraph (b) of this section.

(h) *Use of inside information* (§ 684.17). If your work for the Government gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or organization.

(i) *Effect of simplified wording.* The wording of the requirements as presented in these regulations has been simplified substantially from the wording of underlying statutes and other authorities, so that they will be easier to understand. Your initial interpretation should be conservative. If in doubt on the meaning of terms or otherwise troubled, consult an ethics counselor in the Office of the General Counsel.

(j) *General standards of conduct.* You are also responsible for being familiar with general standards of conduct described in § 680.18 of this chapter and for observing them.

§ 684.12 Financial disclosure.

(a) Unless you are required under paragraph (b) of this section to file public Financial Disclosure Reports, you must file a confidential Statement of Employment and Financial Interests at the time of your appointment (and of any reappointment). The Personnel

Office automatically supplies you with the necessary forms, and you file the Statement there.

(b) *High-ranking "special employees" who work more than sixty days a year.* If you are compensated as a "special employee" at a rate at or above the lowest rate for a GS–16 regular employee, you are a "senior employee". Regular senior employees are required to file public Financial Disclosure Reports. You are required to do so, however, only if you plan to work or actually do work more than sixty days in any calendar year. Specifically:

(1) If at the time of your appointment you are expected to serve more than sixty days in any calendar year, you must file such a Report then and again within thirty days after your appointment ends.

(2) If you did not file at the time of your appointment, but do in fact serve more than sixty days in any calendar year, you must file such a Report within fifteen days of your sixty-first day of work and again within thirty days after your appointment ends.

(3) In either case, if you in fact serve more than sixty days in any calendar year, you must also file such a Report before May 15 of the next year.

A person who is under consideration for nomination to the National Science Board may be asked to file a Financial Disclosure Report with the White House or the Senate through the Office of Government Ethics as part of the clearance process even if not expected to serve more than sixty days a year. Such a Report will not be made public by the NSF.

(c) *Filing of Financial Disclosure Reports.* If you are required to file Financial Disclosure Reports, the necessary forms ordinarily will be sent to you automatically, with instructions. You should inquire, however, if you think you may go over the sixty-day limit, and you may ask for forms from the Office of the General Counsel whenever you need them. File your Reports with an ethics counselor in the Office of the General Counsel. The ethics counselors will help with problems or questions that arise in completing the forms. The law also requires them to review your Report after you file it. They may contact you about any errors you make in filling out the form and about any questions that are raised by what you report. The law requires them to make each Report you file available to the public within fifteen days after receiving it. A copy of any request for your Report will be sent to you.

§ 684.13 Political activity (Hatch Act).

The Hatch Act and other laws restrict the involvement of Federal civil service employees with partisan politics. The restrictions apply to you for all of any day during which you work for the Government. If you have any plan or intention of being involved in any election campaign or political-party activity on any such day, consult an ethics counselor in the Office of the General Counsel before doing so. Members of the National Science Board, as Presidential appointees, are not subject to these rules. They are subject only to a restriction on using official authority or influence for political purposes. Part 683, Subpart D, §§ 683.40–683.44, cover the Hatch Act restrictions in greater detail.

§ 684.14 Representing private interests before the NSF or other Federal agencies.

(a) *"Personal involvement" permanent restriction.* All NSF "special employees" are subject to the following basic restriction:

> You must never represent anyone in dealings with any Federal official on any proposal, project, or other matter involving specific parties if you have been personally involved with that matter at or for the NSF.

(b) *NSF restriction.* If you have been employed with the NSF more than sixty days a year, you are subject to one other restriction:

> During your NSF service and for one year thereafter you must not represent anyone in dealings with any NSF official on any proposal, project, or other matter involving specific parties.

Be careful: Violation of either of these restrictions may also be a Federal crime.

(c) *Effect on involvement with proposals and projects.* These representational restrictions do not preclude you from being involved as a researcher or educator with proposals submitted to the NSF or other Government agencies or with projects supported by the NSF or by other Government agencies. They may preclude you from being the one to write, call, visit, or otherwise communicate with a Federal official about a proposal or project.

(d) *"Personally involved".* You can be "personally involved" even though you actually make none of the critical decisions if you contribute to them by recommendations, advice, approval, or the like, but your involvement must have been substantial. If you are a member of the National Science Board, you have definitely been "personally involved" with a matter if you have participated in any Board or Board-committee action on the matter or have taken part in a Board or committee discussion immediately preceding such an action.

§ 684.15 Compensation.

(a) *Compensation where you have been involved for the Government.* All "special Government employees" are subject to the following restriction:

> While you are an NSF "special employee" you must not seek or accept (except from the Government) any compensation for services by you or anyone else in relation to any matter involving specific parties if you have been personally involved with that matter for the Government.

(b) *Compensation in relation to NSF matters.* If you have been employed with the NSF for more than sixty days in the last 365 and still are, you are subject to one other restriction:

> You must not seek or accept any compensation for services by you or anyone else in relation to any matter involving specific parties that is pending in the NSF.

Be careful: Violation of either of these rules may also be a Federal crime.

(c) *NSF awards.* You may, however, perform work under an NSF award and may receive compensation charged to the award for the work.

(d) *"Personally involved".* The term "personally involved" has exactly the same meaning here as in connection with the representational restrictions described in § 684.14. See § 684.14(d).

§ 684.16 Acts affecting your financial interests.

(a) *No acting as a Federal employee where you have a financial interest.* You must not be personally involved as a Federal employee in the handling of any proposal, award, or other matter in which you, a member of your immediate family, or an organization of which you are or may become a part has a financial interest. BE CAREFUL: violation of this rule may also be a Federal crime.

(b) *Proposals and awards.* You will not violate this restriction with respect to proposals and awards as long as you follow the instructions provided in § 684.11(b).

(c) *"Personally involved".* The term "personally involved" has exactly the same meaning here as in connection with the representational restrictions described in § 684.14. See § 684.14(d).

(d) *"Matter".* The word "matter" has a somewhat broader meaning here than the phrase "matter involving specific parties" used in § 684.14. Broad policy determinations that might affect your home institution, but only in the same manner as all similar institutions, are not covered. If in doubt, consult an ethics counselor in the Office of the

General Counsel. National Science Board members should consult the Chairman of the Board.

(e) *Immediate family.* Only your spouse and minor children are considered members of your "immediate family" under this rule.

(f) *"Organization of which you are or may become a part".* You are a part of an organization if you are an officer, director, trustee, partner, or employee. You "may become" a part of an organization if you are negotiating with it or have an arrangement with it concerning such a position.

(g) *Waiver.* This provision may be waived where the financial interest involved is so insubstantial that it is unlikely to affect the integrity of your services to the Government. If you think such a waiver is called for, consult an ethics counselor in the Office of the General Counsel. The ethics counselor will advise you and will make a recommendation to the official who would have to approve such a waiver. National Science Board members should consult with the Chairman of the Board.

§ 684.17 Inside information.

(a) If your Government job gives you access to information not generally available to the public, you must not use that information for your private benefit or make it available for the private benefit of any other person or organization.

(b) You must not receive anything of monetary value for consulting, lecturing, writing, or public discussion that primarily concerns the responsibilities, programs, or operations of the Foundation or that draws significantly on official information or ideas not generally available to the public.

(c) The Director, the Deputy Director, an assistant director, or (in the case of Board members) the Chairman of the National Science Board may waive application of these rules and authorize use of non-public information in the public interest. Any such authorization must be obtained in writing. Consult an ethics counselor in the Office of the General Counsel. National Science Board members should consult with the Chairman.

§ 684.18 General standards of conduct for "special employees".

(a) *Use of Government employment for private gain.* You must not use your Government employment for a purpose that is (or gives the appearance of being) motivated by desire for private gain for yourself or anyone else, particularly anyone with whom you have family, business, or financial ties.

(b) *Use of Government employment for extortion.* You must not use your Government employment to coerce (or appear to coerce) anyone to provide financial benefit to yourself of anyone else, particularly anyone with whom you have family, business, or financial ties.

(c) *Gifts and favors.* On days when you are working at or for the NSF or in connection with NSF employment you must not seek or accept from anyone who has business with the NSF any gift, tip, loan, entertainment, or favor for yourself or anyone else, particularly anyone with whom you have family, business, or financial ties. This does not include promotional items of trivial value or a modest meal offered as a courtesy when there is no apparent connection with NSF business.

(d) *Misuse of Government property.* You must not use Government property or services for your private benefit or for the private benefit of others, except as your public duties benefit particular members of the public in intended ways.

(e) *Familiarity with statutory provisions.* You are legally responsible for acquainting yourself with each statute that relates to your ethical and other conduct as an NSF and Federal employee. Principal among these are the criminal statutes relating to bribery, graft, and conflicts of interests contained in 18 U.S.C. 201–209. The aspects of those statutory provisions that apply to you as an NSF "special employee" are covered by these regulations. These regulations also cover the provisions of Executive Order 11222, which prescribes standards of ethical conduct for Government officers and employees, and regulations of the Office of Personnel and Management that implement both the statutory provisions and the Executive Order. If you follow the regulations, you should have no trouble with any of those provisions. The regulations do not cover a number of other statutes that you must obey as a Federal employee:

(1) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(2) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(3) The prohibitions against disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and disclosure of confidential information (18 U.S.C. 1905).

(4) The provision on habitual use of intoxicants to excess (5 U.S.C. 7352).

(5) The prohibition against misuse of a Government vehicle (31 U.S.C. 638a(c)).

(6) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(7) The prohibition against use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(8) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(9) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(10) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(11) The prohibitions against embezzlement of Government money or property (18 U.S.C. 641), failing to account for public money (18 U.S.C. 643), and embezzlement of the money or property of an employee by reason of his employment (18 U.S.C. 654).

(12) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(13) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart B—Special Rules of the National Science Board for Board Members

§ 684.20 Summary.

As a member of the National Science Board you are covered by rules for "special employees" described in Subpart A of this Part 684. In addition, Board deliberations raise a number of conflicts issues in a unique context. Moreover, Board members are highly visible Presidential appointees who retain private employment and other affiliations. Specifically, many of them are active scientists whose work has been supported by the NSF or other Federal agencies. For these reasons the Board has adopted the following specific conflict-of-interests rules for the governance of its members. You should also advise the Chairman of the Board of any interest or affiliation you have or propose to have that could create a significant appearance of conflict of interests in the work of the Board.

§ 684.21 Participation in Board deliberations.

(a) *Abstention.* You must excuse yourself from deliberations and votes of the Board or any of its committees on any action that would to your knowledge affect:

(1) The interests of an institution with which you, your spouse, a minor child, a blood relative who lives with you, or anyone who is legally your partner has any of the affiliations listed in paragrah (b) of this section, or

(2) The interests of an individual with whom you, your spouse, a minor child, a blood relative who lives with you, or anyone who is legally your partner has any of the relationships listed in paragraph (c) of this action.

(b) *Affiliations with affected institutions.* (1) Ownership of the institution's stocks, bonds, notes, or other evidences of debt (other than through mutual funds).

Note.—Minor or indirect holdings may be exempted; check with the Chairman.

(2) Current employment.

(3) Any formal or informal arrangement for future employment.

(4) Current appointment as professor, adjunct professor, visiting professor, or the like.

(5) Governing board membership.

(6) Chairmanship of any committee of the institution that has an interest in the Board's action.

(7) Any other office (not including ordinary membership in a professional society or association).

(8) Current membership on a visiting committee or similar body.

Note.—Individual waivers of this provision may be issued in appropriate circumstances; contact the Chairman.

(9) Current enrollment as a student in a department or school that has an interest in the Board's action.

(10) Any other affiliation with the institution that you think would destroy your objectivity or be seen as doing so by a reasonable person familiar with the affiliation.

(c) *Relationships with affected individuals.* (1) Blood or marriage relationship with a principal investigator.

(2) Any other relationship, such as close personal friendship, that you think might tend to destroy your objectivity or be seen as doing so by a reasonable person familiar with the relationship.

§ 684.22 Participation in NSF-supported projects.

(a) *Proposals and new awards.* You must not be listed as an investigator on any proposal submitted to the NSF or on any award made by the NSF while you are on the Board. (Proposals pending when you are nominated will be handled case-by-case by the General Counsel.) Nor should you receive any compensation under an award made by the NSF while you are on the Board. You may, however, do work on a project supported by such an award and may be reimbursed for expenses you incur in doing so.

(b) *Existing awards.* If you are already an investigator or consultant under an NSF award when you become a Board member, you may continue work under the award in the same capacity and may be compensated under the award to the extent established before your nomination. If you have been principal investigator before you become a Board member, you and your institution should select a substitute negotiator. The substitute negotiator need not be responsible for the work, but should represent the project and the institution in dealings with NSF officials on whom you might have undue influence because of your Board position.

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1307

[Ex Parte No. MC 19 (Sub-39)]

Motor Carriers; Household Goods Carriers Bills of Lading Provisions Concerning Full or Replacement Value Protection Tariff Items

AGENCY: Interstate Commerce Commission.

ACTION: Dismissal of petition; interpretation of regulations.

SUMMARY: The Commission is dismissing a petition to amend 49 CFR 1056.12 because the relief requested should properly be framed as a Released Rates Application to depart from 49 CFR 1307.201. Section 1307.201 is interpreted as not prohibiting the inclusion of a valuation statement on household goods carriers' bills of lading which gives effect to full or replacement value protection plans.

DATE: This action is effective on July 26, 1982.

FOR FURTHER INFORMATION CONTACT: Ray G. Atherton, Jr. (202) 275–7844 or Patricia M. Schulze (202) 275–7841

SUPPLEMENTARY INFORMATION: United Van Lines, Inc., filed a petition to amend 49 CFR 1056.12 by restating the valuation options contained in Released Rates Order MC–505 and by including a further valuation statement concerning United's full value protection option.

United's request to amend 49 CFR 1056.12 is inappropriate since subsection (b) of that section simply precludes carrier limitation of liability to *less* than that permitted under the Released Rates Order. Full, or replacement value protection plans appear, on their face, to offer an assumption of liability greater than the liability assumed under Released Rates Order MC–505.

The exact terms of the Released Rates Order are set out in 49 CFR 1307.201. Briefly, the Order authorizes household goods carriers to establish rates applicable only when the shipper declares or releases the shipment at a value of either 60¢ per pound per article or at a lump sum value equal to, or greater than, $1.25 times the total actual shipment weight. If the shipper fails to affirmatively exercise either of these options, the shipment is deemed released to a maximum value of $1.25 times the weight of the shipment. The Order provides that under the 60¢ per pound per article otpion, no separate charge is made for the assumption of liability, while shipments for which the carrier assumes liability at $1.25 times the shipment weight, or greater amount, bear an additional charge of 50¢ per $100 of the value of the shipment. A valuation statement summarizing these options in prescribed language is required to be placed on the carrier's bill of lading.

United's proposal, however, does not appear to request a revision of 49 CFR 1307.201. Instead, it is tailored specifically to United's offering which includes the valuation options of the Released Rates Order and the full value protection which United publishes as an exception to the Bureau tariff in which it participates. As such, the request is construed as seeking individual relief for United Van Lines, Inc., to depart from the prescribed valuation statement of 49 CFR 1307.201(c).

Released Rates Order MC–505 predates the publication by various carriers of full, or replacement value protection plans. It is therefore necessary to interpret the effect of the Order on these plans.

On December 24, 1980, the Commission, Division 1 Acting is an Appellate Division, upheld a Suspension Board Vote in Case No. 70243 not to suspend protested motor common carrier schedules naming a provision covering full value protection on shipments of household goods at 85¢ per $100 of released or declared value. Significantly, the protest was, in part, based on the contention that the protested schedules were violative of Released Rates Order MC–505. This decision establishes precedent for the proposition that full or replacement value protection plans do not, per se, violate Released Rates Order MC–505. It follows that 49 CFR 1307.201(c), while requiring that the prescribed MC–505 valuation statement appear on household goods carriers' bill of lading, does not prohibit the inclusion on those bills of a meaningful valuation statement concerning full or replacement value protection if offered by carriers in their tariffs. It is therefore unnecessary to seek specific permission insofar as the full or replacement protection valuation statement is concerned. On the other hand, any alteration in the prescribed valuation statement of Released Rates Order MC–505 would require authorization from the Released Rates Board. For this reason, the petition is dismissed without prejudice to the filing of an appropriate Release Rates application.

We find: That the petition is inappropriate and should be dismissed without prejudice to the filing of a Released Rates Application.

We further find: That Released Rates Order MC–505 does not prohibit the establishment and maintenance of full value protection valuation options and

that 49 CFR 1307.201(c) is interpreted as not prohibiting the inclusion on household goods carrier bills of lading of meaningful valuation statements on full or replacement value tariff items.

It is ordered: The petition is dismissed.

Dated: July 19, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons and Gradison. Commissioner Simmons was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-20057 Filed 7-23-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 2719-134]

Ocean Salmon Fisheries Off the Coasts of California, Oregon, and Washington

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce issues this notice to close the recreational fishing season in the fishery conservation zone (FCZ) between Cape Falcon, Oregon, and Cape Blanco, Oregon (subarea C), and the recreational fishing season for coho salmon in the FCZ between Cape Blanco and the Oregon-California border (subarea D), on July 21, 1982. The Director, Northwest Region, National Marine Fisheries Service has determined that the recreational quota of 114,000 coho salmon for both subareas will be reached by that date. This action is necessary to ensure that quotas for coho salmon are not exceeded in 1982.

EFFECTIVE DATES: Closure of subarea C to recreational fishing and closure of subarea D to recreational fishing for coho salmon is effective from 2400 hours Pacific Daylight Time (PDT), July 21, 1982, until 2400 hours, Pacific Standard Time, December 31, 1982.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins (Director, Northwest Region, National Marine Fisheries Service), 7600 Sand Point Way, BIN C15700, Seattle Washington 98115; telephone 206-527-6150.

SUPPLEMENTARY INFORMATION: Emergency regulations to implement a 1982 amendment to the fishery management plan for the Commercial and Recreational Fisheries off the Coasts of Washington, Oregon, and California were published in the **Federal Register** (47 FR 21256) for the commercial fishery north of Cape Blanco, Oregon, and the coastwide recreational fisheries. These emergency regulations were effective on May 14, 1982, for a 45-day period and were extended for an additional 45 days on June 28, to be effective through August 11, 1982 (47 FR 28105).

These regulations specify at § 661.22(a)(2) that when a subarea quota is projected by the Director, Northwest Region, National Marine Fisheries Service (Regional Director) to be reached by a certain date, the Secretary of Commerce (Secretary) shall, by publishing a field order in the **Federal Register**, close the fishery as of the date the quota will be reached in that subarea.

The coho quota for the recreational fishery in subareas C and D is 114,000 coho salmon, as stated in § 661.22(a)(1). The Regional Director has determined not to adjust this quota as provided for in § 661.22(b)(1), with respect to the contribution of private hatchery coho to established quotas. Based on the most recent preliminary information supplied by the Oregon Department of Fish and Wildlife (ODFW)l, and the California Department of Fish and Game (CDFG), the recreational fishery in subareas C and D may have reached the 114,000 coho salmon quota as early as July 19, 1982. The Secretary has determined, to avoid confusion for the fishermen and in the interest of consistency, to provide Oregon an opportunity to close its waters as well. However, that closure of State waters cannot be accomplished before Wednesday, July 21, 1982, since ODFW must secure Oregon Fish and Wildlife Commission approval to close and must file the closure order with the Secretary of State. The Secretary therefore issues this notice that the recreational fishery in subarea C will be closed effective midnight, July 21, 1982. Also, the recreational fishery in subarea D will be closed effective midnight, July 21, 1982, to the taking of coho salmon but will remain open for recreational fishing for other species of salmon until October 31, 1982, as specified in § 661.21(a)(4)(ii). This notice does not affect seasons for other subareas specified in the 1982 regulations. Consultations have been held with the Directors of ODFW and CDFG and representatives of the Pacific Fishery Management Council regarding this closure.

As provided under § 661.22(c), all information and data relevant to this notice of closure have been compiled in aggregate form and are available for public review at the above address during normal working hours.

This action is taken under the authority of 50 CFR 661.22, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

(16 U.S.C. 1801 et seq.)

Dated: July 21, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 82-20120 Filed 7-21-82; 4:27 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 143
Monday, July 26, 1982

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 Part 71

[Airspace Docket No. 82-ASW-45]

Proposed Alteration of Transition Area; Orange, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area at Orange, TX. The intended effect of the proposed action is to provide adequate controlled airspace for aircraft executing a new instrument approach procedure to the Orange Airport. This action is necessary since there is a proposed change in the standard instrument approach procedure (SIAP) to the Orange Airport using the Beaumont VORTAC.

DATES: Comments must be received on or before August 25, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

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, TX 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G § 71.181 as republished in advisory Circular AC 70-3 dated January 29, 1982, 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 Orange, TX, will necessitate an amendment to this subpart. This amendment will be required at Orange, TX, since there is a proposed change in IFR procedures to the Orange Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-45." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (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, TX 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 NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

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 follows:

Orange, TX [Amended]

That airspace extending upward from 700 feet above the suface within a 6.5-mile radius of the Orange Airport (latitude 30°04'11" N., longitude 93°48'23" 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 14 CFR 11.61(c))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "Significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on July 14, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-19866 Filed 7-23-82; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AAL-7]

Alteration of Additional Control Area; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the description of Additional Control Area 1487, located in the vicinity of Middleton Island, AK, by lowering the current controlled airspace floor from 14,500 feet MSL to 5,500 feet MSL. This action would provide controlled airspace for air traffic control radar vectoring service and for non-Part 95 routes. Also, the new floor would coincide with the floor of the Anchorage Oceanic CTA/FIR boundary.

DATES: Comments must be received on or before August 25, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Alaskan Region, Attention: Chief, Air Traffic Division, Docket No. 82–AAL–7, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The offical docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions 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) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaing by submiting such written data, views, or agruments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82–AAL–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request ot the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 300 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to lower the controlled airspace floor of Additional Control Area 1487 from 14,500 feet MSL to 5,500 MSL. The FAA has installed a radar facility at Middleton Island, AK, and at Biorka Island, AK. After the commissioning of those facilities, FAA Flight Standards Office has approved a non-Part 95 direct route between Middleton Island and Sandspit, British Columbia. This proposal would provide controlled airspace for air traffic control (ATC) radar vectoring service for this entire area. Also, the lower floor coincides with the adjacent floor of the Anchorage Oceanic CTA/FIR, thereby, aiding flight planning. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 29, 1982.

ICAO Considerations

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Control area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Control 1487 [Amended]

By deleting the words "That airspace extending upward from 14,500 feet MSL; to Fl. 450," and substituting for them the words "That airspace extending upward from 5,500 feet MSL to FL 450,"

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354)a), and 1510); Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this proposal only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on July 15, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-19870 Filed 7-23-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ACE-19]

Control Zone—Hastings, Nebraska; Proposed Revocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to revoke the Hastings, Nebraska, control zone due to the discontinuance of required weather observation reporting. The proposed action will return this designated airspace to a noncontrolled status.

DATES: Comments must be received on or before September 3, 1982.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Don A. Peterson, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) by revoking the control zone at Hastings, Nebraska. The Hastings, Nebraska, control zone no longer has continuous weather observation reporting service. The fixed base operator that previously provided the service can no longer do so. In addition, the airport manager advised that he is unable to provide a practical or reliable means of performing hourly weather observations. Therefore, inasmuch as weather observations are a requirements for maintaining a control zone and since those observations cannot be provided, this proposal is for the purpose of revoking the control zone.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, FAA proposes to amend Subpart F, Section 71.171 of the Federal Aviation Regulations (14 CFR 71.171) by revoking the following control zone:

Hastings, Nebraska

(Secs. 307(a) Federal Aviation Act of 1958, as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)

Note.—The FAA has determined that this proposed revocation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current or to delete them if no longer applicable. It therefore (1) is not a "major rule" under Excutive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; (4) is appropriate to have a comment period of less than 45 days; and (5) is certified that at promulgation it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

14 CFR Part 71

[Airspace Docket No. 82-ASW-40]

Proposed Alternation of Transition Area: Oklahoma City, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes alteration of a transition area at Oklahoma City, OK. The intended effect of the proposed action is to provide adequate controlled airspace for aircraft executing new instrument approach procedures to the Sundance Airpark (formerly Jack Richards Airport). This section is necessary to provide protection for aircraft executing a VOR approach to Runway 17 and an RNAV approach to the Sundance Airpark.

DATE: Comments must be received on or before August 25, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: James L. Owens, Airspace and Procedures Branch, ASW-536, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O.

Box 1689, Fort Worth, TX 76101; telephone: (817) 624–4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in Advisory Circular AC 70–3 dated January 29, 1982, 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 Oklahoma City, OK, will necessitate an amendment to this subpart. This amendment will be required at Oklahoma City, OK, since there are proposed new IFR procedures to the Sundance Airpark.

Comment Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82–ASW–40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (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, TX 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 NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Index Terms

Control zones and/or transition areas.

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 follows:

Oklahoma City, OK [Amended]

* * * And within a 6.5-mile radius of the Sundance Airpark (latitude 35°36'06" N., longitude 97°42'21" 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 14 CFR 11.61(c))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "signfficant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on July 14, 1982.

F. E. Whitefield,

Acting Director, Southwest Region.

[FR Doc. 82–19867 Filed 7–23–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 81–ARM–8]

Proposed Alteration and Establishment of Jet Routes—Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws a proposal published in the **Federal Register** on October 29, 1981 (46 FR 53436) that would have realigned Jet Route J–128 between Tuba City, AZ, and Gunnison, CO, and establish new Jet Route J–205 between Gunnison and Colorado Springs, CO. After analaysis of additional information, we have concluded the proposal does not satisfy current operational requirements; therefore this proposal is withdrawn.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT–230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administrative, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

List of Subjects in 14 CFR Part 75

Jet routes.

Withdrawal of the Proposal

Accordingly, pursuant to the authority delegated to me, the proposal to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as specified in Airspace Docket No. 81–ARM–8 and published in the **Federal Register** on October 29, 1981 (46 FR 53436), is hereby withdrawn.

(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 action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Issued in Washington, D.C., on July 16, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82–19871 Filed 7–23–82; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 231, and 241

[Release Nos. 33–6417; 34–18879; File No. S7–940]

Proposed Revision of Financial Statement Requirements and Industry Guide Disclosures for Bank Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment a proposed revision of Article 9 of Regulation S–X,

which governs the form and content of financial statements filed for bank holding companies. These revisions are a part of the Commission's reexamination of its requirements for financial statements in connection with its efforts to integrate disclosure requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed changes eliminate rules which are duplicative of generally accepted accounting principles ("GAAP"), integrate and simplify the rules, and update the reporting requirements to reflect current financial reporting practices. The Commission has also authorized the proposal of amendments to the Guides for Statistical Disclosures by Bank Holding Companies in order to incorporate certain disclosures proposed to be eliminated from the requirements of Article 9.

DATE: Comments should be received by the Commission on or before September 30, 1982.

ADDRESS: Comment letters should refer to File No. S7-940 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marc D. Oken (202-272-2157), Edmund Coulson (202-272-2160) or Eugene W. Green (202-272-2161), Office of the Chief Accountant, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1980, the Commission published a comprehensive revision of Articles 3, 5, and 12 of Regulation S-X ("S-X") (17 CFR 210.3-01 to .3-18; 17 CFR 210.5-01 to .5-04; and 17 CFR 210.12-01 to .12-29).[1] One of the major purposes of that release was to modify S-X to facilitate uniformity between financial statements included in filings with the Commisson and those included in annual reports to security holders prepared in accordance with the Commisson's proxy rules. At the time those amendments were adopted, the Commission indicated its intent to revise the specific requirements included in Articles 6 (Investment Companies) (17 CFR 210.6-01 to .6-34), 7 and 7A (Insurance Companies) (17 CFR 210.7-01 to .7A-06), and 9 (Banks and Bank Holding Companies) (17 CFR 210.9-01 to .9-05). The Commission has completed the revision of Articles 7 and 7A,[2] and has proposed amendments to Article 6.[3] This proposal to revise the requirements for financial statements of bank holding companies is another step in the project to revise S-X to facilitate the integration of filings of financial statements under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Synopsis of Proposal

Generally, the propsed rules do not significantly modify the current requirements governing the form and content of bank holding company consolidated financial statements. The proposed changes simplify the existing rules and delete certain of the S-X financial statement requirements. Certain of the requirements are proposed to be deleted because a reassessment of the rules indicates they are duplicative of GAAP or that utility of the related disclosure may not be significant.

In addition, certain presently required footnote disclosures which are supplemental to the basic financial statement requirements are proposed to be transferred to the Industry Guides for Disclosure by Bank Holding Companies: Securities Act Industry Guide 3 and Exchange Act Industry Guide 3 ("Guide 3").[4] In evaluating the requirements of Article 9, it was determined that some of the information was primarily analytical data and may not be essential disclosures for the annual report to shareholders. Since Guide 3 is primarily intended to provide data to facilitate analyses, and to allow for comparisons of sources of income and evaluations of exposures to risk, the Commission believes that this supplemental information may be more appropriately presented with the Guide 3 data. Moreover, the simplification of the financial statement disclosures resulting from such changes is of significant benefit. These proposed changes would mean that such disclosures would not be required to be included in the annual report to shareholders, since Guide 3 is applicable only to the description of business section in reports on Form 10-K, certain proxy statements and registration statements. The Commission notes that, in many cases, bank holding company registrants have been integrating their 10-K and annual report to shareholders in a single document, or otherwise have presented much, if not all, of the Guide data in the context of the management's discussion and analysis. The proposed amendments would not preclude these practices and would continue to allow management to determine the appropriate level of supplemental analytical-type data to be included in the annual report to shareholders. In any case, the full information would continue to be available in the Guide 3 disclosures furnished in the 10-K and in other filings with the Commission.

If the amendments herein are adopted, the Commission will concurrently amend the proxy rules to eliminate the interim rules[5] that require only substantial compliance with Article 9 in annual reports to shareholders. Thereafter, bank holding companies that are required to comply with the Commission's proxy rules would be required to include in annual reports to shareholders financial statements prepared in accordance with the requirements of Regulation S-X

Summary of Significant Changes Included in the Proposed Rules

Cash and Due from Banks. Under the existing rules, balances relating to interest bearing deposits in other banks are included with cash and amounts due from depository institutions (Rule 9-02.1(a)). These amounts are proposed to be included in short-term investments since this classification appears to better reflect the nature of these items as an alternative temporary investment of funds. Also, as a result of this proposed change, the amounts included in the "Cash and due from Banks" caption would include only noninterest bearing amounts.

Additionally, the instructions regarding restricted cash balances are clarified to indicate that Federal Reserve requirements must be considered.

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[1] Securities Act Release No. 6233 (45 FR 63660). The release revising S-X was one of four related releases issued on that date comprising part of the Commission's integrated disclosure project which is intended to improve disclosure in certain important areas, to eliminate obsolete or duplicative disclosure requirements, and facilitate the integration of filings made under the Securities Act and the Exchange Act.

[2] Securities Act Release No. 6357 (October 21, 1981) (46 FR 54332).

[3] Securities Act Release No. 6374 (January 11, 1982) (47 FR 2776).

[4] These guides were formerly designated as Guide 61 and Guide 3; they were redesignated as Securities Act Industry Guide 3 and Exchange Act Industry Guide 3 in Securities Act Release No. 6384 (March 3, 1982) (47 FR 11476). They are included in the list of industry guides in Items 801 and 802 of Regulation S-K (17 CFR 229), the central repository of disclosure requirements under the Securities Act and the Exchange Act, which was amended by Securities Act Release No. 6383 (March 3, 1982) (47 FR 11380).

[5] 17 CFR 240.14a-3 and 240.14c-6.

Investment Securities. Disclosures about holdings of investment securities of an issuer of a state, its political subdivisions, or their agencies, or of other securities which exceed 10 percent of stockholders' equity are presently required to be made in the notes (Rule 9–02.2(e)). It is proposed that this information be included in the Guide 3 disclosures since the information may be of interest primarily to analysts and a limited number of other financial statement users. There may be some circumstances where contingencies exist because of unusual risks inherent in significant holdings of securities of certain issuers, and in these situations appropriate disclosures should be made in management's discussion and analysis of the financial statements. Moveover, GAAP would require financial statement disclosure of material contingencies (Statement of Financial Accounting Standards ("SFAS") No. 5, "Accounting for Contingencies"). However, otherwise routine disclosures of such concentrations would not be required in the financial statements under the proposed rules.

Lease Financing. The existing rules require that lease financing amounts be disclosed as a separate balance sheet caption (Rule 9–02.6). The rule also requires that any net investments in direct financing leases and in leveraged leases be stated separately in a note. Although the form of direct financing leases may differ significantly from loans made by a financial institution, there appears to be little difference in the substance of these lending transactions. The proposed rules require that lease financing amounts be combined with loans in a single balance sheet caption with separate disclosure of the various subcategories thereof, including lease financing amounts. The Commission believes this presentation improves and simplifies disclosures while providing adequate information about the nature of a financial institution's lending activities. The Article 9 requirement for separate disclosure of the net amounts relating to direct financing leases and leveraged leases is proposed to be deleted since there is a GAAP requirement to disclose these amounts (paragraphs 23 and 47 of SFAS No. 13, "Accounting for Leases").

Loans to Related Parties. Note disclosure is presently required of the aggregate amount of loans made to directors, executive officers or principal holders of equity securities of the registrant or its principal subsidiaries when such amounts exceed 5 percent of stockholders' equity (Rule 9–02.5(e)). Additionally, disclosure is required by Schedule I of the indebtedness of directors who are also officers, executive officers, and principal equity stockholders when the aggregate indebtedness of such person(s) exceed either $500,000 or 2.5 percent of stockholders' equity, whichever is less, at any time during the period for which income statements are required.[6] Aggregate disclosure is permitted for loans made in the ordinary course of business to nonofficer directors who are not principal shareholders (Rule 9–05) provided that the registrant indicates the number of directors whose indebtedness is included in the aggregate amount. For purposes of both footnote and schedule disclosures, installment loans made in the ordinary course of business are not required to be reported.

The proposed rules revise the existing rules in the following respects. First, the definition of "executive officer" would be modified to conform to the definition in Regulation C which was recently amended.[7] Second, the rule would be amended as it relates to relatives of executive officers, directors and principal shareholders to correspond with the proposed revisions to Regulation S–K ("S–K") (17 CFR Part 229) relating to disclosure of certain relationships and transactions involving management, which are discussed in more detail below. These two changes are proposed in order to achieve appropriate consistency in the Commission's rules. Third, the existing rule is applicable to executive officers, directors and major shareholders of "principal subsidiaries" which are defined as "the subsidiary with the greatest amount of deposits of all consolidated bank subsidiaries and any other consolidated subsidiary in which deposits exceed fifteen percent of consolidated deposits." The scope of the revised rule is proposed to encompass any subsidiary which meets the definition of a "significant subsidary" (Rule 1–02) because that definition is an established Commission benchmark for evaluating the materiality of an entity.

Finally, the Commission is proposing to delete Schedule I of the required schedules for bank holding companies because it believes that detailed listings of loans which are made to related parties in the ordinary course of business by a financial institution may not be useful information for making investment decisions. Disclosure of the aggregate amount of loans made to such persons would continue to be required in a note when such amount exceeds 5 percent of stockholders' equity at the balance sheet date; aggregate information about the level of such activities with related parties is considered necessary for an investor to evaluate the financial condition of the registrant when the amounts of these loans are significant. The Commission is also proposing to require additional footnote disclosure when the aggregate amount of such loans at the balance sheet date is significantly lower than the weighted average amount outstanding during the period covered by the related income statement; this will elicit appropriate disclosures in circumstances where related parties' loan balances have been significant during the reporting period, but are below the disclosure threshold at the balance sheet date. Further, the Commission is proposing to require certain note disclosures when a significant portion of loans to related parties are nonperforming loans [8] and when any such material loans were not made in the ordinary course of business. This information is necessary so that investors and security holders may better assess the effects of such transactions on the financial statements.[9] The Commission believes that the proposed amendments will reduce disclosure burdens generally while enhancing the information value of the disclosures by emphasizing the more significant aspects of loan transactions with related parties.

In proposing these revisions to S–X, the Commission has considered both the existing requirements for disclosure of loans to management in Item 402(e) of S–K and the proposed revisions to such requirements. Instruction 3 to Item 402(e) of the current S–K rules provides that, in lieu of the specific disclosure of indebtedness of management called for by that paragraph,[10] if the lender is a

[6] Specific details of the schedule are found in Schedule 12–03 of Regulation S–X. As to the indebtedness of each person, the schedule calls for name of debtor, balance at beginning of period, additions, amounts collected, amounts written off and balance at end of period, and also pertinent information such as due date, interest rate, terms of repayment and collateral.

[7] 17 CFR 230.405, as amended by Securities Act Release No. 6383 (March 3, 1982) (47 FR 11380).

[8] The definition of "nonperforming" is taken from present Item III.C of Guide 3.

[9] The definition of "ordinary course of business" is taken from the present Rule 9–02.5(e) and existing Schedule I.

[10] Item 402(e) calls for the following disclosure with respect to each director or officer of the registrant, each nominee for election as a director, and each associate of any such director, officer or nominee who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant: (i) The largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was

bank, savings and loan association, or a broker-dealer extending credit under Federal Reserve Regulation T, such disclosure may consist of a statement (if such is the case) that the loans to such persons were made in the ordinary course of business on substantially the same terms as those for comparable transactions and did not involve more than a normal risk of collectibility or present other unfavorable features.[11]

In Securities Exchange Act Release No. 17517 (February 5, 1981) (46 FR 11954), the Commission proposed, among other changes, to amend Instruction 3 to paragraph (e) of Item 402, to require disclosure about any such loans that had become nonperforming.[12] In that release, the Commission stated its belief that the instruction permitting abbreviated disclosure by specified financial entities should not be applicable to loans which, although originally made in the ordinary course of business, enter default or evidence serious problems with respect to repayment. This proposal was reproposed without change in Securities Act Release No. 6338 (August 6, 1981) (46 FR 42042), however, final action on the proposal was deferred because of the contemplated separate reexamination of the remuneration item as part of the Commission's general review of the rules governing proxy solicitations.

As the initial step in its Proxy Review Program, the Commission published for comment in Securities Act Release No. 33-6416 (July 9, 1982) (47 FR 31394, July 20, 1982), amendments to S-K which, among other things, would establish a new Item 404, "Certain relationships and related transactions," containing the current Item 402 requirements pertaining to disclosure of management's indebtedness. The proposed new Item 404 would amend the existing disclosure requirements of management indebtedness to require the disclosure of nonperforming loans, as would have been required by the earlier proposals.[13]

The Commission believes that some of the objectives for disclosure about loans to management in proxy statements, reports or prospectuses are applicable to financial statement disclosures about loans to related parties. Accordingly, the Commission is proposing related revisions to the provisions of Article 9. Given the objective of S-X to facilitate an understanding of the financial condition of a company, the proposed amendments of S-X differ somewhat from the S-K proposal, which is intended to elicit disclosures of transactions with management, directors or director nominees and shareholders where there are possible conflicts of interest. For example, the proposed S-X revision would only require disclosure about nonperforming loans to insiders when a significant portion of the aggregate amount of reported loans to insiders relates to nonperforming loans. This contrasts with the proposed S-K amendment which requires disclosure, on an individual basis, of nonperforming loans of officers and directors in excess of $50,000. The Commission believes that the proposed amendments to S-X would generally complement the disclosure required by both the existing management indebtedness provision required by both the existing management indebtedness provsion as well as the proposed revision to that provision. In this connection, Article 9 will be evaluated as any future changes are made in the related S-K rules.

Bank Premises and Equipment. The current requirement that each major class of bank premises and equipment and related accumulated depreciation be stated separately. (Rule 9-02.7(b)) has been deleted from the proposed rules since such information is generally not significant to a bank holding company. If such amounts are material, Accounting Principles Board Opinion No. 12 requires disclosure of the balances of major classes of depreciable assets, by nature or function, and the related accumulated depreciation, either by major classes of depreciable assets or in total. Similar disclosure of material amounts relating to capital leases is required by paragraph 16 of SFAS 13.

Bankers' Acceptances. No changes are proposed to the balance sheet presentation of bankers' acceptances transactions. The Commission understands that some preparers of financial statements believe that the current presentation should be reevaluated to determine whether these transactions are more appropriately reported as contingent transactions. The Commission invites comments on whether its present requirement to disclose on the balance sheet amounts due from customers on acceptances and banks' acceptances outstanding as assets and liabilities best represents the substance of these transactions.

Deposits. The current rules (Rule 9-02.11) require financial statement disclosure of the details of deposits by type (demand, time, savings and foreign). Proposed Rule 9-03.10 requires only the separate disclosure of the amounts of noninterest bearing deposits and interest bearing deposits, and the related amounts in foreign banking offices if the foreign disclosures provided by proposed Rule 9-05 are required. Guide 3 would continue to require the additional analytical disclosures with respect to the details of demand, savings, time and foreign deposit balances. The current financial statement dislosure requirement (Rule 9-03.7) for interest expense by type of interest bearing deposit would be deleted, although the total interest expense on such deposits would be presented, and Guide 3 would continue to require disclosure of interest expense by each major category of interest bearing liability.

The existing rules require separate disclosure of the aggregate amount of certificates of deposits and other time deposits of $100,000 or more in domestic bank offices (Rule 9-02.11(e)) and the related annual interest expense on the certificates of deposit (Rule 9-03.7). These disclosures are not included in the proposed Article 9 revision. Guide 3 currently provides for disclosure of the amounts of such large certificate of deposit balances as of the end of the latest fiscal year and the scheduled maturities of such balances. The Guide disclosure is proposed to be amended to provide similar disclosure of the amounts of other large time deposits. No amendment to Guide 3 is proposed to require the specific disclosure of the amount of the interest expense on such certificates of deposit since the Commission believes that this information may not be of significant interest to investors and other users. As noted above, Guide 3 currently requires the disclosure of the annual interest expense paid on each major category of interest bearing liabilities, including time deposits.

Short-Term Borrowings. The current requirement to disclose in a note certain short-term borrowings levels and rates (Rule 9-02.12(d)) is proposed to be included in Guide 3 since the information is primarily analytical in nature and may be of limited interest to most investors and other users of the

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incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon.

[11] The term "ordinary course of business" is defined the same way in S-K as it is defined in the proposed amendments to S-X.

[12] The amended instruction would have defined the term "nonperforming loan" in a manner consistent with Guide 3.

[13] The Commission has also solicited comments in Release No. 33-6416 as to whether the disclosure of loans to executive officers and principal shareholders currently required in Schedule I, should be required in proxy statements. Proposed Item 404 of Regulation S-K does not require disclosure of such loans made in the ordinary course of business.

financial statements. This is generally consistent with the recent revision [14] to Rule 5–04, which provides that commercial and industrial companies may include this information in a schedule or in management's discussion and analysis.

Standby Letters of Credit. The current requirement for note disclosure of outstanding standby letters of credit (Rule 9–02.17) is not included in the proposed rules since such disclosure is required by paragraph 12 of SFAS 5.

Foreign Activities. Information about the foreign activities of a bank holding company is presently required by Rule 9–04. This rule provides for the following disclosures about material foreign activities: (1) The amount of identifiable assets, total revenue, expenses, income (loss) before taxes, and net income (loss) for each significant foreign geographic area; (2) details of the categories of foreign loans and deposits; (3) a statement of changes in the allowance for loan losses applicable to foreign loans; (4) details of interest bearing deposits and other balances in banks outside of the United States; and (5) information about other borrowings associated with foreign activities. Furthermore, existing Rules 9–02.5 and 9–02.11 also require that the total amounts of foreign loans and deposits in foreign banking offices be disclosed.

Many of these foreign disclosures provide detailed information which is primarily analytical in nature, and which provides supplemental information about foreign asset risks and profitability. Although no substantive amendments are proposed as to the kinds of disclosures about foreign activities currently required, the Commission is proposing that certain of the disclosures be transferred to Guide 3. Proposed Rule 9–05 requires the following financial statement disclosures about foreign activities: Identifiable assets, total revenue, expenses, income (loss) before taxes, and net income (loss) associated with foreign activities (all detailed by significant foreign geographic area). The existing Article 9 foreign disclosure requirements in items (2) and (3) in the paragraph above are proposed to be transferred to Guide 3. The remaining Article 9 requirements in items (4) and (5) in the paragraph above are proposed to be deleted from the financial statements because, if significant, this information is presently required to be disclosed in the condensed average balance sheets called for by item I.A of Guide 3. Proposed Rules 9–03.5 and 9–03.10 would continue to include a requirement to disclose the amounts of total foreign loans and deposits in the financial statements.

As a result of these proposed changes, disclosures in the financial statements about a bank holding company's foreign operations would comprise information regarding identifiable assets invested in foreign activities, revenues and profitability, and the amount of aggregate foreign loans and foreign deposits. The Commission believes that these changes would simplify the disclosures required in bank holding company financial statements and that the financial statement user would continue to be provided with key summary information to assess the importance of a registrant's foreign operations and any associated risks. Users requiring more detailed information about foreign activities would be able to refer to the supplemental foreign data provided by the Guide 3 disclosures.

Investment Securities Gains and Losses. Rule 9–03.19 currently provides that securities gains and losses be presented in the income statement net of taxes after net income from operations. Similarly, earnings per share data are required to be presented for net income both before and after securities transactions. This two-step reporting format was developed primarily in response to arguments that gains and losses from such transactions should be reported separately from net income from operations because securities sales are not a part of a bank's normal operations, and for various other reasons. The commission believes that gains and losses from such transactions are conceptually only one of several components of income of a banking operation and that the current requirements in Article 9 may perpetuate the belief that these transactions are in some way different than other very similar transactions which are components of operating income. For example, sales of short-term investments, loans and loan participations are all reflected in operating income. Furthermore, there are numerous other transactions often reflected in bank operating income which are not typical transactions for a banking operation, such as gains on debt extinguishment and gains on sales of lease residuals and bank premises. The Commission is also concerned that the current two-step format may result in inconsistent reporting of net income before securities gain and losses among registrants because of differences of opinion as to what constitutes an "investment security." Liberal interpretations of this definition can result in inappropriate presentation of gains and losses on sales of certain assets as investment securities transactions.

Because the Commission believes there is no conceptual basis for the two-step reporting format since securities transactions are a normal part of bank operations, and because of the potential for inappropriate reporting of certain transactions as security gains and losses, the Commission is proposing that gains and losses from securities transactions be presented on a pre-tax basis as a separate, appropriately captioned line item. The applicable income taxes on such amounts may be disclosed parenthetically or in a note, if desired. Such disclosure would provide users with the same amount of information as is presented under the current rules. This one-step format would also reduce the complexity of the income statement and the disclosure of earnings per share date.

Schedule I. This schedule, designated as "Amounts receivable from Certain Persons," is proposed to be deleted, as discussed under "Loans to Related Parties" above. Existing Schedule V, "Indebtedness to Related Parties" is proposed to be redesignated as Schedule I.

Schedule II. The current requirement to disclose in Schedule II information as to valuation and qualifying accounts is proposed to be deleted, since bank holding companies are specifically required by Article 9 to include separate analyses of the activity in their loan loss and real estate allowance accounts in the notes.

Schedule III. The existing Schedule III. "Guarantee of Securities of Other Issuers," is proposed to be redesignated as Schedule II.

Schedule IV. The existing Schedule IV, "Investments in, Equity in Earnings of, and Dividends Received from Releated Parties" is proposed to be replaced by a new Schedule III requirement for condensed parent company information. This change is proposed to conform Article 9 to the recent amendments to Rule 12–04. Accounting Series Release ("ASR") 302 [15] amended Rule 12–04 to replace the schedule requirements detailing the registrant's investments in and indebtedness of affiliates with new requirements specifying disclosures of condensed financial information about the parent company and other related

[14] Securities Act Release No. 6233 (September 2, 1980) (45 FR 63660).

[15] Securities Act Release No. 6359 (November 6, 1981) (46 FR 56171).

data. The test for determining when the proposed Schedule III would be furnished is the same as the Article 5 test which was adopted in ASR 302. The proposed schedule would be required when there are significant third party restrictions on the net assets of the registrant's consolidated subsidiaries.

The Commission previously requested comments in ASR 302 as to: (1) Whether the need for parent company financial information is satisfactorily met by the condensed financial information and other related data prescribed by Rule 12-04; (2) whether sufficient information is disclosed about the activities of bank holding companies in Copmmission filings, given the deletion of the previous requirement for separate financial statements of consolidated finance-type subsidiaries; and (3) whether there should be additional criteria established for determining when parent company information should be furnished. Since these questions have particular relevance to bank holding company registrants, the Commission again requests specific comments on these matters, particularly from financial statement users.

Guide 3

As noted above, certain amendments are proposed to the Industry Guides for Disclosure by Bank Holding Companies. The proposed changes to Guide 3 are principally for the purpose of accommodating related changes being proposed to Article 9 of S-X. In effect, these changes transfer certain disclosure requirements from the financial statements to the description of business section of registration statements and certain filings under the Securities Exchange Act. The underlying rationale for this transfer is that the information is primarily analytical in nature and is similar in character to the other disclosure requirements of Guide 3; these disclosures do not appear to be necessary in annual reports to shareholders. Finally, the Commission believes that there are benefits derived from combining related analytical data in Guide 3 and from the resulting simplification of the financial statement disclosures.

A summary of the proposed changes to Guide 3 follows:

- A new instruction 7 has been added to the General Instructions to key the requirement to provide separate disclosures regarding foreign activities to the proposed Rule 9-05 requirement to make such disclosures in the financial statements.
- Certain disclosures regarding foreign activities have been transferred from the financial statements to Guide 3. These include details of loans and deposits, an analysis of the allowance for loans losses related to foreign activities and certain information related to large time deposits. In some cases, Guide 3 requires the presentation of average balances as opposed to the end of period balances required by S-X.
- Information as to concentrations in the investment portfolio in the securities of particular issuers has been transferred from S-X to Item II of Guide 3.
- The instructions to "Nonperforming Loans" in Item III have been clarified to provide that loans adversely classified (doubtful, loss) by regulatory examiners should normally be included in one of the nonperforming categories.
- The instructions regarding the "Summary of Loan Loss Experience" in Item IV have been recast in a tabular format with no substantive change in the information called for by this item.
- Certain analytical information regarding the registrant's short-term borrowings has been transferred from S-X to a new Item VII in Guide 3.
- Certain other minor editorial and other changes are proposed in order to conform the Guide to related changes being proposed in S-X.

The complete text of the proposed Guide 3, including sections for which no amendments are proposed, is included in this release so that commentators will have available for consideration the entire package of financial disclosure requirements for bank holding companies.

New Bank Audit Guide

The AICPA is currently completing the revision of its audit guide for banks. The issuance of this new audit guide should result in further improvements and uniformity in accounting and financial reporting for banks and bank holding companies. As part of the Commission's oversight role of the private sector's standard-setting efforts, the Commission staff has closely monitored this project and has taken into account the provisions reflected in the final drafts of this audit guide, where appropriate.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

List of Subjects in 17 CFR Parts 210, 231 and 241

Accounting, Reporting requirements, Securities.

The Commission hereby proposes to amend 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By removing §§ 210.9-01 to 210.9-05 and adding new §§ 210.9-01 to 210.9-06 as follows:

Bank Holding Companies

§ 210.9-01 Application of §§ 210.9-01 to 210.9-06.

This article is applicable to consolidated financial statements filed for bank holding companies and to any financial statements of banks that are included in filing with the Commission.

§ 210.9-02 General requirement.

The requirements of the general rules in §§ 210.1 to 210.4 (Articles 1, 2, 3, 3A and 4) should be complied with where applicable.

§ 210.9-03 Balance sheets.

The purpose of this rule is to indicate the various items which, if applicable, should appear on the face of the balance sheets and in the notes thereto.

Assets

1. *Cash and due from banks.* The amounts in this caption should include demand deposits and other noninterest bearing deposits with other banks.

(a) Any withdrawal and usage restrictions (including requirements of the Federal Reserve to maintain reserve balances) or compensating balance requirements should be disclosed (see § 210.5-02-1).

2. *Short-term investments.* Disclose separately the aggregate value of (1) Federal funds sold and securities purchased under resale agreements or similar arrangements, (2) interest bearing deposits in other banks and (3) any other short-term investments. Federal funds sold and securities purchased under resale agreements should not be netted against Federal funds purchased and securities sold under agreements to repurchase as reported in caption 11.

3. *Trading account securities.* Include securities or any other investments held for trading purposes.

(a) Disclose in a note whether trading account assets are valued at market or lower of cost or market. If market is not used, state

on the balance sheet the aggregate market value at the balance sheet date.

4. *Investment securities.* Disclose the aggregate book value of investment securities; show on the balance sheet the aggregate market value at the balance sheet date. The aggregate amounts should include securities pledged, loaned or sold under repurchase agreements and similar arrangements; borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(a) Disclose in a note the carrying value and market value of securities of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) states of the U.S. and political subdivisions; and (3) other securities.

5. *Loans.* Disclose separately (1) total loans, (2) the related allowance for losses and (3) unearned income.

(a) Disclose on the balance sheet or in a note the amount of total loans in each of the following categories:

(1) Commercial, financial and agricultural
(2) Real estate—construction
(3) Real estate—mortgage
(4) Installment loans to individuals
(5) Lease financing
(6) Foreign
(7) Other (state separately any other loan category regardless of relative size if necessary to reflect any unusual risk concentration).

(b) The amount of foreign loans must be presented if the disclosures provided by § 210.9–05 are required.

(c) For each period for which an income statement is required, furnish in a note a statement of changes in the allowance for loan losses showing the balances at beginning and end of the period, provision charged to income, recoveries of amounts charged off and losses charged to the allowance.

(d)(1)(i) As of each balance sheet date, disclose in a note the aggregate dollar amount of loans (exclusive of installment loans in the ordinary course of business) made by the registrant or any of its subsidiaries to directors, executive officers, or principal holders of equity securities (§ 210.1–02) of the registrant or any of its significant subsidiaries (§ 210.1–02), or to any associate of such persons.

(ii) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date does not exceed 5 percent of stockholders' equity at that date. Notwithstanding this reporting threshold, if the weighted average amount of such loans outstanding during the year exceeds 5 percent of stockholders' equity at year-end and significantly exceeds the amount of such loans outstanding at year-end, additional information, including discussion of individual transactions, should be provided to explain such differences.

(2) If a significant portion of the aggregate amount of loans disclosed pursuant to (d)(1)(i) above relates to nonperforming loans, so state and disclose the aggregate amount of such nonperforming loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(3) Notwithstanding the aggregate disclosure called for by (d)(1) above, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan (See § 210.4–08(L)(3)).

(4) Definition of terms. For purposes of this rule, the following definitions shall apply:

"Associate" means (i) a corporation, venture or organization of which such person is an officer or general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (ii) any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity and (iii) any relative by blood, marriage or adoption who has no more remote relationship than first cousin.

"Executive officers" means the president, any vice president in charge of a principal business unit, division or function (such as loans, investments, operations, administration or finance), and any other officer or person who performs similar policy-making functions.

"Ordinary course of business" means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable features.

"Nonperforming loans" means loans that either: (i) Are accounted for on a nonaccrual basis; (ii) are contractually past due 90 days or more as to interest or principal payments; (iii) the terms of which have been renegotiated to provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower; or (iv) are now current, but there are serious doubts as to the ability of the borrower to comply with the present loan repayment terms. A renewal at maturity on current market terms not due to the financial weakness of the borrower will not be considered a renegotiation within the meaning of clause (iii) above.

6. *Bank premises and equipment.*

7. *Due from customers on acceptances.* Include amounts receivable from customers on drafts and bills of exchange that have been accepted by a consolidated bank subsidiary or by other banks for the account of a consolidated subsidiary and that are outstanding—that is, not held by a subsidiary bank, on the reporting date. (If held by a bank subsidiary, they should be reported as "loans" under § 210.9–03.5.)

8. *Other assets.* Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds thirty percent of stockholders' equity. The remaining assets may be shown as one amount.

(1) Excess of cost over tangible and identifiable intangible assets acquired (net of amortization).

(2) Other intangible assets (net of amortization).

(3) Investments in and indebtedness of affiliates and other persons.

(4) Other real estate.

(a) Disclose in a note the basis at which other real estate is carried. Any reduction in carrying value resulting from the recognition of fair market value at the time of acquisition shall be accounted for as a loan loss. Any allowance for losses on other real estate which has been established subsequent to acquisition should be deducted from other real estate. For each period for which an income statement is required, disclosures should be made in a note as to the changes in the allowance, including balances at beginning and end of period, provision charged to income, and losses charged to the allowance.

9. Total assets.

Liabilities and Stockholders' Equity

Liabilities

10. *Deposits.* Disclose separately the amounts of noninterest bearing deposits and interest bearing deposits.

(a) The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosures provided by §210.9–05 are required.

11. *Short-term borrowings.* Disclosure separately on the balance sheet or in a note, amounts payable for (1) Federal funds purchased and securities sold under agreements to repurchase; (2) commercial paper; and (3) other short-term borrowings.

(a) Disclose any unused lines of credit for short-term financing (§ 210.5–02.19(b)).

12. *Bank acceptances outstanding.* Disclose the aggregate of unmatured drafts and bills of exchange accepted by a bank subsidiary, or by some other bank as its agent, less the amount of such acceptances acquired by the bank subsidiary through discount or purchase.

13. *Other liabilities.* Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of thirty percent of stockholders' equity (except that amounts in excess of 5 percent of stockholders' equity should be disclosed with respect to item (4)). The remaining items may be shown as one amount.

(1) Income taxes payable.

(2) Deferred income taxes.

(3) Indebtedness to affiliates and other persons the investments in which are accounted for by the equity method.

(4) Indebtedness to directors, executive officers, and principal holders of equity securities of the registrant or any of its significant subsidiaries (the guidance in §210.9–03.5(d) shall be used to identify related parties for purposes of this disclosure).

(5) Accounts payable and accrued expenses.

14. *Long-term debt.* Disclose in a note the information required by § 210.5–02.22.

15. *Total liabilities.*

16. *Commitments and contingent liabilities.*

17. *Minority interest in consolidated subsidiaries.* The information required by § 210.5–02.27 should be disclosed, if applicable.

Redeemable Preferred Stocks

18. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* See § 210.5–02.28.

Non-redeemable Preferred Stocks

19. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* See § 210.5–02.29.

Common Stocks

20. *Common stocks.* See § 210.5–02.30.

Other Stockholders' Equity

21. *Other stockholders' equity.* See § 210.5–02.31.

22. *Total liabilities and stockholders' equity.*

§ 210.9–04 Income statements.

The purpose of this rule is to indicate the various items which, if applicable, should appear on the face of the income statement and in the notes thereto.

1. *Interest and fees on loans and lease financing.* Include commitment and origination fees, late charges and current amortization of premium and accretion of discount on loans which are related to or are an adjustment of the loan interest rate.

2. *Interest and dividends on investment securities.* Disclosure separately (1) taxable interest income, (2) nontaxable interest income, and (3) dividends.

3. *Trading account interest.*

4. *Other interest income.*

5. *Total interest income.*

6. *Interest on deposits.*

7. *Interest on short-term borrowings.*

8. *Interest on long-term debt.*

9. *Total interest expense.*

10. *Net interest income.*

11. *Provision for loan losses.*

12. *Net interest income after provision for loan losses.*

13. *Other income.* Disclosure separately any of the following amounts, or any other item of other income, which exceed one percent of the aggregate of total interest income and other income. The remaining amounts may be shown as one amount.

(a) Commissions and fees from fiduciary activities.

(b) Commissions, broker's fees and markups on securities underwriting and other securities activities.

(c) Insurance commissions, fees and premiums.

(d) Fees for other customer services.

(e) Profit of loss on transactions in securities in dealer trading account.

(f) Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.

(g) Gains or losses on disposition of equity in securities of subsidiaries or 50 percent or less owned persons.

14. *Other expenses.* Disclosure separately any of the following amounts, or any other item of other expense, which exceed one percent of the aggregate of total interest income and other income. The remaining amounts may be shown as one amount.

(a) Salaries and employee benefits.

(b) Net occupancy expense of premises.

(c) Goodwill amortization.

(d) Net cost of operation of other real estate (including provisions for real estate losses, rental income and gains and losses on sales of real estate).

(e) Minority interest in income of consolidated subsidiaries.

15. *Investment securities gains or losses.* Disclose the method followed in determining the cost of investments sold, e.g., "average cost," "first-in, first-out," or "identified certificate."

16. *Income or loss before income tax expense.*

17. *Income tax expense.* The information required by § 210.4–08(h) should be disclosed.

18. *Income or loss before extraordinary items and cumulative effects of changes in accounting principles.*

19. *Extraordinary items, less applicable tax.*

20. *Cumulative effects of changes in accounting principles.*

21. *Net income or loss.*

22. *Earnings per share data.*

§ 210.9–05 Foreign Activities.

(a) *General requirement.* Separate discosure concerning foreign activities shall be made for each period in which either (1) assets, or (2) revenue, or (3) income (loss) before income tax expense, or (4) net income (loss), each as associated with foreign activities, exceeded ten percent of the corresponding amount in the related financial statements.

(b) *Disclosures.* (1) Disclose total identifiable assets (net of valuation allowances) associated with foreign activities.

(2) For each period for which an income statement is filed, state the amount of revenue, expense, income (loss) before taxes, and net income (loss) associated with foreign activities. Describe the method of allocating the cost of funds to foreign and domestic operations. Explain how adjustments to these funds costs are made for the cost of capital, or why no such adjustment is made. State the nature of any other significant estimates and assumptions used in allocating revenue and expenses to foreign activities.

(3) The information in paragraph (b)(1) and (2) of this section shall be presented separately for each significant geographic area and in the aggregate for all other geographic areas not deemed significant.

(c) *Definitions.* (1) "Foreign activities" include loans and other revenue producing assets and transactions in which the debtor or customer, whether an affiliated or unaffiliated person, is domiciled outside the United States.

(2) The term "revenue" includes the total of the amounts reported at §§ 210.9–04.5 and 210.9–04.13.

(3) A "significant geographic area" is one in which assets or revenue or income before income tax or net income exceed 10 percent of the comparable amount as reported in the financial statements.

§ 210.9–06 Schedules.

(a) The following schedules, which should be examined by an independent accountant, should be filed unless the required information is not applicable or is given in the related financial statements.

Schedule I—Indebtedness to Related Parties. The schedule prescribed by § 210.12–05 should be filed for each period for which an income statement is required in support of any amounts required to be reported by § 210.9–03.13(4) unless such amount does not exceed 5 percent of stockholders' equity at either the beginning or the end of the period.

Schedule II—Guarantees of Securities of Other Issuers. The schedule prescribed by § 210.12–08 should be filed as of the date of the most recent audited balance sheet with respect to any guarantees of securities of other issuers by the person for which the statements are being filed.

Schedule III—Condensed Financial Information of Registrant. The schedule prescribed by § 210.12–04 should be filed when the restricted net assets (§ 210.4–08(e)(3)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. For purposes of the above test, restricted net assets of consolidated subsidiaries shall mean that amount of the registrant's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent fiscal year may not be transferred to the parent company by subsidiaries in the form of loans, advances or cash dividends without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (§ 210.5–02.28) and minority interests shall be deducted in computing net assets for purposes of this test.

* * * * *

2. By revising § 210.12–01 as follows:

Form and Content of Schedules

General

§ 210.12–01 Application of §§ 210.12–01 to 210.12–29.

These sections prescribe the form and content of the schedules required by §§ 210.5–04, 210.6–10, 210.6–13, 210.6–24, 210.6–34, 210.7–05 and 210.9–06.

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECRUITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. By revising the Securities Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] of Part 231 by adding new Item VII and by revising the general instructions and the remaining items. The full text of the revised industry guide, as proposed, is set out below.

Guide 3—Statistical Disclosure By Bank Holding Companies

General Instructions

1. This Guide applies to the description of business portions of those bank holding company registration statements for which financial statements are required.

2. Information furnished in accordance with this Guide should generally be presented in tabular form in the order appearing below. However, an alternative presentation, such as inclusion of the information in Management's Discussion and Analysis, may be used if in management's opinion such presentation would be more meaningful to investors.

3. When the term "reported period" is used in the Guide, it refers to each of the periods described below:

(a) Each of the last three fiscal years of the registrant, except as is provided in paragraphs (b) and (c) below;

(b) Each of the last five fiscal years of the registrant with respect to Items III and IV, except as is provided in paragraph (c) below;

(c) Each of the last two fiscal years with respect to all items, if the registrant had assets of less than $200,000,000 or net worth of $10,000,000 or less as of the end of its latest fiscal year; and

(d) Any additional interim period necessary to keep the information from being misleading.

The reported period shall not include an additional interim period under paragraph (d) above merely because an income statement is presented for such additional interim period, but the reported period shall include such an additional period if a material change in the information presented or the trend evidenced thereby has occurred.

4. Unless otherwise indicated, averages called for by the Guide are daily averages. Where the collection of data on a daily average basis would involve unwarranted or undue burden or expense, weekly or month-end averages may be used, provided such averages are representative of the operations of the registrant. The basis used for presenting averages need be stated only if not presented on a daily average basis.

5. Some of the information called for by the Guide which is prospective in nature may not be available on a historical basis. The staff should be advised of such situations prior to filing and if the requested information is unavailable and cannot be compiled without unwarranted or undue burden or expense, the requirement that such information be furnished may be waived. If possible, reasonably comparable date should be furnished instead. If certain requested information will not be available with respect to periods to be covered in future filings subject to the Guide, this should also be brought to the staff's attention.

6. The disclosure requirements of the Guide are also applicable to foreign registrants to the extent the requested information is available. If the information is unavailable and cannot be compiled without unwarranted or undue burden or expense, this should be brought to the staff's attention.

Note.—In evaluating the reasonableness of assertions by registrants that the compilation of requested information, such as historical data or daily averages, would involve an unwarranted or undue burden or expense, the staff takes into consideration, among other factors, the size of the registrant, the estimated costs of compiling the data, the electronic data processing capacity of the registrant, and efforts in process to obtain the information in future periods.

7. In various places throughout this Guide, disclosure is called for regarding certain "foreign" data. For purposes of this Guide, this information need not be presented unless the registrant is required to make separate disclosures concerning its foreign activities in its consolidated financial statements using the test set forth in § 210.9–05 of Regulation S–X.

I. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential

A. *For each reported period, present average balance sheets.* The format of the average balance sheets may be condensed from the detail required by the financial statements provided that the condensed average balance sheets indicate the significant categories of assets and liabilties, including all major categories of interest-earning assets and interest-bearing liabilities. Major categories of interest-earning assets should include loans, taxable investment securities, non-taxable investment securities, short-term investments and other (specify if significant). Major categories of interest-bearing liabilities should include savings deposits, other time deposits, short-term debt, long-term debt and other (specify if significant).

B. *For each reported period, present an anlaysis of net interest earnings as follows:*

1. For each major category of interest-earning asset and each major category of interest-bearing liability, the average amount outstanding during the period and the interest earned or paid on such amount.

2. The average yield for each major category of interest-bearing asset.

3. The average rate paid for each major category of interest-bearing liability.

4. The average yield on all interest-earning assets and the average effective rate paid on all interest-bearing liabilities.

5. The net yield on interest-earning assets (net interest earnings divided by total interest-earning assets, with net interest earnings equaling the difference between total interest earned and total interest paid).

6. This analysis may, at the option of the registrant, be presented in connection with the average balance sheet required by paragraph A.

C. *For the latest two fiscal years, present (1) the dollar amount of change in interest income and (2) the dollar amount of change in interest expense.* The changes should be segregated for each major category of interest-earning asset and interest-bearing liability into amounts attributable to (a) changes in volume (change in volume times old rate), (b) changes in rates (change in rate times old volume), and (c) changes in rate-volume (change in rate times the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

Instructions. (1) Explain how non-accruing loans have been treated for purposes of the analyses required by paragraph B.

(2) In the calculation of the changes in the interest income and interest expense, any out-of-period items and adjustments should be excluded and the types and amounts of items excluded disclosed in a note to the table.

(3) If loan fees are included in the interest income computation, the amount of such fees should be disclosed, if material.

(4) The interest income on tax exempt securities may be calculated on a tax equivalent basis. A brief note should describe the extent of recognition of exemption from Federal, state and local

taxation and the combined marginal or incremental rate used.

(5) If disclosure regarding foreign activities is required pursuant to General Instruction 7 of this Guide, the information required by paragraph A, B and C of Item I should be further segregated between domestic and foreign activities for each significant category of assets and liabilities disclosed pursuant to paragraph A. In addition, for each reported period, present separately, on the basis of averages, the percentage of total assets and total liabilities attributable to foreign activities.

II. Investment Portfolio

A. As of the end of each reported period, present the book value of investments in obligations of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) States of the U.S. and political subdivisions; and (3) other securities including bonds, notes, debentures and stock of business corporations, foreign governments and political subdivisions, intergovernmental agencies and the Federal Reserve Bank.

B. As of the end of the latest reported period, present the amount of each investment category listed above which is due (1) in one year or less, (2) after one year through five years, (3) after five years through ten years, and (4) after ten years. In addition, state the weighted average yield for each range of maturities.

Instruction. State whether yields on tax exempt obligations have been computed on a tax equivalent basis. (See Instruction (4) to Item I.) Any major changes in the tax-free portfolio should be discussed hereunder.

C. As of the end of the latest reported period, state the name of any issuer, and the aggregate book value and aggregate market value of the securities of such issuer, when the aggregate book value of such securities exceeds ten percent of stockholders' equity.

Instruction. The term "issuer" has the meaning given in section 2(4) of the Securities Act of 1933, except that debt securities issued by a state of the United States and its political subdivisions and agencies which are payable from and secured by the same source of revenue or taxing authority shall be considered to be securities of a single issuer. This information does not have to be provided for securities of the U.S. Government and U.S. Government agencies and corporations. Consideration should be given to disclosure of risk characteristics of the securities of an issuer and of differences in risk characteristics of different issues of securities of an issuer as may be appropriate.

III. Loan Portfolio

A. *Types of Loans.* As of the end of each reported period, present separately the amount of loans in each category listed below. Also show the total amount of all loans for each reported perod which amounts should be the same as those shown on the balance sheets.

Domestic:

1. Commercial, financial and agricultural;
2. Real estate—construction;
3. Real estate—mortgage;
4. Installment loans to individuals;
5. Lease financing.

Foreign:

6. Governments and official institutions;
7. Banks and other financial institutions;
8. Commercial and industrial;
9. Other loans.

Instructions. A series of categories other than those specified above may be used to present details of loans if considered a more appropriate presentation. Furthermore, additional details of loans by category, or separate disclosure of other loan categories regardless of relative size, may be necessary or appropriate in some circumstances, such as when a substantial portion of total loans is concentrated in one or a few industries or foreign countries or, when appropriate, to show any other unusual risk or uncertainties.

B. *Maturities and Sensitivity to Changes in Interest Rates.* As of the end of the latest fiscal year reported on, present separately the amount of loans in each category listed in paragraph A (except that this information need not be presented for categories 3, 4 and 5, and categories 6 through 9 may be aggregated) which are: (1) Due in one year or less, (2) due after one year through five years and (3) due after five years. In addition, present separately the total amount of all such loans due after one year which (a) have predetermined interest rates and (b) have floating or adjustable interest rates.

Instructions. (1) Scheduled repayments should be reported in the maturity category in which the payment is due.

(2) Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

(3) Determinations of maturities should be based upon contract terms. However, such terms may vary due to the registrant's "rollover policy," in which case the maturity should be revised as appropriate and the rollover policy should be briefly discussed.

C. *Nonperforming Loans.* As of the end of each reported period, state the aggregate amount of loans in each of the following categories for: (a) Loans accounted for on a non-accrual basis; (b) loans which are contractually past due 90 days or more as to interest or principal payments (but not included in the non-accrual loans in (a) above); (c) loans, the terms of which have been renegotiated to provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower (exclusive of loans in (a) or (b) above); and (d), loans now current where there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. In connection with (d), a separate discussion of the risk elements associated with such loans, including the relative magnitude of such risks, shall be given.

Instructions. (1) Loans in categories 4 and 5 of paragraph A need not be considered for disclosure pursuant to paragraph C unless the total amount in either category exceeds 10 percent of total loans.

(2) A renewal of a loan at maturity on current market terms not due to the financial weakness of the borrower will not be considered a renegotiation for purposes of clause (c) of paragraph C.

(3) A loan remains in the category described in clause (c) until such time as the terms are substantially equivalent to terms on which loans with comparable risks are being made.

(4) In determining the amounts to be included in category (d), consideration should be given to adverse classifications (doubtful or loss) assigned to any loans by regulatory authorities. Any such loans which have not been included in categories (a), (b) or (c) should normally be disclosed as nonperforming loans under category (d).

(5) If a substantial portion of the loans stated pursuant to paragraph C are concentrated in one or a few industries, separate disclosure of the information required by this paragraph should be provided for such loans.

IV. Summary of Loan Loss Experience

A. An analysis of loss experience shall be furnished in the following format for each reported period:

ANALYSIS OF THE ALLOWANCE FOR LOAN LOSSES

	Reported period
Balance at beginning of period	$X
Charge-offs:	
Domestic:	
Commercial, financial and agricultural	X
Real estate-construction	X
Real estate-mortgage	X
Installment loans to individuals	X
Lease financing	X
Foreign	X
	X
Recoveries:	
Domestic:	
Commercial, financial and agricultural	X
Real estate-construction	X
Real estate-mortgage	X
Installment loans to individuals	X
Lease financing	X
Foreign	X
	X
Net charge-offs	X
Additions charged to operations	X
Balance at end of period	$X
Ratio of net-charge offs during the period to average loans outstanding during the period	X

Instructions. (1) The above table is not intended to mandate a specific format for disclosure of this information. Registrants are encouraged to experiment with various disclosure formats in the interest of effective communication of this data; however, all the required information must be given.

(2) For each period presented, describe briefly the factors which influenced management's judgment in determining the amount of the additions to the allowance charged to operating expense. A statement that the amount is based on management's judgment will not be sufficient.

(3) If, in accordance with the instructions to paragraph III–A, information concerning loans has been presented in categories other than those specified in that paragraph, those other categories should be used to present the disclosures called for under this paragraph.

(4) If the registrant is required to present separate data as to its foreign activities pursuant to General Instruction 7 to this Guide, disclosure must be provided as to the changes in the allowance for loan losses applicable to loans related to foreign activities, including the balances at the beginning and end of the periods, charge-offs, recoveries, and additions charged to operations.

B. At the end of each reported period, furnish a breakdown of the allowance for loan losses in the following format:

ALLOCATION OF THE ALLOWANCE FOR LOAN LOSSES

Balance at end of period applicable to	Reported period	
	Amount	Percent of loans in each category to total loans
Domestic	$X	X
Commercial, financial and agricultural	X	X
Real estate-construction	X	X
Real estate-mortgage	X	X
Installment loans to individuals	X	X
Lease financing	X	X
Foreign	X	X
Unallocated	X	N/A
	X	100

Instructions. (1) See instructions (1) and (3) to paragraph A above.

(2) In lieu of the breakdown of the allowance for loan losses by loan category called for above, the registrant may furnish a narrative discussion of the risk elements in the loan portfolio and the factors considered in determining the amount of the allowance for loan losses. The discussion may be extended to risk elements associated with particular loan categories or subcategories. Information should also be furnished as to the approximate anticipated amount of chargeoffs by category during the next full year of operation.

V. Deposits

A. For each reported period, present separately the average amount of each of the following deposit categories which are in excess of 10 percent of average total deposits:

Deposits in domestic bank offices:

(1) Noninterest bearing demand deposits.

(2) Interest bearing demand deposits.

(3) Savings deposits.

(4) Time deposits.

Deposits in foreign bank offices:

(5) Banks located in foreign countries (including foreign branches of other U.S. banks).

(6) Foreign governments and official institutions.

(7) Other foreign demand deposits.

(8) Other foreign time and savings deposits.

B. If material, the registrant should disclose separately the aggregate amount of deposits by foreign depositors in domestic offices. Identification of the nationality of the depositors is not required.

C. As of the end of the latest reported period, state the amount outstanding of (1) time certificates of deposit in amounts of $100,000 or more and (2) other time deposits of $100,000 or more issued by domestic offices by time remaining until maturity of 3 months or less; over 3 through 6 months; over 6 through 12 months; and over 12 months.

D. As of the end of the latest reported period, state the amount outstanding of time certificates of deposits and other time deposits in amount of $100,000 or more issued by foreign offices. If the aggregate of such certificates of deposit and time deposits in amounts exceeding $100,000 represents a majority of total foreign deposit liabilities, the disclosure need not be given, provided that there is a statement that a majority of deposits were in amounts in excess of $100,000.

VI. Return on Equity and Assets

For each reported period, present the following:

(1) Return on assets (net income divided by average total assets).

(2) Return on equity (net income divided by average equity).

(3) Dividend payout ratio (dividends declared per share divided by net income per share).

(4) Equity to assets ratio (average equity divided by average total assets).

Instructions. (1) If manditorily redeemable preferred stock is outstanding, furnish the ratios required under (2) and (4) above in a dual presentation including and excluding such stock in the calculations.

(2) Registrants should supply any other ratios which they deem necessary to explain their operations.

VII. Short-Term Borrowings

For each reported period, present the following information for each category of short-term borrowings reported in the financial statements pursuant to § 210.9–04.11:

(1) The amounts outstanding at the end of the reported period, the weighted average interest rate thereon, and the general terms thereof;

(2) The maximum amount of borrowings in each category outstanding at any month-end during each reported period;

(3) The approximate average amounts outstanding during each reported period and the approximate weighted average interest rate thereon.

Instruction. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders' equity at the end of the period.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. By conforming Exchange Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] to the amendments proposed for Securities Act Industry Guide 3.

Authority. These amendments are being proposed pursuant to the authority in sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933, and sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78*l*, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and it is not aware at this time of any burden that such rule amendments, if adopted, would impose on competition. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

In addition, the Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

July 9, 1982.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments contained in Securities Act Release No. 33-6417 which revise the financial statement requirements and industry guide disclosures for bank holding companies will not have a significant economic impact on a substantial number of small entities.

The reason for this certification is that it is anticipated that the effects of the proposed amendments, if adopted, will not be significant for any entity subject to these provisions because the compliance burden would not be changed to a significant extent and the required information is generally available from existing records or otherwise available to the affected companies.

John S. R. Shad, Chairman.

July 9, 1982.

[FR Doc. 82-20089 Filed 7-23-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 882

[Docket No. R-82-955]

Section 8 Housing Assistance Payments Program—Existing Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Proposed rule.

SUMMARY: The Department is proposing to amend the Section 8 Existing Housing Program regulation by: (1) Clarifying the procedures for selecting applicants and for determining the appropriate unit size (bedrooms/sleeping rooms) for a Family; and (2) giving an applicant who is denied housing assistance, or a certificate holder whose housing assistance is reduced or terminated, a reasonable opportunity to request an informal hearing.

DATES: Comments due September 27, 1982.

ADDRESSES: Interested persons are invited to submit written comments on or before the due date to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Each comment should include the commentor's name and address and must refer to the docket number indicated in the heading of this rule. A copy of each comment will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joyce Anne Bassett, Program Services Division, Office of Public Housing (202) 426-0744, or Myra E. Newbill, Existing Housing Division, Office of Existing Housing and Moderate Rehabilitation, (202) 755-5353, Department of Housing and Urban Development, Washington, D.C. 20410. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

In *Nichols* v. *Landrieu,* Civil Action No. 79-3094 (United States District Court, District of Columbia), a tenant in the Section 8 Existing Housing Program alleged a violation of due process because the Public Housing Agency (PHA) administering the program advised the tenant that her eligibility was reduced from a three-bedroom to a two-bedroom unit without specifying a reason for the action or advising her of an opportunity for an informal hearing. During the pendency of the action, The Department issued a program Handbook which required notice and hearing procedures in cases of reductions of assistance as well as denials of eligibility (Handbook 7420.7, paragraph 10-8). However, the District Court held that "the Handbook guidelines fail to engender the force of law" and therefore did not "preclude the justiciability of the instant case." On September 12, 1980, the District Court granted summary judgment to the plaintiff and entered an order which:

(1) Certified the action as a class action on behalf of "all persons whose subsidy for Section 8 Existing Housing may be terminated or reduced by a Public Housing Agency (PHA) because of family size and composition requirements without notice of the reasons for termination, the availability of a waiver of family size requirements, and an opportunity to be heard to contest the propriety of termination or claim entitlement to the waiver";

(2) Directed the Department to "publish in the **Federal Register**, for the purpose of inclusion in the Code of Federal Regulations, the pertinent sections, from its Administrative Practices Handbook for the Section 8 Existing Housing Program, delineating notice and hearing requirements pursuant to subsidy reduction"; and

(3) Directed that "the notice provided to a claimant shall contain a short statement advising the recipient of his right to a waiver and the grounds upon which a waiver may be granted."

The Department did not appeal the District Court order.

In this rulemaking proceeding, the Department proposes to amend the Section 8 Existing Housing Program regulations to implement the Court order. In addition, other revisions are proposed in the program regulations regarding selection of applicants for certificates, unit size standards, and informal hearing requirements.

Selection Procedures

Regulatory requirements for selection of applicants to be assisted under the Section 8 Existing Housing Program would be revised and reorganized in 24 CFR § 882.209(a). As indicated below, several of the changes proposed in this section would include in the regulation current program policies now contained in the program Handbook. These policies are of sufficient substantive impact that sound regulatory policy requires that they be included in the regulation after opportunity for

comment. Specific comment is invited particularly with respect to these matters included in the proposed rule.

The current regulation provides that families shall be selected for Certificates in accordance with the PHA program application, including any HUD-approved rules for giving preferences (§ 882.209(a)(3)), and that the equal opportunity housing plan submitted for approval as part of the PHA application for the program must state the PHA procedures for selecting applicants who are to receive Certificates, including nondurational residency requirements permitted under the regulation (§§ 882.204(b)(1)(i)(C), and 882.209(a)(3)). The current regulation also requires that PHA selection criteria be included in the PHA Administrative Plan as well as in the equal opportunity housing plan (§ 882.204(b)(3)(ii)). Consistent with the policy of the United States Housing Act of 1937 to "vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs," the Department believes that PHA discretion in determining selection criteria and preferences should be limited only by statutory eligibility limitations and the distinctive set of policy concerns which are evoked by equal housing opportunity review and are the basis, at least in part, of specific regulatory limitations on such criteria and preferences hereinafter described. For this reason, and also in order that all provisions on policies regarding selection of tenants will be stated in a single place, § 882.209(a)(6) of the amended regulation would provide that the PHA selection procedures, including any preferences or requirements for selection, shall be stated only in the equal opportunity housing plan, and that the PHA shall select applicants in accordance with that plan and HUD regulations governing eligibility for assistance under the Section 8 Existing Housing Program. (Conforming changes are made in § 882.204(b).)

Section 882.209(a)(2) would provide explicity that each PHA may establish applicant selection requirements or preferences in addition to the minimum eligibility requirements under HUD regulations. Consistent with existing program Handbook provisions, the revised regulation would permit a PHA to deny assistance to a past participant in the program who vacated an assisted unit in violation of the lease, failed to satisfy a liability for rent or other amounts owed under the lease, or has otherwise failed to comply with other family obligations under the program. The proposed rule would also permit a PHA to deny assistance to an applicant who has committed any fraud or misrepresentation in connection with any Federal housing assistance program.

In accordance with recent judicial decisions, Section 882.209(a)(2) would confirm that a PHA may deny or defer assistance to a family which owes rent or other amounts to the PHA, including back rents as a Public Housing tenant. See *Vandermark* v. *Housing Authority of the City of York*, 663 F.2d 436 (3rd Cir. 1981); *Baker* v. *Cincinnati Metorpolitan Housing Authority*, 490 F. Supp. 520 (S.D. Ohio 1980). Section 882.209(a)(2)(ii) would further provide that if the PHA elects to defer issuance of a Certificate for this reason, the PHA may require the family to repay the amouts owed prior to issuing the Certificate, or may condition the issuance of a Certificate on the applicant's willingness to enter into an agreement to repay after issuance of the Certificate. These provisions are consistent with existing program Handbook provisions.

Although the regulation would allow the individual PHA to establish special requirements or preferences for selection, proposed Section 882.209(a)(3) would incorporate a current Handbook provision which generally prohibits the use of selection criteria based on the expected behavior of the applicant as a tenant, except to the extent provided by Section 882.209(a)(2) discussed immediately above, which generally is based upon prior PHA experience with the particular applicant. This prohibition is based upon the statutory direction that "the selection of tenants * * * shall be the function of the owner" (Section 8(d)(1)(A), United States Housing Act of 1937). The proposed regulation further provides that PHA selection of an applicant for a Certificate is not a representation by the PHA to the owner as to the expected behavior of the applicant as a tenant, and does not relieve or impair the responsibility of the owner for selection of tenants for units. This provision responds to the concern of PHAs that they should not be held responsible or liable for conduct of tenants, and the concern of owners that they retain control over the decision to rent or not to rent units to Certificate-holders.

A number of provisions relating to selection of certificate holders are proposed to be relocated in connenction with reorganization of section 882.209(a) without substantive change (requirements or preferences for residents of jurisdiction, from § 882.209(a)(3) to § 882.209(a)(4); certificates for residents of Independent Group Residences, from § 882.209(a)(3) to § 882.209(a)(5); use of HUD-required application form, from § 882.209(a)(4) to § 882.209(a)(7); required records on applicants, § 882.209(a)(6) to § 882.209(a)(8).

Occupancy Standards

The Certificate issued by the PHA to an applicant selected for assistance specifies a unit size (expressed as the number of bedrooms or other sleeping rooms) which may be rented by the assisted family. The unit size on the Certificate determines the highest gross rent for which the family may lease a unit with assistance under the program (i.e., the fair market rent for the unit size stated on the Certificate).

The current regulation specifies criteria to be used by the PHA in determining the unit size to be assigned to an applicant (§ 882.209(a)(2)). The Department believes that the determination of such criteria may properly be left to the discretion of PHAs. Accordingly, § 882.209(b)(1)(i) of the proposed regulation would require only that the standards established by a PHA for determining the appropriate unit size for families of different sizes and compositions must provide for the efficient use of program resources while avoiding overcrowding, and must be consistent with the applicable housing quality standards (including the minimum standards for sleeping space at § 882.109(c)).

For the sake of clarity, the regulation would explicitly cross-reference the regulatory provision at § 882.210(e) (which would not be changed) allowing the family to select a smaller or larger size unit than stated on the Certificate. The intent of allowing the family to select a smaller unit is to permit the family to make a trade-off for other amenities, such as convenience to transportation, schools, and shopping, or where the family is unable to locate a suitable unit of the size listed on its Certificate. (A unit larger than that listed on the Certificate may be selected only if the rent for such larger unit does not exceed the fair market rent applicable to the unit size listed in the Certificate.)

The proposed regulation would allow the PHA to establish criteria for granting exceptions from the unit size standards adopted by the PHA. The PHA exception criteria may allow the assignment of a larger unit size if warranted by the characteristics of the family. However, the criteria for granting exceptions, and the procedures for requesting exceptions, must be made available to applicants and Certificate-holders (§ 882.209(b)(1)(ii)). The latter

provision responds to the directive of the *Nichols* order.

Informal Hearings

Section 882.216 would be revised to establish a uniform hearing requirement for applicants and Certificate holders affected by specified types of PHA action.

The current regulation requires the PHA to give an informal hearing to an applicant determined to be ineligible (§ 882.209(f)). In addition, as noted above in connection with the *Nichols* action, paragraph 10–8 of the PHA administrative Practices Handbook for the program (Handbook 7420.7) requires the PHA to give a Certificate-holder an opportunity for an informal hearing before the PHA terminates or reduces housing assistance payments under the program. The new § 882.216 would replace the current regulatory provision and expand its coverage.

Section 882.216(a) provides that the new informal hearing requirement will apply to an applicant determined to be ineligible for participation in the program, or to whom assistance is denied or deferred on the basis of other PHA selection criteria; or to a Certificate-holder whose assistance is terminated or reduced (including persons whose assistance is terminated or reduced because of a reduction in family size or change in family composition, the class concerned in the *Nichols* litigation).

882.216(b) would require the PHA to notify an applicant or Certificate holder of a PHA decision to deny, defer, terminate or reduce housing assistance, and of the right to an informal hearing.

Proposed § 882.216(c) would require a hearing to be conducted in accordance with procedures adopted by the PHA which are consistent with standards prescribed by the rule. The prescribed standards, in substance, are those now contained in the Handbook provisions referred to by the District Court in the *Nichols* action. They dictate the appointment of a hearing officer who may be a PHA officer or employee who did not participate in the PHA's decision, or any person, other than a PHA officer or employee, designated by the PHA; the right of an applicant or Certificate-holder to be represented at the hearing, at its own expense, by a lawyer or other representative; the rights of the applicant or Certificate-holder and the PHA to offer and examine evidence and question witnesses; the requirement of a written decision stating briefly the factual and other basis for the decision; and a requirement that the decision on any issue of fact shall be based solely on evidence presented at the hearing.

The District Court ordered that the Department incorporate its current Handbook provisions regarding informal hearing procedures in its proposed rule, but the Department does not believe that the Court's order precludes the consideration of public comments addressing such requirements. While the requirements specified in the proposed rule may not appear onerous, the Department believes that it may be preferable to grant somewhat greater discretion to PHAs to fashion informal hearing procedures tailored to fair determination of the particular issues involved in determinations covered by proposed § 882.216(a). (For a discussion of factors that may be considered to be elements of a fair hearing in different circumstances, inlcuding factors suggesting greater or less judicialization of the procedures, see generally Friendly, "Some kind of Hearing," 123 U. Pa. L. Rev. 1267 (1975).) In addition to the specific requirements prescribed in the proposed rule or others which commentors may wish to suggest, the Department invites comment on alternative regulatory patterns. One such alternative on which comment is invited would be to authorize PHAs to adopt and publish such procedures as they deem appropriate, which may contain appropriate variations depending upon the nature and relative seriousness of the subject matter and the importance of the private interest affected in a particular instance (permitting, for example, different requirements for hearings for applicants from those provided to existing Certificate-holders), but requiring that in determining such procedures, the PHA shall give due consideration to enumerated elements, which would include the need of an unbiased tribunal (whether an individual or a panel); an opportunity to present reasons why proposed action should not be taken; the manner in which the PHA will be required to present the factual or other basis for its decision, and the manner and extent to which the applicant or Certificate-holder will be permitted to examine evidence and examine and question witnesses; whether, or under what circumstances, an applicant or Certificate-holder may be represented by a lawyer or other representative; the extent to which the tribunal's decision must be based on evidence presented in the hearing proceeding, and the extent to which decision of some factual matters and other matters may be based on the tribunal's own knowledge and experience; and whether, or the circumstances under which, further review of the tribunal's decision will be availble, and the effect or weight to be given to the tribunal's decision in any such subsequent review.

Other Matters

The Department has determined that this proposed rule does not constitute a "major rule" as defined in Executive Order 12291. Analysis of the proposed rule indicates that it will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the office of General Counsel, Rules Docket Clerk, at the address listed above.

Pursuant to Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule was listed as item (C) 37 (H–49–81) under the Office of Housing in the Department's Semiannual Agenda of Regulations published August 17, 1981 (46 FR 41708) pursuant ot Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance number for the program affected by this rulemaking proceeding is: 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Accordingly, the Department proposes to amend 24 CFR Part 882 as follows:

1. In §882.204, paragraphs (b)(1) and (3)(ii) are revised to read as follows:

§882.204 Submission of applications.

* * * * *

(b) * * *

(1) An equal opportunity housing plan.

(i) the plan shall describe the PHA's policies and procedures for:

(A) Outreach to eligible Families, including the requirements of §882.207(a)

(B) Achieving the participation of owners of units of suitable price and quality in areas outside low income and minority concentrations and outside the local jurisdiction where possible and fulfulling the additional requirements of §882,208.

(C) Selecting among eligible applicants those to receive Certificates of Family Participation, including any provisions establishing requirements or preferences for selection established in accordance with §882.209(a).

(D) Providing assistance in finding a unit to Certificate-holders who allege that illegal discrimination is preventing them from finding a suitable unit.

* * * * *

(3) * * *

(i) * * *

(ii) The following functions should be addressed: Contact with Owners; completion of application and determinations of Family eligibility; computation of Gross Family Contributions; briefing of Families and issuance of Certificates; use of housing quality standards and inspections; lease approval and Contract execution; payments to Owners; certification and recertification of Incomes; provision of housing information and services to recipient Families; review and adjustment, as necessary, of Allowances for Utilities and Other Services; reinspection of units under Contracts; processing requests for rent adjustments by Owners; establishment of informal hearing procedures; monitoring program performance.

* * * * *

2. In §882.209, paragraphs (a) and (b) are revised to read as follows:

§882.209 Certificates of family participation.

(a) *Selection for issuance of certificate.* (1) The PHA shall determine whether an applicant for a Certificate of Family Participation under this Part qualifies as a Family. The PHA shall verify income and other information needed for this purpose and to determine the amount of the housing assistance payment.

(2) In addition to the requirements stated in paragraph (1) above, the PHA may establish other requirements or preferences for selecting applicants. The PHA may deny issuance of a Certificate to an applicant (i) who, as a past participant in the §8 Existing Housing Program, vacated a unit in violation of the Lease, failed to satisfy a liability to the Owner for rent or other amounts owed under the Lease, or otherwise failed to comply with other family obligations under the §8 Existing Housing Program, or (ii) who has committed any fraud or misrepresentation in connection with any federal housing assistance program. The PHA also may deny or defer isssuance of a Certificate to an applicant who owes rent or other amounts, including amounts owed under the Public Housing Program, to the PHA or to another PHA. If the PHA elects to defer issuance of a Certificate on such basis, it may, in its discretion, either require the applicant to repay the amounts owed prior to issuing the Certificate or may condition the issuance of a Certificate on the applicant's willingness to enter into an agreement to repay after issuance of the Certificate.

(3) Except to the extent provided in paragraph (2) of this section, the PHA shall not establish selection criteria based on the applicant's expected behavior as a tenant. The PHA's selection of an applicant for issuance of a Certificate shall not be deemed either to constitute any representation by the PHA to the Owner as to expected behavior of the applicant as a tenant or to relieve or impair the responsiblity of the Owner for selection of tenants for units.

(4) Requirements or preferences for those living in the jurisdiction are permissiable. However, no requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant for a Certificate, nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the juridiction shall be treated as residents of the jurisdiction. (See also §882.209(e)(2).)

(5) If the PHA has issued a Certificate to an eligible Family residing in an Independent Group Residence, the PHA may establish a preference for selecting eligible applicants who have indicated the desire to reside in an Independent Group Residence when a §8 Family in an Independent Group Residence moves. Use of this preference is subject to the availability of funds for the appropriate size units. The Certificate holders given this preference shall select the units of their choice and do not have to reside in the Independent Group Residence in which a vacancy has occurred.

(6) The PHA selection procedures, including any preferences or requirements for selection, shall be stated in the PHA's HUD-approved equal opportunity housing plan. The PHA shall select applicants in accordance with the equal opportunity housing plan, and with the requirements of 24 CFR Parts 812 and 889 and this Part.

(7) Every applicant shall complete and sign the form of certification prescribed by HUD.

(8) PHA records on applicants and certified Families shall be maintained so as to provide HUD with racial, gender and ethnic data.

(b) *Issuance of Certificate of Family Participation and Certificate Holder's Packet.* (1) If an applicant is selected, the applicant shall be issued a Certificate of Family Participation.

(i) In issuing the Certificate, the PHA shall enter on the Certificate the smallest unit size (number of bedrooms or other sleeping rooms) consistent with standards established by the PHA for determining the appropriate unit size for Families of different sizes and compositions. The PHA's standards shall provide for the efficient use of program resources while avoiding overcrowding and shall be consistent with applicable HUD-approved housing quality standards (see §882.109(c)). (For provisions concerning rental by a Family of a unit with a larger or smaller unit size than stated on the Certificate, see §882.210(e).)

(ii) The PHA may grant exceptions from the PHA unit-size standards established in accordance with paragraph (i) to allow the assignment of a larger unit size than that established under the standards if warranted by the relationship, age, sex, health or handicap of the Family members. The PHA criteria for granting exceptions from the standards, and procedures for requesting exceptions, shall be made available to applicants and participating Families.

(2) The PHA shall maintain a system to assure that it will be able to honor all outstanding Certificates within the funding provided under the ACC, and that it will comply to the maximum extent feasible with the unit distribution specified in the ACC.

(3) When issuing a Certificate, the PHA shall give the Family a Certificate Holder's Packet, which shall include:

(i) Request for Lease Approval;

(ii) Required Lease Provisions and Prohibited Lease Provisions (see Appendices I and II);

(iii) Information regarding lead-based paint poisoning hazards, symptoms and precautions;

(iv) Fair Housing U.S.A. (HUD–63–EO–(6)), or the Spanish translation thereof (HUD–169–EO–(2)), as appropriate, both issued by the U.S. Department of Housing and Urban Development and the housing discrimination complaint form (HUD–903) or the Spanish translation thereof (HUD–903a);

(v) Information as to the Gross Family Contribution;

(vi) The PHA's schedule of Allowances for Utilities and Other Services; and

(vii) Such other items as the PHA may determine should be included.

* * * * *

3. In § 882.209, (i) the cross-reference at the end of paragraph (e)(2) is changed from "§ 882.209(a)(3)" to "§ 882.209(a)", and (ii) paragraph (f) is removed.

4. Section 882.216 is revised to read as follows:

§ 882.216 Informal hearings.

(a) *Applicability.* The PHA shall provide an opportunity for an informal hearing (1) to an applicant determined to be ineligible for assistance under the requirements of 24 CFR Parts 812 and 889 (on the basis of income or Family composition or for any other reason), (2) to an applicant to whom assistance is denied or deferred on the basis of other PHA selection criteria established pursuant to § 882.209(a)(2), or (3) to a Certificate holder whose assistance is terminated (by refusal to renew a Certificate or otherwise) or reduced (on the basis of income redetermination, reduction in Family size or change in Family composition, or for any other reason). The PHA shall not be required to provide an informal hearing to a Certificate holder or Owner when the PHA exercises any remedy (including the termination of housing assistance payments to the Owner) against the Owner under the Contract.

(b) *Notification.* The PHA shall give the applicant or Certificate holder written notification of the PHA decision to deny, defer, terminate or reduce the applicant's or Certificate holder's housing assistance and the reasons for the decision. The notice shall state that the applicant or Certificate holder may request an informal hearing and shall specify a reasonable date by which the applicant or Certificate holder must request the hearing.

(c) *Hearing.* If the applicant or Certificate holder requests an informal hearing, a hearing shall be conducted in accordance with procedures adopted by the PHA consistent with the standards prescribed by this section, notice of which shall be made available to applicants and participating Families.

(1) The PHA shall appoint a hearing officer to conduct the informal hearing who may be a PHA officer or employee who did not participate in the PHA decision, or any person, other than a PHA officer or employee, designated by the PHA.

(2) The applicant or Certificate holder, at its own expense, may be represented by a lawyer or other representative.

(3) The PHA shall present the factual or other basis for its decision. The applicant or Certificate holder may also present its position. Subject to the direction of the hearing officer, the applicant or Certificate holder and the PHA may offer and examine evidence and question any witnesses.

(4) The hearing officer shall issue a written decision, stating briefly the factual and other basis for the decision, a copy of which shall be furnished promptly to the applicant or Certificate holder. The decision on any issue of fact shall be based solely on evidence presented at the hearing.

Authority: Sec. 8, U.S. Housing Act of 1937 (42 U.S.C. 1437f); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 25, 1982.

Philip Abras,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-20162 Filed 7-23-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Public Comment and Opportunity for Public Hearing on Modified Portions of the Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: notice of receipt of permanent program modifications: public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed amendments to the Utah Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which were submitted to OSM by Utah for the Director's approval.

This notice sets forth the times and locations that the Utah program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public must be received by 4:30 p.m. on August 20, 1982, to be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for August 16, 1982. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by August 6, 1982. If no person has contacted Mr. Hagen by this date to express an interest to participate in this hearing, the hearing will be cancelled. A notice announcing any cancellation will be published in the Federal Register.

ADDRESSES: The public hearing will be held between 1 p.m. and 5 p.m. at the Conference Room, Room No. 4108, 4241 State Office Building, Salt Lake City, Utah. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, New Mexico Field Office, 219 Central Avenue, N.W., Albuquerque, New Mexico, 87102.

Copies of the Utah program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Office above and the OSM Headquarters office and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Utah Division of Oil, Gas and Mining, Department of Natural Resources, 4241 State Office Building, Salt Lake City, Utah, Telephone: (801) 533–5771.

Office of Surface Mining, Room 5315, 1100 "L" Street NW., Washington, D.C., Telephone (202) 343–5351.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the State of Utah submitted to the Department of the Interior its proposed permanent regulatory program under SMCRA.

On October 3, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program. Notice of that decision and the Secretary's findings were published in the **Federal Register** on October 24, 1980 (45 FR 70481–70510). The State of Utah resubmitted its program for approval by the Secretary on December 23, 1980. After providing an opportunity for public comment on the program and completing a thorough review of the resubmission, the Secretary of the Interior determined that the Utah program, including the resubmission, did, with minor exceptions, meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary of the Interior conditionally approved the Utah program subject to the correction of twelve minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the January 21, 1981 **Federal Register** (46 FR 5899–5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899–5915).

In accepting the Secretary's conditional approval, Utah agreed to correct deficiencies "a"—"e" by December 1, 1981, and deficiencies "f"—"l" by July 1, 1981.

Subsequently, Utah requested an extension of the deadline to meet conditions "f," "g," and "h" until January 1, 1982. On October 30, 1981 (46 FR 54070), OSM announced the Secretary's decision to approve the extension.

Upon the State's request the deadline for the State to meet condition "f" was further extended to September 1, 1982, and the deadline for the State to meet condition "h" to January 1, 1983, (47 FR 234155–234156, May 27, 1982).

On June 29, 1981, Utah submitted statutory and regulatory revisions intended to satisfy conditions "a"–"e," "g," and "i"–"l."

On June 22, 1982, (47 FR 26827–26831) the Assistant Secretary for energy and Minerals announced his decision to remove conditions a—e, j, and l and to grant an extension of the time by which Utah must satisfy conditions g, i, and k. In the June 22, 1982 notice, the Assistant Secretary also announced his decision to impose a new condition "m" requiring the State to correct a deficiency in the State program which had recently come to OSM's attention.

This notice addresses amendments submitted by the State which do not relate to any of the conditions.

Specifically, Utah is seeking the Director's approval of the following proposed amendments to its approved regulatory program:

1. *Modification of civil penalty regulations.* The State is seeking the Director's approval of modifications of its civil penalty rules at UMC/SMC 845 which were adopted by the Utah Division of Oil, Gas and Mining on April 30 and May 1, 1981, and of further modifications to these rules which were proposed by the Division on June 23, 1982, and are scheduled for adoption in August or September 1982. The full text of these adopted changes together with the June 23, 1982, proposed revisions is contained in the Utah administrative record under number UT–263. These documents are available for public review during regular business hours at the addresses listed above under "ADDRESSES". Also available for public review are copies of correspondence between the Utah Division of Oil, Gas and Mining and the Office of Surface Mining relevant to the proposed amendments to the State's civil penalty regulations. These documents are also included in the Utah Administrative Record under number UT–263.

2. *Alternative Standard for Measuring Revegetation Success.* Utah is also seeking the Director's approval to utilize the "range site" method as an alternative to the "reference area" method of measuring revegetation success set forth under 30 CFR 816.116 and 30 CFR 817.116.

Utah's proposal to utilize the range site method as an alternative method for measuring revegetation success was submitted to OSM on May 21, 1981. Additional supporting documentation was submitted to OSM by the Division of Oil, Gas and Mining on October 20, 1981, and February 5, 1982. These documents are contained in the Utah administrative record under number UT–264.

The Secretary seeks public comment on whether the proposed modifications to the Utah permanent program listed above satisfy the criteria for approval of State program amendments at 30 CFR 732.15. If the Secretary determines the proposed modifications meet the criteria, the amendments will be approved, and 30 CFR 944.10 modified accordingly.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Compliance With the Regulatory Flexibility Act

The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. Compliance With Executive Order No. 12291

On August 28, 1981, the Office of Management of Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this program amendment.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 20, 1982.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 82–20151 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 947

Surface Mining and Reclamation Operation Under a Federal Program for Washington

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of extension of public comment period and postponement of public hearing.

SUMMARY: On June 21, 1982 (47 FR 26794), OSM published the proposed Federal program for the State of Washington for public comment that

would regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in Washington. Since its publication OSM has found it necessary to extend the public comment period for the convenience of commenters who have indicated that additional time is needed to adequately review and comment on the proposed Federal program. In addition, for the same reason, it is necessary to postpone the public hearing.

DATES:

Written Comments: The comment period on the proposed Federal program will extend until 5:00 p.m. on September 20, 1982.

Public Hearing: The public hearing on the proposed Federal program has been changed from July 28, 1982, to September 13, 1982.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining, Wyoming State Office, Freden Bldg., 935 Pendell Blvd., Mills, Wyoming 82244, or mail to Administrative Record (R&I–21), Office of Surface Mining, Wyoming State Office, P.O. Box 1420, Mills, Wyoming 82644.

Public Hearing: State of Washington General Administration Building Conference Room, Capitol Campus, Olympia, Washington 98504 beginning at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT:

James M. Kress, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–5866.

SUPPLEMENTARY INFORMATION:

Public Commenting Procedures

Written Comments: Written comments should be specific, pertain only to issues proposed in this Federal program, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Mills, Wyoming, will not necessarily be considered or be included in the Administrative Record for the final Federal program.

Dated: July 19, 1982.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 82–20137 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W–4–FRL 2175–6]

State of Alabama; Water Improvement Commission; Underground Injection Control; Primary Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency (EPA) has received complete application from the State of Alabama Water Improvement Commission requesting approval of its Underground Water Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

This notice is required by the Safe Drinking Water Act as a part of the response to the States complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearing will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application from the State Water Improvement Commission to regulate all Class I, III, IV and V injection wells in Alabama.

DATES: Requests to present oral testimony should be filed by August 16, 1982. A public hearing has been scheduled for August 24, 1982 at 10:00 a.m. The public comment period closes September 1, 1982. Comments must be received by that date. Should EPA not receive sufficient requests to present oral testimony by August 16, 1982, the Agency reserves the right to cancel the public hearing and those persons who had expressed an interest in the public hearing will be notified.

ADDRESSES: Comments and requests to testify should be mailed to Curt F. Fehn, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia, 30365. Copies of the application and pertinent material are available from 9:00 a.m. to 4:00 p.m., Monday through Friday at:

Alabama Water Improvement Commission, Public Health Services Building, Montgomery, Alabama 36130, (205) 277–1701

Environmental Protection Agency, Region IV, Library, First Floor, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881–4216.

The hearing will be held in the Richard Beard Building Auditorium, 1445 Federal Drive, Montgomery, Alabama.

FOR FURTHER INFORMATION CONTACT:

Curtis F. Fehn, Groundwater Section, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 881–3866.

SUPPLEMENTARY INFORMATION: This application from the State of Alabama Water Improvement Commission is for the regulation of all Class I, III, IV and V injection wells in the State. The application includes a description of the State Underground Injection Control program, copies of all applicable rules and forms, a statement of legal authority and a memorandum of agreement between the Alabama Water Improvement Commission and the Region IV office of the Environmental Protection Agency.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: July 16, 1982.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 82–20096 Filed 7–23–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82–15; Notice 1]

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

Correction

In FR Doc. 82–19577 appearing on page 31712 in the issue of Thursday, July 22, 1982, first column, the second sentence under **"DATES:"** should read as follows:

"The proposed effective date is 30 days after publication of the final rule in the **Federal Register.**"

BILLING CODE 1505–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1102

[Ex Parte 290 (Sub-4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to request comments on the use of a productivity adjustment in determining the quarterly rail cost adjustment factor and proposals for measuring productivity and for implementing a productivity adjustment. The Commission's reconsideration in this mattter is being made in light of the D.C. Circuit's recent decision which anticipated that the Commission would eventually reconsider the productivity adjustment issue. These comments will be considered separately from the comments requested in the Commission's recent Advance Notice of Proposed Rulemaking in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 47 FR 18012 (April 27, 1982)

DATE: Comments are due on or before September 9, 1982.

ADDRESS: Send an original and, if possible, 15 copies of comments to: Room 5340, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Leslie J. Selzer, (202) 275–7627, or William T. Bono, (202) 275–7354

SUPPLEMENTARY INFORMATION: In an Advance Notice of Proposed Rulemaking published at 47 FR 18012 (April 27, 1982), the Commission reopened the Ex Parte No. 290 (Sub-No. 2) proceeding to request comments on a wider range of issues. The Commission discussed these issues in detail in a separate decision served April 27, 1982. In footnote 2 to that decision, the Commission stated that the scope of the reopening would exclude those issues on judicial review before the United States Court of Appeals for the District of Columbia Circuit in No. 81–1437, *Western Coal Traffic League* v. *United States*. This was intended to avoid interference with the court's review of the Commission's decision in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures*, 364 I.C.C. 841 (1981).

On May 4, 1982, the court issued its decsion in No. 81–1437, affirming the Commission's 1981 decision. The court concluded:

> We expect, however, that in accordance with its stated intentions, the Commission will continuously review the accuracy of its chosen index and will revise the index in an appropriate fashion, including consideration of measurable productivity gains, as the circumstances warrants. (Sheet 36)

On May 5, 1982, the Western Coal Traffic League filed a petition to broaden the reopened proceeding to include the productivity adjustment issue. The railroads filed a reply on May 25, 1982.

Inclusion of this issue in Ex Parte No. 290 (Sub-No. 2) at this time woud unduly delay the Commission's consideration of the issues discussed in the April 27, 1982, decision. Therefore, we deny the Western Coal Traffic League's petition to broaden the April 27, 1982, reopening to include the productivity adjustment issue. Comments directed to the April 27 notice and decision were due on July 9, 1982. See 47 FR 25035 (June 9, 1982).

The D.C. Circuit's recent decision, however, expressly anticipated that the Commission would consider the productivity adjustment issue. Accordingly, we are instituting this proceeding to request comments on the possible use of a productivity adjustment in determining the quarterly rail cost adjustment factor and proposals for measuring productivity and for implementing a productivity adjustment. These comments should be submitted, and will be considered, separately from the comments directed to the April 27, 1982, notice and decision in Ex Parte No. 290 (Sub-No. 2).

Comments directed to the productivity adjustment issues are due on or before September 9, 1982.

Finally, we will address the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, in the Notice of Proposed Rulemaking, should one result here.

List of Subjects in 49 CFR Part 1102

Railroads, Freight.

(49 U.S.C. 10321 and 10707a, and 5 U.S.C. 553 and 559)

Dated: July 14, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Andre dissented with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Andre, dissenting: The productivity issue should be joined with the issues in Ex Parte No. 290 (Sub-No. 2).

[FR Doc. 82–20056 Filed 7–23–82; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 47, No. 143
Monday, July 26, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gospel-Hump Advisory Committee; Meeting

The Gospel-Hump Advisory Committee will meet at 7 p.m., August 19, 1982, at the Nezperce National Forest Smokejumper Barracks conference room, Grangeville, Idaho. Purpose of this meeting will be to review the final draft of the Gospel-Hump Management Plan.

The meeting will be open to the public. Persons who wish to attend should notify Ed Laven, 319 East Main, Grangeville, Idaho 83530; telephone 208/983-1950. Written statements may be filed with the committee before or after the meeting.

Ed Laven,
Acting Forest Supervisor.
July 14, 1982.
[FR Doc. 82-20024 Filed 7-23-82; 8:45 am]
BILLING CODE 3410-11-M

Packers and Stockyards Administration

R. G. Warner, d.b.a. Rawhide Scottsdale, Arizona, et al.; Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., Name, and Location of Stockyard and Date of Posting

AZ-111 R. G. Warner, d.b.a. Rawhide, Scottsdale, Arizona; June 18, 1981

CA-174 Butte Livestock Sales, Chico, California; June 12, 1981

CA-175 Barstow Sales Yard, Barstow, California; July 1, 1981

TN-178 Shelbyville Livestock Market, Shelbyville, Tennessee; October 27, 1981

TN-179 Lewisburg Feeder Pig Market, Lewisburg, Tennessee; January 18, 1982

TX-322 East Texas Livestock of Crockett, Inc., Crockett, Texas; July 3, 1981

TX-323 Jay Rippy, Inc., d.b.a. Cattlemens Livestock Commission Co., Dalhart, Texas; August 12, 1981

Done at Washington, D.C., this 20th day of July 1982.

Jack W. Brinckmeyer,
Chief, Financial Protection Branch, Livestock Marketing Division.
[FR Doc. 82-20080 Filed 7-23-82; 8:45 am]
BILLING CODE 3410-02-M

Vermilion Livestock Co., Inc. Abbeville, Louisiana; Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard and Date of Posting

LA-100 Vermilion Livestock Co., Inc., Abbeville, Louisiana; March 3, 1959

Notice or other public procedure has not proceeded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a after publication in the **Federal Register**. This notice shall become effective July 26, 1982.

(42 Stat. 159, as amended and supplemented: 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 20th day of July, 1982.

Jack W. Brinckmeyer, Chief,
Financial Protection Branch, Livestock Marketing Division.
[FR Doc. 82-20079 Filed 7-23-82; 8:45 am]
BILLING CODE 3410-02-M

Wright County Livestock Auction, Inc., Mountain Grove, Missouri, et al.; Proposed Posting of Stockyards

The Chief, Financial Protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

MO-255 Wright County Livestock Auction, Inc., Mountain Grove, Missouri

OH-147 Elkton Livestock Auction, Inc., Elkton, Ohio

Notice is hereby given, therefore, that the said Chief, pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), proposes to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Chief, Financial Protection Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, by August 10, 1982.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Chief of the Financial Protection Branch during normal business hours.

Done at Washington, D.C., this 20th day of July 1982.

Jack W. Brinckmeyer,
Chief, Financial Protection Branch, Livestock Marketing Division.
[FR Doc. 82-20078 Filed 7-23-82; 8:45 am]
BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

[Docket 40771]

American World Airways Fitness Investigation; Prehearing Conference

Notice is hereby given that a hearing in the above-entitled proceeding is assigned to be held on August 12, 1982, at 9:30 a.m. (local time), Room 1003A, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., July 21, 1982.

Elias C.. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-20153 Filed 7-23-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40747; Order 82-7-67]

Emerald Air, Inc., d.b.a. Emerald Airlines; Application for a Certificate To Engage in Scheduled Interstate and Overseas Air Transportation

Issued under delegated authority: July 19, 1982.

Order Instituting Fitness Investigation

On June 3, 1982, Emerald Air, Inc., d.b.a. Emerald Airlines, a Texas-based intrastate carrier, filed an application in Docket 40747 under the expedited licensing procedures of Subpart Q (14 CFR 302.1701 *et seq.*) for the issuance of a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property, and mail. Emerald requested that its application be processed by non-hearing procedures. In support of its application, Emerald filed data under Subpart Q and Part 204 of our Procedural Regulations.

Fitness Investigation

By this order, we are instituting an investigation on the issue of the fitness of Emerald Airlines to receive certificate authority under section 401(d)(1) of the Act, as well as its fitness to hold authority under the unused authority provisions of section 401(d)(5) of the Act.[1] In view of our policy to encourage entry into new markets by air carriers so as to assure a more effective, competitive airline industry, we emphasize the desirability of expedition and simplicity and direct that this matter be heard before an Administrative Law Judge of the Board as soon as possible.

Interested persons who wish to request additional evidence should file their responses within ten days of the service date of this order.[2] In addition, petitions for leave to intervene should be filed within ten days of the service date of this order. We believe that this will expedite the fitness proceeding, and we urge the Administrative Law Judge to take such other measures in the interest of expedition that he considers appropriate.

Public Convenience and Necessity

We have concluded that after December 31, 1981, no finding of consistency with the public convenience and necessity is required for the award of certificate authority for the interstate and overseas air transportation of persons, property and mail under sections 401(d)(1), (2), and (3) of the Act, with the exception of intra-Alaska and intra-Hawaii all-cargo service for which we must make such findings. See Order 81-12-146, December 23, 1981, for a more complete discussion. If Emerald Airlines is determined to be fit, willing and able to engage in air transportation, it will receive a certificate authorizing it to engage in the interstate and overseas air transportation of persons, property and mail between all points in the United States, its territories and possessions, except intra-Alaska and intra-Hawaii all-cargo service.

Accordingly, under the authority delegated by the Board in its Regulations, § 385.13(v):[3]

1. We institute the Emerald Air Fitness Investigation, Docket 40747, and set it for hearing before an Administrative Law Judge of the Board, on an expedited basis, at a time and place to be determined later, to determine the issues of (1) whether Emerald is fit, willing and able to perform scheduled interstate and overseas air transportation and comply with the Act and our rules, regulations and requirements; (2) to hold unsued authority pursuant to section 401(d)(5) of the Act; and (3) to consider any issues under sections 408 and 409 of the Act which may exist;[4]

2. The applicant's request to waive the 28-day answer period is denied;

3. The applicant's request that we process its application by non-hearing procedures is denied;

4. To the extent not granted herein, we deny the applicant's request for expedited treatment;

5. We direct all interested persons to file requests for additional evidence and requests to intervene no later than July 30, 1981; and

6. We will serve a copy of this order upon all persons listed in the Appendix.

We will publish a summary of this order in the **Federal Register.**

Persons entitled to petition the Board for review of this order under its Regulations, 14 CFR 385.50, may file their petitions within ten days after the date of service of this order.

This shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless before that date a petition for review is filed or the Board determines to review this order on its own motion.

Phyllis T. Kaylor,

Secretary.

Service List Emerald Air, Inc., d.b.a. Emerald Airlines

Mr. Dean Rush, Chairman of the Board and President, Emerald Air, Inc., 1106 Clayton Lane, Suite 300E, Austin, Texas 78723;
Federal Aviation Administration, Director of Airport Services, 800 Independence Avenue, Washington, D.C. 20591;
Texas Aeronautics, Commission, Capital Station, P.O. Box 12607, Austin, Texas 78711;
Mayor of McAllen, McAllen, Texas;
North Texas Commission, P.O. Box 61246, DFW Airport, Dallas, Texas 78711;
Airport Manager, Miller International Airport, McAllen, Texas;
Airport Manager, Will Rogers Field, Oklahoma City, Oklahoma;
Benjamin P. Lamberton, Stephen L. Gerband, Hewes, Morella & Gelband, P.C., 1010 Wisconsin Avenue, N.W., Suite 640, Washington, D.C. 20007;
Mayor of Dallas, Dallas, Texas 75201;
Mayor of Fort Worth, Fort Worth, Texas 76102;
Mayor of Houston, Houston, Texas 77251;
Mayor of Oklahoma City, Oklahoma City, Oklahoma;
William Brackley, Director of Aviation, Department of Aviation, Houston International Airport, P.O. Box 60106, Houston, Texas 77205.

[FR Doc. 82-20152 Filed 7-23-82; 8:45 am]

BILLING CODE 6320-01-M

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[1] Order 82-2-21 granted Emerald unused authority pursuant to section 401(d)(5), for a number of intra-Texas markets. In this investigation, we will examine the fitness of Emerald to continue holding unused authority pursuant to the continuing fitness requirement of section 401(r) of the Act.

[2] Emerald's exhibits do not provide all of the information required by Part 204, particularly the balance sheet of relevant corporations required by § 204.5(f) and the balance sheet for its first normal year of operations required by § 204.5(t). We have contacted the applicant and it has agreed to file the necessary additional information.

[3] See OR-199, effective July 6, 1982.

[4] The term hearing is used in its general sense to connote the formal proceeding process and does not in any way affect the discretion of the Administrative Law Judge to dispense with oral evidentiary phase of this process as warranted by the circumstances.

[Docket 40747]

Emerald Air Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated at Washington, D.C., July 21, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-20155 Filed 7-23-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40524]

Independent Air Inc. Fitness Investigation; Prehearing Conference

Notice is hereby given that a hearing in the above-entitled proceeding is assigned to be held on August 10, 1982, at 9:30 a.m. (local time), Room 1003A, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., July 21, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82-20156 Filed 7-23-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40580]

Samoa, Inc., d.b.a. Samoa Airlines, Inc., Fitness Investigation; Postponement of Hearing

On June 20, 1982, the applicant requested that the hearing scheduled to be held on July 21, 1982, be postponed due to unavailability of its witnesses. Accordingly, notice is hereby given that the hearing in the above-entitled matter scheduled to be held on July 21, 1982 (47 FR 30537, dated July 14, 1982), is postponed until August 25, 1982, at 10:00 a.m., Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., July 20, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-20157 Filed 7-23-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40462]

Sea Coast Airways Fitness Investigation; Cancellation of Prehearing Conference and Hearing

Notice is hereby given that the prehearing conference and hearing in this case assigned to be held on July 27, 1982 (47 FR 31030, July 16, 1982) are hereby cancelled.

Dated at Washington, D.C., July 21, 1982.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 82-20154 Filed 7-23-82; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Indiana Advisory Committee; Agenda and 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 meeting of the Indiana Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 10:00 p.m., on August 19, 1982, at the Sheraton Hotel Gary, 465 Broadway Street, in the Erie Ontario Room, Gary, Indiana 46402. The purpose of this meeting it to orient the new members of the Committee, report on the recent Regional Advisory Committee meeting, review data on the housing discrimination study in Northwest Indiana and discuss program plans for future projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Joseph Russell, Afro-American Studies, Memorial East, M37, Bloomington, Indiana, 47402, (812) 337-3874 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 20, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-20140 Filed 7-23-82; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and 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 meeting of the Michigan Advisory Committee to the Commission will convene at 5:30 pm and will end at 8:30 pm, on August 17, 1982, at the City Hall, City Council Chambers, 1315 South Washington, Saginaw, Michigan, 48601. The purpose of this meeting is to discuss minorities' access to commercial loans, affirmative action in city government, tuition tax credits and equal educational opportunity in the State of Michigan.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, M. Howard Rienstra, 1225 Thomas South East, Grand Rapids, Michigan, 49506, (616) 949-4000 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 21, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-20141 Filed 7-23-82; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and 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 meeting of the Minnesota Advisory Committee to the Commission will convene at 7:00p and will end at 9:00p, on August 20, 1982, at the Holiday Inn Downtown, 1313 Nicollet Mall, Minneapolis, Minnesota 55403. The purpose of this meeting is to orient the new members of the Committee, discuss follow up activities to the letter addressed to Mark Shields, Executive Director of Peace Officers' Standards Training Board in St. Paul and Commissioner McLure will address civil rights issues of the American Indian in Minnesota.

Persons desiring additional information or planning a presentation to the Committee, should contact the Vice Chair, Ruth Myers, 1006 East Second Street, Apartment Number 1, Duluth, Minnesota 55805, (218) 726-7234 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 20, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-20142 Filed 7-23-82; 8:45 am]

BILLING CODE 6335-01-M

Nebraska 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 meeting of the Nebraska Advisory Committee to the Commission will convene at 10:30a and will end at 1:30p, on September 8, 1982, at the Federal

Building, 100 Centennial Mall North, in Room 497, Lincoln, Nebraska. The purpose of this meeting is to discuss plans for follow up activities to the Omaha police report and program planning for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contract the Chairperson, Shirley M. Marsh, 2701 South 34th Street, Lincoln, Nebraska, 68509, (402) 471–2734 or the Central States Regional Office, Old Federal Office Building, 911 Walnut Street, Room 3103, Kansas City, Missouri, 64106, (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 20, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–20143 Filed 7–23–82; 8:45 am]

BILLING CODE 6335–01–M

Vermont Advisory Committee; Agenda and 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 meeting of the Vermont Advisory Committee to the Commission will convene at 7:00a and will end at 9:30 p.m., on August 31, 1982, at the University of Vermont, Williams Science Hall, in Room 511, Burlington, Vermont. The purpose of this meeting is to give a demonstration of the stereotyping and prejudice-in-education kit and discuss the report on the study of Franco-Americans in Vermont.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Philip H. Hoff, 192 College Street, Hoff, Wilson and Powell, P.C., Burlington, Vermont, 05401, (802) 658–4300 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 21, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–20144 Filed 7–23–82; 8:45 am]

BILLING CODE 6335–01–M

Vermont Advisory Committee; Agenda and 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 press conference to be conducted by the Vermont Advisory Committee to the Commission will convene at 10:00 am and will end at 12:00 pm, on September 1, 1982, at the Pavillion Building Auditorium, State Street, Montpelier, Vermont 05602. At this press conference the Committee will announce and demonstrate its educational program on prejudice and stereotyping.

Persons desiring additional information should contact the Chairperson, Philip H. Hoff, 192 College Street, Hoff, Wilson and Powell, P.C., Burlington, Vermont 05401, (802) 658–4300 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 21, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–20145 Filed 7–23–82; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee; Agenda and 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 meeting of the Wisconsin Advisory Committee to the Commission will convene at 6:30p and will end at 9:00p, on August 13, 1982, at the University of Wisconsin Milwaukee, Enderis Hall, Milwaukee, Wisconsin. The purpose of this meeting is to discuss drafts of the Committee's projects on business incentives and vocational education.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Herbert M. Hill, 2127 Van Hise Avenue, Madison, Wisconsin, 53705, (608) 263–1642 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois, 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 20, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–20146 Filed 7–23–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before August 16, 1982.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number 82–00244. Applicant: The University of Texas at Dallas, Biology Program, Box 688, Richardson, TX 75080. Article: Electron Microscope, Model EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for conducting research on a wide variety of specimens of biological origin, for the purpose of helping to elucidate molecular-biological mechanisms which are the basis for all life processes. The specimens will include nucleoprotein complexes involved in genetic replication and expression; DNAs and RNAs, either naturally occurring or reconstructed; viruses; cellular organelles or other structures (e.g., higher-order structures containing chromatin) isolated from living cells; and thin sections of whole cells, chemically labeled to identify one or more components of interest. The primary objective is to determine how the physical structures of biological constituents are related to their functions. The articles will also be used to determine the organization of various genetic elements, i.e., for the physical mapping of genes, genetic deletions, et cetera. The article may be used occasionally in organized courses, chiefly for demonstrations, e.g., in BIO

6332, "Electron Microscopy", in which the theory and practice of electron microscopy are taught annually to classes consisting of about six predoctoral or masters students in the biology program. Application received by Commissioner of Customs: June 17, 1982.

Docket Number 82–00245. Applicant: The Johns Hopkins Hospital, 600 North Wolfe Street, Baltimore, MD 21205. Article: Electron Microscope, Model JEM–100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used by different investigators to examine various types of biological specimens from experimental animals including: central nervous system, heart, viruses, kidney, bone marrow and spleen cells grown *in vitro*, human tumors, and autopsy tissues. Most of the specimens will be examined to observe differences in ultrastructure between control and experimental groups following various surgical manipulations and/or exposure to drugs or toxins. Application received by Commissioner of Customs: June 17, 1982.

Docket Number 82–00246. Applicant: The University of Toledo, 2801 W. Bancroft Street, Toledo, Ohio 43606. Article: Electron Monochromator and Analyzer. Manufacturer: Prof. W. McConkey, Dept. of Physics, University of Windsor, Canada. Intended use of article: The article is intended to be used for the study of doubly excited states of atoms produced in collisions with electrons. The highly monochromatic electron beam from the article will be crossed with an alkaline earth atomic beam (Be, Mg or ca) and the scattered electrons will be analyzed after the collision. The objective of the experiment is to determine the electron excitation differential cross sections for the doubly excited states of alkaline earths. Application received by Commissioner of Customs: June 17, 1982.

Docket Number 82–00254. Applicant: Morehouse School of Medicine, 830 Westview Drive, S.W., Atlanta, Georgia 30314. Article: LKB 14800–3 Cryokit. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in a research effort to elucidate the mechanism whereby soft mammalian tissues support the precipitation of calcium salts during pathological calcification. Through histo- and cytochemical localization of ionic calcium and crystal nuclei of calcium salts, it is expected to provide description of where calcium is localized and how it accumulates at the ultrastructural level. Experiments will be conducted by exposing organ culture explants of various normal soft tissues, including skin, aorta and articular cartilage, to calcergens which elicit the accumulation and ultimate deposition of insoluble calcium salts. Biochemical parameters are to be assayed and ultrastructural histochemistry is to be performed in order to describe the changes occurring in the tissues as they are transformed from an uncalcified state to a calcifiable intermediate and eventually to a calcified condition as a function of time *in vitro*. Application received by Commissioner of Customs: June 17, 1982.

Docket Number 82–00255. Applicant: Cornell University Medical College, 1300 York Avenue, New York, NY 10021. Article: Electron Microscope, Model JEM–100CX SEG with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for investigations of biological materials which include tissue culture cells, tissue samples, purified proteins (myosin) and purified RNA and/or DNA samples. All samples are vulnerable, in varying degrees, to electron beam damage. The objectives of these studies are to correlate biochemical and ultrastructural data to elucidate structural basis of physiological processes such as: transcription, gene-splicing, contraction, motility, secretion, and protein synthesis. In addition, the article will be used in the course "Modern Methods in Electron Microscopy" to train students in advanced techniques of electron microscopy, potentially applicable to their current or future research needs. Application received by Commissioner of Customs: June 17, 1982.

Docket Number 82–00256. Applicant: Arizona State University, Tempe, Arizona 85287. Article: BAF 400D Freeze Etching System & Accessories. Manufacturer: Balzers Aktiengesellschaft, Liechtenstein. Intended use of article: The article is intended to be used to fracture biological tissue samples with a knife and to make replicas of the frozen surfaces so exposed using atomized platinum and carbon. The research to be conducted has the following aims:

1. To study intermediate stages of membrane fusion during exocytosis neutrophils.

2. To visualize microfilament networks in neutrophils using quick-freezing, deep etching, and freeze fracture.

3. To identify and characterize the types of junctions between mammalian oocytes and the surrounding follicle cells, junctions that play a role in passage of hormones or cyclic AMP between these cells.

4. To investigate structural relationships between plasma membrane and cell envelope specializations in bacteria during budding.

5. To demonstrate the organization of chitin synthesis during cell wall formation in growing fungal hyphae.

The article will also be used to train both faculty members and graduate students in freeze etch techniques. Such training will be in the form of mini-seminars as well as in the course "Transmission Electron Microscopy." Application received by Commission of Customs: June 17, 1982.

Docket Number 82–00257. Applicant: Baylor College of Medicine, 1200 Moursund Avenue, Houston, TX 77030. Article: Nuclear Magnetic Resonance Imager. Manufacturer: Bruker Spectro-Spin, West Germany. Intended use of article: The article is intended to be used for studies of tissue samples, small animals, and human subjects. The tissues will be examined for the purpose of obtaining an image based on their chemical make-up as detected by nuclear magnetic resonance. Samples will be imaged, and the results displayed on two dimensional formats including TV and film. In every event, a sample will be exposed to magnetic and radio frequency (rf) fields, an emitted signal detected, and a mathematical reconstruction of specific chemicals in the object generated. The objectives of these investigations are to perfect the ability to make in vivo images and measurements, and to understand their information content in terms of medical diagnosis, management and prognosis. An attempt will also be made to uncover the chemical basis for the NMR signals from the biologic samples and possible significant biochemical events in the images. In addition, the article will be used for medical inservice training of medical students, medical residents, practicing physicians, imaging technologists, basic scientists and postdoctoral fellows. Application received by Commissioner of Customs: June 17, 1982.

Docket Number 82–00259. Applicant: The Medical College of Wisconsin, Inc., 8701 Watertown Plank Road, Milwaukee, Wisconsin 53226. Article: Electron Microscope, Model JEM–100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to perform medium and high resolution ultrastructural studies in a variety of cell biological areas, being performed by a

number of different investigators. The phenomena to be studied will include neuromuscular junction development in rat skeletal muscles, organization and connections of primate visual system, functionally related enzymatic changes in the central nervous system, and microsomal electron transport in liver and heart. The article will also be used in training graduate students in the latest "State of the Art" ultrastructural techniques for utilization in their research studies required for masters and doctoral thesis. Application received by Commissioner of Customs: June 21, 1982.

Docket Number 82-00260. Applicant: Georgia Institute of Technology Engineering Experiment Station, 225 North Ave., NW, Atlanta, GA 30322. Article: Extended Interaction Oscillator. Manufacturer: Varian/Canada, Canada. Intended use of article: The article is intended to be used in a narrow-pulse (2-4 nsec), high-resolution, airborne radar being developed for the U.S. Navy. Its primary function will be target imaging. Application received by Commissioner of Customs: June 21, 1982.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-20139 Filed 7-23-82; 8:45 am]

BILLING CODE 3510-25-M

Final Affirmative Countervailing Duty Determination; Prestressed Concrete Steel Wire Strand From Spain; Correction

AGENCY: International Trade Administration, Commerce.

ACTION: Correction notice.

The July 1, 1982 **Federal Register** notice entitled "Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from Spain" (47 FR 28723-27) should be amended as set forth below:

(1) Delete the last sentence of the paragraph under the heading "**SUMMARY**" (page 28723) and substitute the following: "The ITC will make its determination whether these imports are materially injuring or threatening to materially injure a U.S. industry, before the latter of 120 days after the Department made its preliminary affirmative determination, or 45 days after the Department made its final affirmative determination."

(2) Under the paragraph heading "ITC Notification" (page 28726), delete the sentence that reads as follows: "The ITC will determine on or before August 16, 1982, whether these imports are materially injuring or threatening to materially injure a U.S. industry."

Lawrence Brady,

Assistant Secretary for Trade Administration.

July 19, 1982.

[FR Doc. 82-20138 Filed 7-23-82; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

George Kudravetz,

Program Manager, Office of Government Inventions and Patents, National Technical Information Service, Department of Commerce.

SN 6-132,597 (Patent 4,333,757), Mushroom-Growing Medium, Department of Agriculture.

SN 6-115,651 (Patent 4,335,432), Optimal Vehicle Following Control System, Dept. of Transportation.

SN 6-193,877 (Patent 4,331,881), Field Control for Wind-Driven Generators, Department of Agriculture.

SN 6-174,239 (Patent 4,331,054), Electric Gel Slicer, Dept. of Health and Human Services.

SN 6-190,064 (Patent 4,331,648), N-Acetyl-Cysteine Protects Against Cardiac Damage From Subsequently Administered Cardio-Toxic Anthra-Cycline in Cancer Therapy, Dept. of Health and Human Services.

SN 6-195,539 (Patent 4,331,975), Instrumentation for Surviving Underground Cavities, Department of the Interior.

SN 6-186,381 (Patent 4,331,021), Contrast Resolution Tissue Equivalent Ultrasound Test Object, Dept. of Health & Human Services.

SN 6-195,188 (Patent 4,332,244), Mask For The Safe Delivery of Inhalation Gases to Small Laboratory Animals. Dept. of Health & Human Services.

SN 6-370,018, Preparation of Acylurea Compounds, Department of Agriculture.

SN 6-356,865, Process and Compositions for Preserving Fresh Hides and Skins, Department of Agriculture.

[FR Doc. 82-20026 Filed 7-23-82; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Department of the Army

Department of the Army Performance Review Boards

AGENCY: Army Department, DoD.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of additional members of the U.S. Army Corps of Engineers Performance Review Board for the Department of the Army for 1982.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310, (202) 697-2204.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) OF Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review and evaluate the initial appraisal of senior executive's performance by the supervisor and make recommendations to the appointing authority or rating official relative to the performance of the senior executives. Each board's review and recommendation will include only those senior executive's appraisals from their respective commands or activities. A consolidated board has been established for those commands who do not have enough senior executives to warrant the establishment of separate boards. Publication of this notice corrects the notice published in 47 CFR 120, dated June 22, 1982, page 26885, to account for additions and deletions to the membership of the board previously published.

The additional members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General E. R. Heiberg, III, Deputy Commander.

2. Brigadier General Mark J. Sisinyak, Commander, Missouri River Division.

3. Brigadier General George K. Withers, Jr., Commander Europe Division.

4. Brigadier General Scott B. Smith, Commander, North Central Division.

5. Mr. Fred H. Bailey, III Chief, Planning Division, Lower Mississippi Valley Division.

6. Mr. Lester Edelman, Chief Counsel, Office, Chief of Engineers.

7. Mr. Achiel E. Wanket, Chief, Engineering Division, South Pacific Division.

Carol D. Smith,

Chief, Senior Executive Service Office.

[FR Doc. 82-20055 Filed 7-23-82; 8:45]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 9:00 AM to 5:00 PM on 19 and 20 August 1982 in Room 1E801, The Pentagon, Washington, D.C. Meeting sessions will be open to the public.

The purpose of the meeting is to review the validation of the Armed Services Vocational Aptitude Battery (ASVAB) as well as the development of a new reference population for use in interpreting ASVAB scores. The agenda for the next Committee meeting, scheduled for November 1982, in San Diego, California, will also be discussed.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. W. S. Sellman, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), Room 2B269, The Pentagon, Washington, D.C. 20301, telephone (202) 695-5525 no later than 15 August 1982.

M. S. Healy,

OSD Federal Register Liaison Office, Department of Defense.

July 20, 1982.

[FR Doc. 82-20065 Filed 7-23-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Advisory Committee has been scheduled as follows:

Wednesday & Thursday, 29-30 September 1982, The Pentagon, Washington, D.C. The entire meeting, commencing at 0900 hours each day is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

July 20, 1982.

[FR Doc. 82-20064 filed 7-23-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6473-000]

Tumalo Irrigation District; Application for Preliminary Permit

July 22, 1982.

Take notice that Tumalo Irrigation District (Applicant) filed on June 28, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6473 to be known as the Tumalo Creek Hydroelectric Project located on the Tumalo Creek, in Deschutes County, near Bend, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ms. Janet L. Boettcher, District Manager, Tumalo Irrigation District, 64697 Cook Avenue, Bend, Oregon 97701, with copies to: Mr. Grant Tanner, Lindsay, Hart, Neil & Wagner, Suite 700, Columbia Square, 111 S.W. Columbia, Portland, Oregon 97201, and CH2M Hill, Attention: Peter D. Binney, 200 S.W. Market Street, 12th Floor, Portland, Oregon 97201.

Project Description—The project, to be located at the Applicant's existing Columbia Southern Canal diversion structure, would consist of: (1) The existing 6-foot-high by 40-foot-long diversion structure; (2) a 24,000-foot-long, 72-inch diameter penstock; (3) a powerhouse with a proposed installed capacity of 9.3 MW operating under a head of 840 feet; and (4) a 2,500-foot-long, 12.5-kV transmission line to connect to an existing Mid States Electric Co-op. transmission line.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No foundation explorations or new roads would be required to conduct the studies.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before November 1, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must

also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20099 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6456-000]

Village of Green Island; Notice of Application for Preliminary Permit

July 22, 1982.

Take notice that the Village of Green Island (Applicant) filed on June 23, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6456 to be known as the Green Island Project located on the Hudson River in the City of Troy, Rensselaer County, New York. The application is of file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Philip J. Movish, 500 South Salina Street, Syracuse, New York 13202.

Project Description—The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers Troy Dam and would consist of: (1) A new gated intake structure; (2) a new powerhouse containing two generating units having a total rated capacity of 10,600-Kw; (3) a new tailrace; (4) a new switchyard; (5) a new 0.4-mile-long 34.5-kV transmission line; and (6) appurtenant facilities. Applicant estimates that the average annual energy output would be 38,794,000 kWh. Project energy would be utilized within Applicant's municipal electric system or would be sold.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform technical and economic feasibilty studies, investigations, and the work involved to prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $75,000.

Competing Applications—This application was filed as a competing application to Long Lake Energy Corporation's application for Project No. 5746 filed on December 11, 1981. Public notice of the filing of the initial application, which has already been given, established the due for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," "COMPETING APPLICATIONS" or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20100 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

Issued: July 19, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MISSISSIPPI OIL & GAS BOARD									
-FLORIDA GAS EXPLORATION COMPANY			RECEIVED:	06/30/82		JA: MS			
8240865	41-82-467	2309120146	107-DP			FANNIE B CARLISLE 4-2 #2	EAST MORGANTOWN FIELD	540.0	TRANSCONTINENTAL
-GETTY OIL COMPANY			RECEIVED:	06/30/82		JA: MS			
8240864	42-82-119	2314720113	103			MORRIS 36-10 #1	DEXTER	516.0	SOUTHERN NATURAL
-GULF OIL CORPORATION			RECEIVED:	06/30/82		JA: MS			
8240867	36-82-8	2306120364	103			C O ARMSTRONG #5	EAST HEIDELBERG	0.0	UNITED GAS PIPE L
8240868	35-82-11	2307320241	103			C V COOPER #13	BAXTERVILLE	0.0	UNITED GAS PIPE L
8240863	12-82-8	2306120328	103			COTTON VALLEY UNIT 5-5-2	WEST HEIDELBERG	0.0	UNITED GAS PIPE L
8240866	37-82-8	2306120338	103			J E KING UNIT #4	EAST HEIDELBERG	18.0	UNITED GAS PIPE L
8240869	33-82-11	2307320242	103			W J HOWARD #11-A	BAXTERVILLE	300.0	UNITED GAS PIPE L
8240870	31-82-11	2307300066	103			W J HOWARD UNIT #3	BAXTERVILLE	0.0	UNITED GAS PIPE L
-HOWARD & NASON			RECEIVED:	06/30/82		JA: MS			
8240872	106-81-351	2309520106	108			ROME DABBS #1	CORINNE	20.5	SOUTHERN NATURAL
-SPOONER PETROLEUM COMPANY			RECEIVED:	06/30/82		JA: MS			
8240871	30-82-434	2307720052	107-DP			CROWN ZELLERBACH #1	MONTICELLO	1000.0	SOUTHERN NATURAL
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION									
-BANKS BROTHERS ENERGY CORP			RECEIVED:	06/28/82		JA: NY			
8240754	3131	3101314824	107-TF			RICHTER #1 #3170	LAKESHORE	0.0	NATIONAL FUEL GAS
8240756	3133	3101314857	107-TF			RICHTER 2	LAKE SHORE	12.0	NATIONAL FUEL GAS
-BEREA OIL AND GAS CORPORATION			RECEIVED:	06/28/82		JA: NY			
8240759	2567	3101316066	107-TF			LESTER DAMON #1	GERRY	0.1	COLUMBIA GAS TRAN
8240739	2701	3101316869	107-TF			M BURNSIDE UNIT #2	GERRY	14.4	COLUMBIA GAS TRAN
8240765	2631	3101316219	107-TF			N Y S REF AREA #10 - WELL #10	GERRY	30.0	COLUMBIA GAS TRAN
8240764	2568	3101316067	107-TF			V BARMORE UNIT #1	GERRY	0.2	COLUMBIA GAS TRAN
8240763	2570	3101315950	107-TF			W G TOMPSETT #1	GERRY	25.0	COLUMBIA GAS TRAN
8240762	2571	3101316051	107-TF			W G TOMPSETT #2	GERRY	25.0	COLUMBIA GAS TRAN
-BLOSSOM GAS CO			RECEIVED:	06/28/82		JA: NY			
8240745	2851	3101314403	107-TF			WESTFIELD TIMBER PRODUCTS 3134	LAKE SHORE	19.1	NATIONAL FUEL GAS
-BOUNTY OIL & GAS INC			RECEIVED:	06/28/82		JA: NY			
8240751	1449	3101315263	107-TF			BABYAK #2	WILDCAT	30.0	NATIONAL FUEL GAS
8240748	1452	3101315258	107-TF			DAHLGREN #1	BUSTI	50.0	NATIONAL FUEL GAS
8240740	1457	3101315463	107-TF			E CEDERQUIST #1	WILDCAT	60.0	NATIONAL FUEL GAS
8240743	1458	3101315599	107-TF			E LEVIN UNIT #1	WILDCAT	50.0	NATIONAL FUEL GAS
8240752	1448	3101315260	107-TF			GAGE #1	WILDCAT	60.0	NATIONAL FUEL GAS
8240750	1451	3101315261	107-TF			GARFIELD UNIT #1	BUSTI	55.0	NATIONAL FUEL GAS
8240744	1459	3101315506	107-TF			JONES UNIT #1	BUSTI	50.0	NATIONAL FUEL GAS
8240747	1456	3101314588	107-TF			MAPLEHURST COUNTRY CLUB INC #1	BUSTI	20.0	NATIONAL FUEL GAS
8240741	1454	3101315509	107-TF			NELSON JOINT OPERATING AREA #2	BUSTI	30.0	NATIONAL FUEL GAS
8240749	1450	3101315259	107-TF			R NELSON #1	BUSTI	15.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CHAUTAUQUA ENERGY INC				RECEIVED: 06/28/82		JA: NY			
8240735	2887	3101316982		107-TF		STOUT #1	WESTFIELD	12.0	COLUMBIA GAS TRAN
-DORAN & ASSOCIATES INC				RECEIVED: 06/28/82		JA: NY			
8240746	2902	3101314492		107-TF		BERNICE SWARTOUT #1 KA-21	LAKE SHORE	30.0	NATIONAL FUEL GAS
-ECLIPSE MANAGEMENT ASSOCIATES INC				RECEIVED: 06/28/82		JA: NY			
8240761	1781	3101313753		108		BIELAT #1021	LAKE SHORE	8.4	NATIONAL FUEL GAS
8240757	1778	3101314272		108		KUHRT #5012	LAKE SHORE	6.0	NATIONAL FUEL GAS
8240760	2375	3101315517		108		MARTIN #1 EE#3	LAKE SHORE	15.0	NATIONAL FUEL GAS
8240734	1789	3101315601		108		PAGANO EE#1	LAKE SHORE	13.0	NATIONAL FUEL GAS
8240730	2724	3101315601		103	107-TF	PAGANO EE1	LAKE SHORE	15.0	NATIONAL FUEL GAS
8240731	2731	3101315606		103	107-TF	PAGANO EE2	LAKE SHORE	16.0	NATIONAL FUEL GAS
8240736	3060	3101314823		107-TF		ROCKEY #3160	LAKE SHORE	0.0	COLUMBIA GAS TRAN
-ENVIROGAS INC				RECEIVED: 06/28/82		JA: NY			
8240753	2954	3101316974		103	107-TF	J COCHRAN #1	LAKESHORE	18.0	COLUMBIA GAS TRAN
8240766	2955	3101317028		103	107-TF	J MAIER #1	LAKESHORE	18.0	COLUMBIA GAS TRAN
8240767	2956	3101316979		103	107-TF	L HARRINGTON #2	LAKESHORE	18.0	COLUMBIA GAS TRAN
-P & S DRILLING INC				RECEIVED: 06/28/82		JA: NY			
8240742	2433	3102915825		108		BUFFALO CREEK #2	BUFFALO CREEK	5.6	NATIONAL FUEL GAS
-PIVOT PETROLEUMS INC				RECEIVED: 06/28/82		JA: NY			
8240769	2892	3101315672		107-TF		HOLY FAMILY PARISH INC #1	FORESTVILLE	25.0	NATIONAL FUEL GAS
8240768	2893	3101315673		107-TF		HOLY FAMILY PARISH INC #2	FORESTVILLE	20.0	NATIONAL FUEL GAS
-UNIVERSAL RESOURCES HOLDINGS INC				RECEIVED: 06/28/82		JA: NY			
8240733	2910	3101314825		107-TF		D BARMORE #1	GERRY	20.0	COLUMBIA GAS TRAN
-US ENERGY DEVELOPMENT CORP				RECEIVED: 06/28/82		JA: NY			
8240758	3091	3101315411		107-TF		BUTCHER #1	GERRY	20.0	COLUMBIA GAS TRAN
8240732	2923	3101315417		107-TF		BUTCHER #2	GERRY	20.0	COLUMBIA GAS TRAN
8240737	2937	3101315412		107-TF		E OLMSTEAD #1	GERRY	20.0	COLUMBIA GAS TRAN
8240738	2935	3101315683		107-TF		EDWARD TERRY #2	GERRY	20.0	COLUMBIA GAS TRAN
8240770	2939	3101316593		107-TF		KASHUBA #1	GERRY	20.0	COLUMBIA GAS TRAN
8240755	3088	3101315409		107-TF		W CHURCH #1	GERRY	20.0	COLUMBIA GAS TRAN
OKLAHOMA CORPORATION COMMISSION									
-ADOBE OIL & GAS CORPORATION				RECEIVED: 06/28/82		JA: OK			
8240814	17629	3508520566		102-3		SAVAGE NO 1	NORTH PIKE	182.0	AMINOIL USA INC
-AMERICAN STAR ENERGY & MINERALS COR				RECEIVED: 06/28/82		JA: OK			
8240802	15206	3507323346		103		KIRSCH STAR #1 07323346	SOONER TREND	500.0	CITIES SERVICE GA
-AMOCO PRODUCTION CO				RECEIVED: 06/28/82		JA: OK			
8240908	15162	3503920292		103		W D LEONARD UNIT #1 (RED FORK)	WILDCAT-RED FORK	340.0	SOUTHERN NATURAL
-ANADARKO PRODUCTION COMPANY				RECEIVED: 06/28/82		JA: OK			
8240894	13862	3500700000		108		GREGG B #1	MOCANE	8.0	NORTHERN NATURAL
-ANDOVER OIL COMPANY				RECEIVED: 06/28/82		JA: OK			
8240906	15160	3501722124		103		ELMER #7-1		180.0	DELHI GAS PIPELIN
8240907	15161	3503920473		103		MANSON #5-1		180.0	DELHI GAS PIPELIN
-APACHE CORPORATION				RECEIVED: 06/28/82		JA: OK			
8240788	18053	3514920208		102-2		CITY OF CLINTON 1-9		730.0	EL PASO NATURAL G
-B & H EXPLORATION CO				RECEIVED: 06/28/82		JA: OK			
8240899	13670	3514321647		102-2		ABEL #3	UNNAMED	18.5	DIAMOND S GAS SYS
-BENTLEY & LAING				RECEIVED: 06/28/82		JA: OK			
8240817	15212	3510321539		103		MURCH #1	WEST PERRY	18.0	AMINOIL USA
-BLUE RIVER OIL & GAS INC				RECEIVED: 06/28/82		JA: OK			
8240875	15115	3519321080		103		MERLE #1	LUCIEN	4.0	EASON OIL CO
-BOBBY J DARNELL				RECEIVED: 06/28/82		JA: OK			

JD NO.	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8240883	15138	3508321914		103		YANCEY #3
-BRAXTON OIL AND GAS CORP				RECEIVED:	06/28/82	JA: OK
8240920	15124	3507122338		103		GASPER #2
-DAMSON OIL CORPORATION				RECEIVED:	06/28/82	JA: OK
8240917	12580	3513921428		102-4		ATKINS #C-1
8240918	12557	3513921433		102-4		JOLLIFFE #A-1
8240919	12396	3513921433		102-4		JOLLIFFE #A-1
8240818	15214	3515120839		103		MCGILL #2-16
-DAWN ENERGY CO				RECEIVED:	06/28/82	JA: OK
8240900	13680	3511921215		102-2		NORRIS #1-13
-ECC OIL CO				RECEIVED:	06/28/82	JA: OK
8240876	14116	3514721994		108		MOODY #3 NE/4 SE/4 NE/4 17-25N-14E
-ELIXIR CORP				RECEIVED:	06/28/82	JA: OK
8240898	13136	3508321561		103		LOWRIE #1 083 21561
-ENTEX PETROLEUM INC				RECEIVED:	06/28/82	JA: OK
8240809	15235	3508320956		103		MARTIN "A" WELL NO 1
-F C D OIL CORP				RECEIVED:	06/28/82	JA: OK
8240820	15220	3505320509		103		DUFFY 1-27
-FUSULINA PETROLEUM CORP				RECEIVED:	06/28/82	JA: OK
8240904	15145	3504722465		103		BINGHAM 1-32
-GMG OIL AND GAS CORP				RECEIVED:	06/28/82	JA: OK
8240873	15118	3503722924		103		DIAMOND #1-19
-GRACE PETROLEUM CORPORATION				RECEIVED:	06/28/82	JA: OK
8240815	18089	3512920696		102-2		LEACH 1-22
-HESTON OIL CO				RECEIVED:	06/28/82	JA: OK
8240795	15120	3510924179		103		QUILLIN 22-2
-HINKLE ENGINEERING INC				RECEIVED:	06/28/82	JA: OK
8240874	15117	3504722529		103		GRETTA #1
-INEXCO OIL COMPANY				RECEIVED:	06/28/82	JA: OK
8240812	17628	3512920737		102-2		DYKES #1-6
8240787	18012	3504321411		102-2		GRAYBILL #1-31
8240785	17627	3503920549		102-2		HINKLE #1-36
8240813	18013	3503920688		102-2		HODGE #1-20
8240786	18011	3503920563		102-2		RED SAND #1-34
-IRA E RONGEY				RECEIVED:	06/28/82	JA: OK
8240878	13959	3503700000		108		YOUNG #2
8240877	13960	3503700000		108		YOUNG #3
-J C MOUSER				RECEIVED:	06/28/82	JA: OK
8240903	15144	3510721121		103		ZACKERY #3
-JET OIL COMPANY				RECEIVED:	06/28/82	JA: OK
8240911	15151	3504733715		103		MILLER "B" #1
8240910	15150	3507323166		103		VADDER #2
8240912	15152	3508321755		103		WEINKAUF #1
-JONES & PELLOW OIL CO				RECEIVED:	06/28/82	JA: OK
8240805	15228	3501922341		103		BOYD 11-1
8240806	15229	3504700000		108		CUNNINGHAM #1
8240807	15230	3513722206		103		HARRIS 30-1
8240804	15227	3501922375		103		HOOKS 12-1
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	06/28/82	JA: OK
8240801	15202	3505920035		108		GASS #1
8240800	15201	3509300000		108		LONG #1-24
8240810	15237	3504720836		108		PRENTICE #1-19
8240892	17950	3501121694		103		RUSSWORM #1

FIELD NAME	PROD	PURCHASER
N W GUTHRIE	36.5	EASON OIL CO
EAST VERNON	10.0	CHASE GATHERING S
S E ADAMS	0.0	PANHANDLE EASTERN
S E ADAMS	0.0	PANHANDLE EASTERN
S E ADAMS	0.0	PANHANDLE EASTERN
N W AVARD	0.0	PRODUCERS GAS CO
WILDCAT	100.0	CITIES SERVICE GA
OGLESBY GAS FIELD	2.6	OKAN GAS CO
SO MULHALL	55.0	EASON OIL CO
WEST LAWRIE	10.0	EASON OIL CO
EAST LAMONT	29.2	CRA INC
SOONER TREND	128.0	PHILLIPS PETROLEU
DIAMOND NE SW SW SEC	26.2	KERR MCGEE CORP
WEST STRONG	0.0	
	0.0	GARFIELD GAS GATH
NW ELK HORN	1.0	
(UNDESIGNATED)	146.0	PRODUCER'S GAS CO
S W LEEDY	182.0	PANHANDLE EASTERN
N E CARPENTER	328.0	EL PASO NATURAL G
UNDESIGNATED	730.0	TRANSWESTERN PIPE
UNDESIGNATED	183.0	PANHANDLE EASTERN
GLENPOOL	3.9	PHILLIPS PETROLEU
GLENPOOL	3.9	PHILLIPS PETROLEU
CLEARVIEW FIELD	182.5	PHILLIPS PETROLEU
BROWN EAST	0.0	EASON OIL CO
COLUMBIA	165.0	EASON OIL CO
ELKHORN	215.0	EASON OIL CO
N W TATUMS	180.0	MOBIL OIL CORP
N E ENID	14.0	CHAMPLIN PETROLEU
WEST VELMA	100.0	GETTY OIL CO
N W TATUMS	250.0	MOBIL OIL CORP
LOVEDALE	14.0	NATURAL GAS PIPEL
CHANEY DELL	4.0	UNION TEXAS PETRO
SPRING VALLEY	10.0	GRACE PETROLEUM C
WATONGA CHICKASHA TRE	500.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-KRUMME OIL CO				RECEIVED:	06/28/82	JA: OK			
8240808	15233	3511123067		103		OWENS #1	BEGGS	55.0	PHILLIPS PETROLEU
-LADD PETROLEUM CORPORATION				RECEIVED:	06/28/82	JA: OK			
8240915	15178	3504722537		103		MCINTOSH-LANG #2	ENID NORTHEAST	82.1	CITIES SERVICE GA
8240798	15177	3514722514		103		METZNER #1	GLENOAK	60.2	CITIES SERVICE GA
8240797	15176	3514722648		103		METZNER #1-A	GLENOAK	57.5	CITIES SERVICE GA
8240796	15175	3514722649		103		METZNER #1-B	GLENOAK	12.3	CITIES SERVICE GA
8240916	15179	3507323093		103		VOGT #3	OKARCHE NORTH	821.3	DELHI GAS PIPELIN
-MACKELLAR INC				RECEIVED:	06/28/82	JA: OK			
8240885	15132	3507322854		103		POWELL #2	SOONER TREND	0.0	CITIES SERVICE GA
-MAY ENERGY CO				RECEIVED:	06/28/82	JA: OK		73.0	SWAB CORP
8240784	17564	3508100000		102-A		MAYS 2			
-OIL LIFT INC				RECEIVED:	06/28/82	JA: OK			
8240882	16564	3510521453		108		OSHEL #1 (API #10521453)	SOUTH COFFEYVILLE	5.0	PELICAN PIPELINE
8240895	16563	3510524316		108		OSHEL #2 (API #10524316)	SOUTH COFFEYVILLE	8.0	PELICAN PIPELINE
8240881	16851	3510525429		108		SMITH #1-16 (API #10525429)	SOUTH COFFEYVILLE	9.1	PELICAN PIPELINE
8240880	16852	3510523665		108		TITUS #1 (API #10523665)	SOUTH COFFEYVILLE	14.6	PELICAN PIPELINE
8240896	16562	3510523663		108		WILBUR HARDEN #1-15 (API #10523663)	SOUTH COFFEYVILLE	8.4	PELICAN PIPELINE
8240879	17327	3510524312		108		WILBUR HARDEN #2-15 (API #10524312)	SOUTH COFFEYVILLE	5.5	PELICAN PIPELINE
8240897	16561	3510523664		108		WILKINS #1 (API #10523664)	SOUTH COFFEYVILLE	8.4	PELICAN PIPELINE
-PATTILLO OIL PROPERTIES				RECEIVED:	06/28/82	JA: OK			
8240803	15210	3514723026		103		BOGGARD #1	WILDCAT	16.1	PHILIPS PETROLEUM
-PETROLEUM CORP OF DELAWARE				RECEIVED:	06/28/82	JA: OK			
8240793	12647	3507300000		103		AUFDERHAR #7-2	SOONER TREND	219.0	CITIES SERVICE GA
8240792	12646	3507300000		103		KERMET #27-2	SOONER TREND	36.5	CITIES SERVICE GA
8240791	12635	3507300000		103		THEMER #10-2	SOONER TREND	146.0	CITIES SERVICE GA
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	06/28/82	JA: OK			
8240783	15195	3501121654		103		COFFEY "B" #1	SOUTH OMEGA	0.0	UNDEDICATED
8240888	12976	3501721397		108-ER		LAUB A #1	N CONCHO	9.0	PANHANDLE EASTERN
8240887	12979	3505920822		108		SMITH CC #1	N E FT SUPPLY	5.0	DELHI GAS PIPELIN
-POLARIS ENERGY CORP				RECEIVED:	06/28/82	JA: OK			
8240799	15200	3511100000		103		EAST SLICK #2		0.0	PHILLIPS PETROLEU
-QUANAH CO				RECEIVED:	06/28/82	JA: OK			
8240816	15211	3508121423		103		ERWIN #1	SOUTHEAST MT VERNON	150.0	TRIOK INC
-RATLIFF EXPLORATION CO				RECEIVED:	06/28/82	JA: OK			
8240891	17991	3510900000		102-2		SWATEK #1	SOUTHWEST OKLAHOMA CI	0.0	MOBIL OIL CORP
-READING & BATES PETROLEUM CO				RECEIVED:	06/28/82	JA: OK		730.0	
8240901	13813	3504921697		102-2		LAWSON #1-2			
-RED EAGLE OIL CO				RECEIVED:	06/28/82	JA: OK			
8240823	15226	3509322392		103		CLAUD #1	NORTHEAST FAIRVIEW	27.0	OKLAHOMA NATURAL
8240822	15225	3509322187		103		ROSEY #1	FAIRVIEW	55.0	PIONEER GAS PRODU
-RICKS EXPLORATION CO				RECEIVED:	06/28/82	JA: OK			
8240913	15153	3501121657		103		MEYER 18A	S W CANTON	405.0	DELHI GAS PIPELIN
-ROBERT GORDON OIL CO				RECEIVED:	06/28/82	JA: OK			
8240790	19030	3510721151		103		GORDON #24-3 #107-74834	SOUTHEAST WELEETKA	0.0	TRANSOK PIPELINE
8240789	19029	3510721316		103		GORDON #24-6 #107-70130	GREGORY	0.0	TRANSOK PIPELINE
-S K TUTHILL & B J BARBEE				RECEIVED:	06/28/82	JA: OK			
8240902	15013	3515121216		103		BOWERS #1-5	NORTH CAMPBELL	150.0	PANHANDLE EASTERN
-SAMSON RESOURCES COMPANY				RECEIVED:	06/28/82	JA: OK			
8240782	15193	3507920424		103		REUBEN #2 - SPIRO	NORTH SPIRO	6.8	ARKANSAS LOUISIAN
8240819	15216	3506120292		103		ROSE UNIT #2-WAPANUCKA	KINTA	205.3	ARKANSAS LOUISIAN
-SENECA OIL COMPANY				RECEIVED:	06/28/82	JA: OK			
8240794	13093	3513921456		102-4		REUSZER #1-31	WEST DOMBY	640.0	PANHANDLE EASTERN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-SOUTHWEST EXPLORATION INC				RECEIVED:	06/28/82	JA: OK			
8240884	15137	3510900000		103		WOOD #1		0.0	MOBIL OIL CORP
-TENNECO OIL COMPANY				RECEIVED:	06/28/82	JA: OK			
8240905	15159	3512920623		103		ALLEN #1-19	W CARPENTER	624.0	
8240914	15158	3504321306		103		PERCY #1-16	N W NOBSCOT	55.0	
-THE GHK COMPANY				RECEIVED:	06/28/82	JA: OK			
8240893	19396	3514920206		107-DP		TWYMAN 1-17	NE CANUTE	613.2	EL PASO NATURAL G
-TOMLINSON OIL CO INC				RECEIVED:	06/28/82	JA: OK			
8240886	13199	3500721952		103		KIGHT #1	DOMBEY	109.5	NORTHERN NATURAL
-TRANSIERRA EXPLORATION CORP				RECEIVED:	06/28/82	JA: OK			
8240821	15221	3508121360		103		STATE SCHOOL LAND #5	S W PRAIRIE GEM	15.0	SUN GAS CO
-UNIVERSAL RESOURCES CORPORATION				RECEIVED:	06/28/82	JA: OK			
8240909	15146	3501121650		103		MCCASKEY 1A-33		0.0	DELHI GAS PIPELIN
-VULCAN ENERGY CORP				RECEIVED:	06/28/82	JA: OK			
8240811	15239	3507322802		103		JEWELL #1	SOONER TREND	43.8	PHILLIPS PETROLEU
-WESLEY WEBBER				RECEIVED:	06/28/82	JA: OK			
8240889	15126	3513722458		103		SPEARS "B" #14	SHO-VEL-TUM	10.0	GETTY OIL CO
8240890	15125	3513722809		103		SPEARS "B" #18	SHO-VEL-TUM	15.0	GETTY OIL CO
WEST VIRGINIA DEPARTMENT OF MINES									
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	06/28/82	JA: WV			
8240776		4705500082		103		POCAHONTAS LAND WN-12716	ROCK	4.7	GENERAL SYSTEM PU
-H D WELLS OIL & GAS EXPL & DEVEL IN				RECEIVED:	06/28/82	JA: WV			
8240777		4703501590		103		BALLENGEE NO ONE	SILVERTON	8.0	COLUMBIA GAS TRAN
-PETROLEUM DEVELOPMENT CORP				RECEIVED:	06/28/82	JA: WV			
8240775		4704102917	D	103		J B WORKMAN #2	ASPINALL - FINSTER	0.0	CONSOLIDATED GAS
8240778		4701702535		107-DV		OPAL GRIBBLE #1	UNNAMED	72.0	COLUMBIA GAS TRAN
-STERLING DRILLING & PROD CO INC				RECEIVED:	06/28/82	JA: WV			
8240774		4701502017		103		MURPHY #566	OTTER DISTRICT	15.0	BROOKLYN UNION GA
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	06/28/82	JA: WV			
8240772		4700701509		102-4		ADA CUTLIP #2	OTTER	100.0	
8240780		4701900451		102-4		DARRELL NUTTER #2	PETER'S CREEK	110.0	EQUITABLE GAS CO
8240773		4706700567		102-4		G L VICKERS #2	PETER'S CREEK	38.0	EQUITABLE GAS CO
8240771		4706700535		102-4		GORDON LEGG UNIT #2	PETERS CREEK	55.0	EQUITABLE GAS CO
8240781		4701900453		102-4		HAMPDEN CORPORATION #5	PETER'S CREEK	67.0	EQUITABLE GAS CO
8240779		4701900450		102-4		LEGG #1	PETERS CREEK	63.0	EQUITABLE GAS CO
** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
-AMOCO PRODUCTION CO				RECEIVED:	06/30/82	JA: LA 3			
8240832	G2-2779	1771040776		102-1		OCS-G-3571 WELL A-1	EUGENE ISLAND	5475.0	
8240850	G2-2789	1771040969		102-1		OCS-G-3571 WELL A-2	EUGENE ISLAND	365.0	
8240855	G2-2755	1770540418		107-DP		OCS-G-4208 #A-1	VERMILION	1936.0	
-ARCO OIL AND GAS COMPANY				RECEIVED:	06/30/82	JA: LA 3			
8240836	G1-2452	1770040400		102-5		OCS-G-2832 W CAMERON BLK 205#A-5	WEST CAMERON	3102.0	NORTHERN NATURAL
8240829	G1-2416	1770040253		102-5		OCS-G-2832 W CAMERON BLK 205#A-1MU	WEST CAMERON	3102.0	NORTHERN NATURAL
8240828	G1-2417	1770040253		102-5		OCS-G-2832 W CAMERON BLK 205#A-1NL	WEST CAMERON	3102.0	NORTHERN NATURAL
8240825	G1-2467	1770040440		102-5		OCS-G-2832 W CAMERON BLK 205#A-7MU	WEST CAMERON	3102.0	NORTHERN NATURAL
8240827	G1-2468	1770040440		102-5		OCS-G-2832 W CAMERON BLK 205#A-7NL	WEST CAMERON	3102.0	NORTHERN NATURAL
-CHEVRON U S A INC				RECEIVED:	06/30/82	JA: LA 3			
8240826	G1-2473	1770740322		102-5		OCS-G-2316 #CB-1	SOUTH MARSH ISLAND	1000.0	NATURAL GAS PIPEL
8240854	G1-2474	1770740322		102-5		OCS-G-2316 #CB-1	SOUTH MARSH ISLAND	1825.0	NATURAL GAS PIPEL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8240840	G2-2541	1771040915		102-5		OCS-G-2914 #A-12	EUGENE ISLAND	180.0	NATURAL GAS PIPEL
8240861	G2-2533	1771040796		102-5		OCS-G-2914 #A-2	EUGENE ISLAND	580.0	NATURAL GAS PIPEL
8240839	G2-2542	1771040853		102-5		OCS-G-2914 #A-7	EUGENE ISLAND	146.0	NATURAL GAS PIPEL
8240834	G2-2539	1771040868		102-5		OCS-G-2914 #A-8	EUGENE ISLAND	360.0	NATURAL GAS PIPEL
-CNG PRODUCING COMPANY				RECEIVED:	06/30/82	JA: LA 3			
8240857	G1-2494	1771240146		102-5		A-14S5 SHIP SHOAL 246 OCSG 1027	SHIP SHOAL	808.0	CONSOLIDATED GAS
8240856	G1-2495	1771240135		102-5		A-15S4 SHIP SHOAL 246 OCSG 1027	SHIP SHOAL	625.0	CONSOLIDATED GAS
8240833		1771240096		102-5		A-8S5 SHIP SHOAL 246 OCSG 1027	SHIP SHOAL	850.0	CONSOLIDATED GAS
-CONOCO INC				RECEIVED:	06/30/82	JA: LA 3			
8240862	G2-2529	1770840489		102-5		SOUTH MARSH ISLAND 112 A-3	SOUTH MARSH ISLAND	2190.0	SEA ROBIN PIPELIN
8240835	G2-2527	1770840405		102-5		SOUTH MARSH ISLAND 112, A-2	SOUTH MARSH ISLAND	1095.0	SEA ROBIN PIPELIN
8240837	G2-2528	1770840405		102-5		SOUTH MARSH ISLAND 112, A-2D	SOUTH MARSH ISLAND	2920.0	SEA ROBIN PIPELIN
8240842	G2-2526	1770840401		102-5		SOUTH MARSH ISLAND 113 A-1	SOUTH MARSH ISLAND	730.0	SEA ROBIN PIPELIN
-EXXON CORPORATION				RECEIVED:	06/30/82	JA: LA 3			
8240852	G2-2760	1770840535		102-1		OCS-G 4109 #A-5 (ST)	SOUTH MARSH ISLAND	300.0	COLUMBIA GAS TRAN
8240849	G2-2791	1771540472		102-1		OCS-G 4237 #F-9	SOUTH TIMBALIER	1800.0	TRUNKLINE GAS CO
-HUNT OIL COMPANY				RECEIVED:	06/30/82	JA: LA 3			
8240859	G2-2748	1770940462		107-DP		WELL #6 OCS 0466 EUGENE IS 77	EUGENE ISLAND	1825.0	MICHIGAN WISCONSI
-KERR-MCGEE CORPORATION				RECEIVED:	06/30/82	JA: LA 3			
8240841	G1-2383	1771140545		102-5		OCS-0828 #K-3	SHIP SHOAL	0.0	TRANSCONTINENTAL
-MARATHON OIL COMPANY				RECEIVED:	06/30/82	JA: LA 3			
8240838	G2-2520	1770440416		102-5		EAST CAMERON BLOCK 294 WELL A-4A	EAST CAMERON SOUTH AD	859.0	TEXAS EASTERN TRA
-PENNZOIL OIL & GAS INC				RECEIVED:	06/30/82	JA: LA 3			
8240860	G2-2586	1770940482		102-5		#A-16 OCS-G 2900	EUGENE ISLAND	62.0	SEA ROBIN PIPELIN
-PLACID OIL COMPANY				RECEIVED:	06/30/82	JA: LA 3			
8240853	G2-2551	1770740224		102-5		C-11A OCS-G 2630 SO MARSH IS 281	SOUTH MARSH ISLAND	1825.0	TRUNKLINE GAS CO
-AMINOIL USA INC				RECEIVED:	06/30/82	JA: TX 3			
8240824	G1-2098	4270940505		102-5		OCS-G2712, #A-10D	HIGH ISLAND BLOCK A-5	265.0	COLUMBIA GAS TRAN
-ANR PRODUCTION CORP				RECEIVED:	06/30/82	JA: TX 3			
8240845	G2-2752	4270440054		102-1		BRAZOS BLOCK 501 WELL A-4	BRAZOS	1753.0	TRANSCONTINENTAL
8240858		4270440063		102-1		BRAZOS BLOCK 504 #A-5	BRAZOS	1753.0	TRANSCONTINENTAL
8240848	G2-2749	4270440026		102-1		BRAZOS BLOCK 504 WELL #A-1	BRAZOS	2466.0	TRANSCONTINENTAL
8240843	G2-2750	4270440039		102-1		BRAZOS BLOCK 504 WELL #A-2	BRAZOS	2466.0	TRANSCONTINENTAL
8240844	G2-2751	4270440043		102-1		BRAZOS BLOCK 504 WELL #A-3	BRAZOS	2109.0	TRANSCONTINENTAL
-SHELL OIL CO				RECEIVED:	06/30/82	JA: TX 3			
8240846	G2-2743	4270440015		102-1		OCS-G 3472 A-1	BRAZOS	5500.0	COLUMBIA GAS TRAN
-SUPERIOR OIL CO				RECEIVED:	06/30/82	JA: TX 3			
8240851	G2-2794	4270440053		102-1		BRAZOS BLOCK #578 #B-1	BRAZOS	0.0	TRANSCONTINENTAL
8240831	G2-2795	4270440060		102-1		BRAZOS BLOCK #578 #B-3	BRAZOS	0.0	TRANSCONTINENTAL
8240830	G2-2796	4270440076		102-1		BRAZOS BLOCK #578 WELL #B-4	BRAZOS	0.0	TRANSCONTINENTAL
-TENNECO OIL COMPANY				RECEIVED:	06/30/82	JA: TX 3			
8240847	G2-2744	4271540017		102-1		SABINE PASS 18 #A-6	SABINE PASS 18 #A-6	0.0	TENNESSEE GAS PIP

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20101 Files 7-23-82;8:45 am]

BILLING CODE 6717-01-C

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 19, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
ALABAMA OIL & GAS BOARD									
-ENHANCED ENERGY RESOURCES		RECEIVED:	07/02/82	JA: AL					
8241020	6-24-8211PD	0112520075		107-CS		BELCHER 10-10 #3	BROOKWOOD COAL DEGASI	82.0	SOUTHERN NATURAL
8241021	6-24-8212PD	0112520071		107-CS		BELCHER 10-16 #2	BROOKWOOD COAL DEGASI	1.0	SOUTHERN NATURAL
8241028	6-24-8219PD	0121252007		107-CS		BELCHER 10-8 NO 6	BROOKWOOD COAL DEGASI	14.6	SOUTHERN NATURAL
8241018	6-24-829PD	0112520065		107-CS		U S PIPE & FOUNDRY WELL 10-7 #1	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241019	6-24-8210PD	0112520036		107-CS		U S PIPE & FOUNDRY WELL 11-11 #12	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241009	5-14-8210PD	0112520040		107-CS		U S PIPE & FOUNDRY WELL 11-13 #11	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241005	1-29-8210PD	0112520032		107-CS		U S PIPE & FOUNDRY WELL 11-3 #7	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241007	1-29-8225PD	0112520043		107-CS		U S PIPE & FOUNDRY WELL 11-4 #14	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241008	1-29-8226PD	0112520044		107-CS		U S PIPE & FOUNDRY WELL 11-4 #15	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241006	1-29-8217PD	0112520045		107-CS		U S PIPE & FOUNDRY WELL 11-5 #6	BROOKWOOD COAL DEGASI	4.6	SOUTHERN NATURAL
8241023	6-24-8214PD	0112520057		107-CS		U S PIPE & FOUNDRY WELL 15-8 #2	BROOKWOOD COAL DEGASI	1.8	SOUTHERN NATURAL
8241027	6-24-8218PD	0112520069		107-CS		U S PIPE & FOUNDRY 10-6 NO 5 WELL	BROOKWOOD COAL DEGASI	6.1	SOUTHERN NATURAL
8241022	6-24-8213PD	0112520053		107-CS		U S PIPE & FOUNDRY 14-4 #3	BROOKWOOD COAL DEGASI	2.5	SOUTHERN NATURAL
8241025	6-24-8216PD	0112520054		107-CS		U S PIPE & FOUNDRY 14-5 #4	BROOKWOOD COAL DEGASI	18.3	SOUTHERN NATURAL
8241026	6-24-8217PD	0112520055		107-CS		U S PIPE & FOUNDRY 14-6 #2	BROOKWOOD COAL DEGASI	7.3	SOUTHERN NATURAL
8241024	6-24-8215PD	0112520056		107-CS		U S PIPE & FOUNDRY 15-1 #1	BROOKWOOD COAL DEGASI	5.5	SOUTHERN NATURAL
-EXXON CORPORATION		RECEIVED:	07/02/82	JA: AL					
8241017	6-24-828PD	0105320172		107-DP		J W JOHNSON ET UX 10-10 WELL #1	FLOMATON	365.0	FLORIDA GAS TRANS
8241016	6-24-827PD	0105320170		107-DP		SCOTT PAPER CO GU 5 #5-10-2	BIG ESCAMBIA CREEK	1825.0	CIBA-GEIGY CORP
-GRACE PETROLEUM CORPORATION		RECEIVED:	07/02/82	JA: AL					
8241014	6-24-825PD	0107520411		102-4		LOGGAINS 4-11	BEAVERTON	0.0	NORTHWEST ALABAMA
-PRUET PRODUCTION CO		RECEIVED:	07/02/82	JA: AL					
8241031	6-24-8222PD	0107520296		102-2		BLAKENEY 19-8 NO 1	FERNBANK	560.6	TENNESSEE GAS PIP
8241029	6-24-8220PD	0107520377		102-2		BRYANT 30-1 NO 1	FERNBANK	1113.3	TENNESSEE GAS PIP
8241033	6-24-8224PD	0107520393		102-2		HERRON 20-15 NO 1	FERNBANK	421.6	TENNESSEE GAS PIP
8241030	6-24-8221PD	0107520402		102-2		KIMBROUGH 22-1 NO 1	BLOWHORN CREEK	204.4	SOUTHERN NATURAL
8241032	6-23-8223PD	0107520360		102-2		ROBERTSON 23-12	FERNBANK	608.8	TENNESSEE GAS PIP
8241034	6-24-8225PD	0107520367		102-2		VAIL 19-14 NO 1	FERNBANK	276.7	TENNESSEE GAS PIP
8241035	6-24-8226PD	0107520359		102-2		WILLIAMSON 18-12 NO 1	MILLPORT	134.0	TENNESSEE GAS PIP
-UNION OIL COMPANY OF CALIF		RECEIVED:	07/02/82	JA: AL					
8241010	6-24-821PD	0109720177		107-DP		C P NEWMAN 8-16 #1	COLD CREEK	5.0	UNITED GAS PIPE L
-WARRIOR DRILLING & ENG CO INC		RECEIVED:	07/02/82	JA: AL					
8241011	6-24-822PD	0105720233		102-2		BERRY 24-13	MUSGROVE CREEK	400.0	SOUTHERN NATURAL
8241015	6-24-826PD	0105720245		102-2		BRANYON 30-9	WEST FAYETTE	50.0	SOUTHERN NATURAL
8241013	6-24-824PD	0105720262		102-4		NEWTON 27-3	MUSGROVE CREEK	150.0	SOUTHERN NATURAL
8241012	6-24-823PD	0105720234		102-4		YARBROUGH 34-3	MCCRACKEN MOUNTAIN	100.0	SOUTHERN NATURAL
OKLAHOMA CORPORATION COMMISSION									
-ANDOVER OIL COMPANY		RECEIVED:	06/30/82	JA: OK					

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8240951	17633	3501722129		102-2	103	ROTHER #11-3	HUNTON	180.0	DELHI GAS PIPELIN
8240950	15217	3501722004		103		WITTROCK #1-3	HUNTON	180.0	DELHI GAS PIPELIN
-CITIES SERVICE COMPANY				RECEIVED:	06/30/82	JA: OK			
8240945	13894	3502520493		103		TAYLOR F #2	STURGIS	11.6	PHILLIPS PETROLEU
-CLARK RESOURCES INC				RECEIVED:	06/30/82	JA: OK			
*8240954	15243	3504700000		103		PRYOR 27-1	SOONER TREND	20.0	PANHANDLE EASTERN
-ENERGY RESERVES GROUP INC				RECEIVED:	06/30/82	JA: OK			
8240939	17569	3501521166		102-2		LEWIS #1	WEST BINGER	183.2	
-GULF OIL CORPORATION				RECEIVED:	06/30/82	JA: OK			
8240955	15251	3507323199		103		JOHN G ROHWER NO 1-6	SOUTH OMEGA	140.0	
-HANKS PETROLEUM CORP				RECEIVED:	06/30/82	JA: OK			
8240934	15268	3507323356		103		CONNERTON WELL #1-12	SOONER TREND	182.0	PHILLIPS PETROLEU
-HOLDEN ENERGY CORP				RECEIVED:	06/30/82	JA: OK			
8240937	17558	3501900000		102-4		REED #34-3	SOUTHEAST JOINER CITY	0.0	AMINOIL USA INC
-JONES & PELLOW OIL CO				RECEIVED:	06/30/82	JA: OK			
8240947	14826	3512120290		108		HAMILTON 17-1	N W REAMS	14.0	ARKANSAS LOUISIAN
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	06/30/82	JA: OK			
8240944	13799	3512920557		102-4	103	HARTLEY #2	WEST REYDON	1000.0	EL PASO NATURAL G
-KRUMME OIL CO				RECEIVED:	06/30/82	JA: OK			
8240941	17571	3503723466		102-4		MOFFER #20	CUSHING	15.0	ARCO OIL & GAS CO
8240940	17570	3503723663		102-4		MOFFER #21	CUSHING	15.0	ARCO OIL & GAS CO
-LADD PETROLEUM CORPORATION				RECEIVED:	06/30/82	JA: OK			
8240952	15224	3504321260		103		CURTIS #2	HUCMAC	273.8	TRANSOK PIPE LINE
8240953	15267	3514722749		103		UNION OIL #2	WAYSIDE NORTHEAST	5.5	CITIES SERVICE GA
-MARSHALL OIL CORP				RECEIVED:	06/30/82	JA: OK			
8240936	15272	3512722739		103		FATCO #2	STAGE SAND	0.0	ARKANSAS LOUISIAN
-MAY ENERGY CO				RECEIVED:	06/30/82	JA: OK			
8240938	17565	3508100000		102-4		HAYES #3	HUNTON	72.0	SWAB CORP
-PCX CORP				RECEIVED:	06/30/82	JA: OK			
8240935	15271	3507323278		103		FLEENOR #2	W EDMOND	0.0	PHILLIPS PETROLEU
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	06/30/82	JA: OK			
8240946	14808	3512937834		108		EDMOND #1	WEST EDMOND	14.0	OKLAHOMA NATURAL
-SOUTHLAND ROYALTY CO				RECEIVED:	06/30/82	JA: OK			
8240949	15130	3509322264		103		LONG #2-20	WEST CHEYENNE VALLEY	18.0	PHILLIPS PETROLEU
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	06/30/82	JA: OK			
8240942	4332	3505300000		108		SOUTH WEST WAKITA UNIT #3-2	SOUTH WEST WAKITA	1.0	CITIES SERVICE GA
-SUNRISE EXPLORATION INC				RECEIVED:	06/30/82	JA: OK			
8240943	12569	3503920270		103		MCNEILL #2-12	FAY SOUTH	102.0	TRANSOK PIPE LINE
-UNION TEXAS PETROLEUM				RECEIVED:	06/30/82	JA: OK			
8240948	14988	3509322403		103		A K MANNING #2	HODGE AREA I	127.8	PANHANDLE EASTERN
**********									
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
**********									
-ANGERMAN ASSOCIATES INC				RECEIVED:	07/01/82	JA: PA			
8241043	11896	3706326702		103		ALBERT M PRIBESH #1 - IND-26702	W PA - UPPER DEVONIAN	0.0	PEOPLES NATURAL G
8241036	11887	3706326630		103		ALEX BENNETT #1 - IND-26630	W PA-UPPER DEVONIAN S	45.0	PEOPLES NATURAL G
8241038	11890	3706526733		103		ALEX BENNETT #3 - IND-26733	W PA - UPPER DEVONIAN	35.0	PEOPLES NATURAL G
8241037	11888	3706326631		103		ALEX BENNETT #4 - IND-26631	W PA - UPPER DEVONIAN	35.0	PEOPLES NATURAL G
8241040	11892	3706326639		103		FLORENCE E BODEN #4 - IND-26639	W PA - UPPER DEVONIAN	25.0	PEOPLES NATURAL G
8241041	11893	3706326683		103		NAZZARENO MORETTI #2 - IND-26683	W PA - UPPER DEVONIAN	15.0	PEOPLES NATURAL G
8241039	11891	3706326665		103		PAUL M BLACK - IND-26665	W PA - UPPER DEVONIAN	50.0	PEOPLES NATURAL G
8241042	11894	3706326572		103		ROBERT H NEHRIG #2 - IND-26572	W PA - UPPER DEVONIAN	45.0	PEOPLES NATURAL G
8241044	11897	3712921951		103		ROBERT H WHITTAKER #2 - WES-21951	W PA - UPPER DEVONIAN	25.0	PEOPLES NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-ASHTOLA PRODUCTION CO				RECEIVED:	07/01/82	JA: PA			
8241045	11678	3705120273		102-3		CHARLES J YOCUM #1	WALTERSBURG	19.0	
-ATLAS RESOURCES INC				RECEIVED:	07/01/82	JA: PA			
8241046	13112	3706326057		102-4		SWANK NO 3	CHERRYHILL TWP	38.0	COLUMBIA GAS TRAN
-CASTLE GAS CO INC				RECEIVED:	07/01/82	JA: PA			
8241047	11288	3706326015		103		J C STONEBRAKER #4(C-644)IND-26015	GREEN TOWNSHIP	60.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	07/01/82	JA: PA			
8241052	11914	3706500378		108		BLANCHE WINEBERG ET AL WN-978	GASKILL	18.0	GENERAL SYSTEM PU
8241059	11921	3703320426		108		CHARLES C MCGEE	BELL	2.0	GENERAL SYSTEM PU
8241061	11923	3706321771		108		CLAYTON SUNDERLAND WN-1210	CANOE	13.0	GENERAL SYSTEM PU
8241056	11918	3706520473		108		EARL SCHWARTZ WN-1038	YOUNG	2.0	GENERAL SYSTEM PU
8241063	11925	3703320443		108		HELEN T MCGEE WN-1145	BURNSIDE	9.0	GENERAL SYSTEM PU
8241057	11919	3706520505		108		LINDSEY COAL MINING CO WN-1068	PERRY	14.0	GENERAL SYSTEM PU
8241050	11912	3706500381		108		PA STATE GAME LANDS TR 195A WN-927	GASKILL	14.0	GENERAL SYSTEM PU
8241048	11910	3702320003		108		PARDEE ESTATE WN-813	SHIPPEN	18.0	GENERAL SYSTEM PU
8241055	11917	3706520432		108		PAUL D NEAL WN-1029	YOUNG	14.0	GENERAL SYSTEM PU
8241054	11916	3706520433		108		PENNA GAME COMMISSION WN-1021	GASKILL	17.0	GENERAL SYSTEM PU
8241049	11911	3706500295		108		PENNA STATE GAME LANDS 195A WN-913	GASKILL	13.0	GENERAL SYSTEM PU
8241053	11915	3706500399		108		R & P COAL CO WN-1012	YOUNG	20.0	GENERAL SYSTEM PU
8241062	11924	3703320487		108		RALPH R CRANMER WN-1194	BURNSIDE	9.0	GENERAL SYSTEM PU
8241058	11920	3706520532		108		ROBERT S PHILLIBER WN-1075	GASKILL	20.0	GENERAL SYSTEM PU
8241051	11913	3706300633		108		RUELBA L STEEL #1	BANKS	0.0	GENERAL SYSTEM PU
8241060	11922	3706321457		108		VERNER M WACHOB WN-1144	NORTH MAHONING	17.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED:	07/01/82	JA: PA			
8241065	11927	3706326519		103		JOHN CONNER #1 KA-104	MONTGOMERY TWP	30.0	COLUMBIA GAS TRAN
8241066	11931	3712921983		103		PAUL W GRAFF (HELFER) #5A KZ-21	LOYAL HANNA TWP	30.0	T W PHILLIPS GAS
8241067	11933	3712921949		103		PAUL W GRAFF #2 KZ-20	UPPER DEVONIAN SANDS	30.0	T W PHILLIPS GAS
8241064	11926	3706326594		103		THOMPSON CEMETERY CO #1 KA-103	MONTGOMERY TWP	30.0	COLUMBIA GAS TRAN
-ENVIROGAS INC				RECEIVED:	07/01/82	JA: PA			
8241069	11871	3704921676		107-TF		D CHESLEY #3	LAKESHORE	18.0	NATIONAL FUEL GAS
8241068	11870	3704921585		103		H STETSON #1	LAKESHORE	18.0	NATIONAL FUEL GAS
-FOX OIL & GAS INC				RECEIVED:	07/01/82	JA: PA			
8241070	11843	3706326082		102-2		JOHN GOLDEN #1	CHERRYHILL TOWNSHIP	0.0	COLUMBIA GAS TRAN
8241071	11850	3706325112		102-2		RICHARD HELLER #1	GREEN TOWNSHIP	25.5	COLUMBIA GAS TRAN
-MERIDIAN OIL & GAS ENT INC				RECEIVED:	07/01/82	JA: PA			
8241072	11934	3703921463		107-TF		A T BOBAN SR WELL #1		36.0	
-MONROE RESOURCES LTD				RECEIVED:	07/01/82	JA: PA			
8241073	11929	3712330558		102-2		RUHLMAN NO 1	COLUMBUS	20.0	COLUMBIA GAS TRAN
8241074	11930	3712330558		107-TF		RUHLMAN NO 1	COLUMBUS	20.0	COLUMBIA GAS TRAN
-NEA CROSS CO				RECEIVED:	07/01/82	JA: PA			
8241075	11942	3704921701		102-2		ROSCOE MITCHELL #2	LEBOEUF TWP	15.0	NATIONAL FUEL GAS
8241076	11943	3704921701		107-TF		ROSCOE MITCHELL #2	LEBOEUF TWP	15.0	NATIONAL FUEL GAS
-PHILLIPS PRODUCTION CO				RECEIVED:	07/01/82	JA: PA			
8241078	11958	3706324542		108		FRANK H NICHOLS ET UX #1	EAST MAHONING TWP	7.8	COLUMBIA GAS TRAN
8241077	11957	3706324528		108		W S BLACK ET AL #1	EAST MAHONING TWP	9.0	COLUMBIA GAS TRAN
8241079	11964	3706324135		108		WILLIAM E DONAHUE ET UX #1	EAST MAHONING TWP	6.0	COLUMBIA GAS TRAN
-PIVOT PETROLEUMS INC				RECEIVED:	07/01/82	JA: PA			
8241087	10878	3712330060		107-TF		CHAPMAN #1	FREEHOLD	20.0	COLUMBIA GAS TRAN
8241082	10877	3712330060		102-2		CHAPMAN NO 1	LOTTSVILLE/FREEHOLD	20.0	COLUMBIA GAS TRAN
8241085	10874	3712330063		107-TF		E CORNISH #4-2	FREEHOLD	25.0	COLUMBIA GAS TRAN
8241080	10873	3712330063		102-2		E CORNISH NO 4-2	FREEHOLD	25.0	COLUMBIA GAS TRAN
8241086	10875	3712330064		107-TF		H CORNISH #1	FREEHOLD	20.0	COLUMBIA GAS TRAN
8241081	10876	3712330064		102-2		H CORNISH NO 2	FREEHOLD	20.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8241083	10879	3712330062		102-2		R PERKINS #1	FREEHOLD	20.0	COLUMBIA GAS TRAN
8241088	10880	3712330062		107-TF		R PERKINS #1	FREEHOLD	25.0	COLUMBIA GAS TRAN
8241084	10888	3712330061		102-2		R SMITH NO 1	FREEHOLD	20.0	COLUMBIA GAS TRAN
8241089	10889	3712330061		107-TF		R SMITH NO 1	FREEHOLD	0.0	COLUMBIA GAS TRAN
-QUERTINMONT GLASS CO				RECEIVED:	07/01/82	JA: PA			
8241091	9236	3705100000		108		DAVID #1	DAVID FARM	10.0	COLUMBIA GAS TRAN
8241092	9237	3705100000		108		DAVID #2	DAVID FARM	10.0	COLUMBIA GAS TRAN
8241090	9235	3705100000		108		DAVID #3	DAVID FARM	10.0	COLUMBIA GAS TRAN
-REX-HIDE REALTY INC				RECEIVED:	07/01/82	JA: PA			
8241093	11928	3700522676		103		DONALD E MILLER ET UX #1	PLUMCREEK TWP	0.0	
-VIKING RESOURCES CORP				RECEIVED:	07/01/82	JA: PA			
8241096	11408	3712329526		103		SHEFFIELD PARTNERSHIP 361-5	SHEFFIELD TWP	30.0	NATIONAL FUEL GAS
8241095	11407	3712329527		103		SHEFFIELD PARTNERSHIP 361-6	SHEFFIELD TWP	30.0	NATIONAL FUEL GAS
8241094	11406	3712329528		103		SHEFFIELD PARTNERSHIP 363-5	SHEFFIELD TWP	30.0	NATIONAL FUEL GAS
8241097	11410	3712329529		103		SHEFFIELD PARTNERSHIP 402-2	SHEFFIELD TWP	30.0	NATIONAL FUEL GAS
-WAINOCO OIL & GAS CO				RECEIVED:	07/01/82	JA: PA			
8241100	11902	3703921351		102-2		ANDY N GINGERICH NO 2 (W-94)	ATHENS (SPARTA)	0.0	COLUMBIA GAS TRAN
8241106	11909	3703921351		107-TF		ANDY N GINGERICH NO 2 (W-94)	ATHENS (SPARTA)	0.0	COLUMBIA GAS TRAN
8241099	11901	3703921353		102-2		CHARLES D WETHERBEE NO 1 (W-98)	ATHENS (SPARTA)	0.0	COLUMBIA GAS TRAN
8241103	11908	3703920583		102-2		GOERGE BANGS NO 1 (W-26)	ATHENS (ROME)	14.0	COLUMBIA GAS TRAN
8241101	11903	3703921352		102-2		H RICHARD VAN TASSEL NO 1 (W-99)	ATHENS (SPARTA)	27.0	COLUMBIA GAS TRAN
8241105	11904	3703921352		107-TF		H RICHARD VAN TASSEL NO 1 (W-99)	ATHENS (SPARTA)	27.0	COLUMBIA GAS TRAN
8241102	11907	3703920588		102-2		LEE A HOPKINS NO 1 (W-34)	ATHENS (ROME)	7.0	COLUMBIA GAS TRAN
8241098	11898	3703921347		102-2		WAYNE L BANCROFT NO 1 (W-97)	ATHENS (BLOOMFIELD)	0.0	COLUMBIA GAS TRAN
8241104	11900	3703921347		107-TF		WAYNE L BANCROFT NO 1 (W-97)	ATHENS (BLOOMFIELD)	0.0	COLUMBIA GAS TRAN
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WEST VIRGINIA DEPARTMENT OF MINES									
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-ALLEGHENY & WESTERN ENERGY CORP				RECEIVED:	06/30/82	JA: WV			
8240994		4708703472		107-DV		FIELDS #1	WALTON DISTRICT	18.0	ROARING FORK GAS
8240996		4708703472		103		FIELDS #1	WALTON DISTRICT	18.0	ROARING FORK GAS
8240995		4708703473		103		FIELDS #2	WALTON DISTRICT	18.0	ROARING FORK GAS
-ASHLAND EXPLORATION INC				RECEIVED:	06/30/82	JA: WV			
8240979		4701900459		103		BEDFORD LAND CO #18 - 091801	PAINT CREEK	164.0	COLUMBIA GAS TRAN
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	06/30/82	JA: WV			
8240987		4704700850		103		CONSOLIDATED COAL CORP WN-12654	ELKHORN	35.9	GENERAL SYSTEM PU
8240988		4704700851		103		CONSOLIDATED COAL WN-12655	ELKHORN	25.3	GENERAL SYSTEM PU
8240989		4704700852		103		CONSOLIDATED COAL WN-12658	ELKHORN	9.8	GENERAL SYSTEM PU
8240986		4701303326		103		LOUIS BENNET HRS WN-12700	WASHINGTON	3.0	GENERAL SYSTEM PU
8240985		4701303325		103		LOUIS BENNETT HRS WN-12699	WASHINGTON	5.0	GENERAL SYSTEM PU
8240991		4705500083		103		POCA LAND WN-12715	ROCK	6.8	GENERAL SYSTEM PU
8240990		4704700858		103		POCA LAND WN-12717	ADKIN	66.0	GENERAL SYSTEM PU
-DORAN & ASSOCIATES INC				RECEIVED:	06/30/82	JA: WV			
8240978		4703302604		103		DAVID LOWE #1 KR-28	CLAY DISTRICT	30.0	CONSOLIDATED GAS
8240977		4703302611		103		DAVID LOWE #4 KR-29	CLAY DISTRICT	30.0	CONSOLIDATED GAS
-ENERGY UNLIMITED INC				RECEIVED:	06/30/82	JA: WV			
8240992		4707301296		103		RIEFFENBERGER/DINSMOOR #1	JEFFERSON DISTRICT	0.0	CONSOLIDATED GAS
-FRANK D & DARRELL F SMITH				RECEIVED:	06/30/82	JA: WV			
8240973		4709900076		108		WELL #5-18-1	WAYLIN	6.0	COLUMBIA GAS CO
8240972		4704301393		108		WELL #5-5-2	HARTS CREEK	25.0	COLUMBIA GAS CO
8240984		4704300621		108		WELL NO 5666	JEFFERSON	15.0	COLUMBIA GAS CO
-J & J ENTERPRISES INC				RECEIVED:	06/30/82	JA: WV			
8240970		4701702855		107-DV		J-285	WEST UNION	6.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8240967		4701702856		107-DV		J-286	WEST UNION	0.0	COLUMBIA GAS TRAN
8240969		4701702951		107-DV		J-294	CENTRAL	0.0	COLUMBIA GAS TRAN
8240965		4701702919		107-DV		J-425	WEST UNION	0.0	COLUMBIA GAS TRAN
8240968		4701702921		107-DV		J-427	WEST UNION	0.0	COLUMBIA GAS TRAN
8240971		4701702922		107-DV		J-428	GRANT	0.0	COLUMBIA GAS TRAN
8240966		4701702905		107-DV		J-429	WEST UNION	0.0	COLUMBIA GAS TRAN
-PETROLEUM DEVELOPMENT CORP				RECEIVED:		06/30/82 JA: WV			
8240956		4701702589		107-DV		CLYDE FRASHURE #1	WOLFPEN RUN	48.0	CONSOLIDATED GAS
8240957		4701702590		107-DV		CLYDE FRASHURE #2	WOLFPEN RUN	25.0	CONSOLIDATED GAS
8240960		4701702335		107-DV		GARLAND O FORD #1	SMITHON-FLINT-SEDALIA	62.0	COLUMBIA GAS TRAN
8240962		4701702579		107-DV		GARLAND O FORD #3	SMITHTON-FLINT-SEDALI	30.0	COLUMBIA GAS TRAN
8240958		4701702534		107-DV		L S MCGEE #1	STRAIGHT-FORK-BLUESTO	78.0	COLUMBIA GAS TRAN
8240961		4701702568		107-DV		L S MCGEE #2	STRAIGHT-FORK-BLUESTO	115.0	COLUMBIA GAS TRAN
8240963		4701702585		107-DV		LEONA BROADWATER #1	STRAIGHTFORK - BLUEST	48.0	COLUMBIA GAS TRAN
8240964		4701702586		107-DV		LEONA BROADWATER #2	STRAIGHT FORK - BLUES	85.0	COLUMBIA GAS TRAN
8240959		4701702530		107-DV		OPAL GRIBBLE #2	STRAIGHT-FORK-BLUESTO	25.0	COLUMBIA GAS TRAN
-RAMCO OIL & GAS CORP				RECEIVED:		06/30/82 JA: WV			
8241000		4705900964		103		U S STEEL WELL #27	U S STEEL	40.0	CONSOLIDATED GAS
8240998		4705900945		103		U S STEEL WELL NO 25	U S STEEL	50.0	CONSOLIDATED GAS
8240999		4705900963		103		U S STEEL WELL NO 26	U S STEEL	25.0	CONSOLIDATED GAS
8240997		4705900965		103		U S STEEL WELL NO 28	U S STEEL	50.0	CONSOLIDATED GAS
8240983		4705900968		103		U S STEEL WELL NO 30	U S STEEL	100.0	CONSOLIDATED GAS
-SWIFT ENERGY CO				RECEIVED:		06/30/82 JA: WV			
8241003		4702103804		107-DV		CLARK NO 2	GLENVILLE NORTH	50.0	
8240993		4704103069		107-DV		MCPHERSON "C" NO 1	FINSTER-ASPINALL	50.0	
8241001		4700114870		107-DV		ROSS #3	PHILIPPI	50.0	
8241002		4700101607		107-DV		ROSS NO 5	PHILIPPI	50.0	
8241004		4700701707		107-DV		WELCH NO 6	GLENVILLE NORTH	50.0	
-TRIO PETROLEUM CORP				RECEIVED:		06/30/82 JA: WV			
8240976		4702103832		103		GRIFFITH "D" NO 2	GLENVILLE NORTH	50.0	
8240974		4704103133		103		KEITH NO 1-A	FINSTER-ASPINALL	50.0	
8240975		4702103834		103		WHITE NO 3	GLENVILLE	50.0	
-UNITED PETRO LTD				RECEIVED:		06/30/82 JA: WV			
8240980		4702103627		108		G L SNIDER #1-A	SAND FORK	13.0	CONSOLIDATED GAS
8240981		4702103628		108		G L SNIDER #2-A	SAND FORK	1.5	CONSOLIDATED GAS
8240982		4710500865		108		LEWIS FULL #1-A	GARFIELD	1.0	CABOT CORPORATION
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
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-AMOCO PRODUCTION CO				RECEIVED:		06/30/82 JA: LA 3			
8240930	G2-2592	1770940459		102-5		OCS-G-3572 WELL #A-7	EUGENE ISLAND	1825.0	TRANSCONTINENTAL
8240933	G2-2780	1771040776		102-1		OCS-G-3571 WELL A-1	EUGENE ISLAND	5475.0	
8240932	G2-2778	1771040969		102-1		OCS-G-3571 WELL A2	EUGENE ISLAND	365.0	
-ARCO OIL AND GAS COMPANY				RECEIVED:		06/30/82 JA: LA 3			
8240923	G1-2450	1770040426		102-5		OCS-G-2832 W CAMERON BLK 205#A-6MU	WEST CAMERON	3102.0	NORTHERN NATURAL
8240924	G1-2451	1770040426		102-5		OCS-G-2832 W CAMERON BLK 205#A-6NL	WEST CAMERON	3102.0	NORTHERN NATURAL
8240921	G1-2432	1770040418		102-5		OCS-G-2832 W CAMERON BLK 205#A-4MU	WEST CAMERON	3102.0	NORTHERN NATURAL
8240922	G1-2437	1770040418		102-5		OCS-G-2832 W CAMERON BLK 205#A-4NL	WEST CAMERON	3102.0	NORTHERN NATURAL
8240926	G1-2497	1771940214		102-5		OCS-G-2933 A-1 (MG)	WEST DELTA	1000.0	TENNESSEE GAS PIP
8240927	G1-2498	1771940214		102-5		OCS-G-2933 A-1D (JR)	WEST DELTA	1000.0	TENNESSEE GAS PIP
-CNG PRODUCING COMPANY				RECEIVED:		06/30/82 JA: LA 3			
8240925	G1-2496	1771240135		102-5		A-15S6 OCSG-1027 SHIP SHOAL 246	SHIP SHOAL	825.0	CONSOLIDATED GAS
-GULF OIL CORPORATION				RECEIVED:		06/30/82 JA: LA 3			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8240928	G2-2552	1771540410		102-5		OCS-G 3336 #D-17	SOUTH TIMBALIER	912.0	TEXAS EASTERN TRA
-PENNZOIL OIL & GAS INC				RECEIVED:	06/30/82	JA: LA 3			
8240929	G2-2587	1770940482		102-5		#A-16A EUGENE IS 261 OCSG-2900	EUGENE ISLAND	530.0	SEA ROBIN PIPELIN
-ANR PRODUCTION CO				RECEIVED:	06/30/82	JA: TX 3			
8240931	G2-2754	4270440065		102-1		BRAZOS BLOCK 504 WELL #A-6	BRAZOS	1753.0	TRANSCONTINENTAL

OTHER PURCHASERS VOLUME NO :693

8240954 EXXON CO USA

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before August 10, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brin
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper wall
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb.

Secretary.

[FR Doc. 82–20103 Filed 7–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–384–000]

Arkansas Louisiana Gas Co., a Division of Arkla, Inc.; Application

July 19, 1982.

Take notice that on June 21, 1982, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Applicant), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP82–384–000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 9, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–20104 Filed 7–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6447–000]

Cataldo Hydro Power Associates; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

July 21, 1982.

Take notice that on June 18, 1982, Cataldo Hydro Power Associates (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. §§ 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6447 would be located on the Black River in the Town of Leyden, Lewis County, New York. Correspondence with the Applicant should be directed to: Mr. Malden V. Frank, One Lincoln Center—Suite 1225, Syracuse, New York 13202.

Project Description—The proposed project would utilize existing Applicant-owned and operating facilities consisting of: (1) A 24-foot-high rock-filled timber-crib dam having a 113-foot-long spillway section; (2) a reservoir with a surface area of 23 acres and a gross storage capacity of 150 acre-feet at spillway crest elevation 831.5 feet m.s.l.; (3) an intake structure near the dam's left (west) abutment: (4) a short penstock; (5) a powerhouse containing three generating units having a total rated capacity of 497-kW operated under a 24-foot head and at a flow of 350 cfs; (6) a 2.3/23–kV substation; (7) a 23–kV transmission line; (8) an access road; and (9) appurtenant facilities. Project energy is sold to Niagara Mohawk Power Corporation. Applicant estimates that the average annual energy output has been 1,830,000 kWh.

Applicant proposes to: (1) Modify a 47-foot-long non-overflow section of the dam to be a concrete-capped grouted-masonry spillway section having crest elevation 831.5 feet m.s.l.; (2) remove the old intake, penstock, and powerhouse; (3) construct an intake; (4) construct a powerhouse containing a generating unit having a rated capacity of 2,080–kW operated under a 24-foot head and at a flow of 1,200 cfs; (5) excavate a tailrace; and (6) modify the substation to operate at 4.16/23–kV. Project energy would be sold to Niagara Mohawk Power Corporation. Applicant estimates that the average annual energy output would be 11,200,000 kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New York State Department of Environmental Conservation are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources

or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before September 10, 1982 either the competing license application that propose to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before September 10, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20105 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6452-000]

Connellsville Area School District; Application for Preliminary Permit

July 21, 1982.

Take notice that Connellsville Area School District (Applicant) filed on June 21, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6452 to be known as the Indian Creek Hydro Project located on Indian Creek in Fayette County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William L. Hart, Board President, Connellsville Area School District, 125 North Seventh Street, Connellsville, Pennsylvania 15425.

Project Description—The proposed run-of-the-river project would consist of: (1) The existing Indian Creek Dam, approximately 515 feet long and 40 feet high, constructed of concrete and masonry with a 300-foot spillway section at an elevation of 1,247.8 feet m.s.l.; (2) the existing Mill Run Reservoir having minimal pondage; (3) a new intake structure near the left dam abutment and a penstock, 5.5 feet in diameter and 500 feet long, leading to (4) a new powerhouse containing turbine-generator units having a total rated capacity of 534 kW; (5) a new 50-foot-long tailrace re-entering Indian Creek approximately 550 feet downstream of the dam; (6) a new transmission line and switchyard; and (7) appurtenant facilities. The Applicant estimates that the average annual output would be 2,339,000 kWh. Project energy would be sold to the West Penn Power Company, or other possible options may be utilized. Indian Creek Dam and Mill Run Reservoir are owned by the Westmoreland County Municipal Authority.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $45,000.

Competing Applications—This application was filed as a competing application to Long Lake Energy Corporation's application for Project No. 5897 filed on January 19, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 25, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all

capital letters the title "COMMENTS", "PROTEST", "COMPETING APPLICATIONS", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20106 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6463-000]

Energenics System, Inc.; Application for Preliminary Permit

July 22, 1982.

Take notice that Energenics System, Inc. (Applicant) filed on June 24, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6463 to be known as the Cagles Mill Water Power Project located on the Mill Creek in Putnam County, Indiana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Granville, J. Smith II, President, Energenics System, Inc., 1717 K Street, N.W., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize an existing U.S. Army Corps of Engineers' Dam and Reservoir. The proposed project would cosist of: (1) An existing outlet conduit to be reinforced with a steel liner; (2) a proposed penstock; (3) a proposed powerhouse containing generating units with a total capacity of 1.4 MW; (4) a proposed tailrace channel which would connect with the existing outlet channel; (5) proposed transmission lines; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4.95 GWh. The power generated by the proposed project would be sold by the Applicant to the Public Service Company of Indiana.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soils and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $45,000.

Competing Applications—Annyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before November 1, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20107 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6363-000]

Lind & Associates; Application for Preliminary Permit

July 21, 1982.

Take notice that Lind & Associates (Applicant) filed on May 24, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6363 to be known as the Lind & Associates Hydroelectric Project located on Rock Creek in El Dorado County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. & Mrs. Anton A. Lind, 8715 Curragh Downs Drive, Fair Oaks, California 95628.

Project Description—The proposed project would consist of: (1) A 50-foot-long, 6-foot-high diversion structure; (2) a 4,000-foot-long, 72-inch-diameter penstock; (3) a powerhouse with a total installed capacity of 1,000 kW; and (4) a 0.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas & Electric Company transmission line. The Applicant estimates that the average annual energy production would be 4 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $50,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 12, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 C.F.R. 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 F.R. 55245, November 9, 1981.)

The commission will accept applications for license of exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 30, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in acordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–20108 Filed 7–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5946–000]

Massachusetts Hydro Associates; Application for License (5 MW or Less)

July 21, 1982.

Take notice that Massachusetts Hydro Associates (Applicant) filed on February 4, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for continued operation of a water power project to be known as Lowell Atlantic Project No. 5946. The project is located on a canal off the Merrimack River, near Lowell in Middlesex County, Massachusetts. Correspondence with the Applicant should be directed to: Mr. Harry Wolf, Essex Development Associates, Inc., 110 Tremont Street, Boston, Massachusetts 02108 and Mr. David B. Ward, Esquire, Case & Ward P.C., 1050 Seventeenth Street, N.W., Washington, D.C. 20036.

Project Description—The proposed project would consist of: (1) The project headworks which are situated at right angles to the Lawrence Canal; (2) two 30-foot-long and 8.5-foot diameter penstocks; (3) two turbine-generator units with a total rated capacity of 500 kW; and (4) other appurtenances. Applicant lease the project facilities and associated property from Atlantic Associates. The project would generate 2,700,000 kWh per year initially and 1,700,000 kWh per year once the Lowell Hydroelectric Project No. 2790 is in operation.

Purpose of Project —Project energy would be sold to Fitchburg Gas and Electric Light Company.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before October 4, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 4, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "*NOTICE OF INTENT TO FILE COMPETING APPLICATION*", "*COMPETING APPLICATION*", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any *notice of intent, competing application,* or petition to intervene must also be served upon each

representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20109 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6389-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

July 22, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on June 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)] for Project No. 6389 to be known as the French Creek Water Power Project located on French Creek, within Snoqualmie—Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122—196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) 2-foot-high, 14-foot-long diversion structure; (2) a 24-inch-diameter, 8000-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 2.33 MW; and (4) appurtenant facilities. The Applicant estimates a 12.24 GWh average annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested 24-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $40,000. Power would be sold to Puget Sound Power and Light.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 1, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 30, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20110 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6390-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

July 21, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on June 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6390 to be known as the Sloan Creek Water Power Project located on Sloan Creek, within Snoqualmie—Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122—196th N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) Two 2-foot-high diversion structures on Sloan Creek; (2) a 36-inch, and 18-inch-diameter, 12,000-foot and 4,000-foot-long penstock respectively; (3) a powerhouse containing a generating unit with a rated capacity of 3.62 MW; and (4) appurtenant facilities. The Applicant estimates a 19.04 GWh average annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $40,000. Power would be sold to Puget Sound Power and Light.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 1, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to

submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 30, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20111 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6388-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

July 22, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on June 2, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6388 to be known as the Lost Creek Water Power Project located on Lost Creek within Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Lawrence J. McMurtrey, 12122 — 196th, N.E., Redmond, Washington 98052.

Project Description—The proposed project would consist of: (1) A 2-foot-high, 36-foot-long diversion structure; (2) a 36-inch-diameter, 8,000-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 2.32 MW; (4) appurtenant facilities. The Applicant estimates a 10.15 GWh average annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a definitive project report including preliminary designs, and geological, environmental, and economic feasibility studies. The cost of forementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $40,000. Power would be sold to Puget Sound Power and Light.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 1, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than November 30, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the origial and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20112 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6270-000]

Moon Lake Water Users Association; Application for Exemption of Small Conduit Hydroelectric Facility

July 22, 1982.

Take notice that on April 28, 1982, Moon Lake Water Users Association (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Big Sand Wash Project (FERC Project No. 6270) would be located on "C" Canal in Duchesne County, Utah. Correspondence with the Applicant should be directed to: Mr. Jay R. Bingham, President, Water Power Company, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

Purpose of Project—Power generated by the proposed project will be marketed to the Moon Lake Electrification Cooperative.

Project Description—The proposed project would consist of: (1) The existing "C" Canal providing water to the irrigated lands surrounding Upalco, Utah and to the Big Sand Wash Dam, owned and operated by the Applicant; (2) a new modified diversion structure to divert flow of the "C" Canal; (3) a proposed penstock, approximately 13,900 feet long, using 42" diameter steel pipe; (4) a proposed powerplant containing a single generating unit with an installed capacity of 1,700 kW; (5) proposed transmission lines; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 9.84 GWh.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Utah Department of Natural Resources, Division of Wildlife Resources are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before September 13, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-20113 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1980 Initial Valuation (July 23, 1982)

Valuation Docket No. PV-1466-000—Tomahawk Pipe Line Company, P.O. Box 376, Tulsa, OK 74101.

On or before August 30, 1982, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 70 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.70), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 82-20117 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6340-000]

Ronald E. Rulofson & Janice C. Rulofson; Application for Preliminary Permit

July 21, 1982.

Take notice that Ronald E. Rulofson and Janice C. Rulofson (Applicant) filed on May 17, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6340 to be known as the Big Creek, 7-R Power Project located on Big Creek, in Trinity County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ronald E. Rulofson and Janice C. Rulofson, P.O. Box 108, Hyampom, California 96046.

Project Description—The proposed project would consist of: (1) A 125-foot-long, 5-foot-high diversion structure; (2) a 50-inch-diameter diversion conduit; (3) a 3,825-foot-long, 40-inch-diameter penstock; (4) a powerhouse with an

installed capacity of 2,750 kW; and (5) a 1,000-foot-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas & Electric Company transmission line. The Applicant estimates that the average annual energy production would be 6.4 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $115,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before October 4, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 4, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than December 3, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 4, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–20114 Filed 7–23–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6459–000]

Southeastern Hydro-Power, Inc.; Application for Preliminary Permit

July 22, 1982.

Take notice that Southeastern Hydro-Power, Inc. (Applicant) filed on June 24, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6459 to be known as the Tar River Hydroelectric Project located on the Tar River in Nash County, near Rocky Mount, North Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Charles B. Mierek, Southeastern Hydro-Power, Inc., 838 Arlington Drive, Tucker, Georgia 30084.

Project Description—The proposed project would consist of: (1) The existing City of Rocky Mount Tar River Reservoir with a surface area of 1,400 acres and a gross storage capacity of 13,200 acre-feet at 125 feet NGVD; (2) the existing 40-foot high by 860-foot long City of Rocky Mount Tar River Dam; (3) a proposed 60-inch diameter, 250-foot long steel penstock; (4) a proposed powerhouse with a single Kaplan turbine/generator unit having an estimated total installed capacity of 1,900 kW and producing an average energy output of 7.5 GWh; (5) a proposed 80-foot long concrete retaining wall tailrace; (6) a proposed ½-mile, 44 kV primary transmission line to connect to an existing Carolina Power and Light Company (CPLC) line; and, (7) appurtenant facilities. The proposed market for the power is Duke Power Company and CPLC.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $70,000.00.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before November 1, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before October 1, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all

protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-20115 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6338-000]

Suncook Leathers, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

July 21, 1982.

Take notice that on May 17, 1982, Suncook Leathers, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6338 would be located on the Suncook River in the Town of Pittsfield in Merrimack County, New Hampshire. Correspondence with the Applicant should be directed to: Mr. Peter Gardiner, Swift River Co., Inc., 148 State Street, Boston, Massachusetts 02109.

Project Description—The proposed project would consist of: (1) The proposed addition of 1-foot-high flashboards to an existing 21-foot-high, 421-foot-long, concrete and stone gravity dam owned by the New Hampshire Water Resources Board; (2) an existing reservoir with a surface area of 20 acres at an elevation of 475 feet M.S.L.; (3) major reconstruction of the existing intake structure; (4) rehabilitation of an existing 9-foot-diameter, 200-foot-long steel penstock; (5) rehabilitation of the existing powerhouse structure; (6) rehabilitation of an existing 550-H.P. turbine operating under a 19-foot head; (7) a proposed generator with a rated capacity of 420 kW; (8) rehabilitation of an existing 65-foot-long tailrace; (9) a proposed 75-foot-long, 4.16-kV transmission line; and (10) appurtenant facilities. The average annual energy generation of 1,400,000 kWh would be sold to Public Service Company of New Hampshire. Suncook Leathers, Inc. currently holds a preliminary permit (Project No. 4480-000) for this site.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the New Hampshire Fish and Game Department are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before September 10, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before September 10, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-20116 Filed 7-23-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP 180610; PH-FRL 2177-3]

South Carolina; Receipt of Application for Specific Exemption for DBCP; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Division of Regulatory and Public Programs Service Programs, College of Agricultural Sciences, Clemson University, South Carolina (hereafter referred to as the "Applicant"), for use of DBCP (1,2-dibromo-3-chloropropane) to control nematodes on 20,000 acres of peach trees in South Carolina. EPA is soliciting public comment concerning the specific exemption request.

DATE: Due to the nature of the emergency written comments must be received by August 2, 1982.

ADDRESS: Comments should bear the document control number OPP-180610 and be submitted to: Document Control Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

The public record regarding this notice will be available for public inspection in Rm. E-107, at the above address from 8:00 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: According to the Applicant, ring and root-knot nematodes are ubiquitous in agricultural land in South Carolina. They are important on peach trees because they increase susceptibility to cold injury and certain diseases that cause sudden collapse and death of the trees. The entire complex of factors that leads to premature death has been given the name "peach tree short life." Certain peach rootstocks are resistant to root-knot nematode damage, but none is resistant to ring nematodes; therefore, plant resistance is an ineffective approach to control. Nematocides applied before the trees are planted usually are effective for about two years after treatment. Then nematodes become reestablished in the treated soil. Nematocide treatments after planting, therefore, are required.

Prior to October 1979, peach farmers applied DBCP, the only nematocide registered for use after planting, when nematode populations reached damaging levels. When the registration of DBCP on peaches was withdrawn in 1979, farmers were left with no means for controlling nematodes in established orchards. According to the Applicant, the percentage of orchards having nematode populations at injurious levels increased from 15 percent in 1979 to 50 percent in 1981.

A resurgence of peach tree short life in South Carolina occurred in 1982. The Applicant estimates that 72,000 trees died from this disease in 1982; an increase of 74 percent over 1981. All major losses occurred in nematode-infested orchards.

Without effective treatment, the Applicant states losses in 1983 probably will exceed $12,000,000 and could be as high as $25,000,000. If DBCP is used, losses probably will not exceed $4,000,000 and could be as low as $2,000,000, according to the Applicant.

The Applicant proposes to make one application of DBCP a year, at a maximum rate of 60.5 pounds of the active ingredient per acre. Applications will take place by standard chisel soil injection equipment, with the chisel channels in the soil sealed immediately to prevent escape of DBCP vapors into the air.

Dated: July 20, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-20218 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed form under review is listed below.

DATE: Comments must be received on or before August 25, 1982. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB reviewer and the agency clearance officer of your intent as early as possible.

ADDRESS: Copies of the proposed form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clerance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Thomas P. Goggin, Office of Administration, Room 3230, 2401 E Street, NW., Washington, DC 20506; Telephone (202) 634-6983.

OMB Reviewer: Richard Eisinger, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washingon, DC 20503; Telephone (202) 395-6880.

Type of Request Extension (No Change)

Title: Higher Education Staff Information Report (EEO-6)

Form Number: EEOC Form 221.

Frequency of Report: Biennially

Type of Respondent: State or local governments, Business/other institutions.

Standard Industrial Classification (SIC) Code: 822, 824, 829.

Description of Affected Public: Institutions of higher education.

Responses: 3,000.

Reporting Hours: 12,000.

Federal Cost: $50,000.

Applicable under Section 3504(h) of Public Law 96-511: Not applicable.

Number of Forms: 1.

Abstract—Needs/Uses: Data used by EEOC for investigations, decisions and conciliation in its compliance, litigation and voluntary programs activities. It will be shared with other Federal agencies which have a need for it and pledge to abide by its confidentiality restrictions.

Dated: July 17, 1982.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 82-20053 Filed 7-23-82; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2303]

Gray International Forwarding, Inc., Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Gray International Forwarding, Inc., 1290 South Pearl Street, Denver, CO. 80210 was cancelled effective July 3, 1982.

By letter dated June 7, 1982, Gray International Forwarding, Inc., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2303 would be automatically revoked unless a valid surety bond was filed with the Commission.

Gray International Forwarding, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2303 be and is hereby revoked effective July 3, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 2303 issued to Gray International Forwarding, Inc., be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Gray International Forwarding, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-20073 Filed 7-23-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a) of the Bank Holding Company Act (12 U.S.C. 1842(a)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated for the application. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois, and its wholly-owned subsidiary, NAPSUB Corporation, Chicago, Illinois; to acquire 98 percent or more of the voting shares or assets of The First Bank, Naperville, Naperville, Illinois. Comments on this application must be received not later than August 19, 1982.

Board of Governors of the Federal Reserve System, July 20, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-20042 Filed 7-23-82; 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 or 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 received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York (finance, servicing, and leasing activities; Southeastern U.S.): To engage through its indirect subsidiary, Chase Commercial Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a commercial finance, equipment finance or factoring company, including factoring accounts receivable, making advances and over-advances on receivables and inventory and business installment lending as well as unsecured commercial loans; servicing loans and other extensions of credit; leasing personal property on a full payout basis and in accordance with the Board's Regulation Y, or acting as agent, broker or advisor in so leasing such property, including the leasing of motor vehicles. These activities would be conducted from an office in Charlotte, North Carolina, serving the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. Comments on this application must be received not later than August 19, 1982.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central Bancorporation, Inc., Central Colorado Company,* and *C.C.B., Inc.,* all of Denver, Colorado (underwriting credit life, credit accident and health insurance; Phoenix, Arizona): To engage, through its subsidiary, Central Bancorp Life Insurance Company, in operating as an underwriter of credit life, credit accident and health insurance which is directly related to extensions of credit made by subsidiaries of Central Bancorporation, Inc. These activities would be conducted from an office in Phoenix, Arizona, in connection with extensions of credit made by subsidiaries of Central Bancorporation, Inc. located in (or to be

located in) and serving the following counties in the State of Colorado: El Paso, Denver, Adams, Arapahoe, Jefferson, Boulder, Weld, Pitkin, Garfield, Mesa, Douglas, Pueblo, Moffat and Otero. Comments on this application must be received not later than August 11, 1982.

2. *Bankshares of Nebraska, Inc.*, Grand Island, Nebraska (underwriting credit life and credit accident and health insurance; Nebraska): To engage, through a subsidiary to be formed, in the activity of underwriting insurance which is sold in connection with credit extensions by its credit granting subsidiaries. This insurance would be sold from offices located in Grand Island, Kearney and Hastings, Nebraska. The area to be served by the activities includes the following Nebraska counties: Hall, Adams, Howard, Merrick, Hamilton, Clay, Nucholls, Webster, Franklin, Kearney, Buffalo and Sherman. Comments on this application must be received not later than August 11, 1982.

Board of Governors of the Federal Reserve System, July 20, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-20041 Filed 7-23-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alabama; Meeting of Southern Appalachian Regional Coal Team

AGENCY: Bureau of Land Management, Eastern States Office, Interior.

ACTION: Meeting notice.

SUMMARY: Pursuant to the responsibilities set forth in 43 CFR 3400, the Regional Coal Team for the Southern Appalachian Coal Production Region, Alabama Subregion, will meet on August 12, 1982. The team will review expressions of coal leasing interest for the second round of Federal coal leasing in Alabama, and will give guidance to the Tract Delineation and Site-Specific Analysis Teams. Among the topics to be discussed are leasing levels, definition of minerable reserves, and the activity planning schedule.

Representatives of other agencies and the public are invited to attend the meeting and share their views with the Regional Coal Team.

DATE: The Southern Appalachian Regional Coal Team meeting will begin at 10:00 a.m. on Thursday, August 12, 1982.

ADDRESS: The meeting will be held in the Sanderson and Thornton Rooms of the Holiday Inn South, McFarland Boulevard off Interstate 59, Tuscaloose, Alabama 35405.

FOR FURTHER INFORMATION CONTACT: Monte Jordan, Regional Coal Team Chairman, Bureau of Land Management, 18th and C Streets, N.W., Washington, D.C. 20240, (202) 343-4636, or Robert Todd, Bureau of Land Management, Tuscaloosa Office, 518 19th Avenue, Tuscaloose, Alabama 35404, (205) 759-5441.

G. Curtis Jones, Jr.,

Eastern States Director.

[FR Doc. 82-20231 Filed 7-23-82; 8:45 am]

BILLING CODE 4310-84-M

[M-30912 and Nev-051742]

Montana and Nevada; Notice of Amendment of Proposed Withdrawals; Charles M. Russell and Charles Sheldon National Wildlife Refuges

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of amendment of proposed withdrawals for the Charles M. Russell and Charles Sheldon National Wildlife Refuges.

SUMMARY: Notice of the Bureau of Land Management's application, Nev-051742, for withdrawal of 468,600 acres of land in the Charles Sheldon Antelope Range (now the Charles Sheldon National Wildlife Refuge) from location under the mining laws was published in the **Federal Register** of February 27, 1975, at pages 8368 and 8369 (FR Doc. 75-5253). Similarly, notice of the Bureau of Land Management's application, M-30912, for withdrawal of 980,000 acres of land in the Charles M. Russell National Wildlife Range (now the Charles M. Russell National Wildlife Refuge) from location under the mining laws was published in the **Federal Register** of March 11, 1975, at pages 11365-11367 (FR Doc. 75-6270).

Both applications are hereby amended to change the name of the applicant from the Bureau of Land Management to the U.S. Fish and Wildlife Service. This amendment is concurred in by the Assistant Secretary for Fish and Wildlife and Parks and is in keeping with Public Law 94-223 of February 27, 1976 (90 Stat. 199), which provides that all units of the National Wildlife Refuge System, including the Sheldon and Russell Refuges be administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service.

FOR FURTHER INFORMATION CONTACT: Sue Bosma, Washington, D.C. office, 202-343-6486.

July 16, 1982.

Garrey E. Carruthers,

Assistant Secretary for Land and Water Resources.

[FR Doc. 82-20076 Filed 7-23-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Availability of a Draft Environmental Assessment/Environmental Impact Report on the San Bruno Mountain Habitat Conservation Plan and Endangered Species Section 10(a) Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft Environmental Assessment/Environmental Impact Report (EA/EIR) on the San Bruno Mountain Habitat Conservation Plan and Endangered Species Act Section 10(a) Permit is available for public review. Comments and suggestions are requested.

The U.S. Fish and Wildlife Service and the County of San Mateo propose to implement, and sanction by means of a Federal Endangered Species permit, a cooperative program of management actions on San Bruno Mountain that will recognize the private landowner's desires for housing development and the need to preserve natural ecological conditions on the mountain, specifically habitat for the endangered mission blue butterfly.

The program (HCP) includes review of present and future development proposals to minimize adverse impacts on the natural hibitat, acquisition of privately owned habitat of the mission blue butterfly by San Mateo County to be incorporated into existing public parks, seasonal monitoring of the population status of the mission blue butterfly and other flora and fauna of concern, affirmative habitat enhancement actions, and other actions designed to benefit the mission blue butterfly and other species. An institutional structure to supervise HCP implementation and a funding mechanism to support the various HCP actions are integral parts of the cooperative program.

DATES: Written comments are requested by August 23, 1982. Two meetings are scheduled to hear public response and encourage public participation in the

environmental review of these actions. Public meetings will be conducted under the auspices of the County of San Mateo with active participation of the Fish and Wildlife Service. The San Mateo County Planning Commission will hold a public hearing on the EA/EIR on August 25, 1982, 7:30 P.M., Board of Supervisors Chambers, Hall of Justice and Records, 401 Marshall, Redwood City, California. The San Mateo County Board of Supervisors will hold a public meeting to review the recommendations of the Planning Commission, and consider final certification of the EA/EIR on September 14, 1982, 2:00 p.m., in the Board of Supervisors Chambers at the foregoing address.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph G. Swanson, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814, (916) 440–2791.

Mr. Paul M. Koenig, Director of Environmental Management, County of San Mateo, 590 Hamilton, Redwood City, California 94063, (415) 363–4000.

Individuals wishing copies of the environmental document for review should immediately contact one of the above individuals. Copies have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

SUPPLEMENTAL INFORMATION: The Fish and Wildlife Service (FWS), Department of the Interior, in conjunction with the County of San Mateo, has prepared a draft Environmental Assessment/ Environmental Impact Report to assist in evaluating the environmental impacts of whether or not to issue a federal permit pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended. This action is designed to permit the construction of residential housing within the range and habitat of the endangered mission blue butterfly (*Plebejus icarioides missionensis*) while insuring the implementation of affirmative conservation actions elsewhere throughout the species' range. This action will result in the loss, through direct construction impact, of a segment of the habitat and population of the mission blue butterfly. It will also result in the implementation of a program of conservation actions designed to minimize the adverse effects of development on the species and relieve other natural and man-induced threats to the mission blue.

The major alternatives under consideration that were analyzed and evaluated during planning are:

(1) No project/No Action: This alternative represents no development of a HCP. Housing construction may still occur according to the San Mateo County General Plan of 1976, but a fundamental conflict between private development proposals and federal protection for endangered species will remain. Nearly half of the mission blue butterfly habitat is in private ownership and subject to development pressures. Publically owned habitat is also experiencing natural and man-indured threats that would not be addressed with this alternative.

(2) Modified Development with a HCP: Alternate development patterns have been considered in the course of preparing the HCP and EA/EIR. No other viable development patterns offer substantially less impact on the mission blue. Modifications to existing development designs may nonetheless occur due to other factors during implementation of the HCP.

(3) Alternate Development without the HCP: Development could proceed without a Section 10(a) permit and HCP if no endangered species habitat were involved. The only area on the mountain which is poor mission blue habitat and which is technically suitable for development is the Saddle, now owned by the State of California and planned by the County as a public park. Development on the Saddle would require private acquisition, possibly in trade for the now private land. While this alternative would reduce the short-term impact on the endangered species, it would not provide the enhancement benefits of the HCP, and it would potentially impact another endangered species, the San Francisco garter snake. Development in the Saddle would have significant traffic and visual impacts. The community rejected a plan for development on the Saddle in 1976.

(4) Change the Endangered Classification of the Mission Blue Butterfly: The requirement for a Section 10(a) permit stems from the classification of the mission blue butterfly as endangered by the Federal government. If the classification were changed to "threatened", the prohibition against taking (Section 9) could not be removed without special regulations thus preserving the existing conflict between housing construction and the prohibition on taking endangered species. If the butterfly were removed from the endangered species list, the present legal constraint to development would be removed. In either case, none of the mitigation and enhancement provisions of the HCP would be available to protect the species.

(5) Public Acquisition of Privately owned Endangered Species Habitat: The HCP is a means to convey some private lands to public ownership for conservation and to provide perpetual funding for enhancement activities at no cost to the public. Public acquisition of private land would increase the amount of land conserved. This would require fair market purchase of roughly 1200 acres at cost of about $120,000,000. Public funding of the enhancement program would require an additional $60,000 annually. This alternative would have substantial beneficial impacts on the mission blue butterfly, and other flora and fauna on San Bruno Mountain. It would have adverse impacts on local community plans and desires for urban growth.

Other government agencies and several members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this EA/EIR. The Notice of Intent to prepare this document was published in the April 16, 1982 **Federal Register.** On May 12, 1982, a jointly sponsored scoping meeting was held to seek public involvement and to solicit public views on the significant environmental issues associated with these actions. Written responses to the Notice of Intent were accepted until June 30, 1982. Notices announcing the Scoping Meeting were mailed to a list of about 25 interested persons. About 30 people attended the Scoping Meeting, and six people made verbal presentations on the issues. Written responses were received from several individuals and organizations the most notable being the Environmental Defense Fund.

All agencies and individuals are urged to provide comments and suggestions for improving this EA/EIR soon as possible. All comments received by the date given will be considered in preparation of the final EA/EIR for these proposed actions.

Dated: July 20, 1982.

William Meyer,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 82–20027 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; JFD, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that JFD, Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 1987 Block 82, Grand Isle Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service 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 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: July 16, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–20075 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Bighorn Canyon National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability for the Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Wilderness Recommendation, and Development Concept Plans.

SUMMARY: Pursuant to regulations of the Council on Environmental Quality (40 CFR 1505.2) and the Implementing Procedures of the National Park Service for the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Record of Decision on the final Environmental Impact Statement (FES 81–38) for the General Management Plan, Wilderness Recommendation, and Development Concept Plans, Bighorn Canyon National Recreation Area, Montana and Wyoming.

The Record of Decision is a concise statement of what decisions were made, what alternatives were considered, and that acceptable mitigating measures were developed in order to avoid or minimize environmental impacts.

ADDRESSES: The Record of Decision may be obtained from the Superintendent, Bighorn Canyon National Recreation Area, Post Office Box 458, Fort Smith, Montana 59035, or Regional Director, National Park Service, Rocky Mountain Regional Office, 655 Parfet Street, Post Office Box 25287, Denver, Colorado 80225. Copies of the document are also available for review at the locations noted above.

Dated: July 19, 1982.

Russell Dickenson,

Director, National Park Service.

[FR Doc. 82–20083 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: Small Operator Assistance Application
Bureau Form Number: FS–6
Frequency: Annually
Description of Respondents: Surface Coal Mine Operators
Annual Responses: 1200
Annual Burden Hours: 12,000
Bureau Clearance Officer: Darlene Gross, (202) 343–5447

Carson W. Culp,

Assistant Director, Management and Budget.

July 19, 1982.

[FR Doc. 82–200–74 Filed 7–23–82; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 C.F.R. 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is

neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: July 19, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

Agatha L. Mergenovich,

Secretary.

MC–F–14895, filed: July 6, 1982. Transferor: SUNSET EXPRESS CORPORATION, P.O.B. 27043, Salt Lake City, UT 84115. Transferee: L. L. SMITH TRUCKING, P.O.B. 987, Riverton, WY 82501. Representative: Jack B. Wolfe, 601 E. 18th Ave., No. 107, Denver, CO 80203. Smith seeks authority to purchase a portion of the interstate operating rights of Sunset. Approval is sought for the transfer of certificate MC–148739 (Sub-No. 5), which provides for the transportation of, (1) ore, refractories and mill products, and (2) equipment, materials and supplies used in mining, milling and refactories operations, between points in the U.S. (except those east of AR, IA, LA, MN and MO). TA has been filed. Smith operates as a common carrier under MC–105006 and Sub-No.'s thereto. Condition: L. L. Smith Trucking is owned by Roger Smith 48.5%; Ronald Smith 48.5% and George Richards 3%. The person or persons in control of L. L. Smith must join in the application.

MC–F–14894, filed July 6, 1982. T.F.S., INC., (TFS), (RR 2, Box 126, Grand Island, NE 68801)—PURCHASE—NEBRASKA IOWA XPRESS, INC. (NIX) (3219 Nebraska Ave., Council Bluffs, IA 51501) (ROBERT WENZL, ASSIGNOR). Representative: A. J. Seanson, P.O. Box 1103, Sioux Falls, South Dakota 57101–1103. Authority sought by TFS to purchase all of the operating rights of NIX as set forth in certificates MC–121489 Subs 5, 8, 12, 13, 14F, 15F, 16F, 18F, 20, 21F, 23F, 24, 24, 26, 27, 28, and 29F which collectively authorize the transportation of *general commodities* (except Classes A and B explosives), between points in the United States. Robert Wenzl, who controls TFS through stock ownership, seeks to obtain control of said operating rights through the purchase. TFS is a motor common and contract carrier operating under MC–145743 and MC–141575. Application for temporary authority has been filed.

[FR Doc. 82–20059 Filed 7–23–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 13, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the applications later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP2–155

Decided: July 15, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 135362 (Sub-2), filed July 7, 1982. Applicant: ELMSFORD TRANSPORTATION, INC., 17 North Payne St., Elmsford, NY 10523. Representative: Anthony Morgese (same address as applicant), 914–592–3322. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 146423 (Sub-18), filed July 6, 1982. Applicant: STEPHEN HROBUCHAK, d.b.a. TRANSCONTINENTAL REFRIGERATED LINES, P.O. Box 1456, Scranton, PA 18503. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, 717–344–8030. Transporting for or on behalf of the United States Government, *general*

commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162782, filed July 2, 1982. Applicant: M. H. GARVEY COMPANY, 148 State St., Boston, MA 02109. Representative: John V. McCarthy (same address as applicant), 617–523–6226. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 162802, filed July 6, 1982. Applicant: JONEL, INC., d.b.a. WILLCIN TRANSPORTATION COMPANY, 350 Carlson (P.O. Box 2229), Richmond, CA 94802. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, 415–986–8696. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI); (2) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI); and (3) as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162912, filed July 12, 1982. Applicant: MILLER SAND & GRAVEL CO., 1466 120th Ave., Hopkins, MI 49328. Representative: Thomas E. Miller (same address as applicant), 616–672–5187. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP2–159

Decided: July 19, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 160612 (Sub-1), filed June 29, 1982. Applicant: SCHEALL DRIVEAWAY SYSTEM, Suite 100, 9485 Colfax Ave., Lakewood, CO 80215. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Ave. NW., Washington, DC 20036, 202–785–0048. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 162762, filed June 30, 1982. Applicant: M & M TRANSPORT, INC., 12 Voelker Rd., Fairfield, NJ 07006. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410, 201–791–2270. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OP1–123

Decided: July 15, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 162851, filed July 7, 1982. Applicant: BEL HEAVY HAULERS, INC., 3410 Marquart, Houston, TX 77027. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (713) 437–1768. (1) As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI); and (2) transporting (a) for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI); (b) *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI); (c) *used household goods* for the account of the U.S. Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI); and (d) *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP3–113

Decided: July 19, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

MC 162875, filed July 9, 1982. Applicant: AARTIC PARCEL SERVICE, INC., 27 Canal St., Millbury, MA 01527. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting (1) for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, and (3) *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162945, filed July 12, 1982. Applicant: VANEVANS, INC., 627 Taylor Rd., Enfield, CT 06082. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728–0700. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Volume No. OP4–264

Decided: July 15, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 70267 (Sub-25), filed July 1, 1982. Applicant: ECKERT TRUCKING, INC., 1090 E. Springettsburg Ave., York, PA 17405. Representative: David Zimmerman (same address as applicant), (717) 843–0995. Transporting *general commodities* (except classes A and B explosives and household goods), between Blanche and Blue Pond, AL; Kentmere, DE; Dundee, Lake Hamilton and Waverly, FL; Chelsea and Menlo, GA; Adams, Amo, Avila, Beesons, Cartersburg, Clayton, Cleveland, Coatesville, Denham, Fillmore, Greenfield, Huntertown, La Otto, Lomax, Newpoint, North Belleville, Plainfield, Prescott, Ripley, St. Paul, Smith's Crossing, Spades, Spring Lake, Swan, Tefft, and Waldron, IN; Addison, IL; Burmingham, Clinton, and Whichard, NC; Betzwood, Ironsides, Manatawny, Port Indian, Protectory, and Quarryville, PA; Boydton and Finchley, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI). CONDITION: Issuance of a certificate in this proceeding is conditioned upon applicant certifying to the Commission, prior to commencing operations, that all rail service has actually terminated at specified points. The certification should be sent to the Deputy Director, Section of Operating Rights, Interstate Commerce Commission, Washington, DC 20423.

MC 120257 (Sub-65), filed July 7, 1982. Applicant: K. L. BREEDEN TRUCKING, INC., P.O. Box 4267, Lone Star, TX 75668. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 731–8431. Transporting (1) *used household goods* for the account of the

United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, and (3) as a *broker of general commodities* (except household goods), between points in the U.S. (except HI).

Volume No. OP5-146

Decided: July 12, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 126699 (Sub-5), filed June 28, 1982. Applicant: MOORE VAN & STORAGE OF WOODLAND, INC., 860 Onstott Rd., Yuba City, CA 95991. Representative: Floyd L. Farano, 2555 E. Chapman Ave., Suite 415, Fullerton, CA 92631, (714) 773-4111. Transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

MC 157179 (Sub-1), filed June 21, 1982. Applicant: WARRIOR TRANSPORT, INC., 2334 Havenhurst, Farmers Branch, TX 75234. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112, (817) 457-0804. To operate as a *broker* of *general commodities* (except household goods) between points in the U.S. (except AK and HI).

MC 162708, filed June 28, 1982. Applicant: BOS-TAUN CONSOLIDATION CO., INC., 20 Sturtevant St., Somerville, MA 02146. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181, (617) 235-5571. To operate as a *broker* of *general commodities* (except household goods) between points in the U.S. (except AK and HI).

MC 162718, filed June 29, 1982. Applicant: DALTON CARPET CONSOLIDATORS, INC., P.O. Box 3204, Dalton, GA 30721. Representative: C. Jack Pearce, 1000 Connecticut Ave., NW, Suite 1200, Washington, DC 20036, (202) 785-0048. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162729, filed June 29, 1982. Applicant: RICHARD R. PENNINGTON, d.b.a. LITTLE RICHARD TRUCKING, 5920 224th St. East, Spanaway, WA 98387. Representative: Henry C. Winters, 12600 S.E. 38th, Suite 200, Bellevue, WA 98006, 206-644-2100. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162759, filed July 1, 1982. Applicant: KENT REMMEL, d.b.a. REMMEL ENTERPRISES, P.O. Box 1008, Gruver, TX 79040. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841, (617) 688-4513. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP5-150

Decided: July 14, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 143868 (Sub-13), filed June 28, 1982. Applicant: R.E.T.E.N.O. CARRIERS, INC., P.O. Box 1438, Willmar, MN 56201. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945-2745. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-20061 Filed 7-23-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP-2-157]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions and, jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the Absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Decided: July 16, 1982.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier.

Agatha L. Mergenovich,

Secretary.

MC 162662, filed June 24, 1982. Applicant: ELLIS EXPRESS, INC., 211B Ferris Ave., Waxahachie, TX 75165. Representative: A. Charles Tell, 100 E. Broad St., Suite 1800, Columbus, OH 43215, (614) 228–1541. Transporting (1) *containers, container ends, and container closures,* (2) *glass and glass products,* (3) *plastic and plastic products,* (4) *packaging materials,* (5) *machinery, and* (6) *such commodities* as are used in the manufacture and distribution of the commodities in (1) through (5) above, between points in AR, LA, NM, OK, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This application is directly related to MC–F–14883, published in the Federal Register issue of July 22, 1982.

[FR Doc. 82–20058 Filed 7–23–82; 8:45 a.m.]

BILLING CODE 7035–01–M

[Volume No. OP3–112]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: July 19, 1982.

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the Federal Register issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Appications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

MC 15735 (Sub-50), filed July 12, 1982. Applicant: ALLIED VAN LINES, Inc., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681–8378. Transporting *general commodities* (except commodities in bulk and classes A and B explosives), between points in the U.S. under continuing contract(s) with Chrysler Corporation of Highland Park, MI.

MC 138575 (Sub-16), filed July 12, 1982. Applicant: GWINNER OIL CO., INC., P.O.B. 38, Gwinner, ND 58040. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. Transporting *anhydrous ammonia,* between ports of entry on the International Boundary line between the U.S. and Canada located in MT, on the one hand, and, on the other, points in MT.

MC 142245 (Sub-10), filed July 12, 1982. Applicant: NATIONWIDE TRUCK BROKERS, INC., 5475 Clay Ave., S.W., Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Spartan Stores, Inc., of Grand Rapids, MI.

MC 144724 (Sub-3), filed July 7, 1982. Applicant: WALTER J. SHEETS AND SON, INC., 100 Bittle Cove, Lewisburg, WV 24901. Representative: J. F. Boomer, 213 N. Court St., Lewisburg, WV 24901, (304) 645–7698. Transporting *lumber and plywood,* between points in SC, TN, VA, WV, OH, and KY, under continuing contract(s) with (a) Spartanburg Forest Products, Inc., of Spartanburg, SC, (b) Cherokee Wood Preservers, Inc., Of Mosheim, TN, and (c) C. M. Tucker Lumber Corporation, of Pageland, SC.

MC 145845 (Sub-3), filed July 9, 1982. Applicant: RAYMOND W. PAYNE, d.b.a. PAYNE BUS SERVICE, Route 1, Box 122, Beaverdam, VA 23015. Representative: Leonard A. Jaskiewicz, 1730 M St., N.W., Washington, DC 20036, (202) 296–2900. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at Richmond, VA, and points in Henrico, Goochland, and Prince William Counties, VA and extending to points in the U.S. (except AK and HI).

MC 148774 (Sub-4), filed July 2, 1982. Applicant: LTD AIR CARGO, INC., P.O. Box 30132, Memphis International Airport, Memphis, TN 38130. Representative: Edward G. Finnegan, 134 No. La Salle St., Suite 1016, Chicago, IL 60602, (312) 782–9500. Transporting *general commodities.* (except classes A and B explosives, household goods and commodities in bulk), (A) between points in AR, MS and TN and (B) between points in Atlanta, GA, Dallas and Ft. Worth, TX, Scott County, MS, Stoddard, Butler, Dunklin, Pemiscott and New Madrid Counties, MO and points in AR, MS and TN.

Note.—Applicant intends to tack this authority to its existing authority.

MC 148994 (Sub-3), filed July 6, 1982. Applicant: MICHAEL W. AMABILE, d.b.a. TRIPLE AAA TRUCKING, 29891 Red Arrow Highway, Paw Paw, MI 49079. Representative: Nancy J. Amabile

(same address as applicant), (616) 657–3416. Transporting *food and related products,* between points in AL, AR, CA, DE, FL, IL, LA, MS, NC, SC, TX, WA, and WI, on the one hand, and, on the other, points in IN, under continuing contract(s) with Bakker Produce, Inc., of Griffith, IN.

MC 150645 (Sub-8), filed July 9, 1982. Applicant: TILEWAYS, INC., 7834 Hawn Freeway, Dallas, TX 75217. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with The Larsen Company, of Green Bay, WI.

MC 152664 (Sub-5), filed July 9, 1982. Applicant: TOMBIGBEE TRANSPORT CORPORATION, P.O. Box 412, Adamsville, TN 38310. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103, (901) 526–4114. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162094, filed July 12, 1982. Applicant: WILCZEK TRUCKING COMPANY, a corporation, 4242 S Knox, Chicago, IL 60632. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Rd., Downers Grove, IL 60515, (312) 953–0330. Transporting *petroleum and petroleum products,* between Chicago, IL, on the one hand, and, on the other, points in IA, IL, IN, MI, MO, OH, and WI.

MC 162104 (Sub-2), filed July 12, 1982. Applicant: PETERSON EXPRESS, INC., P.O. Box 41770, Indianapolis, IN 46241. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *such commodities* as are dealt in or used by service stations, food stores, auto supply stores and retail department stores, between points in AR, TN, MO, IL, MI, PA, IA, KY, WI, IN, OH and WV, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162775, filed July 1, 1982. Applicant: JIM FIELDS TRUCKING, INC., P.O. Box 298, Lucedale, MS 39452. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251–2881. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Scott Paper Company of Philadelphia, PA.

MC 162815, filed July 12, 1982. Applicant: MORGAN SOUTHERN, INC., 470 E. Paces Ferry Rd., N.E., Suite 2001, Atlanta, GA 30305. Representative: David G. Morgan (same address as applicant), (404) 231–5744. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 162884, filed July 9, 1982. Applicant: QUINCY CORPORATION, d.b.a. QUINCY FARMS, Rt. 4 Box 245, Quincy, FL 32351. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *such commodities* as are dealt in or used by chain grocery stores and food business houses, between points in AL, FL, GA, LA, MS, and TX.

MC 162885, filed July 9, 1982. Applicant: RONALD R. PAYNE, d.b.a. R P TRUCKING, 1252 S. Eaton St., Lakewood, CO 80226. Representative: Jack B. Wolfe, 601 E. 18th Ave., No. 107, Denver, CO 80203, (303) 861–8046. Transporting (1) *rubber and plastic products,* (2) *chemicals and related products,* (3) *machinery,* and (4) *metal products,* between points in the U.S., under continuing contract(s) with SWM Marketing Corporation, of Dallas, TX.

[FR Doc. 82–20062 Filed 7–23–82; 8:45 am]

BILLING CODE 7035–01–M

Water Carrier Temporary Authority Application

The following was filed with the Regional Office. Petition for Reconsideration is to be filed, within 20 days of this publication with the Regional Office noted in each caption summary. Replies to petition may be filed within 20 days of the date petition is filed.

The following applications were filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

W–1353 (Sub-1–TA), filed: July 12, 1982. Applicant: SAND DOLLAR MARINE, INC., 4440 Chastant Street, Suite B, Metairie, LA 70002. Representative: C. Theodore Alpaugh, III, 1300 Hibernia Bank Building, New Orleans, LA 70112, (504) 566–1311. Transporting drilling rig subassemblies between the Port of New Orleans, LA and Pascagoula, MS.

Agatha L. Mergenovich,

Secretary

[FR Doc. 82–20060 Filed 7–23–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; 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. F–187

The following applications were filed in Region I:

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 153971 (Sub-1–1TA), filed July 12, 1982. Applicant: E–Z TRANS, INC., P.O. Box 641, Woodbury, CT 06789. Representative: Gerald A. Joseloff, 410 Asylum Street, Hartford, CT 06103. *Contract carrier:* irregular routes: *Lumber, lumber products, building materials and wood products,* between points in and east of WI, IL, KY, TN, and MS under continuing contract(s) with York Wholesale Co., Inc. of Andover, MA; Phil-Mar Lumber Corp. of Brooklyn,

NY; JAS Lumber of New Caanan, CT; ENAP, Inc. of Newburgh, NY; and Seaboard International Lumber & Plywood, Inc., of Providence, RI. Supporting shipper: JAS Lumber, 21 Crystal St., New Caanan, CT 06840; ENAP, Inc., Plattakill Turnpike, Newburgh, NY 12550; Seaboard International Lumber & Plywood, Inc., 132 George M. Cohan, Blvd., Providence, RI 02903; York Wholesale Co., Inc., P.O. Box 46, 125 Tewksbury St., Andover, MA 01810; Phil-Mar Lumber Corp., Brooklyn, NY 11234.

MC 162915 (Sub-1–1TA), filed July 12, 1982. Applicant: EASY RIDER LINES, INC., 21 Queen Anne Drive, Deal, NJ 07723. Representative: Steven S. Ezon, Esq. (same as applicant). *Passengers and their baggage, in the same vehicle, in charter and special operations* between Monmouth, Ocean, and Atlantic County, NJ, on the one hand, and, on the other, New York City, NY. Supporting shipper: S. D. Riders Associates, 143 Monmouth Drive, Deal, NJ 07723.

MC 162974 (Sub-1–1TA), filed July 15, 1982. Applicant: IRWIN COHEN, d.b.a. ELCEE TRUCKING COMPANY, 25 Millay Road, P.O. Box 207, Morganville, NJ 07751. Representative: Irwin Cohen (same as applicant). *Contract carrier:* irregular routes: *Metal Scrap and sheet metal* between Hightstown, NJ and Baltimore, MD, under continuing contract(s) with Coca-Cola Company Foods Division, Hightstown, NJ. Supporting shipper: Coca-Cola Company Foods Division, 480 Mercer Street, Hightstown, NJ 08520.

MC 162975 (Sub-1–1TA), filed July 15, 1982. Applicant: JOHN P. LIBERATORE, d.b.a., GREYHOUND'S EXPRESS, 641 Winter Street, Framingham, MA 01701. Representative: John P. Liberatore (same as applicant). *Dogs, (racing),* between points in MA, WV, KS and FL. Supporting shipper(s): Zion and Joseph Kennel, 14 Starkanught Heights, Gloucester, MA 01930; Northshore Kennel, 23 Sparhawk Road, Lynn, MA 01905.

MC 150295 (Sub-1–4TA), filed July 14, 1982. Applicant: K & M DIESEL SERVICE, INC., 10–12 E. Maple Avenue, Cedarville, NJ 08311. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Iron and steel products, hardware, machinery, plastic and rubber articles and materials and supplies used in the manufacturing and distribution thereof, except in bulk,* between points in the U.S. (except AK and HI), under continuing contract(s) with Signode Corp., Glenview, IL. Supporting shipper: Signode Corporation, 3610 W. Lake Avenue, Glenview, IL 60025.

MC 162935 (Sub-1–1TA), filed July 13, 1982. Applicant: L & S TRUCKING INC., 1 Third Street, P.O. Box 367, Freehold, NJ 07728. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Chemicals and related articles and animal fats (except hazardous materials)* between Philadephia, PA Commercial Zone and NJ, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, RI, VT, VA and WV, under continuing contract(s) with Gill & Duffus Chemicals, Inc., Princeton, NJ; The Ironsides Co., Columbus, OH. Supporting shipper(s): Gill & Duffus Chemicals, Inc., 105 College Road East, Princeton, NJ 08540; The Ironsides Co., 270 W. Mound St., Columbus, OH 43215.

MC 135069 (Sub-1–3TA), filed July 15, 1982. Applicant: ROCKAWAY TRUCKING, INC., Route 46, P.O. Box 45, Rockaway, NJ 07866. Representative: Dixie C. Newhouse, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier:* irregular routes: *Steel, including materials, equipment and supplies* from Columbus, OH to Claremore, OK and their Commercial Zones under continuing contract(s) with Worthington Steel Company, Inc., Columbus, OH. Supporting shipper: Worthington Steel Co., Inc. 1127 Dearbon Drive, Columbus, OH 43085.

MC 162901 (Sub-1–1TA), filed July 13, 1982. Applicant: ROYAL LIVERY, INC., 272 Fillow Street, West Norwalk, CT 06850. Representative: L. C. Major, Jr., Esq., Suite 304, Overlook Building, 6121 Lincolnia Road, P.O. Box 11278, Alexandria, VA 22312. *Passengers and their baggage, in the same vehicle with passengers, limited to the transportation of no more than six (6) passengers (excluding the driver), in one vehicle at one time, in special and charter operations,* between points in Hartford, New Haven, Fairfield, and Litchfield Counties, CT, and points in NY, NJ, PA, MA, RI, DE and DC. Supporting shipper(s): There are 28 statements in support of this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 162936 (Sub-1–1TA), filed July 13, 1982. Applicant: CARMEN SCAFIRO & SONS, INC., 906 Smith St., Delran, NJ 08075. Representative: Jack L. Schiller, 123–60 83rd Avenue, Kew Gardens, NY 11415. *Contract carrier:* irregular routes: *Steel studs* from the facilities of Marion Industries, located at Westbury, NY to points in DE, MD, NJ, PA, VA and DC, under continuing contract(s) with Marino Industries of Westbury, NY. Supporting shipper: Marino Industries, Montrose Road, Westbury, NY.

MC 162934 (Sub-1–1TA), filed July 12, 1982. Applicant: HENRY SCHMAELZLE TRANSPORTATION, INC., 2 Broadway, Hamden, CT 06518. Representative: Henry D. Schmaelzle, 640 Mix Avenue, Cortland 5–J, Hamden, CT 06514. *General commodities,* between CT, NY, NJ, PA, MD, DE, MA, VT, NH, and RI. Supporting shipper: Southern New England Telephone Company, 48 Boston Post Road, Orange, CT 06477.

MC 156800 (Sub-1–6TA), filed July 12, 1982. Applicant: SEABOARD EXPRESS, INC., 565 Plank Road, Waterbury, CT 06705. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517. *Contract carrier:* irregular routes: *(1) Hotel restaurant supplies and related items,* between New Haven County, CT, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with World Tableware International of Wallingford, CT; (2) *Iron and steel articles,* between Hartford County, CT, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with SKF Steel of Windsor, CT. Supporting shipper(s): World Tableware International, 9 Carlton St., Wallingford, CT 06492; SKF Steel, 60 Pigeon Hill Road Extension, Windsor, CT 06095.

MC 114885 (Sub-1–1TA), filed June 24, 1982. Applicant: TANK TRUCK TRANSPORT, LTD., 15 Brydon Dive, Rexdale, Ontario, CD M9W 1J1. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue NW., Washington, DC 20006. *Flour, in bulk,* from the U.S./CD Border entry point at Buffalo, NY, to Buffalo, NY and its Commercial Zone. Supporting shipper: Robin Hood Multifoods, Inc., P.O. Box 4000, Postal Station A, Willowdale, Ontario, CD M2N 5T5.

MC 147777 (Sub-1–1TA), filed July 15, 1982. Applicant: TRAVEL TIME BUS LINES, INC., 99 Arnold Street, Springfield, MA 01119. Representative: James M. Burnes, 1383 Main Street, Suite 413, Springfield, MA 01103. *Passengers and their baggage, in special and charter operations,* beginning and ending at Baltimore, MD, Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth and Suffolk Counties, MA, New York City, NY and Washington, DC and extending to points in the U.S. (except AK and HI). Supporting shipper(s): There are 45 supporting shipper statements that may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 41581 (Sub-1–2TA), filed July 13, 1982. Applicant: WAGNER TOURS, INC., 865 Belmont Avenue, North Haledon, NJ 07508. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Passengers and their baggage* between Franklin Lakes, NJ and White Plaines, NY, under continuing contract(s) with IBM Corporation, Princeton, NJ. Supporting shipper: IBM Corporation, P.O. Box 10, Princeton, NJ 08540.

MC 160039 (Sub-1–1TA), filed July 12, 1982. Applicant: WEX ENTERPRISES, INC., 118 Hall Street, P.O. Box 2009, Concord, NH 03301. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. *Contract carrier:* irregular routes: *Telephone equipment materials, and supplies used in the construction and maintenance of telephone systems,* between Southboro and Watertown, MA, on the one hand, and, on the other, Montpelier, VT, under continuing contract(s) with Western Electric Company, Inc. of North Andover, MA. Supporting shipper: Western Electric Company, Inc., 1600 Osgood Street, North Andover, MA 01845.

MC 154046 (Sub-1–2TA), filed July 12, 1982. Applicant: YELLOW TRANSPORTATION SERVICES OF BROOME COUNTY, INC. 385 State St., P.O. Box 538, Binghamton, NY 13902. Representative: Nicholas G. Serafini, Jr. (same as applicant). *Contract carrier:* irregular routes: *Cleaning compounds, toilet preparation, jewelry, food supplements, cooking utensils, and other merchandise, equipment, sold, used or distributed* between Binghamton, NY and all points in New York State under continuing contract(s) with Amway Corporation of Dayton, NJ. Supporting shipper: Amway Corporation, P.O. Box 900, Monmouth Junction Road, Dayton, NJ 08810.

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 162838 (Sub-II–1TA), filed July 7, 1982. Applicant: JUNE E. NAVARRE, d.b.a. AA LIMOUSINE SERVICE, P.O. Box 78, R.D. No. 2, Breinigsville, PA 18031. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Passengers and their baggage, in the same vehicle with passengers, in special and charter operations, limited to the transportation of not more than 14 passengers (not including the driver) in the same vehicle,* between points in Lehigh and Northampton Counties, PA, on the one hand, and, on the other, points in New York, NY commercial zone, for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 6 supporting statements attached to this application which may be examined at the Philadelphia Regional Office.

MC 152553 (Sub-II–3TA), filed June 29, 1982. Applicant: M. L. KREDOVSKI, d.b.a. APPLIED TECHNOLOGY TRANSPORTATION, P.O. Box 46, Freidensburg, PA 17933. Representative: M. L. Kredovski (same address as applicant). Contract, irregular: *hazardous waste, hazardous materials, waste or scrap materials not identified by industry producing* from points in the U.S. to Emelle, AL; Jacksonville, FL; Dalton, GA; Baton Rouge, LA; Deepwater, Kearny and Newark, NJ; Cleveland and Vickery, OH; Akron and Bath, PA; Pinewood and Roebuck, SC; and *hazardous materials* from Akron, PA to points in NJ, NY, MD and VA Supporting shipper(s): American Environmental Protection Corp., P.O.B. 37647, Jacksonville, FL 32205; Gem Chem Chemical Management Co., P.O.B. 118, Lititz, PA, 17543; Ron J. Tattersall, Inc., d.b.a. Resource Management Systems, 16 Harrison Ave., Saddle Brook, NJ 07662.

MC 162560 (Sub-II–1TA), filed July 7, 1982. Applicant: JIMMY A. SCHLIER, d.b.a. BODY SHOP BY JIM SCHLIER, Box 3433, R. D. 3, Stroudsburg, PA 18360. Representative: George W. Westervelt, Jr., 738 Main St., Stroudsburg, PA 18360. *Wrecked or disabled trucks, tractors, trailers and replacements therefore, in secondary movement, in two-away service,* between points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT and DC. An underlying ETA seeks 120 days authority. Supporting shipper(s): Roadway Express, Inc., P.O. Box 471, Akron, OH 44309.

MC 146080 (Sub-II–2TA), filed July 7, 1982. Applicant: McKINLEY MUNCY, Jr., d.b.a. CARDINAL BUS LINES, 2759 5th Ave., Huntington, WV 25702. Representative: John M. Friedman 2930 Putnam Ave., P.O.B. 426, Hurrican, MV 25702. *Passengers and their baggage, in special and charter operations,* between points in KY, OH and WV, on the one hand, and, on the other, points in the U.S. (including AK & HI), for 180 days. Supporting shipper(s): Dorsey Tours, Inc., South Charleston, WV; Wayne County Extension Homemakers, Huntington, WV; Owenetts Club, Huntington, WV; Inco Retirees, Huntington, WV; Westmoreland Womans Club, Huntington, WV.

MC 158859 (Sub-II–8TA), filed July 13, 1982. Applicant: O. DEAN TRANSPORTATION, INC., 406W. Williamsburg Rd., Sandston, Va. 23150. Representative: P. Owen Dean (same address as applicant). Contract, irregular: *Malt Beverages, wine, food and related products* between Williamsburg, VA, on the one hand, and on the other, points in the U.S. (except AK & HI), under continuing contract(s) with Anheuser Bush Co., St. Louis, MO. An underlying ETA seeks 120 days authority. Supporting shipper(s): Anheuser Busch Co. One Busch Place, St. Louis, MO 63118.

MC 113666 (Sub-II–23TA), filed July 7, 1982. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, P.O. Drawer A, Freeport, PA 16229–0301. Representative: R. Scott Mahood, (same address as applicant). *Plastic Pellets, in bulk, in tank vehicles,* from Washington, PA to Clinton, MS. An underlying ETA seeks 120 days authority. Supporting shipper: Washington Penn Plastic Co., Inc., 2833 West Chestnut Street, Washington, PA 15301.

MC 48386 (Sub-II–6TA), filed July 7, 1982. Applicant: GRAVER TRUCKING, INC., R.D. #7, Box 7655, Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Rope and related products,* between Wayne County, PA, on the one hand, and, on the other, points in the U.S. (except AK & HI). An underlying ETA seeks 120 days authority. Supporting shipper(s): American Manufacturing Co., 206 Willow Ave., Honesdale, PA 18431.

MC 162827 (Sub-II–1TA), filed July 7, 1982. Applicant: LAKESIDE TRANSPORT, INC., 1515 East Ave., P.O. Box 177, Erie, PA 16512. Representative: Willaim A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *Scrap metals* between Jamestown and Syracuse, NY and Erie and Corry, PA, on the one hand, and, on the other, points in OH, NY and PA, under continuing contracts with Jamestown Scrap Corp. of Jamestown, NY, Marleys Industries, Inc. of Syracuse, NY, Penn Iron & Metal Company, Inc. of Erie, PA and Corry Iron & Metal Corp. of Corry, PA. Supporting shippers: Jamestown Scrap Corp., 149–151 Jones & Gifford, P.O. Box 1218, Jamestown, NY 14701; Marleys Industries, Inc., 320 West Hiawatha Bldg., Syracuse, NY 13208; Penn Iron & Metal Co., 1515 East Ave., P.O. Box 177, Erie, PA 16512; Corry Iron & Metal Corp., P.O. Box 94, Corry, PA 16407.

MC 162727 (Sub-II–1TA), filed June 30, 1982. Applicant: MECHANICSVILLE BUS LINE, INC., Rt. 1, Box 648, Mechanicsville, VA 23111. Representative: Paul D. Collins, 7761 Lakeforest Dr., Richmond, VA 23235.

Passengers and their baggage, in the same vehicle with passengers, in special and charter operations, beginning and ending in points in Chesterfield, Hanover and Henrico Counties, VA; and Ashland, Colonial Heights, Hopewell, Mechanicsville, Petersburg, Richmond and Sandston, VA, and extending to points in DC, GA, FL, MD, NJ, NY, PA, SC, TN and WV, for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are seven supporting statements attached to this application which may be examined at the Phila. Regional office.

MC 107450 (Sub-II–1TA), filed July 7, 1982. Applicant: METROPOLITAN COACH CORPORATION, 1617n Brook Rd., Richmond, VA 23220. Representative: Calvin F. Major, 200 W. Grace St., P.O.B. 5010, Richmond, VA 23220. *Passengers and their baggage, in special operations,* between Richmond, VA and Atlantic City, NJ, for 180 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Tropicana Hotel & Casino Broadwalk, Atlantic City, NJ 08401.

MC 161864 (Sub-II–1TA), filed July 7, 1982. Applicant: NATIONWIDE EXPRESS SERVICE, INC., 1105 N. Market St., Wilmington, DE 19801. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. *General commodities (except Classes A & B explosives, Household Goods and commodities in bulk),* between points in the U.S. (except AK & HI). An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 39 supporting shippers' statements attached to this application which may be examined at the Phila. Regional office.

MC 162837 (Sub-II–1TA), filed July 7, 1982. Applicant: LAWRENCE A. PENN, d.b.a. LAWRENCE A. PENN, JR. TRUCKING, Route 3, Box 365–A, Martinsville, VA 24112. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *New furniture,* from Bassett and Martinsville, VA to points in AZ, CA, NV, OR, and WA for 270 days. Supporting shipper: Bassett Furniture Industries, Inc., P.O. Box 626, Bassett, VA 24055.

MC 156010 (Sub-II–1TA), filed July 6, 1982. Applicant: PENN'S BEST INC., P.O. Box A–4, Rt. 6 & Canal St., Meshoppen, PA 18630. Representative: Meredith Ruark (same address as applicant). *General commodities (except those of unusual value, Classes A & B explosives and those requiring special equipment),* between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 12 supporting statements attached to this application that may be reviewed at the Phila. Regional office.

MC 161628 (Sub-II–1TA), filed July 12, 1982. Applicant: RAM OFFICE TRANSPORT CORP., RD #3, Box 224, Susquehanna Trails, Delta, PA 17314. Representative: Melvin W. Bouman (same address as applicant). *Mobile office trailers and modular building sections* between points in York and Lancaster Counties, PA and Baltimore County, MD, on the one hand, and, on the other, pts in ME, NH, VT, MA, CT, RI, NY, PA, NJ, MD, DE, WV, VA, NC, and SC. An underlying ETA seeks 120 days authority. Supporting shipper(s): Coastal Modular Corp., White Marsh, MD; Williams Mobile Offices, Inc., Baltimore, MD; Coastal Building Systems, Red Lion, PA.

MC 146807 (Sub-II–28TA), filed July 7, 1982. Applicant: S-n-W ENTERPRISES, INC., 2405 San Souci Hwy., Wilkes-Barre, PA 18702. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Contract, irregular: *general commodities, (except Classes A & B explosives, Household Goods as defined by the Commission, and commodities in bulk),* between points in the U.S (except AK & HI), under continuing contract(s) with Nationwide Industrial Shippers' Cooperative Assoc. An underlying ETA seeks 120 days authority. Supporting shipper(s): Nationwide Industrial Shippers' Cooperative Assoc., P.O.B. 681, Libertyville, IL 60048.

MC 146807 (Sub-II–29TA), filed July 13, 1982. Applicant: S-n-W ENTERPRISES, INC., 2405 San Souci Hwy., Wilkes Barre, PA 18702. Representative: James M. Burns, 1383 Main St. Suite 413, Springfield, MA 01103. *Food and related products,* between points in Luzerne, Lehigh and Northampton Counties, PA, on the one hand, and, on the other, points in the U.S. (excluding AK & HI). An underlying ETA seeks 120 days authority. Supporting Shipper(s): Just Born, Inc., P.O. Box 1158, Bethlehem, PA 18018.

MC 162407 (Sub-II–1TA), filed July 12, 1982. Applicant: WILLIAM ARTHUR SMITH, d.b.a. W. A. SMITH TRUCKING COMPANY, P.O. Box 78, Alberta, VA 23821. Representative: W. A. Smith (same address as applicant). Contract, irregular: *Log homes, materials, equipment and supplies used in the manufacture and distribution of the above commodity,* from Lawrenceville, VA to points in; AL, DE, FL, GA, IN, KY, MD, NC, OH, PA, SC, Tn and Wv, under continuing contract(s) with New England Log Homes, Inc. An underlying ETA seeks 120 days authority. Supporting Shipper(s): New England Log Homes, Inc. 2301 State St., P.O.B. 5056, Hamden, Ct 06518.

MC 162897 (Sub-II–1TA), filed July 12, 1982. Applicant: SOUTH COAST TRANSPORT, INC., P.O. Box 267, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Contract, irregular: *General commodities (except Classes A and B explosives, commodities in bulk and household goods as defined by the Commission, between points in the U.S. (except AK & HI), under continuing contract(s) with Copperweld Corp. and its subsidiaries. A underlying ETA seeks 120 days authority. Supporting Shipper(s): Copperweld Corp. 2 Oliver Plaza, Pittsburgh, PA 15222.*

MC 158613 (Sub-II–10TA), filed July 12, 1982. Applicant: TRICOR BUSINESS GROUP, INC, 1242 Tatamy Rd., Easton, PA 18042. Representative: Rogert D. Haershamn, 22 Olde Mill Run, Medford, NJ 08055. *General commodities, (except Classes A & B explosives, Household goods as defined by the Commission and commodities in bulk),* between points in the U.S., restricted to traffic originating at or destined to the facilities of International Paper Co. of New York, NY. An underlying ETA seeks 120 days authority. Supporting Shipper(s): International Paper Co., 77 W. 45th St., New York, NY 10036.

MC 30237 (Sub-II–10TA), filed July 12, 1982. Applicant: YEATTS TRANSFER COMPANY, P.O. Box 666, Altavista, VA 24517. Representative: Eston H. Alt (same address as applicant). *Expanded plastic products,* between Greenup County, KY, on the one hand, and, on the other, pts in NC, SC and VA. An underlying ETA seeks 120 days authority. Supporting Shipper(s): E. I. du Pont de Nemours & Co., Wilmington, DE 19898.

MC 3104 (Sub-II–4TA), filed July 6, 1982. Applicant: Z & M MOTOR LINE INC., P.O. Box 2345, Cumberland, MD 21502. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Irregular: Contract: *Calcined flint clay, including materials, equipment and supplies,* from High Hill, MO, including its commercial zone, to Mt. Savage, MD, including its commerical zone, for 270 days, under a continuing contract(s) with Mt. Savage Speciality Refractories Co. An underlying ETA seeks 120 days authority. Supporting shipper: Mt. Savage Speciality Refractories Co., Box 608, Mt. Savage, MD 21545.

The following applications were filed in Region 3. Send protests to: ICC,

Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 162266 (Sub-3–2 TA), filed July 16, 1982. Applicant: TEMPUS TRUCKING COMPANY, 2508 Starita Road, Charlotte, NC 28213. Representative: Robert D. Hoagland, Esq., 1204 Cameron Brown Building, Charlotte, NC 28204. *General Commodities (except Class A & B explosives and households goods)* between points in the States of AL, AR, AZ, CA, CT, DC, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, MN, MO, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, TX, VA, VT, and WV under continuing contract with Charlotte Freight Association, Incorporatated. Supporting shippers: Charlotte Freight Association, Incorporated, P.O. Box 26007, Charlotte, NC 28213.

MC 124896 (Sub-3–9 TA), Filed July 16, 1982. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3489, Thorne & Ralston Streets, Wilson, NC 27893. Representative: Norman J. Philion, 1920 N Street, Washington, DC 20036. *Packaged petroleum products of all kinds, metal cans, cardboard containers, supplies and equipment, except in bulk,* between points in IL, OH, NJ, NY, PA, SC, MD, and WV on the one hand, and, on the other points in NC, SC, VA, GA, and FL. Supporting shipper: Warren Oil Company, Inc., 1308 N. Ellis Ave., P.O. Box 251, Dunn, NC 28334.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 61440 (Sub-5–16TA), filed July 12, 1982. Applicant: LEE WAY MOTOR FREIGHT, INC., P.O. Box 12750, Oklahoma City, OK 73157. Representative: T. M. Brown (same as applicant). Contract, Irregular; *General Commodities (except Classes A and B explosives, Household goods, and commodities in bulk)* between points in the US (except AK and HI) under continuing contracts with Uniroyal, Inc. of Middlebury, CT.

MC 67234 (Sub-5–27TA), filed July 12, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Contract, irregular; *General Commodities (except Classes A and B explosives and commodities in bulk)* between points and places in the US (including AK and HI), under continuing contract(s) with Burroughs Corporation. Supporting shipper: Burroughs Corporation, Burroughs Place, Detroit, MI 48232.

MC 121801 (Sub-5–3TA), filed July 12, 1982. Applicant: HAYES MOTOR FREIGHT, INC., P.O. Box 35007, Dallas, TX 75235. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036. *General Commodities, (except Class A and B explosives, household goods and commodities in bulk),* between Little Rock, AR; Memphis, TN; Chicago, IL; Kansas City and St. Louis, MO; and Dallas and Houston, TX, on the one hand, and on the other, points in OK. Applicant intends to tack and interline. Supporting shippers: 37.

MC 136646 (Sub-5–1TA), filed July 12, 1982. Applicant: LE MARS TRANSPORT, INC., P.O. Box 353, LeMars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Petroleum products,* from Tulsa, OK and points in Plymouth and Lyon Counties, IA to points in IA, MN, NE and SD. Supporting shipper: M & W Petroleum, Route 1, Box 76, LeMars, IA 51031.

MC 144616 (Sub-5–13TA), filed July 12, 1982. Applicant: SOUTHWESTERN CARRIERS, INC., P.O. Box 79495, Saginaw, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. *Plumbing and plumbing hardward,* between Duvall County, FL, on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Barnett Brass & Copper, Inc., Jacksonville, FL.

MC 145933 (Sub-5–1TA), filed July 12, 1982. Applicant: ADOLF DURON, d.b.a. A D TRUCKING, 8237 McElroy Road, El Paso, TX 79907. Representative: Hughan R. H. Smith, 26 Kenwood Place, Lawrence, MA 01841. Contract, irregular; *building materials and supplies,* between points in TX; OK; and NM; under continuing contracts with: (1) Cashway Building Supplies, Inc., El Paso, TX; (2) W. Silvers, Inc., El Paso, TX.

MC 146853 (Sub-5–10TA), filed July 12, 1982. Applicant: FRANK F. SLOAN, d.b.a. HAWKEYE WOODSHAVINGS, Route 1, Runnells, IA 50327. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Canned goods,* from Sacramento, Hollister, San Francisco, Watsonville, Yuba City, Oroville, and Los Angeles, CA; Stanislaus, San Joaquin, Alameda, and Santa Clara Counties, CA, to points in Iowa, Ortonville and Minneapolis, MN; and LaCrosse and Superior, WI. Supporting Shipper: HAR Trading Company, 2501 Grand Avenue, Des Moines, Iowa 50312.

MC 152172 (Sub-5–3TA), filed July 12, 1982. Applicant: DENNIS KEAR, d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Agricultural implements and machinery,* from the facilities of Allis Chalmers Corporation at or near Milwaukee, WI, La Porte, IN and Independence, MO to points in NE. Supporting shipper: Allis Chalmers Corporation, 528 East 29th St., South Sioux City, NE 68776.

MC 152942 (Sub-5–3TA), filed July 12, 1982. Applicant: TOGO TRUCKING CO., Route 3, St. Joseph, MO 64505. Representative: James H. Counts, 320 Robidoux Center, St. Joseph, MO 64501. Contract, irregular; *bricks* from: Claycon Transports Corporation, Oklahoma City, OK to: Quality Sand & Materials, Inc., Kansas City, MO and Kansas City, KS. Supporting Shippers: Quality Sand & Materials, Inc., 625 S. Willis, Box 779, Independence, MO 64052; Claycon Transports Corporation, P.O. Box 75368, Oklahoma City, OK 73147.

MC 154092 (Sub-5–2TA), filed July 12, 1982. Applicant: SUGARLAND EXPRESS, INC., 6623 Kansas Avenue, Kansas City, KS 66111. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. *Petroleum and Petroleum Products (except in bulk),* Between Tulsa, OK and points within the states of AR, IL, IA, KS, MN, MO, NE, ND, SD and WI. Supporting shipper: Phillips Petroleum Company, Bartlesville, OK 74004.

MC 159474 (Sub-5–5TA), filed July 12, 1982. Applicant: U.S. EXPRESS, INC., P.O. Box 9652, Little Rock, AR 72219. Representative: Stephen F. Grinnell, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402. *General Commodities, (except Classes A & B explosives, household goods and commodities in bulk)* between the facilities utilized by Ralston Purina Company and its subsidiaries at points in the U.S., on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Ralston Purina Company, St. Louis, MO.

MC 162678 (Sub-5–1TA), filed July 12, 1982. Applicant: JOHN W. PEPPER, d.b.a., COMMERCIAL TRANSPORTATION, P.O. Box 15020, Kansas City, KS 66115. Representative: Arthur J. Cerra, P.O. Box 19251, Kansas City, MO 64141. *Shipping Containers* between the Commercial Zone of St. Joseph, MO, on the one hand, and, on the other, the Commercial Zones of Des Moines, IA, and Dakota City, NE. Supporting shipper: The Mead

Corporation (Container Division), Box 968, St. Joseph, MO 64502.

MC 144678 (Sub-5–8TA), filed July 16, 1982. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Overland Park, KS 66210. Representative: Harold H. Clokey, (same as applicant). Contract; Irregular. *General Commodities, (except household goods as defined by the Commission, Classes A & B explosives, and commodities in bulk)* between points in the US except AK and HI, under a continuing contract(s) with K Mart Corporation. Supporting shipper: K Mart Corporation, 3100 West Big Beaver Road, Troy, MI 48084.

MC 150812 (Sub-5–12TA), filed July 15, 1982. Applicant: FROST TRANSPORTATION, INC., P.O. Box 3400, Shreveport, LA 71103. Representative: Joseph A. Keating Jr., 121 S. Main St., Taylor, PA 18517. Contract, irregular; *Paper and paper products and related items,* between Quachita Parish, LA on the one hand, and, on the other, points in CA, CT, DE, MA, NJ, NY, PA, MO, NH, and VT, under a continuing contract with Manville Forest Products, Corp., Monroe, LA. Supporting shipper: Manville Forest Products, Corp., P.O. Box 488, West Monroe, LA 71291.

MC 152068 (Sub-5–5TA), filed July 15, 1982. Applicant: HOC-EXPRESS, INC., 125 N. Elizabeth, Wichita, KS 67203. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Janitorial supplies and detergents and equipment, materials & supplies useful in the manufacturing of janitorial supplies & detergents,* between Sedgwick County, KS, on the one hand, and points in the US (except AK and HI), on the other hand. Supporting shipper: Spurrier Chemical Companies, Inc., P.O. Box 2812, Wichita, KS 67201.

MC 152068 (Sub-5–6TA), filed July 15, 1982. Applicant: HOC-EXPRESS, INC., 125 N. Elizabeth, Wichita, KS 67203. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Heating units, air conditioning units & refrigeration units & their components and materials, equipment and supplies used in the sale, distribution, repair & maintenance thereof,* between points in KS and points in Cimarron, Texas, Beaver, Harper, Woods, Alfalfa, Grant, Kay, Osage, Washington, Nowata, Craig, Ottawa, Ellis, Woodward, Major, Garfield, Noble, Pawnee, Rogers, Mayes & Delaware Counties, OK on the one hand, and points in MO, IL, OH, GA, MI, MN, WI, and AZ on the other hand. Supporting shipper: Superior Supply Co., Inc., 215 Laura, Wichita, KS 67211.

MC 152068 (Sub-5–7TA), filed July 15, 1982. Applicant: HOC-EXPRESS, INC., 125 N. Elizabeth, Wichita, KS 67203. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Food & related products,* between Butler County, KS, on the one hand, and points in the U.S. (except AK and HI) on the other hand. Supporting shipper: T&S Food Distributors, Inc., 219 West 6th St., Augusta, KS 67019.

MC 161290 (Sub-5–2TA), filed July 15, 1982. Applicant: CARROLL FOSTER, INC., Route 3, Box 659, Jonesboro, AR 72401. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103. (1) *Cabinets* from Jeffersonville and Richmond, IN; and Elizabeth City, NC, to points in AZ; (2) *fireplaces* from Wisconsin Rapids, WI, to points in AZ; (3) *cabinets* from Bargersville, IN; and Minneapolis, MN, to points in NM; and (4) *beds and bedding* from Minneapolis, MN, to points in NM. Supporting shippers: Drum's Cabinets, Inc., 910½ El Paseo Rd., Las Cruces, NM 88001; Elm Distributors, Inc., 1333 N. 21st Ave., Phoenix, AZ 85009.

The following applications were filed in Region 4. Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 54203 (Sub-4–2TA), filed July 15, 1982. Applicant: V. SENG TEAMING CO., 600 N. Thomas Drive, Bensenville, IL 60106. Representative: Bernard J. Kompare, Suite 1700, 180 N. Michigan Ave., Chicago, IL 60601. *Such commodities* as are dealt in or used by manufacturers of hand tools, between points in Cook County, IL, on the one hand, and, on the other, points in Defiance County, OH. Supporting shipper: Hand Tool Division of Dresser Industries, Inc., 11100 W. Belmont Ave., Franklin Park, IL.

MC 128837 (Sub-4–2TA), filed July 15, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Patio and pool supplies,* between Clearwater, FL on the one hand, and, on the other, Phoenix, AZ. Supporting shipper: Sun Wholesale Supply Inc., of P.O. Box 6025, Clearwater, FL 33618.

MC 151404 (Sub-4–5TA), filed July 14, 1982. Applicant: NORTHLAND PRODUCE, INC., 4350 Lincoln Road, Holland, MI 49423. Representative: Edward N. Button, Button & McDowell, P.A., 635 Oak Hill Avenue, Hagerstown, MD 21740. *Frozen orange juice, lemonade, grape and apple concentrate and related bulk commodities,* between the facilities of Bodines, Inc., located at or near Chicago, IL on the one hand, and, on the other, points in OH, MI, PA, MO, KS, CO, IN, WI, MN, NY, CT, MA, & FL. Supporting shipper(s): Bodines, Inc., 5757 W. 59th St., Chicago, IL 60638.

MC 154740 (Sub-4–3TA), filed July 14, 1982. Applicant: ODESSA TRANSPORTATION, INC., 4525 S. Halsted St., Chicago, IL 60609. Representative: Lawrence R. Johnston (Same address as applicant). Such Commodities as are dealt in or used by wholesale, retail, chain or discount grocery, supermakets, or food business houses, between points in IL on the one hand, and, on the other, points on CO, IN, IA, KY, MI, MN, MO, OH, and WI. Supporting shippers: Certified Grocers of IL, Inc., 6701 S LaGange Road, Hodgkins, IL 60525, D & D Transport, Inc., P.O. Box 577, Chatsworth, IL 60921, Lake Michigan Food Broker and Distributor, 11720 S. Pulaski Road, Alsip, IL 60658.

MC 155218 (Sub-4–2TA), filed July 16, 1982. Applicant: TRANS TRUCK, INC., 7401 Bunkam Road (P.O. Box 11.), East St. Louis, IL 62204. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St Louis, MO 63102. Transporting *sugar in bulk,* between St. Louis, MO, on the one hand, and, on the other, points in AR, IL, IN, IA, KS, TN, MS, MO, OK, WI, MI, OH and NE. Supporting Shipper: Industrial Sugars, Divsion of Colonial Sugars, Inc., St. Louis, MO.

MC 155254 (Sub-4–1TA), filed July 16, 1982. Applicant: FAISON TRANSPORTATION, INC., 7547 Southfield Drive, Indianapolis, IN 46227. Representative: John F. Wickes, Jr., Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contract* irregular: *Housewares,* between Indianapolis, IN and Chicago, IL. Restricted to traffic moving under continuing contract with Capital Consolidated, Inc. Supporting shipper: Capital Consolidated, Inc., 3333 North Franklin Road, Indianapolis, IN.

MC 159733 (Sub-4–3TA), filed July 16, 1982. Applicant: S&L TRUCKING, INC., P.O. Box 322, Harvard IL 60033. Representative: William F. Mix, 21 A Muzzey Street, Lexington, MA 02173. *Contract* irregular: *Epoxy molding compounds, granules or pellets, in packages, and materials, equipment and supplies used in the manufacture, sale and distribution thereof, (except Class A & B explosives)* between Toledo, OH and points in the states of CA, FL, IL, MD, NJ, and WA. Restricted to traffic

moving under continuing contract with Plaskon Products, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Plaskon Products, Inc., 2829 Glendale Avenue, Toledo, OH 43614.

MC 162730 (Sub-4–2TA), filed July 14, 19 1982. Applicant: CASEY CARTAGE, INC., 4631 S Racine Ave., Chicago, IL 60609. Representative: Stephen H. Loeb, Suite 4, 2777 Finley Road, Downers Grove, IL 60515. *Contract, Irregular: Malt beverages,* between the facilities of Stroh Brewery at Chicago, IL, on the one hand, and, on the other, points in IA, IL, IN, MI, and WI under contract with Stroh Brewery, Inc. Supporting shipper: Stroh Brewery, Inc. One Stroh Drive, Detroit, MI 48226.

MC 162830 (Sub-4–1TA), filed July 13, 1982. Applicant: DAKOTA BLOCK CO., P.O. Box 2920, Rapid City, SD 57709. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. *(a) Metal Products; (b) Clay, Concrete, Glass or Stone Products; (c) Rubber or Miscellaneous Plastic Products; and (d) Materials, equipment and supplies used in the manufacture, sale and distrubition of these products on return,* between points in Morton County, ND and Pennington County, SD on the one hand, and on the other hand, points in CO, MT, NE, ND, SD and WY. A corresponding ETA for 120 days has been filed. Supporting shippers: Dakota Steel & Supply Co., P.O. Box 2920, Rapid City, SD 57709 and Dakota Block Co, P.O. Box 2920, Rapid Rapid City, SD 57709.

MC 162967 (Sub-4–1TA), filed July 14, 1982. Applicant: HANDI-TRANSPORT COMPANY, INC., 1351 Hawthorne Lane, West Chicago, IL 60185. Representative: Joel H. Steiner, 29 South LaSalle Street, Suite 905, Chicago, IL 60603. *Rubber and plastic products, chemicals and related products, machinery and pulp, paper and related products,* between points in the commercial zones of Chicago, IL; San Francisco, CA; New York, NY; Seattle, WA; Salt Lake City, UT; Cleveland, OH; Atlanta, GA; and Dallas, TX, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to traffic moving to or from facilities used by Handi-Kup Company, Inc. Supporting shippers: Handi-Kup Illinois Inc. 1351 Hawthorne Lane, West Chicago, IL 60185; Handi-Kup Company, a division of Fiberplastics, Inc., 195 Tamal Vista Boulevard, Corte Madera, CA 94925 and Handi-Kup New Jersey, Inc., 190 Forrest Street, Metuchen, NJ.

The following applications were filed in region 6. Send protests to: Interstate Commerce Commission, Region 6, Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 161638 (Sub-6–2 TA), filed July 12, 1982. Applicant: Blakley and sons, Inc., 3031 Isleta Blvd., S.W. Albuquerque, NM 87105. Representative: Larry D. Lucas, 3208 Pan American Frwy., NE., Albuquerque, NM 87107. *Contract,* irregular; *Gypsum wallboard,* between points and places in NM to points and places in CO under continuing contract with Dry Wall Supply, Inc. of Denver, CO, for 270 days. Supporting shipper: Dry Wall Supply, Inc, 60 Tejon St., Denver, CO 80223.

MC 162971 (Sub-6–18A), filed July 13, 1982. Applicant: DONALD R. LIND and NULLET L. SCHNEIDER, a partnership, doing business as D & N TRUCKING, 840 Hamilton Dr., Pleasant Hill, CA 94523. Representative: Ronald C. Chauvel, 100 Pine St., #2550, San Francisco, CA 94111. *Contract Carrier,* irregular routes, *food and foodstuffs,* between Oakland, San Leandro, San Francisco and Vacaville, CA, on the one hand, and, on the other, Portland, OR and Kent and Seattle, WA, under continuing contracts with Lucky Stores, Inc. and Hills Bros. Coffee, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Lucky Stores, Inc. P.O. Box 5008, San Leandro, CA 94577; Hills Bros. Coffee, Inc., 2 Harrison Street, San Francisco, CA 94119.

MC 155811 (Sub-6–2 TA), filed July 13, 1982. Applicant: TOM McCARTY TRUCKING, 2400 2nd N.W., Albuquerque, NM 87102. Representative: Thomas D. McCarty (same as applicant). *Building Materials: from TX, NM, AZ, & CA, to: TX, NM, AZ, CA, WY, OK, MO, KS, IL, OH, WI, CO, UT, WA, for 270 days. Supporting shippers: Leatherback Industries, Inc., 211 Amherst SE., Albuquerque, NM 87106; Navajo Forest Products, P.O. Box 1280 Navajo, NM 87328.*

MC 138732 (Sub-6–12 TA), filed July 13, 1982. Applicant: OSTERKAMP TRUCKING, INC., P.O. Box 5546, Orange, CA 92667. Representative: Michael R. Eggleton, 5 Crow Canyon Court, Suite 200, San Ramon, CA 94583. *General Commodities (except classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and hazardous wastes),* between points in and west of ND, SD, NE, KS, AR, OK, and TX, for 270 days. Supporting shippers: There are nine shippers. Their statements may be examined at the regional office listed above.

MC 162916 (Sub-6–1TA), filed July 12, 1982. Applicant: PACIFIC OVERLAND CARRIERS, INC., P.O. Box 11377, Phoenix, AZ 85061. Representative: David Robinson, 2228 W. Northern Ave., B–201, Phoenix, AZ 85021. *Such commodities as are dealt in by wholesale and retail grocery and department stores,* between points in AZ and CA, for 270 days. Supporting shippers: There are five supporting shippers. Their statements may be examined at the Regional Office listed.

MC 110149 (Sub-6–3TA), filed July 12, 1982. Applicant: PAN AMERICAN VAN LINES, INC., P.O. Box 923, Long Beach, CA 90801. Representative: W. C. Fogle (same as applicant). (1) *Rocket Engines, and* (2) *Rocket Fuel (except in bulk),* between points in the U.S., except AK and HI, for 270 days. Supporting shipper(s): Rocketdyne Division—Rockwell International, 6633 Canoga Ave., Canoga Park, CA 91304.

MC 162956 (Sub-6–1TA), filed July 13, 1982. Applicant: RANDALL A. PHILLIPPE, d.b.a. RAP-ED TRANSPORTATION, P.O. Box 1106, Tahoe City, CA 95730. Representative: Armand Karp, 743 San Simeon Dr., Concord, CA 94518. *Contract Carrier,* irregular routes: *Food and kindred products,* from points in CA, OR and WA to points in Maricopa County, AZ; Denver County, CO; Champaign County, IL; Marion County, IN; Wyandotte County, KS; St. Louis County, MO; Columbiana County, OH; Smith County, TX; Salt Lake County, UT, for the account of Coastal Marketing Associates, Inc., for 270 days. Supporting shipper: Coastal Marketing Associates, Inc., P.O. Box 67, Campbell, CA 95009.

MC 155069 (Sub-6–2TA), filed July 12, 1982. Applicant: RIVER CITY TOURS, INC., 2853 Stephens Lane, El Dorado Hills, CA 95630. Representative: Don H. Lee (same as applicant). *Passengers and their baggage,* in special and charter operations, in round-trip operations from Amador and El Dorado Counties, CA, to points in NV, and return to origin, for 180 days. Supporting shippers: There are 10 shippers. Their statements may be examined at the Regional Office listed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–20063 Filed 7–23–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 2, 1982, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw Opium (9600)	II.
Poppy Straw (Opium Plant Form) (9650)	II.
Concentrate of Poppy Straw (9670)	II.

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefor and any existing bulk manufacturer registered therefor may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Acting Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street N.W., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with any independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Acting Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: July 20, 1982.

Francis M. Mullen,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-20072 Filed 7-23-82; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 82-44]

Government-Owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: July 26, 1982.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, John G. Mannix, Director of Patent Licensing, Code GP-4, Washington, D.C. 20546, telephone (202) 755-3954.

SUPPLEMENTARY INFORMATION: .

Patent application 303,671: System for Producing Gas-Filled Hollow Spheres; filed September 18, 1981.

Patent application 317,977: Fire Extinguishant Materials; filed November 3, 1981.

Patent application 320,621: Polyphenylquinoxalines Containing Pendant Phenylethynyl and Ethynyl Groups; filed November 12,1981.

Patent application 322,320: Structural Pressure Sensitive Silicone Adhesives; filed November 17, 1981.

Patent application 322,321: Reusable Thermal Cycling Clamp; filed November 17, 1981.

Patent application 325,082: Degassifying and Mixing Apparatus for Liquids; filed November 25, 1981.

Patent application 333,536: Induction Heating Gun; filed December 22, 1981.

Patent application 333,537: Advanced Inorganic Separators for Alkaline Batteries and Method of Making Same; filed December 22, 1981.

Patent application 338,386: Missile Rolling Tail Brake Torque System; filed January 11, 1982.

Patent application 338,387: Hinged Strake Aircraft Control System; filed January 11, 1982.

Patent application 342,858: High Temperature Emittance Coatings and Coating Compositions; filed January 26, 1982.

Patent application 350,475: A Brushless DC Tachometer; filed February 19, 1982.

Patent application 350,471: Moisture Content and Gas Sampling Device; filed February 19, 1982.

Patent application 350,477: Imaging X-Ray Spectrometer; filed February 19, 1982.

Patent application 350,476: Light Weight Nickel Battery Plaque; filed February 19, 1982.

Patent application 350,474 Two Dimensional Scanner Apparatus; filed February 19, 1982.

Patent application 350,472: Control System for an Induction Motor with Energy Recovery; filed February 19, 1982.

Patent application 350,473: Real Time Pressure Signal System for a Rotary Engine; filed February 19, 1982.

Patent application 352,827: Thin Film Strain Transducer; filed February 26, 1982.

Patent application 352,821: Improved Chromium Electrodes for Redox Cells; filed February 26, 1982.

Patent application 352,831: Rotary Target V-Block; filed February 26, 1982.

Patent application 358,088: Means and Method for Calibrating a Photon Detector Utilizing Electron-Photon Coincidence; filed March 15, 1982.

Patent application 358,089: Acoustic Rotation Control; filed March 15, 1982.

Patent application 359,388: High Voltage V-Groove Solar Cell; filed March 18, 1982.

Patent application 361,216: Ion Mass Spectrometer; filed March 24, 1982.

Patent application 361,217: Acoustic Agglomeration Methods and Apparatus; filed March 24, 1982.

Patent application 361,215: Hotmelt Recharge System; filed March 24, 1982.

Patent application 361,711: A Method and Technique for Installing Light-Weight, Fragile, High-Temperature Fiber Insulation; filed March 25, 1982.

Patent application 364,041: Method for Determining the Point of Zero Zeta Potential of Semiconductor Materials; filed March 31, 1982.

Patent application 364,126: Spectrophone Stabilized Laser With Line Center Offset Frequency Control; filed March 31, 1982.

Patent application 364,092: A Method of Increasing Minority Carrier Lifetime in Silicon or the Like; filed March 31, 1982.

Patent application 364,097: Acoustic Levitation Methods and Apparatus; filed March 31, 1982.

Patent application 364,072: Ion Beam Textured Graphite Electrode Plates; filed March 31, 1982.

Patent application 366,025: Improved Process for Preparing Perfluorotriazine Elasomers and Precursors Thereof; filed April 6, 1982.
Patent application 366,103: Epitaxial Thinning Process; filed April 6, 1982.
Patent application 365,950: High Temperature Silicon Carbide Impregnated Insulating Fabrics; filed April 6, 1982.
Patent application 367,136: State-of-Charge Coulometer; filed April 9, 1982.
Patent application 367,132: Televisions Camera Video Level Control System; filed April 9, 1982.
Patent application 367,121: Thermal Protection System; filed April 9, 1982.
Patent application 368,188: Simplified D.C. to D.C. Converter; filed April 19, 1982.
Patent application 371,351: Process and Apparatus for Growing a Crystal Ribbon; filed April 23, 1982.
Patent application 371,350: High Pressure Fluid Gas Mixture Flushing of Passageways; filed April 23, 1982.
Patent application 371,352: Prosthetic Occulsive Device for an Internal Passageway; filed April 23, 1982.
Patent application 371,253: Interlocking Wedge Joint; filed April 23, 1982.
Patent application 371,354: Method and Apparatus for Strengthening Boron Fibers; filed April 23, 1982.
Patent application 373,770: Correlation Spectrometer Having High Resolution and Multiplexing Capability; filed April 30, 1982.
Patent application 373,771: Electronic Scanning Pressure Measuring System and Tranducer Package; filed April 30, 1982.
Patent application 375,620: Wideband Passive Synthetic Aperture Multichannel Receiver; filed May 6, 1982.
Patent application 375,784: Improved Thermal Barrier Coating System; filed May 6, 1982.
Patent application 375,684: Solar Powered Actuator With Continuously Variable Auxiliary Power Control; filed May 6, 1982.
Patent application 377,891: Apparatus for Disintegrating Kidney Stones; filed May 13, 1982.
Patent application 378,533: Unitary Seal Ring Assembly; filed May 13, 1982.
Patent application 379,602: Wind and Solar Powered Turbine; filed May 19, 1982.
Patent application 379,601: Acoustic Particle Separation; filed May 19, 1982.
Patent application 383,068: Saltless Solar Pond; filed May 28, 1982.

July 19, 1982.

S. Neil Hosenball,

General Counsel.

[FR Doc. 82-20040 Filed 7-23-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice 82-41]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Informal Advisory Subcommittee on NASA Aeronautical Projects.

DATE AND TIME: August 10, 1982, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Ave., SW, Room 647, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. Robert Nysmith, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/755-8550).

SUPPLEMENTARY INFORMATION: The Ad Hoc Informal Advisory Subcommittee on NASA Aeronautical Projects is meeting to investigate NASA/industry responsibilities in the conduct of aeronautical proof-of-concept and technology validation programs. The Ad Hoc Subcommittee, chaired by Dr. Robert Loewy, is comprosed of 10 members.

The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the subcommittee members and participants).

Type of meeting: Open

Agenda

August 10, 1982
8:30 a.m.—Chairperson's Remarks.
9 a.m.—Presentation of Project Information.
1:30 p.m—Discussion of Information and Identification of Future Activity.
4:30 p.m.—Adjourn.

Walter B. Olstad,

Associate Administratior for Management.

July 19, 1982.

[FR Doc. 82-20037 Filed 7-23-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice 82-42]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Aeronautical Propulsion Technology.

DATE AND TIME: August 16, 1982, 8:30 a.m. to 5 p.m.; August 17, 1982, 8 a.m. to 5 p.m.

ADDRESS: NASA Headquarters, 600 Independence Ave., SW, Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil C. Rosen III, National Aeronautics and Space Administration, Code RT-6 Washington, DC 20546 (202/755-3280).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Aeronautical Propulsion Technology was established to assist the NASA in identifying and examining advanced propulsion technology requirements for future Aeronautical vehicles and to recommend program additions, deletions, or changes in scope or emphasis that may be found necessary to support the overall NASA Aeronautical research and technology objectives. The Chairperson is Dr. Montgomerie C. Steele and there are eleven members on the Subcommittee. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Subcommittee members and participants).

Type of meeting: Open

Agenda

August 16, 1982
8:30 a.m.—Review Aeronautics Long Range Plan
10:30 a.m.—Review of Computational Fluid Dynamics Program
1:30 p.m.—Review of Combustion Fundamentals and Modeling Research.
3:30 p.m.—Review of Planned Advanced Turbofan Research Program.
5 p.m.—Adjourn.

August 17, 1982
8 a.m.—Review of Planned Small Engine Component Technology Program.
10 a.m.—Update of Advanced Turboprop Program Plans
11 a.m.—Review Propulsion Systems Studies
1:30 p.m.—Committee Discussion and Formulation of Recommendations.
5 p.m.—Adjourn.

Walter B. Olstad,

Associate Administrator for Management.

July 19, 1982.

[FR Doc. 82-20038 Filed 7-23-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice 82-43]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Advisory Subcommittee on Structures/Controls Interaction.

DATE AND TIME: August 17, 1982, 9 a.m. to 5 p.m.; August 18, 1982, 9 a.m. to 5 p.m.; August 19, 1982 8 a.m. to 12 Noon.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Ave., SW, Room 647, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Dr. Deene J. Weidman, National Aeronautics and Space Administration, Code RTM–6, Washington, DC 20546 (202/755–3277).

SUPPLEMENTARY INFORMATION: This ad hoc subcommittee was formed with representation from three existing advisory subcommittees for the express purpose of reviewing the control and structures interactions problems of large flexible spacecraft. This subcommittee will assess current control needs and structural methodology for spacecraft and recommend actions to provide technology needs for the future. The Subcommittee, chaired by Dr. Joseph Garibotti, is comprised of seven members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons, including the Subcommittee members and participants).

Type of meeting: Open

Agenda

August 17, 1982
- 9 a.m.—Subcommittee Charter.
- 9:30 a.m.—Review of Control Needs for Antenna Structure.
- 11 a.m.—Review of Control Needs for Spacecraft.
- 1:30 p.m.—Review of Structural Needs for Space Structures.
- 3 p.m.—Review of Current Applicable NASA Research.
- 5 p.m.—Adjourn.

August 18, 1982
- 9 a.m.—Continue Review of NASA Research.
- 11 a.m.—Subcommittee Discussion.
- 5 p.m.—Adjourn.

August 19, 1982
- 8 a.m.—Subcommittee Discussion and Definition of Goals.
- 12 Noon—Adjourn.

Walter B. Olstad,

Associate Administrator for Management.

July 19, 1982.

[FR Doc. 82–20039 Filed 7–23–82; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

1. Date: August 10 and 11, 1982
Time: 8:30 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications submitted for Humanistic Projects in Museums and Historical Organizations, Division of General Programs, for projects beginning after January 1, 1983.

2. Date: August 12 and 13, 1982
Time: 9:00 a.m. to 5:00 p.m.
Room: 1134
Program: This meeting will review applications submitted for Humanistic Projects in Libraries, Division of General Programs, for projects beginning after January 1, 1983.

3. Date: August 11, 12 and 13, 1982
Time: August 11 7:00 p.m. to 9:00 p.m.
August 12 8:30 a.m. to 7:00 p.m.
August 13 8:30 a.m. to 5:00 p.m.
Room: 807
Program: This meeting will review applications submitted for Humanities Projects in Media Division of Public Programs, for projects beginning after January 1, 1983.

4. Date: August 17, 1982
Time: 8:45 a.m. to 5:00 p.m.
Room: 807
Program: This meeting will review the Fellowships for College Teachers applications in Modern British and American Literature, Literary Theory and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1983.

5. Date: August 23, 1982
Time: 8:45 a.m. to 5:00 p.m.
Room: 314
Program: This meeting will review Fellowships for Independent Study and Research applications in Literary Criticism, Comparative Literature, Theatre, and Film, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–20070 Filed 7–23–82; 8:45 am]

BILLING CODE 7536–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

Date: August 4, 5, and 6, 1982.
Time: August 4, 1982 from 7:00 p.m. to 9:00 p.m.
August 5, 1982 from 8:30 a.m. to 7:00 p.m.
August 6, 1982 from 8:30 a.m. to 5:00 p.m.
Room: 807.
Program: This meeting will review applicaitons submitted for Humanistic Projects in Media, Division of General Programs, for projects beginning after January 1, 1983.

Date: August 3 and 4, 1982.
Time: 8:30 a.m. to 5:30 p.m.
Room: 1023.
Program: This meeting will review applications submitted for Humanistic Projects in Museums and Historical Organizations; Division of General Programs, for projects beginning after January 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the

Arts and the Humanities act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code. The Endowment was unable to meet the usual 15 day notice deadline, because of a reorganization of the review process for these proposals.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82–20071 Filed 7–23–82

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation, Et Al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 55 to Facility Operating License No. DPR–72, issued to the Florida Power Corporation, City of Alachua, City of Bushnell, City of Gainesville, City of Kissimmee, City of Leesburg, City of New Smyrna Beach and Utilities Commission, City of New Smyrna Beach, City of Ocala, Orlando Utilities Commission and City of Orlando, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., and the City of Tallahassee (the licensees) which revised the Technical Specifications (TSs) for operation for the Crystal River Unit No. 3 Nuclear Generating Plant (the facility) located in Citrus County, Florida. Portions of the amendment were authorized by telephone on March 3, 1982, March 9, 1982, April 1, 1982 and April 6, 1982. The administrative addition to the amendment is effective on the date of issuance.

The amendment (1) revises the response time of the Reactor Coolant Pump Power Monitors (RCPPMs), (2) allows operation of the facility at a power level no greater than 2300 MWt (90.4% of full power) with the RCPPMs bypassed and (3) administratively adds limiting conditions for operation and surveillance requirements for the power operated relief valves which had inadvertently been omitted from a previous amendment. Portions of the amendment were authorized on an expedited basis to allow plant startup and operation at steady state while problems associated with the RCPPMs are being resolved.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated March 4, 1982, and April 1, 1982, as supplemented by letters dated March 9, 1982, April 6, 1982, and April 30, 1982, (2) the Commission's letters to Florida Power Corporation dated March 12, 1982, April 2, 1982, and April 16, 1982, (3) Amendment No. 55 to License No. DPR–72, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 15th day of July 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82–20136 Filed 7–23–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–387]

Pennsylvania Power & Light Co. et al.; Notice of Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–14 to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc. (the licensees) which authorizes operation of the Susquehanna Steam Electric Station, Unit No. 1 (the facility), by Pennsylvania Power and Light Company at reactor core power levels not in excess of 3293 megawatts thermal in accordance with the provisions of the License and the Technical Specifications. Authorization to operate beyond five percent (164.4 megawatts thermal) is still under consideration and will require specific Commission approval.

Susquehanna Steam Electric Station, Unit 1 is a boiling water nuclear reactor located at the licensees' site in Luzerne County, Pennsylvania. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulation. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on August 9, 1978 (43 FR 35406).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–14, complete with Technical Specifications, (2) the report of the Advisory Committee on Reactor Safeguards, dated August 11, 1981, (3) the Commission's Safety Evaluation Report, dated April 1981, Supplement

No. 1, dated June 1981, Supplement No. 2, dated September 1981 and Supplement No. 3, dated July 1982, (4) the Final Safety Analysis Report and amendments thereto; and (5) the Final Environmental Statement dated, June 1981; and (6) Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Susquehanna Steam Electric Station, Units 1 and 2.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of Facility Operating License No. NPF–14 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements No. 1, 2, and 3 (NUREG–0776) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call 301–492–9530.

Dated at Bethesda, Maryland, this 17th day of July 1982.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82–20135 7–23–82; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A82–11; Order No. 438]

Louis Denu, Petitioner, Siberia, Indiana 47582; Order and Filing of Appeal

July 21, 1982.

On July 9, 1982, the Commission received an appeal letter from Louis Denu (hereinafter "Petitioner"), concerning United States Postal Service's closing of the Siberia, Indiana, post office. The appeal letter states that the Petitioner is very interested in keeping the post office open. The appeal letter appears to request the review provided for by Section 404(b) of the Postal Reorganization Act (39 U.S.C. 404(b)).[1] The petition does not conform perfectly with the Commission's rules of practice, which also require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[2] However, Section 1 of the Commission's rules of practice [3] calls for a liberal construction of the rules to secure just and speedy determination of issues.

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "ensure that such persons will have an opportunity to present their views."[4] The petition requests that the decision to close the Siberia post office be reconsidered.

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[5]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close post offices. The effect on the community is also a mandatory consideration under Section 404(b)(2)(A) of the Act.

The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the closing of post offices.[6]

Upon preliminary inspection, this case appears to involve the following issues of law:

1. Whether the procedure followed by the Postal Service was in compliance with the statute and the Postal Service's regulations.

2. Whether the Postal Service's actions are consistent with the statutory requirement that the Postal Service provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining [39 U.S.C. 404(b)(2)(C)]. Petitioner states that he does not think service can be as good with regard to the county newspaper, which the residents now receive on the day of issue.

Other issues of law may become apparent when the Commission has had the opportunity to examine further the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination in light of *Lone Grove, Texas, et al.*, Docket Nos. A79–1, *et al.* (May 7, 1979), and the Commission's subsequent decisions on appeals of post office closings and consolidations. The determination may be found to resolve adequately one or more of the issues involved in the case.

In view of the above, and in the interest of expediting this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the service's legal position or interpretation on any such issue, it will make the request therefore by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on the petitioner by the service.

In briefing the case or in filing any motion to dismiss for want of prosecution, in appropriate circumstances the service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in 404(b) cases,[7] and none is being appointed. The Commission orders:

(A) The letter from Louis Denu be accepted as a petition for review pursuant to 404(b) of the Act [39 U.S.C. 404(b)].

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

By the Commission.

David F. Harris,

Secretary.

Appendix

July 9, 1982—Filing of Petition.
July 21, 1982—Notice and Order of Filing of Appeal.

[1] 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94–421 (September 24, 1976), 90 Stat. 1310–11. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

[2] 39 CFR 3001.1.

[3] 39 CFR 3001.1.

[4] 39 U.S.C. 101(b).

[5] 39 U.S.C. 101(b).

[6] 42 FR 59079–85 (November 17, 1977); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

[7] In the Matter of Gresham, S.C., Route #1, Docket No. A78–1 (May 11, 1978).

July 26, 1982—Filing of Record by Postal Service [*see* 39 CFR 3001.113(a)].
July 29, 1982—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
August 9, 1982—Petitioner's Initial Brief [*see* 39 CFR 3001.115(a)].
August 24, 1982—Postal Service Answering Brief [*see* 39 CFR 3001.115(b)].
September 8, 1982—(1) Petitioner's Reply Brief should petitioner choose to file [*see* 39 CFR 3001.115(c)].
(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument.
November 7, 1982—Expiration of 120 day decisional schedule [*see* 39 U.S.C. Section 404(b)(5)].

[FR Doc. 82-20150 Filed 7-23-82; 8:45 am]
BILLING CODE 7715-01-M

[Docket No. A82-12; Order No. 439]

Mr. Bruce Franks, et al., Petitioners, Holy City, California 95026; Order of Filing of Appeal

Issued: July 21, 1982.

On July 12, 1982, the Commission received a letter from Mr. Bruce Franks (hereinafter "Petitioner"), Water Manager of the Aldercroft Heights County Water District concerning the alleged United States Postal Service plans to close the Holy City, California post office. In addition, two letters were received from Ms. Connie S. Zemer, and Thomas Winder, respectively, also in reference to the Holy City, California, post office. Neither of these three letters make any explicit reference to the Postal Reorganization Act, but two state that the writers are formally protesting the closing.

Apparently these letters were not written by attorneys, as they do not conform precisely with the Commission's rules of practice, which require a petitioner to attach a copy of the Postal Service's Final Determination to the petition.[1] However, Section 1 of the Commission's rules of practice does call for a liberal construction of the rules to secure a just and speedy determination of issues.[2] Furthermore, the statute provides that petitions for review must be filed within 30 days of the Postal Service's determination to close the post office.[3] Therefore, we believe that the letters should be liberally construed as petitions for review, pursuant to Section 404(b) of the Postal Reorganization Act (39 U.S.C. 404(b)).

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "* * * ensure that such persons will have an opportunity to present their views."[4] From the face of these petitions appealing the decision to close the Holy City post office, it is unclear whether the Postal Service provided the required notice. In addition, these petitions do not indicate whether any hearings were held, nor do they specify whether a determination has been made under 39 U.S.C. 403(b)(3). (Petitioners failed to supply a copy of the Postal Service's Final Determination, if one is in existence.) However, the petitions do appear sufficient, construed as above described, to initiate inquiry to determine whether the Postal Service complied with the statutory mandates, and its own regulations, for the discontinuance of post offices.[5]

Applicable Law in This Proceeding

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[6]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close or consolidate post offices. The effect on the community is also a mandatory consideration under Section 404(b)(2)(A) of the Act.

Upon preliminary inspection, the petitions appear to raise the following issues of law:

1. Is the Postal Service's proposed closing of this post office consistent with the "maximum degree of effective and regular postal services" standard of Section 404(b)(2)(C)?

2. Did the Postal Service consider the alleged historic landmark status of the Holy City Post Office as part of the effect on community standard of Section 404(b)(2)(A)?

3. As part of the effect on the community standard of Section 404(b)(2)(A), must the Postal Service consider the effect the closing of the Holy City post office would have on those doing business within the community?

4. Must the Postal Service consider that the alternative post office can allegedly be reached only by means of a narrow, inaccessible private road not served by public transportation as part of its treatment of the "maximum degree of effective and regular postal services" standard of section 404(b)(2)(C)?

Other issues of law may become apparent when the Commission has had the opportunity to examine the determination made by the Postal Service. Such additional issues may emerge when the parties and the Commission review the Service's determination for consistency with the principles announced in *Lone Grove, Texas, et al.*, Docket Nos. A79-1, *et al.* (May 7, 1979). Conversely, the determination may be found to resolve adequately one or more of the issues described above.

Commission Procedure in This Docket

In view of the statutory requirements, and in the interest of expedition of this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above, and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 20 days of receiving the Determination and record pursuant to section 113 of the rules of practice (39 CFR 3001.113), make the request therefor by order specifying the issues to be addressed. When such a request is issued, the memorandum shall be due within 20 days of the issuance, and a copy of the memorandum shall be served on Petitioners by the Service.

In addition the Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[7]

In briefing the case, or in filing any motion to dismiss for want of prosecution, in appropriate circumstances, the Service may incorporate by reference all or any

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[1] 39 CFR 3001.111(a).
[2] 39 CFR 3001.1.
[3] 39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-1311. Our rules of practice governing these cases appear at 39 CFR 3001.110 *et seq.*

[4] 39 U.S.C. 404(b)(1).
[5] 42 FR 59079-59085 (11/17/77); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).
[6] 39 U.S.C. 101(b).

[7] 39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in 404(b) cases, and none is being appointed.[8] The Commission Orders:

(A) The letters from Bruce Franks, Water Manager of the Aldercroft Heights County Water District, Connie S. Zemer, and Thomas Winder shall be construed as petitions for review pursuant to section 404(b) of the Act (39 U.S.C. 404(b)).

(B) The Secretary of the Commission shall publish this Notice and Order in the **Federal Register.**

(C) The Postal Service shall file the administrative record in this case on or before July 27, 1982, pursuant to the Commission's rules of practice (39 CFR 3001.112(a)).

By the Commission.

David F. Harris,

Secretary.

Appendix

July 12, 1982—Filing of Petition
July 21, 1982—Notice and Order of Filing of Appeal
July 27, 1982—Filing of record by Postal Service [*see* 39 CFR 3001.113(a)]
August 1, 1982—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
August 11, 1982—Petitioners' initial brief [*see* 39 CFR 3001.115(a)]
August 28, 1982—Postal Service answering brief [*see* 39 CFR 3001.115(b)]
September 12, 1982—(1) Petitioner's reply brief, if petitioner chooses to file such brief [*see* 39 CFR 3001.115(c)]
(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
November 9, 1982—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 82-20149 Filed 7-25-82; 8:45 am]

BILLING CODE 7715-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Conservation Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Conservation Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Tuesday, August 10, 1982. 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 S.W. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Eckman, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 82-20033 Filed 7-23-82; 8:45 am]

BILLING CODE 0000-00-M

Executive Committee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Executive Committee of its Scientific and Statistical Advisory Committee.

DATE: Tuesday, August 17, 1982. 1:00 p.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 S.W. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 82-20028 Filed 7-23-82; 8:45 am]

BILLING CODE 0000-00-M

Fish and Wildlife Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Fish and Wildlife Subcommittee of the Scientific and Statistical Advisory Committee.

DATE: Friday, July 30, 1982, 8:30 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 S.W. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 82-20032 Filed 7-23-82; 8:45 am]

BILLING CODE 0000-00-M

Resource Assessment Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Resource Assessment Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Friday, August 20, 1982. 10:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 S.W. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Frahm, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 82-20034 Filed 7-24-82; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21-10A Flight Recorder and Cockpit Voice Recorder Underwater Locating Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of draft Advisory Circular (AC) and request for comments.

SUMMARY: The draft Advisory Circular is intended to provide guidance when seeking certification of flight recorder and/or voice recorder underwater locating device installations.

DATE: Commentors must identify file AC 21-10A and comments must be received on or before August 31, 1982.

ADDRESS: Send all comments in duplicate on the draft Advisory Circular to: Federal Aviation Administration, Attention: Regulations and Policy Office, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at ANM-

[8] In the Matter of Greshman, S.C., Route #1, Docket No. A78-1 (May 11, 1978).

110, at the Northwest Mountain Regional Office, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, ANM–112, at the address above, phone (206) 764–7053.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are solicited on all aspects of the draft advisory circular. A copy of the draft advisory circular may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT".**

Background

AC 21–10 addresses flight recorder underwater locating devices. This proposal revises AC 21–10 to be compatible with existing current airworthiness rules, operating rules and orders by incorporating into AC 21–10 the following:

1. Acceptable means of showing compliance for single underwater locating device installation with colocated cockpit voice and flight data recorders are specified. Compliance requires a 1000g impact shock test, as originally applied to the underwater locating device, to the beacon and associated recorder to demonstrate that they are not likely to separate when subjected to crash impacts. The AC proposes to allow, as Order 8040.1A Appendix 3 allows, the use of a crash condition analysis that substantiates the underwater locating device package's ability to meet the 1000g impact shock test parameter in lieu of the actual impact test.

2. A pressure test simulating a 20,000 foot ocean depth has been incorporated. AC 21–10 specified an equipment operating depth to 20,000 feet, but did not specify a depth test. This proposal does.

3. Type certificate and supplemental type certificate are the approval means specified for the underwater locating device recorder installations.

Issued in Seattle, Washington on June 30, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82–19869 Filed 7–23–82; 8:45 am]

BILLING CODE 4910–13–M

Proposed Advisory Circular on Criteria for Operational Approval of Airborne Wind Shear Detection Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) 120–XX, Criteria for Operational Approval of Airborne Wind Shear Detection Systems.

SUMMARY: This proposed advisory circular (AC) establishes an acceptable means, but not the only means, for obtaining operational approval of airborne wind shear detection systems used in operations under Parts 121, 125, and 135 of the Federal Aviation Regulations (FAR).

DATE: Comments must be received by September 24, 1982.

ADDRESS: Please submit your comments in duplicate to: Federal Aviation Administration; Office of Flight Operations, Air Transportation Division, Flight Technical Programs Branch, (AFO–210), 800 Independence Avenue, SW.; Washington, D.C. 20591; or delivered to: Room 304b, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Wasniewski, Office or Flight Operations, Air Transportation Division, AFO–210, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8452.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of the proposed AC by writing to: Federal Aviation Administration, Office of Flight Operations, Air Transportation Division, AFO–210, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments invited: Interested parties are urged to submit their comments on the proposed AC. Comments may be inspected at Room 303D between 8:00 a.m. and 4:30 p.m.

Issued in Washington, D.C. July 16, 1982.

Kenneth S. Hunt,

Director of Flight Opereations.

[FR Doc. 82–19874 Filed 7–23–82; 8:45]

BILLING CODE 4910–13–M

[Summary Notice No. PE–82–13]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

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), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 16, 1982.

ADDRESS: 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 July 21, 1982.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Supplemental Summary—Notice of Petition for Exemption

Space Services, Incorporated petitioned the Federal Aviation Administration (FAA) for an exemption from any Federal Aviation Regulations that would restrict, limit, or prohibit the launch of a Conestoga I rocket from Matagorda Island, Texas. A summary of the petition for exemption was published in the **Federal Register** of April 15, 1982, in Notice No. PE–82–8 (47 FR 16243). No comments were received in response to that Notice. The petitioner has provided additional information. Accordingly, the FAA finds that a supplemental Notice on this petition for exemption is appropriate in order to insure that the public is fully aware of this planned event and actions the FAA would contemplate in response to the petition. This supplemental Notice invites comments from interested parties. Comments received will assist the FAA in disposing of the petition and may well serve to establish the basis for

future FAA policy regarding private commercial rocket operations.

Following is a current summary of the petition for exemption including supplemental information:

Space Services Incorporated plans to launch a Conestoga I rocket on or about September 8, 1982, from a privately owned site on Matagorda Island, Texas. The flight profile consists of an azimuth of 137° True (southeasterly) from 28°6′ N, 96°49′ W, an apogee of approximately 167 miles, an impact point at 279.1 NM downrange (24°38′ N, 93°40′ W), and a flight duration of ten and one-half minutes. While the flight path would not affect any populated land areas, it could affect some air and marine operations downrange.

The Conestoga I is a 7-ton vehicle configured around the M56A1 Minuteman I second stage motor. Vehicle guidance, which is provided by a MIDAS inertial reference platform, is reported to be reliable to within 3 sigma (+/−2° azimuth and 7 NM downrange). The progress of the flight will be monitored in two ways. First, data on the vehicle's attitude and rate of attitude change as well as other performance functions will be transmitted via telemetry to a mission control ground station. Second, the vehicle will be equipped with a radar beacon transponder which will enable a single ground based radar system to develop instantaneous impact point predictions throughout the boost phase. For emergency flight termination, it is equipped with a manually actuated radio command thrust temination system.

The FAA is considering the petitioner's request for exemption from FAR Section 101.23 to the exent that it prohibits any person from operating an unmanned rocket—

1. In controlled airspace;
2. Within five miles of the boundary of any airport;
3. At any altitude where clouds or obscuring phenomena of more than five-tenths coverage prevails;
4. At any altitude where the horizontal visibility is less than five miles;
5. Into any cloud;

and from Section 101.25 which sets forth notice requirements for rocket operations.

The FAA sees certain actions and stipulations necessary to provide an equivalent level of safety in conjunction with an exemption for such a rocket operation. Among these are:

1. establishment of a temporary restricted area within domestic airspace to isolate the rocket launch from other air traffic operations; [1]
2. operational parameters, outside of which termination of the vehicle's thrust would be ordered;
3. domestic and international notices to airmen and mariners defining the area affected by the rocket flight;
4. direct communication between the launch operator and air traffic control; and
5. restricting IFR flight operations in international airspace affected by the rocket flight.[1]

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
None this period.			

[FR Doc. 82-20163 Filed 7-23-82; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP82-13; Notice 1]

Thomas Built Buses, Inc.; Petition for Exemption From Notice and Remedy for Inconsequential Noncompliance

Thomas Built Buses Inc. of High Point, N.C., has petitioned 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 two apparent noncompliances with 49 CFR 571.221, Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength,* on the basis that they are inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 221 requires body panel joints to be capable of holding the body panel to the member to which it is joined when subjected to a force of 60% of the tensile strength of the weakest joined body panel, determined in accordance with the standard's procedures. Exempted from the definition of "body panel joint," however, are maintenance access panels. In the course of compliance investigations of a 1978 Thomas Mighty Mite 22 passenger school bus (agency file CIR 2109), and a 1979 Thomas Forward Control 78 passenger school bus (CIR 2262), the National Highway Traffic Safety Administration discovered that interior panels by the driver contained 8-inch segments without fasteners of any type. No wiring or other functional parts lay behind the panels. The 60% test load required was almost 6000 pounds but the segments without fasteners were considered to be separable with 0 pounds.

Thomas replied that the failure to provide fasteners was an oversight and that those school buses sold in States requiring stop arm systems normally have wiring or other functional parts behind the panels but that buses sold in the remaining States will, as a rule, have nothing behind them. Thomas argued that the failure was inconsequential as the external body panel by the driver position fully complies with Standard No. 221 and that the approximately 1400 buses involved form a very small portion of its overall school bus fleet. Petitioner polled 124 State directors of pupil transportation and State contract operators to determine whether accidents had occurred involving the panel in question; of the 106 replies, only one indicated that the panel nearest the driver contributed to or manifested a potential for injury, as represented by an accident involving a bus other than one built by Thomas. Therefore, the panels are alleged to be safe in their present configuration based on current experience.

Interested persons are invited to submit written data, views and arguments on the petition of Thomas Built Buses Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered.

The application and supporting materials and all comments received after the closing date will also be filed

[1] It should be noted that airspace and flight restrictions would be imposed for a period of time (typically 3 hours) to allow for advance coordination and minor delays. However, such restrictions would, in fact, be cancelled as soon as the rocket flight is over.

and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

The engineer and attorney principally responsible for this notice are Robert Williams and Taylor Vinson, respectively.

Comment closing date: August 25, 1982.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 16, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-19947 Filed 7-23-82; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held August 23, 1982, at 9:30 a.m. in Room 5B14 at the Federal Office Building, 819 Taylor Street, Ft. Worth, Texas 76102. The agenda for the meeting is as follows:

—Report on short term financial assistance program
—Report on surety bonding program
—Report on Amtrak pilot project
—Report on the Program Management Centers (PMCs)

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Betty Chandler, Minority Business Resource Center, 400 7th Street, SW, Washington, D.C. 20590, telephone (202) 426-2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on July 19, 1982.

Melvin Humphrey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 82-19929 Filed 7-23-82; 8:45am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of Members of Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the composite PRB for the Bureaus of Engraving and Printing, Mint, Government Financial Operations, and Public Debt.

FOR FURTHER INFORMATION CONTACT: Irvin E. Faunce, Deputy Commissioner, Bureau of Government Financial Operations, Room 620, Annex, Madison Place, NW., Washington, D.C. 20226; Telephone 202-566-5038.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the Bureaus of Engraving and Printing, Mint, Government Financial Operations, and Public Debt are listed below. This Board reviews the performance of Senior Executives below the level of bureau head and principal deputy in the four bureaus, except for the Assistant Commissioner, Comptroller at the Bureau of Government Financial Operations. At least three voting members constitute a quorum.

	Primary	Alternate
E&P	Robert J. Leuver, Assistant Director (Administration).	Milton J. Seidel, Assistant Director (Research and Engineering).
Mint	Galen D. Dawson, Assistant Director for Production.	
GFO:	Irvin E. Faunce, Deputy Commissioner.	Michael D. Serlin, Assistant Commissioner (Governmentwide Accounting).
	Bland T. Brockenborough, Assistant Commissioner (Administration).	John Turner, Assistant Commissioner (Disbursement and Claims).
PD	W. M. Gregg, Deputy Commissioner.	Kenneth W. Rath, Assistant Commissioner (Washington).
		Eleanor J. Holsopple, Assistant Commissioner (Admin.).

This notice does not meet the Department's criteria for significant regulations.

Dated: July 21, 1982.

Irvin E. Faunce.

Deputy Commissioner, Bureau of Government Financial Operations, Performance Review Board Chairman, 1982.

[FR Doc. 82-20098 Filed 7-23-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 143
Monday, July 26, 1982

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

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1

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, July 29, 1982.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Marshall (202-377-6679).

MATTERS TO BE CONSIDERED:

Waiver and Modification of Condition—Silver State Savings and Loan Association, Las Vegas, Nevada
Bank Membership and Insurance of Accounts—Butte Savings and Loan Association, Chico, California
Bank Membership and Insurance of Accounts—Summit Savings and Loan Association, Bellevue, Washington, (New Stock Association)
[No. 51, July 22, 1982]

[S-1081-82 Filed 7-22-82; 9:38 am]
BILLING CODE 6720-01-M

2

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: July 27, 1982, 2 p.m.

PLACE: Fourth floor, Conference Room 4-G, 1776 G Street, NW., Washington, D.C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION:
Scott R. Daugherty.

MATTERS TO BE CONSIDERED:

Minute of June 30, 1982 Board of Directors' Meeting
President's Report
Complete May Financial Statements; Partial June Financial Statements; Minutes Entry
Minutes of June 30, 1982 Financing Strategy Meeting
Financial Strategy August 1982; Minute Entry; Hedging Contract Limit Resolution; Short-term Debt Resolution
Investment Policy
July 21, 1982.

[S-1080-82 Filed 7-21-82; 4:36 pm]
BILLING CODE 6720-02-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 4 p.m., July 22, 1982.

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

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Docket No. 81-10: Sea-Land Service, Inc., Trailer Marine Transport Corporation; Gulf-Caribbean Marine Lines, Inc., Puerto Rico Maritime Shipping Authority—Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades—Consideration of petition of PRMSA for relief; motion of PRMSA to file reply; request of PRMSA for oral argument; and petition of Department of Transportation to intervene.

CONTACT PERSONS FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1085-82 Filed 7-22-82; 2:16 pm]
BILLING CODE 6730-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 20, 1982.

TIME AND DATE: 10 a..m., Wednesday, July 28, 1982.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Elias Moses v. Whitley Development Corporation, Docket No. KENT 79-366-D; (Issues include whether the operator discriminatorily discharged the miner in violation of section 105(c)(1) of the Mine Act.)

CONTACT PERSONS FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1083-82 Filed 7-22-82; 11:56 am]
BILLING CODE 6735-01-M

5

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

TIME: 9-10 a.m.

DATE: August 24, 1982.

PLACE: Sheraton Centre, Montreal, Quebec.

STATUS: Closed.

MATTERS TO BE DISCUSSED: Executive Session (closed meeting Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703).

CONTACT PERSON FOR MORE INFORMATION: Toni Carbo Bearman.

July 8, 1982.
Toni Carbo Bearman,
Executive Director, NCLIS.

[S-1084-82 Filed 7-22-82; 11:57 am]
BILLING CODE 0000-00-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 26, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Tuesday, July 27:

10:00 a.m.:
Discussion of and Possible Vote on Full Power Operating License for LaSalle-1 (public meeting)

Wednesday, July 28:

3:30 p.m.:
Discussion of and Vote on Full Power Operating License for San Onofre-2 (public meeting)

Thursday, July 29:

10:00 a.m.:
Oral Presentation on Clinch River Breeder Reactor Project (public meeting)
2:00 p.m.:
Discussion of License Fees—Proposed Schedule (public meeting)
3:00 p.m.:
Affirmation/Discussion Session (public meeting)
a. Export and Import of Nuclear Equipment and Material: Proposed Amendments to NRC's Regulations
b. Diablo Canyon Physical Security—Governor Brown's Request for Public Disclosure of Non-Protected Information
c. Partial Vacating of Commission Order of May 22, 1979, on Preservation of Records of TMI-2 Accident

d. Review of ALAB–670 (In the Matter of Consumers Power Company)
e. Request for Fees and Expenses Under the Equal Access to Justice Act in Bailly Proceeding
f. Proposed Rulemaking Concerning Staffing at Nuclear Power Plants

ADDITIONAL INFORMATION: On July 15, the Commission voted 3–0 (Commissioner Gilinsky and Commissioner Asselstine not present) to hold on short notice the Affirmation of Requirements for Emergency Response Capability, held that day.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

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

July 19, 1982.

Walter Magee,

Office of the Secretary.

[S-1082-82 Filed 7-22-82; 9:39 am]

BILLING CODE 7590-01-M

federal register

Monday
July 26, 1982

Part II

Environmental Protection Agency

Hazardous Waste Management System; Permitting Requirements for Land Disposal Facilities

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 260, 264, and 265

[SWH-FRL 2172-8]

Hazardous Waste Management System; Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and EPA Administered Permit Programs

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is required by the Resource Conservation and Recovery Act (RCRA) to issue standards applicable to owners and operators of hazardous waste management facilities. These standards are to be used in issuing permits for facilities that treat, store, or dispose of hazardous waste. Accordingly, EPA is today issuing interim final standards applicable to owners and operators of new and existing hazardous waste land disposal facilities and the corresponding procedures for permit applications. EPA is also issuing conforming amendments to some existing hazardous waste regulations.

DATES: Effective date: These interim final regulations become effective on January 26, 1983, which is six months from the date of promulgation as RCRA Section 3010(b) requires.

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained under the Act. EPA will publish a notice of the effective date of the reporting and recordkeeping provisions of this rule after it obtains OMB approval.

Comments must be submitted on or before November 23, 1982.

ADDRESS: Comments should be sent to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 382-4487.

Comments on today's rule should identify the regulatory docket as follows: "Docket 3004, Permitting Standards for Land Disposal Facilities." Comments pertaining specifically to regulatory amendments to 40 CFR Part 122 should be marked "Docket 3005, Permitting Requirements for Land Disposal Facilities." The public docket for these regulations is located in Room S269C, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA hazardous waste hotline, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (800) 424-9346, or in Washington, D.C., 382-3000.

For information on the technical aspects of this regulation contact: John P. Lehman, Director, Hazardous and Industrial Waste Division, and Acting Director, Land Disposal Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 755-9185.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are issued under the authority of Sections 1006, 2002(a), 3004, and 3005 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), 6924, and 6925.

II. Background

A. Structure and Status of the Hazardous Waste Regulatory Program

1. *Program Structure.* Subtitle C of RCRA creates a "cradle-to-grave" management system intended to ensure that hazardous waste is safely treated, stored or disposed of. First, Subtitle C requires EPA to identify hazardous waste. Second, it creates a manifest system designed to track the movement of hazardous waste, and requires hazardous waste generators and transporters to employ appropriate management practices as well as procedures to ensure the effective operation of the manifest system. Third, owners and operators of treatment, storage and disposal facilities must comply with standards that "may be necessary to protect human health and the environment" which are established by EPA under Section 3004 of RCRA. These standards are generally implemented through permits that are issued by authorized states or EPA to owners and operators of hazardous waste treatment, storage, and disposal facilities.

All substantive RCRA Subtitle C regulations that impose new requirements (including today's permitting standards for land disposal facilities) become effective six months after their promulgation by EPA. Under Section 3005(a), on the effective date of the Section 3004 standards (the first set of which became effective on November 19, 1980), all treatment, storage, and disposal of hazardous waste is prohibited except in accordance with a permit that implements the Section 3004 standards.

Recognizing that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste treatment, storage, and disposal facilities who qualify for interim status are treated as having been issued a permit, until an authorized state or EPA takes final administrative action on their permit applications. Interim status does not relieve a facility owner or operator of complying with Section 3004 standards.

2. *Regulation Development Status.* To implement the various sections of Subtitle C of RCRA, EPA has issued the following sets of regulations in Title 40 of the Code of Federal Regulations:

Part 260.—Hazardous Waste Management System: General
Part 261.—Hazardous Waste Management System: Identification and Listing of Hazardous Wastes
Part 262.—Standards for Generators of Hazardous Wastes
Part 263.—Standards for Transporters of Hazardous Wastes
Part 264.—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Part 265.—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Part 267.—Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities
Parts 122–124.—Consolidated Permit Regulations (including permit regulations for hazardous waste facilities and State program authorization)

These regulations have been promulgated in several stages and are contained chiefly in the following **Federal Register** publications:

1. 45 FR 33066, May 19, 1980: Parts 260–263 and 265, general provisions of Part 264, and Parts 122–124.

2. 45 FR 47832, July 16, 1980: Listing of additional hazardous wastes in Part 261.

3. 46 FR 2804, January 12, 1981: Parts 264 and 122, standards for storage and treatment facilities; and Parts 264, 265, and 122, standards for closure, post-closure care, and financial responsibility.

4. 46 FR 7666, January 23, 1981: Parts 264 and 122, standards for incinerators.

5. 46 FR 12414, February 13, 1981: Part 267, interim permitting standards for four classes of new land disposal facilities.

While implementing these regulations, EPA has been continuously re-evaluating them. In some cases, EPA has discovered that implementing particular provisions could lead to unanticipated adverse consequences. In others, EPA has determined that certain requirements either were unnecessary to protect human health and the environment or could be modified to achieve the desired environmental result more effectively. Finally, some regulations required further clarification. As a result, EPA has at various times revised some of the regulations listed above. The regulatory amendments, notices of suspension, and notices of extension of compliance deadlines are listed below:

1. 45 FR 72024, October 30, 1980: Amended § 261.4 regarding when a hazardous waste generated in storage or transportation units or manufacturing processes becomes subject to RCRA; amended § 260.10 to modify the definition of "generator" and added other definitions.

2. 45 FR 72035, October 30, 1980: Temporarily excluded from hazardous waste status wastes that currently are deemed hazardous solely due to the presence of trivalent chromium.

3. 45 FR 72037, October 30, 1980: Delisted waste from the leather tanning and titanium dioxide production industries.

4. 45 FR 72040, October 30, 1980: Technical amendment to clarify the "Analytical Procedures for Analyzing Extract Contaminants" in Appendix II of Part 261.

5. 45 FR 74884, November 12, 1980: Published a final list of certain hazardous wastes previously listed in an interim final regulation.

6. 45 FR 76074, November 17, 1980: Suspended the applicability of Parts 122, 264, and 265 to owners and operators of wastewater treatment tanks under the NPDES program and to owners and operators of neutralization transport vehicles, or containers and tanks that neutralize wastes that are hazardous only because they exhibit the "corrosivity" characteristic or are listed only for that reason.

7. 45 FR 76618, November 19, 1980: Excluded from Subtitle C regulation (1) solid waste from certain mining operations, and (2) cement kiln dust.

8. 45 FR 76620, November 19, 1980: Clarified the special requirements for generators of small quantities of hazardous waste.

9. 45 FR 76624, November 19, 1980: Eliminated the distinction between on-site and off-site accumulation for treatment, storage, or disposal.

10. 45 FR 76626, November 19, 1980: Clarified that the Part 264 and 265 standards and Part 122 permitting requirements for treatment and storage of hazardous wastes are not applicable to (1) actions taken to immediately contain and treat spills of hazardous wastes, and (2) materials that, when spilled, become hazardous wastes.

11. 45 FR 76630, November 19, 1980: Clarified the circumstances under which hazardous waste management facilities may qualify for interim status.

12. 45 FR 78524, November 25, 1980: Clarified the situations in which residues of hazardous wastes in drums, barrels, tank trucks, or other types of containers must be managed as hazardous wastes.

13. 45 FR 78530, November 25, 1980: Delisted wastes that are hazardous solely because they exhibit the "EP toxicity" characteristic, are generated in the arsenical treatment of wood or wood products, and are generated by people who use such wood or wood products for the wood's intended end use.

14. 45 FR 78532, November 25, 1980: Finalized the lists of commercial chemical products, off-specification products, and intermediates that when discarded or intended to be discarded are considered to be hazardous wastes, and removed all trade names from the lists.

15. 45 FR 80286, December 4, 1980: Provided that a hazardous waste generated in a product or raw material pipeline is not subject to regulation until it is removed from the pipeline in which it was generated, unless it remains in the pipeline for more than 90 days after the pipeline ceases to be operated for the purpose of transporting product or raw materials.

16. 45 FR 86966, December 31, 1980: Clarified when a transporter handling shipments of hazardous waste is required to obtain a storage permit.

17. 46 FR 2344, January 9, 1981: Amended definition of "existing hazardous waste management facility"; clarified "construction"; added definition of "Federal, State, or local . . . approvals or permit"; and amended permit requirements to allow new hazardous waste management facilities (other than land disposal facilities) to commence construction before receiving permits.

18. 46 FR 4614, January 16, 1981: Finalized the listing of thirteen hazardous wastes from specific sources; deleted two wastes from the interim final hazardous waste list; and deferred action on and suspended the effectiveness of the listing of nine wastes in interim final form on July 16, 1980, and deferred action on one waste proposed on that date.

19. 46 FR 5616, January 19, 1981: Revised public participation requirements in the state enforcement process during interim authorization.

20. 46 FR 7964, 8298 and 8312, January 26, 1981: Amended Part 123 requirements for authorization of state programs.

21. 46 FR 13492, February 20, 1981: Amended interim status regulations to allow liquid ignitable wastes in containers to be disposed of in landfills until May 19, 1981, under specified conditions.

22. 46 FR 18025, March 23, 1981: Corrected hazardous waste regulations issued on January 12, 1981.

23. 46 FR 27119, May 18, 1981: Deferred effective date of financial requirements from July 13, 1981, to October 13, 1981.

24. 46 FR 27473, May 20, 1981: Made technical corrections to many of the rules listed above.

25. 46 FR 33502, June 29, 1981: Extended to November 19, 1981, the date for compliance with the interim status standards that prohibited the diposal of containerized liquid ignitable wastes in landfills. Also allowed (without time limitation) the landfilling of solid ignitable wastes.

26. 46 FR 36704, July 15, 1981: Specified new procedures for public participation in hazardous waste permitting.

27. 46 FR 48147, October 1, 1981: Deferred the effective date of financial requirements from October 13, 1981, to April 13, 1982.

28. 46 FR 55110, November 6, 1981: Amended Part 264 and Part 122 regulations concerning piles and containers to better tailor the standards to the types of hazard posed by specific situations.

29. 46 FR 56582, November 17, 1981: Exempted certain categories of mixtures of solid wastes and hazardous wastes from the presumption of hazardousness.

30. 46 FR 56592, November 17, 1981: Amended the interim status standards for the disposal of ignitable, reactive, and containerized liquid wastes in landfills to allow the land-disposal of small containers of liquid and solid waste that are placed in overpacked drums (lab packs).

31. 47 FR 1248, January 11, 1982: Amended the regulations waiving permit requirements for accumulation of wastes on-site for less than 90 days to (1) clarify that the provision applies to all generators, including those who accumulate hazardous waste for the purpose of use, reuse, recycling, and reclamation; (2) remove the requirements for the use of Department of Transportation-approved containers; (3) revise labelling requirements for accumulated wastes; and (4) allow an extension of the 90-day accumulation limit in certain circumstances.

32. 47 FR 1254, January 11, 1982: Provided an opportunity for neutralization surface impoundments to obtain waivers from interim status ground-water monitoring requirements.

33. 47 FR 7841, February 23, 1982: Delayed the compliance dates for: (1) the submission of annual reports; (2) the submission of initial-year quarterly ground-water monitoring data; and (3) the preparation of ground-water quality program assessment outlines.

34. 47 FR 8304, February 25, 1982: Delayed the date for compliance with the interim status standard prohibiting the disposal of containerized liquid wastes in landfills.

35. 47 FR 12316, March 22, 1982: Amended the interim status regulations governing the disposal of containerized liquid hazardous wastes in landfills.

36. 47 FR 15032, April 7, 1982: Amended the financial responsibility regulations to provide additional options for owners or operators to demonstrate financial responsibility.

37. 47 FR 15304, April 8, 1982: Amended the Part 122 regulations to make minor changes in miscellaneous requirements.

38. 47 FR 16544, April 16, 1982: Amended the liability coverage requirements to: (1) add an option of a financial test as a means of demonstrating liability coverage; (2) add an option of submitting a certificate of insurance as evidence of insurance; and (3) change the requirements for the endorsement and certificate.

39. 47 FR 27520, June 24, 1982: Amended the permitting and interim status regulations for hazardous waste incinerators to: (1) exempt certain corrosive and reactive wastes; (2) change the performance standards for hydrogen chloride and particulate emissions; and (3) clarify permit requirements before, during, and after trial burns.

The regulations discussed above have covered most aspects of hazardous waste control under Subtitle C of RCRA, but have failed to fully address a major component—Part 264 permitting standards for land disposal facilities. Today's promulgation contains those standards for new and existing land disposal facilities (except underground injection wells).

B. History of Rulemaking for Land Disposal Standards

EPA has promulgated today's permitting standards for hazardous waste land disposal facilities after considering, and obtaining public comments on, a wide range of regulatory options. Over a period of several years, EPA has proposed two different sets of standards and, in two separate **Federal Register** notices, solicited comments on various land disposal issues. Furthermore, as discussed in the next section, EPA has already promulgated interim standards for four classes of new land disposal facilities.

EPA originally proposed technical standards for permitting land disposal facilities on December 18, 1978 (43 FR 58982). The basic approach was to set uniform design requirements for land disposal facilities, subject to opportunities for variences when alternative designs could achieve equivalent environmental protection. A 90-day comment period was provided. Many commenters criticized the proposal, arguing that it was not sufficiently flexible (despite its incorporation of variances) and not adequately oriented toward a clearly articulated regulatory goal.

In response to public comments, EPA reconsidered the proposed approach of design standards. Based on this reconsideration, EPA tentatively selected a risk assessment approach. On October 8, 1980, EPA published a supplemental notice of proposed rulemaking (45 FR 66816), in which EPA outlined four regulatory options and announced its tentative selection of the risk assessment approach. EPA provided a 30-day comment period.

On February 5, 1981, EPA reproposed technical standards for permitting land disposal facilities (46 FR 11126). The reproposal adopted a site-specific risk-assessment approach. This approach would have required the permit writer, based on information and predictions submitted by the applicant, to evaluate the potential risks to human health and the environment that would be posed by a particular facility's location, design, construction, and operation. Due to the complexity of the proposed regulation and the importance of the issues involved, an eight-month comment period was provided.

To further promote full discussion of the complex technical and policy issues concerning the various types of land disposal practices and the appropriate means of regulating them, EPA published a supplemental notice of reproposed rulemaking on May 26, 1981 (46 FR 28314). The notice presented many questions relating to these issues and requested comment on them. The questions addressed various regulatory approaches, including site-specific risk assessment, broad design standards, location standards, containment standards, and alternatives to land disposal. It also invited comment on diverse technical questions and on practical considerations, such as the administrative burdens that are likely to be imposed by various regulatory approaches and the likelihood of public acceptance of facilities permitted under these different approaches.

Finally, on December 21, 1981, EPA held a public meeting to discuss EPA's reappraisal of its regulatory approach and its movement towards the combined approach of ground-water protection standards plus design and operating standards. A 14-day comment period was provided. Thus, the public was provided opportunity to comment on the outline of today's regulatory approach, which grows out of (and modifies

somewhat) the basic elements discussed in December 1981.

Together, the various proposals and notices outlined above have addressed the basic features of many different options for regulating land disposal under Subtitle C of RCRA. Furthermore, numerous public hearings, meetings, and technical symposia have been held to assist EPA to develop appropriate land disposal standards. The regulations promulgated today are based upon prior proposals and public comments responding to the proposals and combine those features that the Agency believes will best effectuate the purposes of RCRA. These features are discussed later in this preamble in the context of the specific regulatory provisions promulgated today.

C. Promulgation of Part 267 Standards for New Land Disposal Facilities

At the time of the February 5, 1981, reproposal of land disposal standards, EPA was particularly concerned about the lack of permitting standards for new land disposal facilities. The lack of such standards precluded the construction and operation of new environmentally sound facilities and posed potential difficulties for new industrial facilities that needed to rely upon the on-site disposal of hazardous wastes. To alleviate this short-term problem, EPA promulgated interim standards for four classes of new land disposal facilities (landfills, surface impoundments, land treatment units, and Class I underground injection wells) in 40 CFR Part 267 on February 13, 1981 (46 FR 12414).

Section 267.2 provides that Part 267 applies only to the owner or operator of a new hazardous waste landfill, surface impoundment, land treatment unit, or Class I underground injection well, who has applied for a permit and for whom public notice of the preparation of a draft permit has been issued either prior to February 13, 1983, or six months after Part 264 regulations for the facility become effective, whichever is sooner. Thus, the Part 267 regulations will cease to apply to landfills, surface impoundments, and land treatment units six months from today—January 26, 1983. After that date, only permit applications that have already reached the draft permit stage will continue to be processed under Part 267.

The Part 267 standards for injection wells will remain in effect until February 13, 1983. EPA intends to extend the Part 267 standards for injection wells beyond February 13, 1983, if Part 264 standards for such units are not promulgated by that date. EPA requests comments on this approach. The development of Part 264 standards for injection wells is discussed in section IV.B.3 of this preamble.

D. Court Order Requiring the Promulgation of Today's Regulations

Based upon the public comments submitted in response to the February 5, 1981, proposal and the May 26, 1981, supplemental notice, EPA concluded that a thorough review and modification of its regulatory strategy for land disposal of hazardous wastes would be required. To ensure that all aspects of this complex issue could be integrated into the land disposal standards, EPA intended to promulgate these standards in the fall of 1983. However, on November 13, 1981, EPA was directed by a court order in *State of Illinois* v. *Gorsuch* (D.D.C., Civil Action No. 78–1689) "to promulgate regulations for existing hazardous waste land disposal facilities on or before February 1, 1982". After unsuccessfully moving for reconsideration of the court order, EPA filed an appeal with the U.S. Court of Appeals for the District of Columbia Circuit. The D.C. Circuit granted EPA a stay of the Court order pending the outcome of the appeal. On June 7, 1982, the D.C. Circuit ordered EPA to promulgate today's regulations by July 15, 1982.

EPA has promulgated today's regulations ahead of the schedule which the Agency had desired, in order to comply with the D.C. Circuit's court order. While the Agency feels that today's regulations are reasonable and comply with the requirements of Section 3004 of RCRA, they are not the same regulations that EPA would have liked to issue in the fall of 1983. As discussed elsewhere in this preamble, EPA hopes to improve these regulations in the future by developing (1) numerical criteria for certain design performance standards expressed today only in narrative terms, and (2) specific standards that are tailored to specific wastes, locations, and management practices.

III. Summary of the Part 264 Land Disposal Regulations

The regulations promulgated today in 40 CFR Part 264 apply to all landfills, surface impoundments, waste piles, and land treatment units used to treat, store, or dispose of hazardous waste. They apply to both new and existing waste management units and distinguish between these units in appropriate circumstances.

Conforming changes have been made in the permitting standards in Part 122, the definitions in Part 260, and the interim status standards in Part 265. The regulations will, upon their effective date, supersede the Part 267 regulations for new landfills, surface impoundments, and land treatment units that were promulgated on February 13, 1981. They will also supersede the Part 264 Subparts K and L standards for surface impoundments and waste piles that were promulgated on January 12, 1981.

The regulations consist primarily of two sets of performance standards. One (Subparts K–N of Part 264) is a set of design and operating standards separately tailored to each of the four types of units covered by the regulations. The other (Subpart F) is a single set of ground-water monitoring and response requirements applicable to each of these units. The former is intended to ensure that owners or operators minimize the formation of leachate and the migration of leachate to the adjacent subsurface soils and to ground water and surface waters. The latter is intended to ensure that owners or operators detect any ground-water contamination, and perform corrective action when such contamination threatens human health and the environment.

The design and operating standards require units (other than land treatment units) to have liners to prevent migration of wastes to the subsurface soil or to ground water and surface waters during the active life of the unit. Landfills and piles are also required to have leachate collection and removal systems (such as drains that collect leachate and pumps that remove it) to minimize the leachate remaining after closure. Surface impoundments, for which leachate collection and removal systems are inappropriate (due to the large quantities of liquid that regularly enter the impoundments), are required to remove liquid wastes and/or solidify the wastes at closure to minimize post-closure leaching of wastes. A variance from the liner and leachate collection requirements is available to units where owners or operators demonstrate that wastes from their units will never migrate to ground water or surface water. In addition, existing portions of units are exempt from these requirements.

At closure, all wastes and waste residues must be removed from piles and from surface impoundments that are permitted as storage or treatment facilities at the request of the owner or operator. (Piles may be permitted only as storage or treatment facilities.) Other surface impoundments, as well as landfills, will be closed with the wastes left in place and must be provided with a final cover (capped) at closure. They

must then be maintained and monitored for ground-water contamination during the post-closure care period.

The ground-water protection requirements contained in Subpart F establish a three-stage program to detect, evaluate, and, if necessary, correct ground-water contamination during the active life of the unit plus a compliance period designated in the permit.

The first stage of the ground-water monitoring and response program is a detection monitoring program, which requires the permittee to install a ground-water monitoring system at the waste boundary (including both upgradient and downgradient wells) to monitor the ground water for parameters that would indicate whether a leachate plume has reached the waste boundary. If a plume is detected, a second stage—a compliance monitoring program—is established. The compliance monitoring program tracks the migration of hazardous constituents (constituents on Appendix VIII of Part 261 that are reasonably expected to be in or derived from waste disposed at the facility and that are found in ground water).

The results of compliance monitoring are compared against a ground-water protection standard. The standard requires that hazardous constituents not exceed the following concentration limits:

(1)(a) For any constituent, the background level in the ground water, or

(b) For any of the 14 hazardous constituents covered by the National Interim Primary Drinking Water Regulations (NIPDWR), the maximum concentration limits (MCLs) for drinking water established in those regulations, if the background level of the constituent is below the MCLs, or

(2) Any other limits shown by the owner or operator to not harm human health and the environment.

If the ground-water protection standard is violated, the the third stage—corrective action—is activated. Corrective action must continue until the standard is complied with. Corrective action consists of the removal of the contamination (by pumping or other means) or in-situ treatment of the hazardous constituents.

The regulations provide an option whereby owners or operators may comply with a more stringent set of design and operating standards and thereby obtain a waiver of ground-water monitoring and response requirements. These special standards include two bottom liners (instead of the single liner generally required for new portions of units) and a leak detection system between the liners (in addition to the leachate collection and removal system above the liners generally required for new landfills and piles). If a leak is discovered, the leaking liner must be repaired or replaced, or else the owner or operator then becomes subject to the ground-water monitoring and response requirements. (An additional exemption from the ground-water monitoring and response requirements is provided for piles that are periodically removed from their liner so that the liner may be inspected for leaks.)

Both the design and operating standards and the ground-water monitoring and response program will be implemented through the issuance of permits. In the case of the ground-water monitoring and response program, permit modifications may be required when there is a need to progress from one stage of the program to the next.

IV. Present and Future Regulatory Activities Related to Today's Regulations

Although today's regulations nearly complete the regulatory framework for hazardous waste land disposal facilities, EPA plans to continue working to improve the regulations. Major activities in this regard are discussed below.

A. Interim Final Promulgation of Land Disposal Standards

To comply with the court order in *State of Illinois* v. *Gorsuch*, EPA is promulgating land disposal standards that are in interim final form and thus will become effective six months after promulgation in accordance with Section 3010 of RCRA. As noted above in Section II. B. of this preamble, EPA has previously proposed, discussed in **Federal Register** notices, or received public comment on, the issues relevant to today's promulgation. However, while based upon previously discussed regulatory approaches, today's standards differ from previous proposals in how they integrate various elements of those approaches. Therefore, EPA desires further public comment on these standards before they take effect. Consequently, EPA is promulgating today's regulation in interim final form. A 120-day comment period is being provided. EPA requests that significant issues be brought to the Agency's attention as soon as possible to enable EPA to make appropriate modifications of the regulations before they become effective.

B. Future Regulatory Activity

1. *Financial Responsibility for Corrective Action.* Section 3004(6) of RCRA requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment. Thus far the Agency has established standards requiring demonstration of financial responsibility for closure, post-closure care, and liability coverage (Subpart H, Parts 264 and 265, revised interim final regulations promulgated April 7, 1982 (47 FR 15032–15074) and April 16, 1982 (47 FR 16544–16561)). The Agency is considering whether it would be appropriate to establish standards requiring owners and operators of hazardous waste management facilities to demonstrate financial responsibility for any corrective actions required to be taken to comply with the ground-water protection standard. The Agency therefore invites public comment on this and other issues discussed in this section relating to financial responsibility for corrective action.

At those facilities where all other ground-water protection measures have failed and a leachate plume is migrating beyond the compliance point (a point at the waste boundary where compliance with the ground-water protection standard is being measured), corrective action measures are the key means for protecting human health and the environment. EPA believes it important, therefore, that the owner or operator be able to perform corrective action measures if and when they are needed. This certainly suggests a need for financial responsibility to cover corrective action. There are, however, several factors that must be considered in deciding whether such financial responsibility is either necessary or desirable and in formulating requirements for such financial responsibility.

The primary purpose of the financial responsibility requirements for closure and post-closure care is to assure that funds will be available when needed to perform those activities. The Agency established these requirements in light of its conclusion that in their absence, some owners or operators of hazardous waste management facilities would be unwilling or unable to perform closure and post-closure care or make funds available to do so. The Agency imposed these requirements during the operating life of the facility because there is very little economic incentive for an owner or operator of a facility to perform closure and post-closure activities at the end of that facility's useful life when its value is minimal.

Similarly, the primary purpose of any financial responsibility requirements for corrective action would be to assure

that money will be available when needed to conduct necessary corrective action measures. The Agency expects that any financial responsibility requirements for corrective action which it may establish would be similar to the existing financial responsibility requirements for closure and post-closure care. However, there are fundamental differences between the nature of the requirements for corrective action and those for closure and post-closure care. These differences pose difficult questions regarding whether similar financial responsibility requirements are appropriate for corrective action as those established for closure and post-closure care. Unlike the closure and post-closure care requirements, it may be very difficult to determine with a reasonable degree of certainty during the operating life of a facility whether corrective action measures will be required at a facility and if so, the amount of money necessary to perform those measures. Unless these issues are properly resolved, the financial responsibility requirements for corrective action may either provide very little assurance that the necessary corrective action will be performed at a facility when needed, or impose a very high cost upon owners and operators of hazardous waste management facilities which, in many cases, will not require any corrective action.

The most difficult issue facing the Agency is determining when it should require the owners or operators of a facility to demonstrate financial responsibility for corrective action. In developing the financial responsibility requirements for closure and post-closure care, the Agency learned that the cost of demonstrating financial responsibility for activities like corrective action can be quite substantial. However, in the case of the financial responsibility requirements for closure and post-closure care, the Agency concluded that those requirements were appropriate even though the costs are substantial because it is certain that closure and post-closure care will be needed at facilities and they must be provided promptly to protect human health and the environment. In contrast, however, the Agency expects that for many facilities, the only time at which it will be certain that corrective action will be required is shortly before the corrective action measures are to be undertaken. This, in many cases, will be after the facility has closed. Consequently, the Agency is faced with at least three options: (1) requiring the owners or operators of all facilities to demonstrate financial responsibility for corrective action during the operating life of the facility; (2) requiring owners or operators of only those facilities at which the need for corrective action has been established to demonstrate financial responsibility for that action; or (3) requiring the owners or operators of certain facilities to demonstrate financial responsibility only upon the occurrence of some other event (such as the commencement of compliance monitoring).

Each of these options has significant drawbacks. Under the first option, there is a substantial likelihood that many owners and operators will be required to spend substantial amounts of money to demonstrate financial responsibility for corrective action which they will never be required to undertake. Under the second option, there may be a substantial number of owners or operators that will be unable or unwilling to assure that funds will be available for corrective action after their facility has closed, leaving no funds available to perform the needed corrective action. The third option may suffer from the problems presented under both options one and two. The Agency solicits comments on this issue and is specifically interested in suggestions on alternative approaches.

A second major issued relating to the financial responsibility requirements is the appropriate method for determining the amount of funds to be assured. Unlike the closure and post-closure requirements, the amount of money necessary to complete required corrective action may be extremely difficult to estimate before the need for corrective action has been established and may even be difficult to estimate once its need has been established. Consequently, if the Agency were to establish a financial responsibility requirement for corrective action, the Agency would have to develop a basis for determining and appropriate amount of funds to be assured. One alternative is a schedule which establishes various amounts to be assured depending upon the size and type of facility, the number of years which the facility has been in operation, conformity to design and operating standards, and other relevant factors. Comments are requested on these issues.

The Agency expects that financial responsibility for corrective action could be demonstrated by the same financial assurance mechanisms which may be used to demonstrate financial responsibility for closure and post-closure care (trust funds, surety bonds, letters of credit, insurance, financial test and corporate guarantee, and state guarantees). The Agency believes these mechanisms would provide an appropriate level of assurance that funds would be available when needed for necessary corrective action. Insurance, such as is available for on-site cleanup of nuclear waste facilities, may be particularly appropriate for corrective action because of the contingent nature of corrective action. Insurors will be able to spread the risk associated with funding corrective action and thus should be able to reduce the costs which owners and operators would have to bear to provide financial responsibility for this activity. Comments are solicited on whether any other financial mechanism might be used to provide financial assurance for corrective action and whether any modifications of the closure and post-closure mechanisms would be required to make them appropriate for corrective action.

An additional issue related to financial responsibility requirements for land disposal facilities concerns the relationship of the Post-closure Liability Trust Fund under Section 232 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to these regulations. Under CERCLA Section 107(k), the liabilities of a hazardous waste disposal facility are transferred to the Fund only if the following conditions are met:

1. The facility has received a permit under Subtitle C of RCRA;

2. The facility has complied with its permit and has been properly closed in accordance with the permit; and

3. The facility and surrounding area has been monitored for up to five years after closure to demonstrate that there is no substantial likelihood for hazardous substances to migrate off-site or to be released from confinement, or for other risks to public health or welfare.

The Fund does not begin to build up, via a tax on hazardous waste received at qualified hazardous waste disposal facilities, until October 1, 1983.

As EPA develops its approach to financial responsibility for corrective action, it will consider how best to relate that approach to the provisions of the Post-closure Liability Trust Fund under CERCLA. EPA solicits comments on this issue.

2. *Monofills and Neutralization Surface Impoundments.* The Agency believes that two types of waste management units covered by today's Part 264 permitting standards should not be subject to the full set of standards promulgated today. These are monofills and neutralization surface

impoundments. EPA intends to propose separate standards for these units.

Monofills are landfills, surface impoundments, or waste piles used to treat, store or dispose of one or more of a small group of inorganic wastes. This group includes wastes that are hazardous solely because they exhibit the characteristic of EP toxicity (defined in § 261.24). EP toxicity is a characteristic that indicates the likelihood that certain metals and other constituents could be leached by an acidic leaching medium in significant concentrations. This group is further limited to specific wastes that the Agency formally finds would not leach significant concentrations of these constituents in the absence of an acid leaching medium. At present, the Agency expects that the following wastes may meet the above criteria and thus would be eligible for inclusion in a future regulation concerning monofills:

1. Incinerator ash;
2. Residues from foundry furnace emissions controls;
3. Metal casting molding sand;
4. Cement kiln dust and clinker;
5. Hydroxide and carbonate sludges resulting from the treatment of plating bath waste;
6. Residues from titanium dioxide production;
7. Oven residue from the production of chrome and oxide green pigments (listed in § 261.32 as waste K008); and
8. Emission control dust or sludge from the production of steel (including the waste listed in § 261.32 as K061).

Under management conditions that preclude contact between the above wastes and acids, EPA believes that there may be an extremely low likelihood that significant concentrations of hazardous constituents could leach into nearby ground waters. In essence, although these wastes have the potential to cause substantial harm if mismanaged (since they exhibit the characteristic of EP toxicity), they may be managed in a way that makes it very unlikely for this harm to occur. Therefore, EPA believes that it may be unnecessary to require monofills that prevent waste-acid contact to comply with the full Part 264 standards.

Neutralization surface impoundments are surface impoundments that (1) are used to neutralize wastes that are hazardous solely because they exhibit the characteristic of corrosivity (§ 261.22) or have been listed in Part 261 Subpart D solely for this reason; (2) contain no other wastes; and (3) neutralize the corrosive wastes sufficiently rapidly so that there is no potential for migration of hazardous wastes from the impoundment. EPA believes that, like monofills, neutralization surface impoundments may present low enough risks to ground water to justify the imposition of less than the full Part 264 standards. (Indeed, EPA recently promulgated a regulation that provides an opportunity for neutralization impoundments to obtain a waiver from the Part 265 interim status ground-water monitoring requirements. See 47 FR 1254, January 11, 1982.)

The Agency is preparing a proposal to establish a separate set of standards for monofills and neutralization surface impoundments that are less extensive than the general standards but are equally protective of human health and the environment. It expects to be able to publish this proposal soon. In the meantime, until the final set of reduced standards are promulgated, EPA will assign its lowest land-disposal permitting priority to monfills and neutralization surface impoundments and will focus its permitting efforts on other types of waste management units.

3. *Underground Injection Wells.* Underground injection wells are unique among waste management units in that they are specifically regulated under a separate statute as well as under RCRA. Under the Safe Drinking Water Act (SDWA), EPA regulates the subsurface injection of liquids in wells through the underground injection control (UIC) program. SDWA, Section 1421 *et seq.* UIC regulations are set forth in 40 CFR Parts 122–124 and 146. Where the liquids injected are hazardous wastes, there is overlapping jurisdiction between the UIC program and the RCRA hazardous waste program.

Because of the overlapping jurisdictions between SDWA and RCRA, EPA has promulgated a permit-by-rule for injection wells in § 122.26(b). That section provides that the owner or operator of an injection well disposing of hazardous waste will be deemed to have a RCRA permit if he (1) has and complies with an UIC permit, and (2) complies with special requirements in § 122.45 for wells injecting hazardous waste.

The development of UIC standards under SDWA addressing the injection of hazardous wastes is not yet complete. EPA recently settled two lawsuits that challenged the regulations initially promulgated to implement the UIC program. *Natural Resources Defense Council* v. *EPA* (D.C.Cir., No. 80–1607 and consolidated cases); *American Petroleum Institute* v. *EPA* (D.C.Cir., No. 80–1875A and consolidated cases). Based upon these settlements, EPA has promulgated revised UIC regulations 47 FR 4992, February 3, 1982. Those regulations contained standards for two types of hazardous waste injection wells: Class I wells (those that inject waste below underground sources of drinking water), and those Class IV wells in which waste is injected directly into underground sources of drinking water. UIC standards have not been promulgated for Class IV wells in which waste is injected above underground sources of drinking water.

Because of the interaction between the RCRA and UIC programs, EPA could not separately promulgate RCRA standards today for Class IV wells in which wastes are injected above underground sources of drinking water. However, EPA intends to develop standards for this limited set of facilities and issue them in a manner that ensures continued consistency between the UIC and RCRA regulatory programs.

4. *Tailoring of Standards for Specific Wastes.* Apart from the specific regulatory activities discussed immediately above, EPA is conducting regulatory impact analyses for each of the various types of waste management units. In addition, it is conducting a "degree-of-hazard" study which will examine various combinations of waste types and volumes, treatment and disposal technologies, and environmental settings. This study is intended to identify ways in which RCRA Subtitle C standards could be tailored to better address particular problems.

Based upon these studies, EPA hopes to propose appropriate regulatory amendments in 1983 and promulgate them in 1984.

5. *Units Not Covered by Promulgated Standards.* The Part 264 regulations promulgated to date, together with future regulations for underground injection facilities and for underground tanks that cannot be entered for inspection, are intended to regulate all types of treatment, storage, and disposal facilities. It is possible, however, that some hazardous waste management practice is currently used, or may be developed in the future, that does not fit the description of any of the specific units (containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, and underground injection wells) that are covered or are soon to be covered by specific Subparts of Part 264.

EPA is considering promulgating regulations in a separate Subpart to address waste management units that are not covered by another unit-specific Subpart. Such regulations would consist of general environmental performance standards similar to those contained in § 267.10.

EPA solicits comments on what type of units, if any, are currently in existence, or likely to come into existence in the near future that are not covered by the current Part 264 regulations. EPA also solicits comments on the appropriate means to write standards for such units in compliance with Section 3004 of RCRA.

V. Relationship of the Part 264 Land Disposal Standards to Other RCRA Subtitle C Regulations

A. Relationship to the Part 265 Interim Status Standards

EPA has made these land disposal standards consistent with the interim status land disposal standards. The basic interim status design and operating standards (*e.g.*, controls on run-on and run-off, freeboard for surface impoundments, inspection, and restrictions on landfilling liquid, ignitable, and reactive wastes) are continued in the Part 264 standards, although sometimes in modified form. In some instances, based upon comments submitted on the May 19, 1980 interim final regulations, EPA determined that some modification of the Part 265 interim status standards is warranted. In such cases, EPA has amended those standards in the Part 265 rules promulgated today and based the new Part 264 standards on the amended Part 265 standards.

One important area where EPA has ensured consistency is ground-water monitoring. As explained in Section VI of this preamble, ground-water protection standards and monitoring requirements are a central element of the Part 264 land disposal standards. Ground-water monitoring systems that have been installed at the limit of the waste management area to comply with the monitoring requirements of Part 265 Subpart F may also be used to perform the ground-water monitoring required by Part 264 Subpart F. Thus while the ground-water monitoring programs in Parts 264 and 265 differ, they are fully compatible.

B. Relationship to the Part 267 Standards for New Land Disposal Facilities

As discussed above in Section II.C. of this preamble, the temporary Part 267 standards for new landfills, surface impoundments, and waste piles expire on January 26, 1983, and will be superseded by today's Part 264 standards on that date.

C. Relationship to Standards for Storage Surface Impoundments and Storage Piles Promulgated on January 12, 1981

On January 12, 1981, EPA promulgated, in interim final form, Part 264 standards for new and existing surface impoundments and waste piles that are used for storage or treatment of hazardous wastes and are designed and operated to prevent discharges into the land, ground water, and surface water (except as authorized by a National Pollutant Discharge Elimination System permit). The standards (40 CFR Part 264, Subparts K and L) provided for the containment of all wastes during the unit's operating life, followed by removal of wastes at closure. No ground-water monitoring was required.

These standards will be entirely superseded by today's regulations on January 26, 1983. Consequently, EPA today is withdrawing its October 20, 1981, proposal to suspend the effective date of the January 12, 1981, standards as they apply to existing storage surface impoundments. (46 FR 51407) Discussions of the major differences between the January 12 regulations and today's regulations, and of how the transition from the January 12 regulations will be effected are contained in Sections VII.F. (Surface Impoundments) and VII.G. (Waste Piles) of this preamble.

D. Relationship to the Consolidated Permit Regulations

Procedures for issuing and modifying hazardous waste permits are contained in 40 CFR Parts 122 and 124. These procedures apply to permitting the land disposal facilities covered by the Part 264 technical standards promulgated today.

The permitting procedures in Parts 122 and 124 will be used in a variety of contexts other than initially permitting facilities. As discussed later in this preamble, the ground-water protection program in today's regulations contains several types of requirements that may need to be specified after the permit has been issued and would thus require interaction between the permittee and permit-issuing authority. These include detailed "compliance monitoring" programs which must be developed and implemented when initial "detection monitoring" indicates that waste constituents have entered the ground water beneath the waste boundary; and corrective action programs that must be developed and implemented when compliance monitoring indicates that the ground-water protection standard has been violated. In each of these cases, the Part 124 procedures will be used to modify the permit.

Today's regulations contain some amendments to the Part 122 permitting standards. These are designed to conform the permit requirements, and especially the permit application requirements, to the new standards promulgated today. See the discussion below in Section VII. K. of this preamble.

E. Relationship to Requirements for State Program Authorization

1. *General Discussion.* Like several other Federal environmental statutes, RCRA authorizes EPA to approve State programs. Once approved, these programs operate in lieu of the Federal program within their respective jurisdictions. See Section 3006 of RCRA. Regulations governing EPA approval of State hazardous waste programs are contained in 40 CFR Part 123 (45 FR 33456, May 19, 1980; 46 FR 7964 and 8298–8310, January 26, 1981).

RCRA is unique among the Federal environmental statutes in providing for two types of approvals of State programs, "interim authorization" and "final authorization". Interim authorization is a temporary approval lasting up to 24 months after a full Federal program has been established; it may be granted to States whose programs are "substantially equivalent" to the Federal program. Final authorization is a permanent approval (subject to withdrawal by EPA for causes specified in Section 3006(e) of RCRA); a State may obtain final authorization by demonstrating that its program (1) is "equivalent to" the Federal program, (2) is "consistent with" the Federal program, and (3) provides adequate enforcement.

2. *Interim Authorization.* Because EPA has promulgated its Section 3004 standards in several stages, it has provided that States may apply for and receive interim authorization in stages. Phase I allows States to administer programs in lieu of and corresponding to that portion of the Federal program which covers identification and listing of hazardous waste (40 CFR Part 261) and generators and transporters of hazardous waste (Part 262 and 263), and establishes interim status standards for hazardous waste treatment, storage, and disposal facilities (Part 265). Phase II allows States to administer permit programs for hazardous waste treatment, storage, and disposal facilities; the permits must apply standards substantially equivalent to the Federal Part 264 standards. As each component of Part 264 standards is

promulgated, EPA announces in a Federal Register notice that States may apply for interim authorization for that component (as well as previously promulgated components). See 40 CFR 123.121(c)(2). In a separate notice in today's Federal Register, EPA is announcing the contents of Component C of Phase II interim authorization, which addresses State program analogs to today's regulations.

3. *Final Authorization.* With the promulgation today of permanent Part 264 standards for landfills, surface impoundments, waste piles and land treatment units, the RCRA Subtitle C program is now virtually complete. Because the Federal regulatory program is almost complete, EPA believes it is now appropriate to begin granting final authorization to States whose programs are consistent with and equivalent to the Federal program and which provide adequate enforcement. In the notice in today's Federal Register announcing the contents of Component C, EPA is also announcing that States may now apply for final authorization.

VI. Strategy For Protection

In assuring that today's regulations adequately protect human health and the environment, EPA has addressed potential adverse effects on ground water, surface water, and air quality. This section describes generally how today's regulations protect each of these three environmental media and how EPA intends to refine its regulatory approach over time.

A. Ground Water

Ground-water protection has been one of EPA's central concerns in devising a regulatory strategy for hazardous waste land disposal. A large number of the documented damage cases from hazardous waste land disposal have involved ground-water contamination. Likewise the legislative history of RCRA, including the damage cases cited in the 1976 Senate Report, indicates that the Congress was quite concerned about ground-water contamination when it created the hazardous waste program. Accordingly, today's regulations deal very explicitly with ground-water protection.

1. *Considerations Guiding the Ground-water Protection Strategy.* EPA's ground-water protection strategy under these regulations has been shaped by a variety of policy concerns. EPA's decisions on the regulations have been particularly influenced by five general considerations of regulatory policy. While several of these have been discussed in previous Federal Register notices on land disposal, it is helpful to discuss them here because they provide a useful context in which to explain the overall strategy of today's regulations. First, EPA has concluded that the regulations should be designed to reduce some of the uncertainties associated with hazardous waste disposal. Such an approach allows owners and operators to do intelligent planning for their operations and helps to assure the public that safe practices are being used. EPA wants to make sure that the issuance of a RCRA permit for a facility means that a certain level of protection is provided and that the public can be assured that the prescribed level of protection will be achieved.

The way to meet this objective is to avoid regulatory schemes that principally rely on complicated predictions about the long term fate, transport, and effect of hazardous constituents in the environment. Such predictions are often subject to scientific uncertainties about the behavior of particular constituents in the hydrogeologic environment and about the effects of those constituents on receptor populations. Likewise, the magnitude of the potential effects depends on future institutional factors (*e.g.*, land-use patterns in the area around the facility, the intentions of the owner or operator to remain at the site) that can also be a source of uncertainty. Therefore, while EPA acknowledges that there are situations where predictions of future effects can be made reasonably, it intends to emphasize regulatory measures that do not require such predictions.

Second, EPA's strategy for protection must consider the unique characteristics of ground water. Ground water is a fragile resource. Once contaminated, an aquifer remains polluted for a relatively long time and it may be extremely difficult to restore the quality of the water in the aquifer. At the same time, it is often easier to limit the impact of polluted ground water on human health and the environment than it is to limit the impact of polluted surface water or air. Ground water does not rovide a habitat for fish or wildlife, and human use of ground water is usually limited to situations where the ground water is withdrawn for particular purposes. Thus by assuring that ground-water quality is compatible with the various uses to which it may be put, EPA can be reasonably sure that human health and the environment will be protected.

Third, EPA has concluded that the standards issued today should not stifle innovation. The recent attention given to hazardous waste management in this country is a relatively new phenomenon. EPA expects that the state of scientific knowledge about how to control hazardous wastes will make significant strides in the next few decades. In order to avoid creating impediments to such technological innovation, EPA has tried to use performance standards whenever possible. Performance standards establish environmental, design, or operating objectives and leave to the owner or operator and the permit-issuing authority the decision of what the most appropriate design and operating measures are for achieving the standard. Besides being more cost-effective, such an approach keeps EPA, the States, and the public focused on the issue that is of greatest concern—the environmental results that can be expected from the facility.

Fourth, EPA has concluded that the purposes of RCRA cannot be achieved unless the standards for land disposal facilities are capable of being implemented in the context of the permit program. Permitting agencies (at the State and Federal level) must be able to issue permits to environmentally-acceptable facilities and to deny permits to those facilities that cannot provide adequate levels of environmental protection.

In order to meet this need, EPA's regulatory approach must be one that can be implemented quickly and that limits the need to conduct complex, time-consuming analyses on the behavior and effects of hazardous constituents in the environment. This latter consideration is particularly important because the national pool of experts on such topics as the fate and transport of hazardous waste constituents in the subsurface environment is quite limited and should be conserved for those situations where such analysis must be done. Therefore, EPA believes that the strategy for protection under these regulations should emphasize standards that provide a clear indication to the regulated community of what is expected. Such certainty should reduce the time involved in acting on permits and should avoid the need for complex analyses with uncertain outcomes.

Fifth, EPA has concluded that the regulated community should be required to devote the bulk of its environmental protection expenditures to measures that are most likely to produce significant environmental results. There is a limited amount of resources available to provide environmental protection and these resources should be used in the most cost-effective manner possible. A regulatory strategy which tends to require exhaustive data collection and analysis prior to

permitting doesn't serve that goal. Expenditures on such analysis are often better spent on design and operating measures that have been shown to be effective in controlling hazardous waste. While EPA is willing to explore new ideas in hazardous waste management with permit applicants, it does not intend to establish standards that require exhaustive analyses in order to determine whether they have been met.

2. *Alternatives Examined.* In the course of rulemaking on the land disposal regulations, EPA has considered (and sought comment) on a variety of alternative approaches to regulation. In previous Federal Register notices EPA has identified at least five possible regulatory approaches:

1. Design and Operating Standards—Such standards would require installation of specific equipment or use of particular practices. An example is a liner specification such as 2 feet of clay with a permeability of 10^{-7} cm/sec.

2. Technical Performance Standards—Such standards establish an engineering objective and allow the permit applicant to develop a design or set of practices to achieve the objective. An example is a requirement to develop a run-off control system that can accommodate the water volume from a specified storm event (*e.g.*, 24-hour, 25-year storm).

3. Containment Standard—Such a performance standard would require that the permittee keep waste or waste constituents within a certain area for a fixed period of time. An example is a liner standard requiring that the liner be able to contain waste for 100 years.

4. Environmental Performance Standards—Such standards specify limits (usually numerical) on levels of contamination that may be tolerated in the environment. An example is a ground-water quality standard for the ground water below the facility.

5. Risk Assessment Standard—Such a standard would establish broad narrative criteria to guide the permit-issuing authority in doing a site-specific assessment of the risks associated with the facility and in developing permit conditions that reduce the risk to acceptable levels. An example is a standard which requires the permit applicant to demonstrate that there will be no significant risk of cancer resulting from the facility.

Each of these approaches has its own advantages. Generally, EPA believes that technical performance standards in conjunction with environmental performance standards provide the right mix of certainty and flexibility to be implementable and to assure the proper emphasis on the environmental results of control measures. Wherever possible, today's regulations have relied on these approaches. Performance standards, however, are often difficult to develop and it has not been possible in the time allowed to promulgate these regulations for EPA to develop performance standards for all situations. Therefore, some of the standards in today's regulations draw upon other regulatory approaches (e.g., design standards). Over time EPA intends to refine the land disposal regulations to develop performance standards that apply to more situations and to make more explicit the performance standards established in today's regulations.

3. *Control Strategy.* Based on the considerations outlined above and on the comments received during rulemaking, EPA has developed a strategy for ground-water protection at land disposal facilities that it believes is adequate to protect human health and the environment. The fundamental goal of the regulations is to minimize the migration into the environment of the hazardous component of waste placed in land disposal units. EPA's strategy for achieving this goal has two basic elements. One element is a liquids management strategy for the disposal units at the facility that is intended to minimize leachate generation in the waste management units and to remove leachate from the waste management units before it enters the subsurface environment. This is the "first line of defense" in the sense that it seeks to prevent ground-water contamination by controlling the source of the contamination. The other element of the general strategy is a ground-water monitoring and response program that is designed to remove leachate from the ground water if it is detected. The monitoring and response program serves as a backup to the liquids management strategy.

a. *Liquids Management Program*—When hazardous wastes are in liquid form or are mixed with other liquids, they are in a form which presents the greatest threat to ground water because of their potential for migration in the subsurface environment. EPA believes, therefore, that a systematic effort to reduce the volume of liquids that can potentially enter the subsurface environment should be a basic tenet of any ground-water protection strategy. There are two aspects of a prudent liquids management strategy. First, the generation of leachate should be minimized, primarily by keeping liquids out of the waste management units. Second, reasonable steps should be taken to remove liquids from the units before they enter the subsurface environment.

Today's regulations establish a liquids management strategy for each type of land disposal unit under Subparts K–N. These portions of the regulations establish the principal technical requirements for surface impoundments, waste piles, land treatment units, and landfills. These requirements vary somewhat between Subparts depending on the characteristics of each unit type, but they do fall into a few general categories. To avoid the generation of leachate, the owner or operator of some types of units will be required to control run-on to the unit, to substantially restrict the placement of liquid waste or waste containing free liquids, or to place a cap on the unit at closure. To prevent the migration of liquids into the environment, the owner or operator may be required to place underliners below the waste, to install leachate collection and removal systems, to assure the structural integrity of any dikes used at the unit, to control run-off from the unit, to treat hazardous constituents, or to remove free liquids at closure.

Today's regulations have stated these requirements as performance standards to the extent possible. EPA also intends to issue guidance that will describe specific design and operating measures that may be used to satisfy the performance standards.

EPA believes that the placement of liners beneath the waste in a land disposal unit is often a key element in a general liquids management strategy. It should be emphasized, however, that liners must be viewed as components of an overall liquids management system. A liner is a barrier technology that prevents or greatly restricts migration of liquids into the ground. No liner, however, can keep all liquids out of the ground for all time. Eventually liners will either degrade, tear, or crack and will allow liquids to migrate out of the unit. It is, therefore, important that other measures be taken to remove liquids from the unit during the time that the liner is most effective (*i.e.*, during the active life of the facility). Leachate collection and removal systems at landfills and measures to remove free liquids from surface impoundments at closure are the principal techniques used to remove liquids.

EPA's view of the function of a liner contrasts somewhat with that of some members of the public and the regulated community. Some have argued that liners are devices that provide a perpetual seal against any migration from a waste management unit. EPA has concluded that the more reasonable

assumption, based on what is known about the pressures placed on liners over time, is that any liner will begin to leak eventually. Others have argued that liners should be viewed as a means of retarding the movement of liquids from a unit for some period of time. While this view accords with how liners do in fact operate, EPA does not believe that this is a sound regulatory strategy for ground-water protection because it is principally designed to delay the appearance of ground water contamination rather than to achieve a more permanent solution. Accordingly, EPA views liners as a barrier technology that can be best used to facilitate the removal of liquids from a waste management unit during its active life (including the closure period) and thereby provide a greater assurance of long-term protection at the facility.

While liners may remain effective at preventing migration from the unit until well after closure, their principal role occurs during the active life. After closure, EPA believes that a protective cap becomes the prime element of the liquids management strategy. A well-designed and carefully maintained cap can be quite effective at reducing the volume of liquids entering a unit and therefore can substantially reduce the potential for leachate generation at the unit for long periods.

b. *Ground-Water Monitoring and Response Program*—The second element of the overall ground-water protection strategy in the regulations is the monitoring and response program established in Subpart F. This is a program that requires graduated levels of monitoring and corrective action responsibilities that increase as the evidence of ground water contamination increases.

When there is no evidence of ground-water contamination, the owner or operator is simply required to montor to detect whether leachate has entered the ground water. Once there is evidence that a unit is leaking, the owner or operator takes on the responsibility of defining the potentially dangerous component of the leachate entering the ground water and monitoring to assure that the level of hazardous constituents in the ground water does not exceed concentrations that could adversely affect human health and the environment. If the leachate causes increases that exceed a specified ground-water protection standard for the unit, corrective action measures must be taken to achieve compliance with that standard.

Unlike the liquids management strategy for the unit, which seeks to minimize the total rate and volume of all liquids emerging from the unit, the monitoring and response program forces EPA and the owner or operator to address specific chemical constituents in the leachate coming from the unit. EPA believes that this increased concern with the specific chemical components of leachate is appropriate considering the situation addressed by the monitoring and response program. This element of the ground-water protection strategy is concerned with hazardous waste leachate that has actually entered the ground water and thus is at a point where adverse environmental impacts are most imminent. EPA believes that a careful examination and consideration of the potential effects of the specific constituents in hazardous waste leachate is necessary at that time in order to assure that the statutory mandate to protect human health and the environment is achieved.

In contrast, it is not necessary to know the complete chemical composition of hazardous waste at stages that are more remote from the point of actual impact on the environment. For example, it is not necessary to know every element of a waste before listing it as a hazardous waste. The presence of some constituents which could cause potential hazards to human health or the environment under some management scenario is sufficient to warrant identifying a waste as hazardous. Likewise, at the time of placement of waste in a land disposal unit it would be appropriate to focus on the broad characteristics of the waste, such as the liquid content or corrosive characteristics of the waste. Thus the increased level of concern with the specific makeup of hazardous waste leachate at the time of its discovery in ground water is fully consistent with the general philosophy of the monitoring and response program—increasing attention to the constituents in the waste as the evidence of imminent adverse impact on ground water increases.

The monitoring and response program in today's regulations is to be instituted in the ground water immediately outside the waste management area. EPA believes that the owner and operator should be capable of controlling hazardous constituents in the environment as soon as possible after they appear in the environment. As will be discussed later, there may be some situations in which human health and the environment will not be threatened if hazardous constituents in the ground water move beyond the waste management boundary. This possibility does not, however, obviate the need to establish the monitoring and response program as close to the waste as possible.

Early detection of contamination allows the owner or operator as well as the permitting authority the additional time needed to develop corrective action measures that will be successful and cost-effective. It is also sound policy to conduct corrective action close to the waste in order to minimize ground-water depletion on the aquifer, to increase the cost-effectiveness of the corrective action, and to reduce substantially the possibility that a plume of contamination will migrate beyond the owner or operator's control.

A key element of the monitoring and response program is the establishment of a ground-water protection standard for the waste management units. The principal purpose of this standard is to indicate the level of ground-water contamination that triggers the need for corrective action measures. The ground-water protection standard also defines the constituents that must be addressed in the compliance monitoring program (the monitoring scheme that must be used when hazardous waste leachate has entered the ground water).

Where possible, the ground-water protection standard is based on environmental performance standards that establish numerical concentration limits for individual contaminants. Specifically, EPA has relied on the National Interim Primary Drinking Water Regulations to establish maximum contaminant limits for a particular set of toxic metals and pesticides. EPA hopes to eventually expand the list of constituents for which specific health-based concentration limits may be used.

Where such environmental performance standards are not available for chemical constituents that are known to be hazardous, EPA has provided that the action level which triggers corrective action will be any statistically significant increase over the background level of the constituent in the ground water below the waste management unit. EPA believes that this is a reasonable approach for three reasons. First, as will be discussed in more detail later, it is the best of the available alternatives. Second, a "no increase over background" standard assures that causation (namely the fact that the facility is the source of the increased concentration) is established at the same time that noncompliance with the ground-water protection standard is determined. This approach avoids the possibility that the owner or

operator would be forced to clean up the ground water even though hazardous constituents had not migrated from his units into ground water.

Third, this approach is consistent with a ground-water protection philosophy that seeks to maintain ground-water quality necessary for current and future uses. Background ground-water quality, independent of the effects of hazardous waste disposal, will define the highest use to which a particular aquifer may be put. An aquifer which is already too dirty to be used as a drinking water source will certainly not be transformed into a prime drinking water supply with the advent of hazardous waste disposal activities in the area. A regulatory strategy that prevents increases over background levels of contamination assures that the existing and potential uses of that aquifer will be maintained. In some cases, state authorities may have clearly defined what those uses are. In other areas, these uses may be established by custom or by agreements between private parties. In any case, the maintenance of background quality should ensure that hazardous waste disposal activities will not adversely affect other uses of ground water in the area.

This latter justification for the "no increase over background" standard also suggests a basis for modification of the ground-water protection standard. It is possible that some increases in the levels of particular constituents in ground water can be tolerated without adversely affecting current and future use of the ground water beyond the facility. Accordingly, EPA has provided a mechanism for allowing the establishment of alternative concentration limits, above background levels, for hazardous constituents covered by the ground-water protection standard. EPA has concluded that such an option is a reasonable element of any ground-water protection scheme and does not create a major loophole in the regulatory scheme.

Rational choices can be made about the uses of ground water in an area and about the limits on contamination that are necessary to protect those uses. EPA has concluded that public confidence in such decisions will be enhanced, however, by assuring that a decision to establish an alternative concentration limit is the result of a deliberative process. Therefore EPA has required that there be a full consideration of all relevant factors before setting alternative concentrations limits. Likewise, EPA has made it clear that the burden of proof in justifying an alternative concentration limit lies with the permit applicant.

The effectiveness of the monitoring and response program depends ultimately on the success of corrective action measures. EPA expects that corrective action measures will prove to be effective in many places. The national experience with ground-water cleanup, however, is relatively limited at this time. EPA expects that over time the state of knowledge about ground-water cleanup measures will improve. As our experience with corrective action measures improves, it may be necessary to broaden or narrow the use of corrective action measures in the land disposal regulations.

There are two aspects of the corrective action program established in today's regulations that reflect a recognition of the uncertainties associated with ground-water cleanup. First, EPA has not made corrective action the only means for ensuring ground-water protection at land disposal facilities. EPA has concluded that a sound liquids management strategy can be the prime method for providing long-term protection of ground water at land disposal facilities. The monitoring and response program is a back up program which becomes most important if the liquids management strategy fails. Ultimately, then, this regulatory approach relies on corrective action measures only when all other reasonable measures to control ground-water pollution have failed.

Second, any corrective action program required under today's regulations must be designed to meet the ground-water protection standard by removing waste constituents or by treating them in place. Thus, the program emphasizes measures that are most likely to achieve relatively permanent results, in contrast to corrective action measures that simply create barriers or modify the gradient in the ground water to prevent migration. Such techniques may provide good controls for some period of time but their effects are necessarily less permanent than a strategy that emphasizes removal or in place treatment of contaminants. As discussed below, EPA has decided that owners and operators will not be expected generally to conduct compliance monitoring and corrective action programs forever. It is, therefore, all the more appropriate to emphasize corrective action measures that can be expected to achieve relatively permanent results.

c. *Time Frame of Protection Strategy*—There is often a substantial lag time between the act of waste disposal and the appearance of any adverse effects on ground water from that disposal. This simple physical fact has raised major policy issues that have been some of the most difficult questions that EPA has had to consider in the development of today's regulations.

In the Agency's view, there seems little doubt that the general goal of any strategy for protecting ground water from hazardous waste should be to provide protection for a very long time. Ground water is a relatively abundant resource in this country, but it is also a fragile one that is not easily cleaned up once it is contaminated. Moreover, many of the chemical constituents present in hazardous waste do not degrade over time or do so at very slow rates. Thus, it can be expected that a hazardous waste land disposal unit presents some risk to ground water well into the future.

While this line of thinking may suggest that the regulations should be aimed at perpetual protection, EPA has concluded that no useful purpose is served by announcing a regulatory strategy that professes to protect ground water forever. First, such a professed objective is ultimately misleading. While proper hazardous waste management practices can provide long-term protection, it is impossible to specify with any degree af accuracy how those technologies will perform several hundred years from now. Certainly it is impossible to attempt to predict and design for all potential future turns in human events (e.g., acts of war) and geologic history (e.g., another Ice Age).

Second, such a regulatory philosophy does not reflect a proper attitude toward the future. We cannot assume that our ability to cope with the environmental risks associated with hazardous waste disposal will not improve in the future. (The technology for controlling hazardous wastes in particular is currently in an embryonic stage and EPA expects that substantial progress will be made in this field in the near future.) This is not a misplaced faith in the salvation of future technology but rather a simple recognition that future generations may be much better able to cope with problems of ground-water pollution than we are today.

Therefore, EPA has concluded that its regulatory strategy should seek to provide long-term protection, but it should not profess to provide protection for infinity. EPA considered whether it should specify some fixed time period that would provide an outer bound on how long it can reasonably expect to assure ground-water protection. At this

time, EPA simply has not been able to develop an adequate rationale for such a time frame. (As will be discussed later, EPA intends to initiate several studies to explore whether there is a reasonable basis for specifying such a time frame.)

Therefore, EPA has decided that the basic strategy for today's regulations is to require the owner or operator to take reasonable steps (including the installation of various control technologies) that are likely to provide long-term protection of ground water, without specifying exactly how long these steps are expected to be effective. The liquids management strategy embodied in today's regulations, for example, emphasizes design and operating measures that are designed to reduce the present and future likelihood of leachate migration to ground water. In the monitoring and response program, the owner or operator must be prepared, while he is present at the facility, to take needed corrective action as soon as ground-water contamination appears. Where variances from this responsibility are allowed, the owner or operator must be able to demonstrate that relatively permanent conditions are present in and around the facility that are expected to prevent adverse effects on human health or the environment. Conditions that simply delay the time when adverse effects would occur do not provide a basis for the owner or operator to be relieved of his responsibilites under the monitoring and response program.

In some areas, however, it has been necessary to specify time periods in the regulation in order to make the regulations workable. One such time period is the compliance period (i.e., the time period over which the owner or operator must be ready to perform corrective action once hazardous constituents have appeared in ground water.) The other time period is the post-closure care period. This period defines how long the owner or operator must maintain design features aimed at long-term ground-water protection and how long he must monitor the ground water as long as contamination is not detected.

The compliance period is linked to the active life of the waste management area. It is a time period that is at least equal to the number of years that the regulated unit(s) received waste but it may be longer where additional time is needed to complete corrective action that was ongoing at the time that the normal compliance period ends. In setting the compliance period, the basic objective is to have the owner or operator ready to conduct corrective action during the time that the most significant portion of the leachate plume is emerging from the regulated unit.

There could be two potential reasons for the appearance of contamination in ground water: (1) the regulated unit liner has failed and is allowing leachate to pass through it; or (2) the unit did not have a liner and liquids present in the unit are simply seeping into the ground unobstructed by any barriers. In either case the liquids available for migration to ground water should be sharply curtailed by the placement of the final cover on the unit at closure. In fact, a well-designed and carefully maintained cover should reduce the rate of migration of leachate to ground water to insignificant levels. Thus, the active life of the unit, the period during which the cover is not present, is the time period during which the release of leachate to the subsurface environment is likely to be greatest.

Projecting that same analysis into the ground water, it is logical to assume that once contamination appears in ground water the most substantial release to ground water will occur during a period that is equal to the active life (including the closure period) of the unit. Based on this technical analysis, EPA has concluded that the compliance period for the compliance monitoring program must extend for a time period that is at least equal to the active life of the unit.

EPA recognizes, however, that several technical factors may cause the plume caused by a "no liner" or "failed liner" scenario to continue to appear after a compliance period that is based on the unit's active life. First, the placement of a cover at closure does not immediately shut off the exfiltration of liquid from the unit. Particularly at a landfill there is likely to be a deliquifying period during which liquid in the waste passes down through the waste and into the ground. In addition, various contaminants may move at different speeds through the unsaturated zone below the facility. Thus, the detection of hazardous constituents in ground water may reflect the appearance of the fastest-moving constituents. The slower moving constituents may begin to appear later and continue to appear for a period that is longer than the compliance period (i.e., the period equal to the active life of the unit) as measured from the first appearance of the fastest-moving constituent.

The regulations account for this phenomenon, if it occurs, with a variance. If a corrective action program is under way when the normal compliance period ends, the compliance period will be extended until the ground-water protection standard is achieved. This will ensure that the time period for the compliance monitoring and corrective action programs is linked to the purpose of the program—the removal of the hazardous component of any plume from the unit.

EPA also recognizes that some technical factors could cause the period during which significant amounts of leachate enter the subsoil to be much less than the active life of the regulated unit. The major situation where this would occur is where a liner in the unit provides an effective barrier for some period of time, and the liner does not fail until late in the active life of the unit. At this time, EPA does not know how to account for this possibility in defining what the appropriate compliance period should be because it is not possible to know precisely when the liner actually fails. Accordingly, the regulations provide that the compliance period must extend for a period at least as long as the active life of the unit, based on the assumption that an improperly installed liner may begin to leak as soon as waste disposal begins.

The second major time period used in the regulations concerns post-closure responsibilities. The owner or operator must know how long after closure he must continue to maintain the liquids management measures, such as the cover, and continue to monitor to determine whether hazardous constituents are leaking into ground water. This is a difficult time frame to define because it implies some assessment of how long owners and operators should be held responsible for a unit at which there has been no evidence of ground-water contamination.

The existing hazardous waste regulations have established a post-closure care period that extends for 30 years after closure at a land disposal facility but allows for variances to increase and, in some cases, decrease that time period. EPA promulgated regulations establishing that post-closure care period on May 19, 1980 (45 FR 33066) and received comment on that approach. This time period represents what EPA thinks is a reasonable burden to place on the owner or operator to maintain a presence at the facility. While some commenters have recommended shorter or longer time periods, others have indicated that the existing post-closure care period represents a reasonable burden for the facility owner or operator.

Given the current state of knowledge about hazardous waste disposal and given the record developed in

rulemaking on these regulations, EPA has concluded that this time period is a reasonable way to define the owner or operator's responsibility after closure to continue liquids management measures and to monitor ground water where no contamination has appeared. The Regional Administrator may modify this time period under the regulations where necessary to protect human health and the environment. Such a variance is necessarily open-ended because it can potentially be based on a variety of site-specific factors.

EPA is not entirely satisfied with the way today's regulations address the issue of time in protecting ground water. EPA intends to analyze further the question of whether there is an optimal time frame to be used in a ground-water protection strategy for land disposal facilities. Specifically EPA intends to study each of the following approaches to setting an optimal time frame.

First, EPA will consider whether there is a technical basis for setting a proper time frame. EPA is interested in determining whether the time period can be linked to the likelihood of significant attenuation of constituents in the unsaturated zone. Thus, EPA would explore the circumstances under which, if contamination did not appear in ground water for a certain number of years, it could be concluded that sufficient attenuation had occurred to reduce to insignificant levels the potential hazard of any plume that could reach ground water.

Second, EPA will consider whether there is an optimal time period that balances the need for protection at individual facilities against the need for environmentally-acceptable capacity for land disposal of hazardous waste. At some point, the imposition of long-term responsibilities on owners and operators of land disposal facilities could become so expensive that new facilities would not be developed and that existing facilities would close, thereby reducing the available capacity for hazardous waste that may have to be placed in land disposal facilities. Such a situation would not be desirable as a matter of national environmental policy because it tends to create pressure for the worst forms of uncontrolled hazardous waste disposal.

Third, EPA will consider whether there is an optimal time frame for ground-water protection that balances the cost of additional protection against the benefits derived from increasing the time frame for protection.

B. Surface Water

EPA is also concerned with the impact of hazardous waste land disposal on surface waters. As part of its general liquids management strategy for waste management units, EPA has imposed requirements that should minimize the impact on surface waters. For example, run-off controls at landfills, land treatment units, and piles, and the overtopping requirement at surface impoundments, will avoid the migration of hazardous constituents over the land surface to surface water. In addition, units located in 100-year floodplains must generally be designed to prevent washout, a measure that is primarily concerned with surface water protection.

The general strategy for the protection of ground water in today's regulations should also serve the purpose of surface water protection. Most aquifers are hydraulically connected to surface water. To the extent that today's standards assure protection of ground water upgradient from a surface water body, EPA is also providing protection of that surface water. In fact, as will be discussed later, EPA has built a concern for surface water into the monitoring and response program as well as the design and operating requirements being promulgated today.

In addition, it should be recognized that the surface water effects from hazardous waste land disposal are controlled under other EPA programs besides the RCRA hazardous waste program. Specifically, the discharge of pollutants into navigable waters from a point source is subject to regulation under the Clean Water Act (CWA). Such a discharge must receive a permit under the National Pollutant Discharge Elimination System (NPDES), as provided for in Section 402 of the CWA. Where a hazardous waste land disposal facility has a point source discharge, the appropriate requirements of the CWA must be met for that discharge.

C. Air

For several reasons, EPA has found it very difficult to address the effects of land disposal units on air quality in these regulations. First, EPA has less information and experience with air pollution at these units than with other types of environmental problems (e.g., ground-water contamination.) As a result, less is known about the extent of the problem and about the available control technologies for remedying the problem. This makes it difficult to assess the need for particular requirements to deal with air pollution. Second, based on the information that is available to EPA, it appears that the question of whether a unit has an air pollution problem, particularly where volatile emissions are at issue, is heavily dependent on the nature of the particular waste being placed in the unit. Several of the experts attending EPA's technical symposium on land disposal, for example, indicated that some surface impoundments could have significant air emissions but that the extent of the problem was primarily dependent on the volume of volatile hazardous constituents placed in the impoundment.

Given the limited information on air emissions from hazardous waste land disposal units and the fact that the problem appears to be highly waste-specific, EPA has not attempted to establish extensive control measures for such problems as volatile emissions in these regulations. EPA considered establishing a narrative standard for air emissions that would be analogous to that contained in § 267.10(c) of the temporary standards for new hazardous waste land disposal facilities. EPA decided, however, that it needed more information before it would know how to translate such a broad standard into specific control requirements that could become permit conditions.

EPA has required a few operating measures aimed at avoiding adverse effects from air emissions. Specifically, EPA requires wind dispersion controls to minimize emissions of particulate matter at waste piles, land treatment units, and landfills.

EPA has begun a detailed study of potential air emission problems and will focus first on defining the extent of the problem and the circumstances under which emissions threaten human health and the environment. This work is being done in conjunction with EPA's broader degree of hazard studies and regulatory impact analyses. As a result of that work, EPA may propose banning certain wastes in certain types of units or placing restrictive design and operating standards on units handling significant quantities of volatile wastes in those circumstances where it has clearly identified air pollution problems.

VII. Detailed Analysis of the Rules—Parts 260, 264, 265, and 122

This section of the preamble discusses the specific provisions in today's regulations. Before beginning the discussion, however, it is important to clarify the meaning of various terms used to describe what areas are being regulated at a disposal facility. When using the term "facility," EPA is referring to the broadest extent of EPA's area jurisdiction under Section 3004 of RCRA. In many cases, particularly for off-site facilities, this means the entire site that is under the control of the

owner or operator engaged in hazardous waste management. Within the facility there will be an area where hazardous waste treatment, storage, and disposal activities occur. This is the waste management area.

The waste management area is made up of one or more waste management units. The provisions in the Part 264 and 265 regulations (principally the technical standards in Subparts K–N) establish requirements that are to be implemented on a unit by unit basis. A waste management unit is a contiguous area of land on or in which waste is placed. A waste management unit is the largest area in which there is a significant likelihood of mixing of waste constituents in the same area. Usually this is due to the fact that each waste management unit is subject to a uniform set of management practices (e.g., one liner and leachate collection and removal system).

Today's regulations establish specific requirements for surface impoundments, waste piles, land treatment units, and landfills. Generally, each of these four terms is synonymous with the concept of a waste management unit. For example, a surface impoundment is typically a single depression in the ground in which wastes are allowed to mix. Landfills may, however, present an exception to this general rule. Some landfills are designed as a series of adjacent trenches that are separately lined. In this situation, the term "landfill" can refer to the entire set of trenches. Yet, each individual trench is a separate waste management unit under today's regulations. (The principal practical implication of this distinction arises in determining what area of the facility is subject to the monitoring and response program in Subpart F. This will be discussed in more detail in Section VII.D. of this preamble.)

EPA's hazardous waste management regulations have also used the term "process" to describe a part of the facility. "Process" refers to general classes of waste management activities (e.g., surface impoundments, piles) and thus embodies a set of units that may be present at a facility. For example, a facility may contain three separate surface impoundments, two waste piles, and a single landfill. Such a facility contains six waste management units and three waste management processes (e.g., surface impoundment, waste pile, and landfill.)

In some parts of today's regulations and in this preamble, the term "facility permit" is used in describing a permit issued under Section 3005. While the broad term "facility" is used, this is not intended to mean that a permit can only be issued for all units at a facility. EPA may issue a permit for some set of units at a facility. (Under these circumstances, the interim status standards of Part 265 continue to apply to units that are not covered by the individual permit and have not been formally denied an individual permit.)

Today's regulations also refer to waste management "portions." This is the smallest area typically referred to in these regulations. This simply means some area within the confines of a waste management unit.

Finally, today's regulations have clarified somewhat the terminology used to describe areas used for land treatment. In the past, EPA has used the term "land treatment facility" to describe the plot of ground on or in which land treatment occurs. This area is esentially the waste management unit as just described. Therefore, EPA intends to use the term "land treatment unit" when describing these areas. This shift in terminology is designed to make the language used in the regulations more precise. It does not reflect a substantive change in the scope of the land treatment requirements. Thus, the term "land treatment unit" in today's regulations is synonymous with the term "land treatment facility" used in previously-issued regulations.

A. Definitions (Part 260)

In today's regulations, EPA is adding several definitions to 40 CFR Part 260 that are used in the land disposal regulations. In addition, EPA is replacing one definition and clarifying the meaning of another.

1. *Aquifer.* The term "aquifer" is defined in Part 260 (promulgated on May 19, 1980) as a geologic formation, group of formations or part of a formation capable of yeilding a significant amount of ground water to wells or springs. Public comments have suggested that "significant amount" is an imprecise term which may leave owners and operators in doubt as to which formations constitute aquifers. Commenters correctly pointed out that the concept of a "significant amount" was actually site-specific, depending upon the demand for ground water. Furthermore, commenters stated, the potential yield (amount) of ground water from one well could be dramatically lower than the yield from a cluster or field of wells at the same location. In water-scarce areas, it is not uncommon to install several wells into the same formation to collect sufficient ground water to feed into a public water supply system. The lower the yield to one well, the greater the number of wells necessary to serve the users of a given water supply system.

In the preamble to the December 18, 1978 proposal, the Agency had suggested 600 gallons per day as the minimum yield which would constitute a "usable quantity," based upon the needs of a family of four persons. The Agency used the design specification of 125 gallons per person per day in arriving at this minimum yield. Commenters pointed out, however, that this design specification is only applicable to municipal public water supply streams and includes allowances for washing of automobiles, lawn watering, central sewerage, minimal fire protection, etc. Commenters suggested that, if the agency wished to base the minimum yield specification on the needs of a family of four in a rural area (a typical situation where a single, private, ground-water supply well would be used) an individual demand of between 5 and 50 gallons per person per day, to satisfy health and personal hygiene needs, would be appropriate.

Commenters also stated that many land disposal facilities are sited in areas where saturated upper clay layers are available to serve as a natural barrier to the migration of leachate into the ground water in the actual uppermost aquifer. Since any saturated soil material can yield quantities of ground water to wells, even at an extremely low rate, one interpretation of the definition of aquifer could require the saturated clay landfill liner to be monitored in accordance with the ground-water monitoring requirements.

It was never the Agency's intent to consider saturated clay landfill liners to be subject to ground-water monitoring as an aquifer. However, no acceptable criterion was suggested, nor has the Agency been able to produce a universally acceptable interpretation of "significant amount" which is appropriate in all of the various circumstances that may be encountered.

The Agency wishes to define the term "aquifer" more precisely in a manner that is consistent with both the RCRA program and the Safe Drinking Water Act program, and that reflects the ground-water policy that EPA is currently developing to coordinate its ground-water protection programs. EPA is working on this issue, and will announce its result when the work is completed.

2. *Certification.* The terms "certification", "certify", and "certified" are used throughout the regulations, including those promulgated today, to refer to the rendering of a professional opinion concerning compliance with a

requirement of the regulations by a qualified professional in the field. Commenters have suggested that courts sometimes interpret these terms to imply that certification is equivalent to a guarantee or warranty, thus relieving other parties (e.g., owners and operators) of their responsibilities under regulations as a result of such certifications. This was not intended by the Agency in the various RCRA certification requirements. By requiring a certification, the Agency is seeking an opinion from a professional qualified in the field but does not intend to relieve owners and operators from their responsibilities under the regulations. The definition does not address the potential liabilities of the certifying party. This is a matter to be resolved between the certifying party and the owner or operator in accordance with applicable law. Since EPA still believes the terms "certification" and "certify" accurately denote the Agency's intention, EPA is choosing to define the terms to eliminate possible legal misinterpretation.

3. *Constituent, Hazardous Waste Constituent.* Both the term "constituent" and the term "hazardous waste constituent" are defined in 40 CFR § 260.10 to mean "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". However, the first of these terms, "constituent", has been used throughout the RCRA regulations in its common sense (i.e., an element or component of a whole) rather than in reference to constituents listed in Table 1 of Appendix VII of Part 261. To reflect the actual use of this term in the regulations, the term "constituent" has been dropped from the definitions in § 260.10. Therefore, as with other undefined terms, it is to read in its common, everyday sense.

The definition of "hazardous waste constituent" remains unchanged. This term refers to a constituent of a waste which caused the Administrator to list the waste as a hazardous waste or a Table 1 constituent.

4. *Existing portion.* A new term, "existing portion," has been added to § 260.10 to describe the portion of a waste management unit that is exempt from those requirements in Subparts K, L, and N of Part 264 which would involve impractical retrofitting for existing operations. The Agency believes that lateral expansions of existing waste management units (i.e., the placement of wastes on additional land surfaces) after permit issuance should incorporate all of the design standards in Subparts K, L, and N of Part 264 because the construction of features like a liner for such expansions would not require impractical retrofitting. Therefore, today's regulations do not exempt all existing waste management units from liner requirements but do exempt the land surface included in the original Part A permit application on which wastes have been placed prior to permit issuance. This term is used in Subparts K, L, and N of Part 264.

5. *Treatment Zone.* Today's regulations also define "treatment zone", a term used in the Subpart M requirements for land treatment units. This term describes the area within a land treatment unit in which all degradation, transformation, or immobilization of hazardous constituents must occur. For a complete explanation of this term, see the preamble discussion of Subpart M.

6. *Uppermost Aquifer.* The term "uppermost aquifer" is generally understood to mean the first geologic formation beneath the natural ground surface which meets the definition of an aquifer. The uppermost aquifer will be the first aquifer affected by leakage from a facility. In rare situations, however, lower aquifers are hydraulically interconnected with the uppermost aquifer within the facility property boundary. In these situations, hazardous constituents could migrate, via the uppermost aquifer, to lower aquifers. Therefore, when monitoring ground water quality for the purpose of determining compliance with the ground-water protection standard, the entire system of aquifers, rather than just the uppermost aquifer, may be of concern. To avoid the repeated use of the phrase "uppermost aquifer and hydraulically interconnected lower aquifers" throughout Subpart F of Part 264, the term "uppermost aquifer" has been defined in § 260.10 to include the entire system of aquifers which are hydraulically interconnected with the uppermost aquifer within the facility property boundary.

B. Conforming Changes (Part 264, Subparts B, E, G, H)

Because of the promulgation of today's new Subparts and Sections, a number of minor conforming changes are being made in several sections of Part 264. These changes merely add references to the new Subparts and Sections to several existing reference lists in Subparts B, E, G, and H. Specifically, minor conforming changes are being made in § 264.15 (general inspection requirements), § 264.73 (operating record), § 264.77 (additional reports), § 264.112 (closure plan) § 264.117 (post-closure care and use of property), § 264.118 (post-closure plan), § 264.142 (cost estimate for facility closure), and § 264.144 (cost estimate for post-closure monitoring and maintenance).

C. Location Standards (Part 264, Subpart B)

1. *Applicability (§ 264.10).* Section 264.10(b) lists those facilities to which the floodplain standard under § 264.18(b) applies. Storage surface impoundments and storage piles subject to regulation under Subparts K and L, respectively, were made subject to the floodplain requirements of § 264.18(b) when EPA promulgated regulations applicable to these facilities on January 12, 1981. Part 264 standards applicable to other types of surface impoundments and waste piles are being promulgated for the first time in today's rules; § 264.10(b) has been amended to include them as well.

Part 264 standards applicable to hazardous waste land treatment units and landfills are also being promulgated for the first time today and they have been made subject to § 264.18(b), by an amendment to § 264.10(b).

The Agency has concluded that all types of surface impoundments and waste piles, as well as land treatment units and landfills, should be subject to the floodplain standards. In all of these types of waste management units, hazardous wastes could be washed out by floodwaters unless adequate controls are imposed. Consequently, § 264.10(b) is being modified by adding waste management units subject to regulation under Subparts M and N to the list of facilities to which the floodplain standard applies. Sections 264.11 through 264.18(a) remain unchanged by today's rule, except for minor conforming changes to § 264.15, as noted above. It should be understood, however, that § 264.18(a), seismic considerations, applies only to new land disposal facilities.

2. *Floodplains (§ 264.18(b)).* The Agency has concluded that hazardous waste surface impoundments, waste piles, land treatment units, and landfills preferably should not be located in a 100-year floodplain. Facilities so located must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood. However, in accordance with §264.18(b)(1)(i), if the owner or operator demonstrates to the Regional Administrator that, in the event of a flood, the waste would be removed to a

safe area before flood waters reached the facility, special design and operating features to prevent washout are not required. The Agency realizes that this option may not be viable for many existing surface impoundments, waste piles, land treatment units, and landfills. Accordingly, the Agency is promulgating a second exemption, defining narrow circumstances in which existing facilities, not designed and operated to prevent washout, may be located in a 100-year flood plain without the owner or operator's making the demonstration contained in § 264.18(b)(1)(i). These circumstances are where the owner or operator demonstrates that a washout would cause no adverse effects on human health or the environment. Section 264.18(b)(ii) lists the factors that must be considered in making this demonstration. These factors are the following: the volume and characteristics of the waste in the facility; the concentration of hazardous constituents that could result in affected surface waters; current and potential uses of and water quality standards established for affected surface waters; and the impact of hazardous constituents on the sediments of affected surface water bodies or the soils of the 100-year floodplain.

These factors address the principal adverse health and environmental effects that potentially can result from flood washout of hazardous waste land disposal facilities. They are intended to cover the effects that might occur during the flooding washout (*e.g.*, the contamination of river sediments and floodplain soils caused by sedimentation of washed-out hazardous constituents as and after the floodwaters recede). The Agency is unable to provide more definitive criteria because of the wide variations in facility locations, flooding character of adjacent water bodies, types of wastes stored or disposed of in facilities, and other site-specific conditions. The Agency solicits public comment on these factors.

The general floodplain requirements are consistent with the other requirements in Subparts K through N, which are designed to prevent the escape of hazardous waste or hazardous constituents into surface water and hydraulically connected ground waters in order to prevent potential adverse effects on surface water quality. (See also Section VII. E–I of this preamble and the preamble to §264.18(b), 46 FR 2813–2815, January 12, 1981.)

The Agency recognizes, however, that existing hazardous waste surface impoundments, waste piles, land treatment units, and landfills located in 100-year floodplains were placed there before § 264.18(b) applied to them. Consequently, because the preferred option of avoiding location in a 100-year floodplain is not practicably available for those waste management units, they may have to take advantage of one of the two exemptions from this requirement.

With the exception of small impoundments and waste piles, it may be impossible to remove hazardous waste from waste management units before flood waters can reach them. Also, it may be difficult to construct new walls or dikes or elevate existing walls or dikes around these units to prevent washout from a 100-year flood. Retrofitting may not be feasible or practicable for reasons such as: inadequate landspace on which to build new or expanded dikes; inadequate structural capacity of existing walls or dikes to accommodate expansions; and unwarranted disruption of the operation of the existing unit (principally surface impoundments) and, in some cases, associated manufacturing operations, when building or expanding dikes.

The 100-year flood plain rule may seem inconsistent with the requirement that surface impoundments, landfills, land treatment units and waste piles have run-off control systems designed to withstand the effects of a 25-year storm. The two criteria are not inconsistent, however. Although the Agency is concerned about the effects of run-off, these effects are not likely to be as serious as those that would result from a flood. A flood would carry hazardous materials much farther from the facility than would run-off that exceeded the run-off control system, and a flood probably would carry away a greater quantity of hazardous materials. Thus, the environmental consequences of a flood are very great, and waste management facilities generally should not be located where a flood may occur.

D. Ground-water Protection (Part 264 Subpart F)

Subpart F contains the requirements for the monitoring and response program that will serve as a backup to the other ground-water protection measures in today's regulations. The requirements of this subpart define a general set of responsibilities that the owner or operator must meet but allow considerable flexibility in how the monitoring and response programs may be designed.

EPA intends to examine closely the monitoring programs and the monitoring data developed to meet these requirements and to use this information to refine the regulations over time. As in today's regulations, EPA's objective will be to develop a cost-effective monitoring program that will provide reliable information about the effects of land disposal units on ground water in order to ensure protection of human health and the environment.

1. *Applicability (§ 264.90).* a. *Regulated units*—The requirements of this subpart apply to new and existing surface impoundments, landfills, waste piles, and land treatment units that manage hazardous waste. In defining the scope of this subpart, however, it is necessary to define rather precisely the particular waste managment components that are subject to the ground-water monitoring and response program. This subpart uses the term "regulated unit" in defining the portion of the facility that is subject to the requirements of this subpart. A regulated unit is any waste management unit of the above types that receives hazardous waste after the effective date of today's regulations.

A waste management unit can be a regulated unit even though it contains predominantly non-hazardous waste or hazardous waste which was disposed prior to the effective date of these regulations or prior to November 19, 1980, the effective date of the regulations defining what is a hazardous waste (40 CFR part 261) and establishing the permitting requirements (40 CFR 122–125) for hazardous waste management facilities.

Many existing waste management units may contain waste that was placed there before the effective date of these regulations or before November 19, 1980. Some commenters have raised questions about EPA's legal authority to regulate such waste and about the reasonableness of regulating them under a RCRA permit as a policy matter.

EPA believes that it has legal authority under Subtitle C of RCRA to regulate any activity, emission, or release from a facility that is receiving hazardous waste. Section 3004 of RCRA provides that EPA has authority to issue regulations covering owners or operators of treatment, storage, and disposal *facilities* as may be necessary to protect human health and the environment. This section does not limit EPA's authority to those portions of the facility that receive hazardous waste after a specific date.

Section 3005 of RCRA, which provides for issuance of permits to treatment, storage, and disposal facilities, indicates that after the effective date of any Section 3005 regulations any treatment, storage, and disposal of hazardous

waste without a permit is prohibited. EPA does not believe that the prospective nature of this provision operates to limit EPA's standard-setting authority under Section 3004. The prospective nature of Section 3005 reflects the permitting scheme of RCRA. Owners or operators seek permits for a particular future activity (*i.e.*, treatment, storage, and disposal of hazardous waste) at the facility. The owner or operator does not generally seek a permit for actions he has already taken (*i.e.*, previous treatment, storage and disposal activities.) EPA's authority to deny permission to conduct future waste management activities is one of the principal sanctions under the permit program.

As a condition for allowing future waste management activities, however, RCRA provides that the owner or operator must meet the requirements of Section 3004. Under Section 3004, EPA must define the responsibilities of an owner or operator that are necessary to protect human health and the environment. In order to accomplish that objective, EPA may need to impose duties that are designed to remedy the present adverse effects of past activity. Likewise, EPA may require the owner or operator to continue certain activities that are designed to protect human health and the environment after the owner or operator has ceased placing waste into the ground. (Such future responsibilities are the correlative duty that must accompany the current right to dispose of hazardous waste. EPA thinks that those duties can be most effectively implemented through permits.) Under RCRA, an owner or operator who wishes to initiate or continue storage, treatment, or disposal activities at a facility must take on all of these responsibilities. EPA has concluded that these responsibilities must include reasonable measures to address current ground-water pollution attributable to waste placed before the date of permit issuance under these regulations.

EPA has decided that there are sound policy reasons for subjecting regulated units to the ground-water monitoring and response program of Subpart F. First, once wastes are placed in the same unit there is a strong possibility that the constituents in the waste will react with each other to form new compounds or to alter the physical or chemical state of the waste constituents. Some of the interactions may cause the resulting leachate to become more toxic or more mobile in the subsurface environment. At the time that leachate emerges from a unit it is extremely difficult, particularly at units that handle many types of waste, to determine what characteristics of the leachate are attributable to particular wastes. It is therefore appropriate to focus regulatory concern on the leachate as it is and not to speculate on what incremental effect particular wastes have had on the leachate's quality and characteristics.

Another reason for subjecting all waste in a regulated unit to the monitoring and response program is that the management problem posed by a unit is not substantially affected by the timing of when hazardous constituents were placed in the unit. If the unit's liner fails, the leachate can be expected to contain constituents from wastes placed before and after the effective date of these regulations. Likewise, corrective action measures (e.g., counterpumping) do not selectively remove constituents from wastes placed at different times but rather control the entire plume. Thus, once wastes are in the same unit, the nature of corrective action would not be substantially altered by attempts to distinguish between wastes placed in the same unit at different times.

In defining what is a "regulated" unit, however, EPA has sought to address the concern in the regulated community that a permit under Subtitle C may not be the appropriate mechanism for requiring cleanup of contamination from all previous waste management activity at a facility. EPA has defined a regulated unit as one which receives hazardous waste after the effective date of today's regulations.

EPA believes this has several advantages. First, it gives reasonable notice to the regulated community about what the regulations will require and will allow them to adjust their management practices accordingly. It avoids the prospect that the owner or operator would face responsibilities under a permit for units that were operated and fully closed before any of the Section 3004 standards were established. (Any adverse effects on ground water from such units may be addressed under other EPA authorities, including Section 7003 of RCRA.) This approach is certainly consistent with Section 3010 of RCRA which provides that regulations under Subtitle C are to become effective six months after they are promulgated. The legislative history of this provision indicates that the purpose of the provision was to give the regulated community a reasonable time period in which to prepare for new requirements.

Second, this approach ensures that there will be an early incentive to institute the proper design and operating measures to reduce the potential for significant ground-water contamination from regulated units. With the issuance of today's regulations, the regulated community will have the benefit of reviewing EPA's conclusions on what a sound liquids management strategy for a land disposal unit should be. EPA thinks that today's regulations should create incentives to institute reasonable design and operating measures before a permit application is called in for an existing unit and final action is taken on the permit. (EPA acknowledges that it will take several years to complete this process for all existing land disposal units.) By indicating that all units receiving waste after the effective date of today's regulations will ultimately be subject to the monitoring and response program of Subpart F, EPA has created the incentive for owners and operators to take reasonable steps today to reduce the likelihood that they will face long-term responsibilities for corrective action.

There will be situations where it will be difficult to tell whether a plume of contamination comes from a regulated unit. This is most likely to occur when several regulated units are adjacent to other storage or disposal units. As will be described later, the compliance point where there are several regulated units is an imaginary boundary circumscribing all of these units. In such a situation, it may be difficult to determine whether regulated units are causing a leachate plume that appears at the compliance point.

The regulations provide that any waste constituent that migrates beyond the compliance point is presumed to come from a regulated unit. The owner or operator may, however, overcome this presumption if he demonstrates, with monitoring data or other information, that the constituents are coming from another source.

b. Exclusions—There are limited exclusions from the Subpart F requirements. First, any of the general exclusions in § 264.1 remove certain facilities from Subpart F as well. Second, double-lined surface impoundments, piles, and landfills (described in § 264.222, § 264.252, and § 264.302, respectively) are excluded, as are piles complying with § 264.250(c) and § 264.253. The specific elements of these types of units are described in detail in later sections. The reason that most of these provisions provide a basis for an exclusion from Subpart F is that they involve some ongoing method for detecting whether the unit's liner has failed. As long as it is clear that the liner has not failed, EPA and the public can be confident that hazardous constituents

from such regulated units will not enter ground water. The exclusion for a pile designed to satisfy § 264.250(c) is based on the premise that the specified conditions reduce the possibility of leachate generation to such a degree that ground-water contamination is not likely to occur.

Third, the owner or operator of a land treatment unit may suspend compliance with Subpart F requirements if he can demonstrate to the Regional Administrator under § 264.280(d) that the hazardous constituents in the waste have been effectively treated. The requirements for such a demonstration are described in the discussion of land treatment in Section VII. H.8. of this preamble. It should be recognized, however, that this exclusion relieves the owner or operator from Subpart F responsibilities only during the post-closure care period.

Fourth, the owner or operator of a regulated unit may be excluded from Subpart F if the Regional Administrator finds that there is no potential for hazardous constituents to migrate from the regulated unit to the uppermost aquifer during the active life of the unit (including the closure period) and the post-closure care period specified under § 264.117. This exclusion is designed for units located in hydrogeologic settings that prevent leachate migration to ground water for very long periods. In such a setting, hazardous waste leachate would simply not be able to reach ground water during the active life of the unit and the post-closure care period. Where there is a high degree of confidence that such a hydrogeologic setting is present, EPA decided that it would be of little value to require the permittee to implement a detection monitoring program. (Such a program would simply not detect contamination during the active life of the regulated unit plus the post-closure care period.)

Moreover, EPA believes it may be productive to exclude such locations from ground-water monitoring. Such locations are relatively desirable for waste disposal because soils which provide long delays in the arrival of leachate in ground water may also have characteristics that attenuate hazardous constituents. Excluding ground-water monitoring requirements at such locations could encourage the use of such environmentally desirable locations.

This exclusion is based on the premise that it may be unnecessary to require detection monitoring in some favorable hydrogeologic settings. Therefore, it is appropriate that the time frame should be the same as that of the detection monitoring program—the active life of the regulated unit plus the post-closure care period.

This exclusion involves substituting predictions of likely migration to ground water for actual ground-water monitoring. EPA believes that it is extremely difficult to make accurate predictions about the migration of liquids through the unsaturated zone. Several of the experts attending EPA's technical symposium on land disposal held in May of 1981 indicated that they did not have a high degree of confidence in predictions of leachate fate and transport in the subsurface environment. The prinicpal reason for this low confidence in such predictions is that appropriate values for the several variables that need to be considered are often extremely difficult to determine.

Since this exclusion involves substituting inherently uncertain predictions for ground-water monitoring, EPA believes that a safety factor should be built into the exclusion. Thus, today's regulations provide that owners or operators must base any predictions made to qualify for this exclusion on assumptions that tend to maximize the estimated rate of leachate migration. While these assumptions are not specified in the regulations, the following is a list of the types of assumptions that EPA will use in determining whether an exclusion is warranted. Geologists and geotechnical engineers should be familiar with most of these assumptions.

First, the thickness or depth of soil underlying the regulated unit should be determined. This factor can be determined directly by soil core borings. If soil depth estimates are used in the prediction, however, the minimum value in the range of depth estimates should be selected. Second, the calculation of travel time should be based only on natural soil properties, ignoring the effects of synthetic or recompacted natural soil liners placed beneath the waste. Third, the prediction should be based on the travel time of the most dense and/or least viscous fluid in the regulated unit (i.e., the fluid with the lowest kinematic viscosity). For example, some solvents are less viscous than water and thus are likely to move faster than water. Fourth, since the depth of liquids or leachate in a unit can vary, the prediction should assume that the unit is full of liquids (i.e., the maximum possible hydraulic head).

Fifth, the owner or operator should assume that the soil is saturated because fluids will pass through such soils more quickly than unsaturated soils. Sixth, the owner or operator should account for the effective porosity of the soil when making a prediction. Estimations of effective porosity are difficult to make. For this reason, EPA believes that 10 percent effective porosity, a low value, should be used to avoid the uncertainty involved in estimating effective porosity and to ensure relatively short travel time predictions for the soil beneath the regulated unit. Seventh, soil attenuation mechanisms should be ignored in travel time predictions. Eighth, since a regulated unit may have been in operation well before the prediction of travel time is made, an owner or operator should assume that migration of fluids through the soil began when the unit commenced operation.

As another measure to increase confidence in a prediction made to qualify for this exclusion, EPA has required that the owner or operator's demonstration must be certified by a qualified geologist or geotechnical engineer.

Lastly, EPA considered establishing an exemption from Subpart F requirements for a regulated unit located over an uppermost aquifer which is so dirty that it would never be used for any purpose and which, regardless of any future level of contamination, is not capable of significantly contaminating another usable aquifer or surface water that is hydraulically connected. EPA believes that this would be an extremely rare situation, if indeed such a location exists, and has, therefore, chosen not to establish such an exemption at this time. However, EPA requests comments on the existence of such locations and the appropriateness of such an exemption from Subpart F.

2. *Establishment of Programs (§ 264.91).* Under Subpart F the Regional Administrator will be establishing in a facility permit the elements of a monitoring and response program. The purpose of § 264.91 is to make clear that the owner or operator of each regulated unit subject to this subpart must institute some kind of monitoring and response program and that the content of the program will be specified in the facility permit. The other sections of Subpart F provide further elaboration of the content of the various programs.

The owner or operator must institute at least one of the three types of programs set forth in Subpart F—a detection monitoring program, a compliance monitoring program, or a corrective action program. The permit may, however, contain all three and specify the conditions under which each will be used. EPA expects that in many situations it may be appropriate to specify more than one program in a facility permit. For example, it is logical

to have a compliance monitoring program and a corrective action program in the same permit. Then the permittee will be able to shift back and forth between the compliance monitoring mode and the corrective action mode of operation as the levels of hazardous constituents in ground water fluctuate above and below the concentration limits for the constituents.

There may be some incentive to combine programs in the same permit because the establishment of such a program would be a major modification if it occurred after the issuance of the initial permit. A proceeding to modify a permit would be conducted in compliance with EPA permitting procedures and could be time-consuming. Once a program is established in a facility permit, the owner or operator must continue to implement the program unless the permit specifies when certain obligations may terminate or unless the owner or operator obtains a permit modification. It is, therefore, wise for the owner or operator to anticipate when he believes a permit modification will be needed and to assemble the information necessary for such a modification.

Ultimately, the Regional Administrator has the authority to include more than one program in a facility permit even though the owner or operator did not specifically ask for multiple programs. While the owner or operator can only be operating under one program at a time, there will be situations where it is necessary for an owner or operator to take prompt action under his permit when monitoring data indicate that another type of program is appropriate.

The Regional Administrator must have the flexibility to establish in the permit a program that is conditioned on the occurrence of some event (e.g., appearance of contamination) in order to adequately protect human health and the environment. For example, a regulated unit may be located above fast-moving ground water and near an important drinking-water source. In such a situation, the time needed to modify the facility permit to replace a detection monitoring program with a corrective action program could allow substantial damage to occur. In such a situation it might be appropriate to have an approved corrective action program in the permit that would be triggered by the detection of contamination in the ground water. Thus, today's regulations specifically provide that the Regional Administrator may incorporate one or more monitoring and response programs into the facility permit as may be necessary to protect human health or the environment.

Besides being combined with each other, monitoring and response programs may also be linked to other provisions of a facility permit. There are certain design and operating measures that allow owners or operators to forego Subpart F monitoring the response programs. These exclusions, however, terminate if such design and operating measures fail to meet their objectives. Therefore, permittees may want to have a monitoring and response program (*e.g.*, a detection monitoring program) included in the permit even though they employ one of the designs that qualify them for an exclusion. The permit would specify that the Subpart F program need not begin until the design failed. For example, the owner or operator of a double-lined surface impoundment may choose to initiate a monitoring and response program, in lieu of repairing the facility liner, if the liner fails during the active life of the impoundment. Initiation of a Subpart F program is the only appropriate action to take if the owner or operator intends to use a double-liner design to provide protection during the post-closure care period.

While an owner or operator may have more than one monitoring and response program in the facility permit, there are certain minimum requirements specified in § 264.91. If hazardous constituents from a regulated unit have not entered the ground water, the owner or operator must at least have a detection monitoring program. This is to ensure that any leakage from the facility is detected. Once hazardous constituents appear in ground water, the owner or operator must, at a minimum, have a compliance monitoring program that can determine whether the ground-water performance standard is exceeded.

If that standard is exceeded, the owner or operator must have a corrective action program. Compliance monitoring programs and/or corrective action programs will continue through the compliance period under § 264.96. Section 264.91 also indicates that a corrective action program is needed when hazardous constituents under § 264.93 exceed concentration limits under § 264.94 in the ground water between the compliance point and the downgradient facility property boundary. (The rationale for this provision is discussed in Section VII.D.13.d. of this preamble.) It is possible that the compliance period may be shorter than the normal post-closure care period for the facility depending on when contamination first appeared, the length of the regulated unit's active life and the success of the corrective action program.

When the compliance period ends before the close of the post-closure care period, today's regulations provide that the owner or operator must reinstate a detection monitoring program for the remainder of the post-closure care period. In § 264.90(c)(2), the regulations make clear that detection monitoring programs, once instituted, continue through the post-closure care period. (the permitting regulations under 40 CFR § 122.15 provide that the Regional Administrator may initiate a permit modification to establish a detection monitoring program if the compliance period ends before the end of the post-closure care period specified in the permit.)

EPA believes this is reasonable for two reasons. First, since the owner or operator will be present at the facility through the post-closure period under the permit, it is appropriate for him to take all reasonable steps to assure ground-water protection. Since detection monitoring involves a relatively light monitoring burden, it should be relatively easy for the owner or operator to perform. Second, the completion of a successful corrective action program (i.e., a showing that the ground-water protection standard in the permit has not been exceeded for a period of three years) or the completion of the compliance monitoring program does not provide absolute assurance that a plume of significant contamination will never appear below a regulated unit. Since hazardous constituents move at different speeds through soil and since they may be released from the regulated unit at different times, it is possible that a plume of contamination could appear several years after an initial plume from the unit had been detected and cleaned up. Therefore, a detection monitoring program is needed to determine whether such a delayed plume appears.

The nature of the program established in the initial permit will depend on the information available at the time of permitting. The key question is whether a regulated unit has begun to leak. For new units this is not an issue, but it may be somewhat problematic for existing units. Since the owners or operators of most existing units will be conducting monitoring in accord with the Part 265 interim status requirements, there should be a reliable base of information that can be used to determine whether hazardous constituents have entered the ground water.

The issue of whether a regulated unit qulifies for one of the exclusions in § 264.90 will also be addressed in the

initial permitting process. An applicant who believes he qualifies for such an exclusion will submit information to demonstrate that fact in his permit application. He may also wish to submit the information necessary to establish a Subpart F monitoring and response program as well in case EPA determines that he does not qualify for the exclusion.

3. *Ground-water Protection Standard (§ 264.92).* The ground-water protection standard in § 264.92 indicates when corrective action is necessary to control plumes of contamination that have emerged from a regulated unit. The ground-water protection standard essentially tells the owner or operator when corrective action must begin and when it may be terminated. In this way, the ground-water protection standard provides protection for human health and the environment.

There are four principal elements of the ground-water protection standard: (1) The hazardous constituents to be monitored and removed if necessary; (2) the concentration limits for each hazardous constituent that trigger corrective action; (3) the point of compliance for measuring concentration limits; and (4) the compliance period. Each of these elements of the standard is described in a separate section of Subpart F.

The ground-water protection standard will be established when hazardous constituents from a regulated unit appear in ground water. As will be discussed later, a waste constituent must be in the ground water before it can be part of the ground-water protection standard. There may be situations where an owner or operator will want to anticipate events and establish elements of the ground-water protection standard before hazardous constituents actually appear in ground water. For example, if he expects that a particular constituent that is prevalent in his waste will eventually migrate to ground water and be selected as a hazardous constituent, he may want to establish an alternative concentration limit for that constituent under § 264.94. While today's regulations do not preclude the establishment of elements of the ground-water protection standard before leachate from a regulated unit appears in ground water, EPA does not intend to give first priority to such requests. EPA must use its available resources to give prompt consideration to the establishment of ground-water protection standards at facilities that are contributing leachate to ground water.

Where it establishes concentration limits before contaminants arrive in ground water, EPA is essentially establishing a partial compliance monitoring program for a regulated unit that is conditional on appearance of contaminants in the ground water. Once contamination actually appears in ground water and a permit modification proceeding is triggered, the Regional Administrator may reassess the justification for the alternate concentration limit in light of the information available at the time that the ground-water protection standard is actually established.

Finally, it should be recognized that the ground-water protection standard is not a general performance standard that applies directly to owners or operators. Under a permit an owner or operator is responsible for conducting the monitoring and corrective action measures that are designed to achieve the ground-water protection standard. If monitoring indicates that the ground-water protection standard is exceeded, the owner or operator is responsible for taking certain actions specified in the permit. If he fails to take these actions, he is subject to enforcement action; if the actions specified are inadequate to bring the facility back into compliance with the ground-water protection standard, the permit must be modified. Section 122.15(a)(7) has been amended to provide that a permit may be modified when the corrective action program has not brought the regulated unit back into compliance with the ground-water protection standard within a reasonable period of time.

4. *Hazardous Constituents (§ 264.93).* In keeping with the regulatory philosophy described earlier in this preamble, the objective of the Subpart F monitoring and response program is to remove the hazardous portion of any leachate plume that has reached ground water from a regulated unit. Thus, in establishing the ground-water protection standard for the facility, the Regional Administrator must define the hazardous portion of the plume.

This is accomplished by identifying hazardous constituents. Under today's regulations, the Regional Administrator makes three findings when identifying a constituent as a hazardous constituent under § 264.93. First, the constituent must be listed in Appendix VIII of 40 CFR Part 261. Second, the constituent must have been detected in the ground water below a regulated unit. Third, the constituent must be reasonably expected to be in or derived from the waste contained in the regulated unit.

a. *Alternatives Examined*—EPA considered several options for identifying hazardous constituents. One option was to focus on the list of Appendix VII constituents identified in Part 261. When EPA lists a hazardous waste under Part 261, it often lists the particular waste constituents that caused EPA to identify it as a hazardous waste. These constituents are identified in Appendix VII.

EPA concluded that Appendix VII was not an appropriate list to use in identifying hazardous constituents. In identifying Appendix VII constituents, EPA did not attempt to conduct an exhaustive analysis of all constituents in the waste that could have caused the waste to be hazardous. For purposes of identifying a waste as a hazardous, it was sufficient to identify a few constituents that could pose a substantial present or potential hazard to human health or the environment if the waste was improperly managed. Therefore, limiting hazardous constituents to those in Appendix VII would preclude EPA from addressing other hazardous constituents known to be in the wastes.

In addition, Appendix VII only applies to listed waste. It does not address hazardous constituents that may be present in wastes deemed hazardous because they exhibit one of the characteristics in Part 261. Moreover, Appendix VII is not designed to address the hazardous constituents that may be formed when various wastes are mixed in a regulated unit, or react with constituents in the soil.

A second option considered was a narrative standard that would establish general criteria for what constituted a hazardous constituent. The Regional Administrator would use these criteria to identify individual hazardous constituents and would specify them in the permit. EPA rejected this option for two reasons. First, it did not serve the general goal of providing certainty to the regulated community or the public. Permit applicants could not predict the potential scope of their responsibilities, and the public would be uncertain whether most of the potentially dangerous constituents would be covered. Second, narrative criteria could prove difficult to implement as a practical matter in the permitting process. Under Subpart F, hazardous constituents are to be identified when the Regional Administrator establishes a compliance monitoring or corrective action program for the facility. Before that decision can be made, however, the applicant must know what universe of potential hazardous constituents to monitor in order to provide the data base from which the Regional Administrator would select hazardous constituents. A narrative standard is not

very helpful in this situation because it would force the applicant to guess at what might be present or to monitor for absolutely everything. EPA believes that it is a waste of resources to monitor for everything because there will be constituents (*e.g.*, chlorides) that do not present any real danger. At the same time, EPA does not believe it is sound regulatory policy to leave to the applicant the decision of what waste constituents might be hazardous constituents. Therefore, EPA rejected the option of establishing a purely narrative definition of hazardous constituent, concluding that some specific list of constituents was necessary.

EPA concluded that hazardous constituents should be based on the list of constituents in Appendix VIII of Part 261. Appendix VIII is a list of 387 hazardous constituents and classes of constituents that have been shown to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. It includes many of the constituents identified under Section 307(a) of the Clean Water Act, Section 311 of the Clean Water Act, Section 112 of the Clean Air Act, and Section 1412 of the Safe Drinking Water Act. Further, it covers genetically active constituents that EPA's Cancer Assessment Group has evaluated and determined to sufficiently threaten human health and the environment to warrant regulation under EPA's programs. Finally, it includes the most acutely toxic substances listed in the NIOSH Registry or regulated by the Department of Transportation as a transportation hazard.

EPA has used this list of constituents in the hazardous waste listing process. EPA has also used Appendix VIII in its regulations for incinerators. For each constituent listed in Appendix VIII, EPA has prepared a Health and Environmental Effects Background Document. Each document describes and evaluates the constituent's adverse effects on humans and other life forms and substantiates the fact that the constituents may pose a substantial hazard to human health or the environment.

EPA believes that Appendix VIII has several advantages as a basis for defining hazardous constituents. First, Appendix VIII is a relatively comprehensive list of constituents that may cause significant harm to human health and the environment, as indicated in the description of its origin, and should assure the public that the monitoring and response program provides adequate protection. Second, Appendix VIII provides certainty to the regulated community. It clearly defines their environmental responsibilities and thus should assist in the management of land disposal units.

b. *Public Comments on Use of Appendix VIII*—Several commenters have raised objections to the use of Appendix VIII in these regulations. Some have argued that Appendix VIII has not been subject to rulemaking or scientific peer review. This is not correct. Appendix VIII has been subject to public comment on several occasions. Appendix VIII accompanied the interim final hazardous waste rules of May 19, 1980 (45 FR 33132). Reflecting public comments received on those rules, EPA modified Appendix VIII on November 12, 1980 (45 FR 27477), November 25, 1980 (45 FR 78544), May 20, 1981 (46 FR 27477), and June 3, 1981 (46 FR 29708). In addition, commenters on the outline of today's regulations, that was discussed in the public meeting of December 21, 1981, had an opportunity to comment on the use of Appendix VIII. These opportunities for public review have also provided the scientific community an opportunity to comment on the list.

Some commenters have claimed that there is a lack of reliable analytical methods for constituents on Appendix VIII. Of the 387 constituents listed in Appendix VIII, the Agency has described analytical methods for all but nine constituents which are unstable in water and thus would not be expected to be found in ground water samples.

Some commenters have argued that Appendix VIII places an unreasonable monitoring burden on the regulated community. The monitoring burden associated with the use of Appendix VIII depends in the first instance on the nature of the wastes placed in a regulated unit. EPA does not believe that it is unreasonable to place a more extensive monitoring burden on owners and operators who handle wastes that contain many potentially dangerous constituents. As will be discussed later in this preamble, the owner or operator will be allowed to demonstrate that some Appendix VIII constituents cannot be in a regulated unit because of the nature of the waste. Ultimately, the reasonableness of the monitoring burden depends on the health and environmental rationale underlying the inclusion of a constituent on Appendix VIII. EPA believes that the constituents on Appendix VIII are those which may pose a substantial hazard to human health or the environment. If an owner or operator disagrees with that conclusion and has data to challenge that conclusion, he may petition the Agency under § 260.20 to remove constituents from the list.

As part of its ongoing refinement of the regulations, EPA will consider adding constituents to Appendix VIII. If members of the public believe that additional constituents should be on Appendix VIII, they can also petition the Agency to expand the list.

c. *Selecting Hazardous Constituents from Appendix VIII*—Besides being on Appendix VIII, a constituent must meet two other criteria before it may be identified as a hazardous constituent. First, it must be in the ground water. The ground-water protection standard is only concerned with waste constituents that reach ground water. Second, a waste constituent must reasonably be expected to be in or derived from waste contained in a regulated unit. A constituent derived from waste may be a by-product of reaction of waste or waste leachate with other waste or materials in a regulated unit or with soil underlying the unit. As a general matter, EPA will consider the presence of the constituent in the ground water at the compliance point as a sufficient initial indication that the constituent is derived from waste in a regulated unit.

EPA recognizes, however, that it is possible that a constituent appearing at the compliance point may not originate from a regulated unit. Today's regulations, therefore, allow the permit applicant two grounds for arguing that a constituent did not derive from the waste in a regulated unit. Only one of those arguments, however, may be considered in the establishment of hazardous constituents. The owner or operator may be handling a waste with relatively uniform chemical characteristics, and he may be able to show that it is impossible for certain constituents to ever appear in the leachate emerging from his regulated unit. In that situation, the Regional Administrator may conclude that some Appendix VIII constituents found in ground water should not be identified as hazardous constituents for that regulated unit.

The second line of argument that the applicant may want to pursue is that, while a particular constituent could appear in the leachate from his regulated unit, the applicant believes that the constituent found in ground water is coming from a source other than the regulated unit. Before accepting such a showing, however, EPA believes it is important to have sufficient monitoring data to allow for statistical comparisons of background values for a constituent to the level of that constituent at the compliance point.

Therefore, today's regulations provide the owner or operator an opportunity to make such a showing in the context of his detection or compliance monitoring programs. EPA does not believe, however, that such an analysis should be the basis for deleting Appendix VIII constituents from the list of hazardous constituents in the ground-water protection standard.

EPA has provided a limited variance in § 264.93 that would allow an applicant to ask the Regional Administrator to eliminate some constituents found in ground water from the list of hazardous constituents specified in the facility permit. The burden that must be met here, however, is a heavy one. Basically the owner or operator must be able to demonstrate that the constituent is not capable of posing a substantial threat to human health or the environment at any time under any circumstances that might reasonably occur, barring war or acts of God.

The variance specifically does not, however, allow the owner or operator to argue that adverse effects on human health or the environment will simply be delayed for some period of time. Thus, the owner or operator could not receive a variance under § 264.93(b) by arguing that a plume of contamination would not reach potential users (e.g., not migrate beyond the facility property boundary) for some period of time.

The variance provided in § 264.93(b) is designed to address relatively limited situations. For example, the applicant may be able to demonstrate that, regardless of the concentration that the hazardous constituent might reach in ground water underlying a regulated unit, because of its half-life and the slow rate of ground-water flow, it can never pose a hazard to human health or the environment.

Today's regulations specify a set of factors that the Regional Administrator will consider when considering a variance under § 264.93(b). The factors used in the Regional Administrator's analysis are similar to those identified in § 267.10, the general performance standard applied to new hazardous waste land disposal facilities in the Part 267 temporary standards. The factors have been modified slightly to explicitly indicate that the Regional Administrator will examine the ground-water and surface-water uses in the area around the facility. (The § 267.10 standard also addressed air protection and subsurface migration, which are not part of the analysis in this variance.) Basically, the factors are designed to assure that the following topics are examined: (1) The potential for leachate migration from a regulated unit: (2) the quality of the leachate as it migrates; (3) the current and future uses of ground water and surface water in the area; and (4) the health and environmental effects associated with exposure to different levels of hazardous constituents.

Under the Underground Injection Control (UIC) program of the Safe Drinking Water Act, the States will be identifying underground sources of drinking water (USDW) and exempted aquifers. (See 40 CFR § 122.35) The UIC program is aimed at protecting USDW's. Exempted aquifers are aquifers that have many of the same characteristics as underground sources of drinking water but that are unlikely to be used for public drinking water supply due to a variety of technical and economic factors. Under the UIC program, a State must seek approval from EPA for any decision to exempt an aquifer. In making decisions about the use of an aquifer under the variance in this section, EPA believes it is important to build on the decisions already made by the States and EPA under the UIC program. This will insure consistency in EPA's overall approach to ground-water protection.

Today's regulations provide, therefore, that the Regional Administrator will consider any decisions made under § 122.35, the provision that allows for identification of USDW's and exempted aquifers, in any decisions about ground-water use for purposes of this variance. The Regional Administrator will rely on that decision, however, only to the extent that it is consistent with the ground-water protection strategy in today's regulations. For example, if an aquifer is exempted for a fixed period of time (e.g., in some mining situations), then the Regional Administrator may consider what the likely use of that ground water will be after the fixed time period in deciding whether a variance under this section is appropriate.

5. *Concentration Limits (§ 264.94).* As indicated earlier, the ground-water protection standard indicates when corrective action is needed at the facility. In order to serve that purpose, the ground-water protection standard must establish an action level for each constituent that will trigger initiation of a corrective action program. In § 264.94, the regulations set forth the criteria that the Regional Administrator will use in establishing such concentration limits for each hazardous constituent.

a. *Alternatives Examined*—EPA considered several options for defining concentration limits. One approach is to set limits based on the detectability of the constituent in ground water. A second approach is to establish numerical limits for each constituent that are based on a health or environmental rationale. A third option is to establish narrative criteria based on protection of human health and the environment in the regulations and to allow the Regional Administrator to set specific contamination limits in the permit after considering a variety of site-specific factors. The fourth option is to ensure that a hazardous constituent does not exceed the background concentration of that constituent in the ground water.

EPA decided not to use the first option, which would trigger corrective action whenever there is a detectable level of the constituent at the compliance point. Detectable levels of hazardous constituents may appear at the compliance point through no fault of the owner or operator. Natural background levels of chemical constituents or other sources of contaimination could cause such detectable values. EPA believes it is unfair to the owner or operator to cause him to clean up contamination that cannot be reasonably linked to leachate from a regulated unit.

Today's regulations embody a mix of the other three options. Each has advantages but no single approach is appropriate in all situations. The second option, which involves the establishment in the regulations of numerical limits for each constituent, is based on health and environmental factors. This is a desirable option because it assures that the action level is directly related to the protection of human health or the environment. Unfortunately, such an approach is not fully adequate at this time because EPA has not established such contamination limits for most of the hazardous constituents listed on Appendix VIII. Therefore, EPA has used health-based contamination limits where such limits exist. Specifically, the maximum contaminant limits established for the constituents in the National Interim Primary Drinking Water Regulations (NIPDWR) under the Safe Drinking Water Act will be used in the ground-water protection standard. Those constituents and associated concentration limits are specifically identified in Table 1 under § 264.94.

There may also be situations where the third option, which involves the site-specific establishment of concentration limits based on a narrative standard, will be feasible. EPA decided not to rely solely on this approach, however, for several reasons.

It may require data that are not readily available. Moreover, the data

collection and analysis needed for such an approach may be extremely time-consuming and resource-intensive. EPA is concerned that such an approach could lead to a cumbersome administrative process that would delay the initiation of needed measures to control plumes of contamination. In addition, the result of the analysis under such a standard could be subject to considerable scientific uncertainty and might not serve to assure the public that adequate measures were being taken. Finally, this approach could divert the owner's or operator's resources from expenditures on proven control measures that will provide significant environmental protection to expenditures on complex analysis and predictions about the fate and transport of hazardous constituents.

Therefore EPA has decided to provide for this option through a variance. Today's regulations allow the owner or operator an opportunity to request an alternate concentration limit based on a demonstration that the concentration will not adversely affect human health and the environment. If the data on which the demonstration is based is subject to considerable uncertainty, EPA will not establish the requested concentration limit. To avoid unreasonable delay in the commencement of corrective action, today's regulations provide specific deadlines for the submission of information necessary to establish the ground-water protection standard. An owner or operator who wants to justify a concentration limit based on the narrative criteria in the regulations must do so within the general time frames applicable to the establishment of other types of concentration limits.

In those situations where there is no concentration limit specified in the regulations (i.e. the NIPDWR maximum contaminant levels in Table 1) and where the owner or operator fails to justify an alternate concentration limit under the variance, today's regulations will be based on the fourth option, which would require that the level of a hazardous constituent not exceed the background concentration of that constituent in the ground water.

This approach has several advantages. First, it assures that the standard will not be violated unless hazardous constituents have entered the ground water from a regulated unit. (This assumes that normal fluctuations in background are accounted for in the analysis of whether background has been exceeded. This concern will be discussed in Section VII. D.9. of this preamble.)

Second this approach provides assurance to the public that the ground water quality will not be made any worse by the advent of hazardous waste disposal in the area. As discussed earlier in the preamble, this approach assures that the current and future uses of ground water in the area will be preserved. EPA concluded that this approach was the best of available alternatives for those hazardous constituents not addressed by the NIPDWR, for which an alternate concentration limit cannot be established, because it properly balances the need to fully protect human health and the environment and the need to develop fair, workable requirements for the regulated community.

While the numerical limits identified in Table 1 for the NIPDWR constituents are generally appropriate concentration limits for those constituents, there is one situation where the "no increase over background" standard will be used for those constituents. It is possible that in some situations the level of the constituent in background ground water exceeds the NIPDWR limit for that constituent. Unless the "no increase over background" standard is applied in that situation, the regulations would force the owner or operator to initiate corrective action measures even though no contamination had entered the ground water from regulated units at the facility. Such a result is inconsistent with the basic purpose of the monitoring and response program.

b. *Use of Alternate Concentration Limits*—Under § 264.94, the owner or operator may ask for a concentration limit other than a NIPDWR contaminant limit or a "no increase over background" limit. The basic test that the Regional Administrator will use in evaluating such a demonstration is whether the constituent would pose a substantial present or potential hazard to human health or the environment at any future time, barring war or acts of God.

The alternate limit may be sought at any time but EPA will not allow the consideration of such a demonstration to unreasonably delay the establishment of the ground-water protection standard for a facility. Once the ground-water protection standard has been established in the permit, the owner must seek alternate concentration limits through permit modifications under the procedures in 40 CFR Part 124. Such modifications are always major modifications and the burden of proof is on the applicant to justify the variance.

The factors that the Regional Administrator will use in considering this variance are identical to the factors to be considered for the variance in § 264.93, which allows the Regional Administrator to exclude some Appendix VIII constituents found in ground water from the list of hazardous waste constituents in the ground-water protection standard. The distinction is that the variance in § 264.93 does not limit the concentration of the constituent in the ground water underlying the facility; this variance does.

A few examples may help to explain how this variance may work. These examples are not to be interpreted as scenarios that will necessarily qualify for alternative concentration limits nor are they the only possible scenarios. An owner or operator may have a regulated unit located close to a river that is downgradient from the unit. The owner or operator may also be able to show that the ground water between the unit and the river will never by used. He may also be able to show that as long as contaminant levels are maintained below certain thresholds the assimilative capacity of the river will not be exceeded. This situation may be a good candidate for an alternate concentration limit.

A second scenario is one in which the owner or operator is able to demonstrate that there is a high concentration threshold for a contaminant based on available health and environmental data. By keeping the concentration of the contaminant in the ground water at the compliance point below that level, he can assure that there will be no adverse effects downstream on human health or the environment. A third scenario might be based on attenuation in the saturated zone. The owner or operator may be able to show that as long as the concentration of a hazardous constituent does not exceed certain levels at the compliance point, the concentration of that constituent at a downgradient point of use will be non-detectable or within commonly accepted health standards. (It should be noted that EPA believes it extremely difficult to make this latter demonstration.)

As with the variance in § 264.93, the owner or operator may not receive an alternate concentration limit by showing that the adverse effects on human health and the environment will be delayed. In addition, EPA intends to rely on designations of underground sources of drinking water and exempted aquifers under the UIC program when considering what the uses of ground water are likely to be in the area. In addition, it should be understood that the variance in this section will not be

used to reconsider the health basis of the National Interim Primary Drinking Water Regulations. The Regional Administrator may establish alternative concentration limits for the constituents in Table 1, but these alternative limits must be based on factors (*e.g.*, likely attenuation during migration) that do not call into question the basis for the MCL's.

6. *Compliance Point (§ 264.95).* The ground-water protection standard must also define the point in the ground water at which the standard must be met. The Agency considered several options and concluded that the compliance point should be the edge of the waste management area.

a. *Alternatives Examined*—The first option considered was some point directly below the waste. EPA rejected that option for several reasons. It is not generally practical to attempt to monitor ground water directly underneath a land disposal unit. Drilling wells through a regulated unit itself is unwise because such wells can only undermine the integrity of the unit design, creating a conduit for the passage of hazardous constituents to ground water. It is conceivable that wells could be drilled at an angle underneath a regulated unit so that there would not be a need to penetrate the liner in the regulated unit. EPA does not think that this type of monitoring system has been shown to operate effectively at a sufficient number of hazardous waste disposal units to justify its use as the general requirement in today's regulations. Moreover, there will not typically be a substantial delay in detecting hazardous constituents if the compliance point is at the edge of the waste management area as opposed to some point below a regulated unit.

A second option considered was the property boundary. EPA considered this approach carefully but decided that it did not provide sufficient time to take corrective action once noncompliance occurred. Moreover, this approach could allow contamination of large quantities of ground water within the property boundary, water that would eventually move off site.

A third option considered was to establish a buffer distance outside of the waste management area. EPA decided not to take this approach. There was no rationale for a fixed buffer distance that would apply to all facilities. EPA did actively consider the use of a buffer zone that was based on assuring at least 5 years of flow time within the property boundary. EPA eventually decided against this approach because it was difficult to justify the 5-year time frame and because this approach could still allow significant ground-water contamination before corrective action would begin.

The fourth option considered was the edge of the waste management area. EPA ultimately decided that this was the best of the available options for several reasons. EPA believes this approach will provide the greatest assurance to the public. Given the fact that there is a degree of uncertainty about how successful corrective action measures will be, EPA does not think that it makes sense to allow contamination of large quantities of ground water when selecting a compliance point. Moreover, since the owner or operator is not expected to be present at the facility forever, it is reasonable to require him to keep the ground water under his control as clean as possible while he is present at the facility. This is consistent with the general philosophy of these regulations to require reasonable steps to provide long-term environmental protection.

In addition, EPA believes that corrective action is likely to be most cost-effective when conducted at the edge of the waste management area. The plume of contamination is likely to be most concentrated at that point, meaning that less water will need to be removed and managed if it is removed there instead of some other downgradient point. In addition to being cost-effective, a strategy that reduces the need to remove large quantities of ground water is a sound water conservation policy. By using the edge of the waste management area as the point of compliance, EPA has reduced the likelihood that corrective action measures would deplete the aquifer and thereby impair use of ground water in the area.

b. *Use of Compliance Point*—While "compliance point" is the term of art used to define the location where the ground water protection standard is measured the "compliance point" is, in fact, a surface (or a set of points.) Specifically, the compliance point is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units. The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. This area will be specified in the facility permit. Where there is more than one regulated unit at the facility, the waste management area is described by an imaginary line circumscribing the several regulated units.

The edge of the waste management area is not the outer limit of the waste itself. The limit includes any horizontal space taken up by liners, dikes, or other barriers designed to contain waste in a regulated unit. The purpose of this provision is to avoid the implication that monitoring and corrective action wells should be drilled through the structures which are designed to control the waste, clearly a counterproductive result.

In defining the compliance point for the ground-water protection standard, EPA considered the implications of the selected approach for existing plumes that have appeared at existing facilities. At the time that it initiates permitting for existing facilities, EPA may find that hazardous constituents have already migrated beyond the compliance point at some units. Under the regulatory system in today's regulations, however, portions of plumes that have migrated beyond the compliance point will be addressed under the permit. EPA will require the cleanup of the portion of these plumes up to the property boundary as a condition of continued operation after the effective date of these rules. (This issue is discussed in Section VIII.D.13.d. of this preamble.) Portions of plumes that have migrated beyond the facility property boundary are not subject to the monitoring and response program of Subpart F.

EPA believes that today's regulations reflect a reasonable approach, as a matter of law and policy, on the appropriate scope of the Subtitle C program. Plumes that have already migrated beyond the property boundary may be addressed by other EPA programs. If such a plume presents an imminent and substantial endangerment to health or the environment, EPA may take enforcement action under Section 7003 to correct the situation. Such plumes may also qualify for remedial action measures under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA will actively consider the use of these other authorities to address plumes of contamination that have migrated beyond the property boundary at the time of initial permitting. EPA must operate within the constraints of those laws and thus cannot guarantee that actions under these other authorities will also be appropriate. EPA does intend, however, to take a close look at plumes of contamination that have migrated beyond the property boundary at the time of initial permitting to determine whether action under other authorities is justified.

7. *Compliance Period (§ 264.96).* In setting the ground-water protection standard, the Regional Administrator

must define the time period over which it will apply. In § 264.96, the regulations indicate that the compliance period to be set in the permit is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period.)

As described in Section VI.A. of the preamble, the compliance period is to be based on the active life of a regulated unit, the time period during which the most significant release of liquids to the ground is likely to occur. Where more than one unit is contained within the waste management area of the facility, liquids may enter the ground for the period beginning when waste is first placed in any unit within the waste management area and continuing until the last unit within the waste management area is properly closed. Accordingly, the appropriate time frame for this compliance period is the period equal to the active life of the waste management area.

EPA recognizes that there may be situations where particular plumes or portions of plumes can be linked to particular units, depending on the configuration of the waste management area. For example, where the waste management area is made up of a series of adjacent landfill trenches and ground-water flow is parallel to those trenches, it may theoretically be possible to distinguish which trench created a plume that may appear at the compliance point. Today's regulations, however, do not allow for the establishment of individual compliance periods for each regulated unit within the waste management area. EPA is considering whether to provide for such an option and seeks further comment on this issue. In particular, EPA asks commenters to address the need for such a provision, the practical feasibility of distinguishing plumes from different units within the same waste management area, and the technical criteria that might be used in determining when this option might be appropriate.

In calculating the compliance period, the Regional Administrator will include the time that any regulated unit was operating prior to permitting. The basis for the compliance period is the time period during which leachate could have entered the ground due to the absence of a liner or the failure of the liner. The fact that some of that time period occurred before permit issuance and some after should not influence the length of the time period.

The compliance period begins to run when the owner or operator initiates a compliance monitoring program under § 264.99 following detection of hazardous constituents in ground water. This assumes that detection of hazardous constituents in ground water indicates that the front of the plume is entering ground water.

It is theoretically possible, however, that the actual front of the plume is relatively dilute and that the detection monitoring program would not indicate the presence of hazardous constituents in the ground water until some later, more contaminated, portion of the plume appears. In such a case, the theory of plume migration described in Section VI.A. of this preamble would suggest that the compliance period should be shorter than the length of the regulated unit's active life. (Under that theory, the compliance period is linked to the time period during which the most significant portion of the plume is expected to appear.)

EPA knows of no way to account for this scenario in setting the compliance period because it depends on knowledge about the quality of leachate that is entering the ground water, a fact that will not be known at the time the ground-water protection standard is established. Therefore, the compliance period will be linked to the full active life of the regulated unit (or the waste management area if there is more than one unit), based on the assumption that the detection monitoring program will detect the initial front of a plume of contamination emerging from the regulated unit.

The compliance period may extend beyond the number of years equal to the active life of the waste management area if corrective action has been initiated but not completed. EPA believes that corrective action measures should be completed once begun. The capital expenditures will have already been made, so the permittee will only bear the additional costs of operating the corrective action equipment. The fact that the ground-water protection standard is still exceeded at the end of the normal compliance period indicates that an environmental problem is still present. This may be caused by the fact that some constituents in the plume may have proceeded through the soil more slowly than those that were at the front of the plume. In keeping with the general philosophy that the owner or operator should seek to remove environmentally significant levels of hazardous waste leachate from the environment, EPA believes that it is reasonable for the compliance period to be extended where necessary to complete corrective action.

It is necessary, then, to define what is meant by completing corrective action. Today's regulations indicate that the owner or operator can demonstrate the success of corrective action by showing, with monitoring data, that the ground-water protection standard has not been exceeded for a period of three consecutive years. This time period should provide a reasonable margin of safety in determining whether a plume of contamination has been removed.

Depending on when corrective action begins and its success in removing or treating contamination, it is possible that the compliance period will extend beyond the post-closure care period for the unit. The regulations do not provide that the post-closure period would be automatically extended for the same duration as the compliance period. It may not always be necessary for the compliance period and the post-closure care period to continue for the same amount of time because the activities involved may have differing objectives. Cover maintenance, for example, may not be directly related to the task of cleaning up a plume caused by leachate that entered the ground during the unit's active life. The Regional Administrator may, however, modify the permit to extend the post-closure care period under § 264.117 of the existing regulations. Under the general criteria established in § 264.117, it may be entirely appropriate to extend the post-closure care period to be coterminus with the compliance period.

8. *General Ground-water Monitoring Requirements (§ 264.97).* In § 264.97, EPA has set forth a series of general requirements that address such topics as well design and placement, sampling and analysis procedures, analytical methods, sampling of water elevations, determination of background, and statistical procedures.

It is most efficient to describe these requirements as they come up in later sections of this preamble that discuss the specific ground-water monitoring programs. Two of these general requirements, however, deserve special discussions. They are described in the following two sections.

9. *Determination of Background (§ 264.97(g)).* In many situations, the concentration limit for a particular hazardous constituent will require no increase over the background concentration of the constituent. In addition, the detection monitoring program relies on increases over background levels of parameters or constituents to define when a regulated unit is leaking. Today's regulations are designed to ensure that the calculation of background ground-water quality will be based on accurate data.

The level of chemical constituents in ground water may fluctuate substantially over time. One of the major sources of variation is seasonal fluctuation. During different times of the year the recharge rates to ground water will vary, reflecting the differences in climate, rainfall, and other factors. When recharge rates are high, there may be more dilution and the background concentrations of constituents tend to fall. When the recharge rate is low, the concentration of constituents in background ground water may increase.

EPA believes that such variation in background concentrations should be accounted for if this can be done without compromising other regulatory objectives. For detection monitoring, today's regulations provide that background concentrations will be determined by the mean of values measured at least quarterly for one year. Quarterly sampling is required to roughly accord with the seasons.

EPA does not believe that this general approach can be used in the compliance monitoring program because of the environmental situation at the time that such a program is required. If hazardous constituents are moving downgradient, they may present a considerable risk of causing adverse effects on human health and the environment. EPA does not believe it is generally appropriate to allow such a plume to continue to migrate while the owner or operator collects background data for one year. Therefore, EPA will, whenever possible, rely on whatever reliable background data is available to establish background values for the compliance monitoring program.

Today's rules require that a request for a permit modification to incorporate a compliance monitoring program be submitted by the owner or operator within 90 days of determining that there has been a statistically significant increase in the concentration of a detection monitoring parameter. During this 90 day period multiple ground-water samples can be obtained from the monitoring wells, and analyzed for the presence and concentration of hazardous constituents. Potential seasonal variations in concentrations cannot be established during this period. Depending on the length of the permit process, the owner or operator may have enough time to develop one year of background data for each constituent.

The Regional Administrator will exercise discretion in processing a permit modification application to incorporate compliance monitoring when available data (including data collected during the 90 days after finding a statistically significant increase in a detection monitoring parameter) suggest that additional measurements of background concentrations are necessary to adequately account for anticipated seasonal variations. This situation could occur when Appendix VIII constituents in ground water at the compliance point are present in concentrations which are not greater by a statistically significant amount than the concentrations of these constituents in samples from upgradient wells. If, in such a situation, the owner or operator has evidence that the concentrations of the constituents in ground water vary over time, then additional sampling and analysis over time to account for such variation in background concentrations may be prudent.

Occasionally, additional sampling and analysis over time may be appropriate even where compliance point concentrations exceed upgradient concentrations, at a given point in time, if the Regional Administrator believes it reasonably possible that this difference is due to seasonal or spatial variation in ground-water quality. In this case, however, the Regional Administrator would consider whether the rate of ground-water flow (and any plume of contamination) was sufficiently slow that additional time for collection of ground-water quality data would jeopardize the potential for successful corrective action if it is determined to be necessary. The Regional Administrator would not, however, consider allowing time for additional data gathering in cases where the initial difference in compliance point and upgradient constituent concentration is well above potential seasonal variation.

The owner or operator who wants to account for seasonal variations in the background values has at least two additional options. He can anticipate the need for such data by collecting upgradient data on Appendix VIII constituents likely to be in leachate before detection monitoring program indicates that leakage has occurred. He may also continue to collect background data after the compliance monitoring program permit is issued. He may use that data in making a demonstration under § 264.99(j) that an apparent increase over concentration limits in the ground-water protection standard is caused by contamination from other sources. He may also use the data in seeking a permit modification to change the background values contained in the compliance monitoring program.

Another issue in the establishment of background for a constituent is the question of what wells should be used in the data base. One option is to establish background at downgradient wells and then to determine whether ground-water quality at each well increases significantly over time. The principal disadvantage of this approach is that is can lead to major miscalculations at an existing regulated unit. Such a unit could be leaking quite heavily. If the plume of contamination is included in the data base used to determine background, the plume could continue to flow and the analysis of ground-water quality at the downgradient wells would not show a statistically significant increase.

Another option is to base background on data from both upgradient and downgradient wells. This approach suffers from the same general problem described above. A plume of real contamination could become part of the data base for determining background and lead to a failure to detect a significant plume.

A third option, which EPA believes is preferable in most situations, is to base background data on upgradient wells. Assuming these wells are properly placed, they should produce data that are not biased by contamination from the facility.

There is, however, a conceptual difficulty with the use of upgradient wells as the basis for determining background. In a theoretical sense, an "increase over background" test at the compliance point attempts to compare the sampled ground-water quality at the compliance point to what that ground-water would have been at the compliance point in the absence of the facility.

In the option just described, the upgradient wells are being used to indicate what the ground-water quality at the compliance point would have been in the absence of the facility. The problem here is that there may be some lag time between upgradient and downgradient wells due to the slow movement of ground water. Thus, upgradient ground-water quality may not always be exactly the same as background ground-water quality at the compliance point. While this factor may be a source of error, EPA knows of no reliable way to correct for it. Given the alternatives, EPA still believes that this approach is superior because it at least does not present the possibility of including leachate from a regulated unit in the data base for calculating background values.

There may be situations, however, where the data used to calculate background values may be taken from wells other than the upgradient wells. In some situations, it may not be possible to determine what wells are upgradient. For example, if a land disposal unit sits

on a hilltop, the entire perimeter of a regulated unit is, in a sense, downgradient. In such a situation, it may be more useful to establish background by drawing samples from a nearby background plot that is representative of general ground-water quality in the area.

In other situations, the possibility that wells other than upgradient wells may be affected by contamination from a regulated unit may not be a serious risk. For example, at a new facility that has not yet received waste, it might be quite acceptable to use downgradient wells in the determination of background ground-water quality.

To account for situations such as these, EPA has provided a variance from the general requirement that background ground-water quality be based on upgradient wells. Such a variance is appropriate where hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient or where sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by upgradient wells.

Today's regulations do not specify how many wells must be installed to provide the data base for determining background ground-water quality. In § 264.97(g), however, the regulations indicate that certain minimum numbers of samples must be taken. The owner or operator must take at least one sample from each well used in the calculation of background (*i.e.*, one from each upgradient well in the normal case). This will ensure that broadly-based data are used, and that the owner or operator cannot selectively use various data points.

The regulations also require a minimum of four samples from the entire system in the determination of background. This means that if there is only one upgradient well, then the owner or operator would take four replicates at that well; if there are two wells, the owner or operator would take two from each well.

10. *Statistical Procedures (§ 264.97(h)).* In the detection monitoring program, the owner or operator must determine whether background values of monitoring parameters or constituents are exceeded at the compliance point. In the compliance monitoring program, the owner or operator must determine whether concentration limits (which may include background values) for hazardous constituents are exceeded at the compliance point. In order to be sure that the ground-water quality measured at the compliance point reflects an accurate indication of whether a background value or concentration limit is exceeded, today's regulations require that the owner or operator determine whether a "statistically significant" increase (or decrease in the case of pH) over background values or concentration limits occurs at the compliance point.

The regulations set forth the general standards that must be met by the statistical procedures used at the facility. In referring to "statistical procedures" in § 264.97(h), EPA means to emphasize that the concept of "statistical significance" must be reflected in a number of aspects of the monitoring program. This involves not just the choice of a level of significance, but also the choice of a statistical test, and the requirements of the number of samples and the number of replicate measurements run on each sample. Since all of these interact to determine the ability of the procedure to detect contamination, the statistical procedures must be evaluated in their entirety and not evaluated by individual component.

EPA's basic concern in establishing standards for statistical procedures is to achieve a proper balance between the risk that the procedures will falsely indicate that a regulated unit is causing background values or concentration limits to be exceeded (false positives) and the risk that the procedures will fail to indicate that background values or concentration limits are being exceeded when that is, in fact, the situation (false negatives). Today's regulations are designed to address that concern directly.

a. *Basic Statistical Procedure*—EPA has not been able to specify one set or several sets of statistical procedures that will provide a high level of confidence in the results for all situations. Many different situations exist and no one procedure is appropriate for all circumstances.

EPA also found it difficult to try to reduce the regulations to a set of specific numerical performance standards that would achieve the proper blance between false positives and false negatives. A major reason for EPA's inability to establish such performance standards at this time is that the probability of correctly deciding that a regulated unit is contaminating (often expressed as the "power" of a statistical test) cannot be easily summarized by a single number because the power of a test is related to the magnitude of the difference between two populations. Today's regulations do not attempt to express the idea of "exceeding background values or concentration limits" in terms of any minimum magnitude; any increase is a cause for concern under today's regulations. The implication of this for the statistical procedures is that a performance standard related to the power of a statistical test would have to be specified for every possible minimum magnitude that might be of concern. This is not feasible at this time given the state of knowledge about ground-water contamination.

An alternative would be for EPA to decide what magnitude of increase it was concerned about and to specify how powerful the test would be for that magnitude of difference. However, the Agency is unable, at this time, to determine an amount of contamination that is acceptable and thus is not able to set such a magnitude. Also, the problem would remain of having to specify how powerful the test should be for values above that minimum difference of concern. EPA invites comment on this issue.

Consistent with its general strategy, however, EPA has tried to bring certainty to these regulations wherever possible.

Therefore, the Agency is establishing a specific sampling requirement, statistical test, and significance level for those situations for which the Agency believes the test is appropriate. This specific approach will then serve as a benchmark against which other statistical procedures may be compared. The comparison should be based on their theoretical properties combined with available data from the specific site. It will generally be easier to make a relative comparison of one procedure against another than to determine the best possible test at a given site.

The regulations establish a standard statistical procedure for use in the detection phase when the background data is approximately normally distributed. The procedure requires background sampling data, sampling data from the compliance point, and a specific statistical test protocol. For any parameter or constituent from a specific well, the protocol is as follows: Compare the mean contaminant level of the compliance point data with the mean contaminant level of the background data using Cochran's Approximation to the Behrens-Fisher Student's t-test. If the comparison is found to be significant at the 0.05 level of significance, a new sample is drawn from that specific well and the comparison of the mean of the new monitoring data with the background data is made. If this (retest) comparison is significant at the 0.05 level of significance, the site is judged to produce a statistically significant difference in contaminant level. If the

comparison is non-significant on either the initial test or the retest, the site is judged not to produce a significant difference in contaminant level.

Today's regulations define the situations in which the distribution is likely to be normal by a coefficient of variation. The coefficient of variation for distribution is the standard deviation divided by the mean. Today's regulations assume that a sample with a coefficient of variation less than 1.00 is likely to have a normal distribution. This assumption is based on the following analysis.

For a normal distribution, approximately 95% of all possible data lie within plus or minus two standard deviations of the mean. Since ground-water constituent levels cannot have negative values, zero is the lower bound to the distribution of sampling data and hence such data should have a coefficient of variation (standard deviation divided by the mean) of approximately 0.5 or less. When sample standard deviation and sample mean are used to estimate the coefficient of variation rather than the true (population) standard deviation and mean, the probabilistic nature of this sample coefficient of variation must be considered. If the data is from a normal distribution, then less than 10% of all sample coefficients of variation will exceed 1.00 by random chance. If the data is non-normal (such as either skewed to the left or right), then the sample standard deviation will be large relative to the sample mean and, therefore, make the probability of a sample coefficient of variation exceeding 1.00 quite large. Accordingly 1.00 is being used to distinguish between situations that are and are not likely to have normal distributions.

In specifying 1.00 instead of 0.5 as the coefficient of variation the Agency believes that it will reduce the burden, on both the owner or operator and the Agency, of establishing a site-specific data comparison procedure. More facilities will, therefore, utilize the specified Student's t-test than if the coefficient of variation were specified as 0.5. For those facilities where the sample coefficient of variation is less than 1.00 but at which the ground-water quality is not quite normally distributed, the specified t-test should remain valid due to the "robustness" of the t-test.

While EPA has decided that a coefficient of variation of 1.00 provides a reasonable criterion for determining whether monitoring data are likely to be normally distributed, EPA specifically seeks further comment on this issue. EPA also urges commenters to provide suggestions about other statistical criteria that might be used to predict whether monitoring data are likely to be normally distributed.

As described in the previous section of this preamble, detection monitoring background values are based on quarterly sampling with at least four replicate measurements on samples taken per quarter. Should there be only one background well, the four measurements per quarter are obtained by splitting a sample from the one well into four aliquots and conducting separate analyses of each aliquot. If there is more than one well, the regulations require there to be at least four measurements per quarter from the background wells as a group with a minimum of one measurement per well.

This number of background measurements is judged by the Agency to be the minimum requirement to adequately establish background concentrations. Using fewer background measurements could decrease the confidence in the background estimate and reduce the ability of a given statistical procedure to detect contamination of a given amount.

The Agency is requiring that monitoring wells be sampled at least semi-annually and that when a well is sampled, the sample is divided into at least four aliquots on which separate analyses and measurements are then conducted. The reason for requiring four aliquots to be separately analyzed is to obtain information on measurement error. It has been EPA's experience that measurement error cannot be reliably estimated with less than four readings.

The standard statistical test being required is the Cochran's Approximation to the Behrens-Fisher Student's t-test. The t-test is appropriate in most situations because concentrations measured above the limit of quantification (defined as the value below which numerical estimates of concentration are unreliable) tend to be approximately normally distributed. The test is believed to be reasonably insensitive to moderate deviation from normality in the distribution of the data.

The version of the t-test required for the comparison of mean level of background data with the mean level of compliance point data is not the one most commonly encountered when comparing two data sets. A key assumption (aside from that of normality) for the usual test is that the underlying variances of the two data sets are equal. With ground-water monitoring data, the background data has variability due to measurement error and seasonal variation, but the compliance point monitoring data has variability only due to measurement error. Therefore, the appropriate test for comparing the two data sets is the Behrens-Fisher Student's t-test, which requires special tables. A good approximation to the relatively complex Behrens-Fisher Student's t-test is supplied by the Cochran's approximation to the Behrens-Fisher Student's t-test, which uses standard tables. These tables are commonly available and it takes no special statistical skills to interpret the results of the test.

EPA is fixing the level of significance for the Student's t-test at 0.05 for each parameter at each well. When the Agency proposed this significance level for interim status ground-water monitoring, it received some criticism that this would produce too many notifications of contamination where none had actually occurred.

EPA recognizes that this could be a problem, particularly when there are many comparisons being made for different parameters and for different wells. However, EPA is concerned that a lower significance level would unduly compromise the ability to detect contamination when it did, in fact, occur.

Instead EPA believes that, given the number of parameters likely to be selected in a detection monitoring program, the problems created by a significance level of 0.05 are adequately controlled by the provision for an automatic retest procedure. The regulations for use of the Student's t-test specify that, for each specific well, one must retest those parameters that tested as a significant difference the first time. They also specify that the observed difference of the first sample is not considered to be statistically significant for purposes of this regulation unless the retest also shows a significant difference.

It may be demonstrated that, without the retest provision, the "compounding" effect of multiple comparisons creates an overall significance level that EPA believes to be too high. For example, if there were twelve comparisons (4 parameters at each of three downgradient wells), each to be made at a significance level of 0.05, then the overall significance level for the twelve comparisons as an entire group is 0.46, too high for practical use. If the retest procedure is used in the same situation, the overall significance level for the entire group is 0.03, a more acceptable value.

EPA certainly seeks to avoid a situation where non-contaminating sites are falsely identified as contaminating due to repeated use of a univariate

statistical test procedure. EPA does not believe, however, that this problem should be addressed by reducing the significance level applied to individual tests and thereby undermining the ability to detect real contamination. Comments are invited on how to construct a statistical test procedure that has an acceptably low probability of falsely identifying a non-contaminating regulated unit, yet provides an acceptably high probability of identifying a truly contaminating regulated unit.

EPA recognizes that even where the distribution of background data is expected to be normally distributed (i.e., the coefficient of variation is less than 1.00), there may be situations where the owner or operator can devise statistical procedures that are more cost-effective to him and which will provide reliable results. Therefore, today's regulations allow the Regional Administrator to approve such procedures if he finds that the procedures balance the risk of false positives and false negatives in a manner comparable to that provided by the Student's t-test protocol specified in the regulations. In examining the comparability of the suggested procedure, the Regional Administrator will not focus on a single aspect of the procedure, such as the significance level of the test, but rather will look to the overall ability of the procedure to provide a reasonable balance between the risk of false positives and false negatives. The Regional Administrator will specify in the permit such things as the sampling frequency and the sample size for the alternative statistical procedure.

b. *General Alternative to Basic Procedure.*—EPA recognizes that there will be situations where the t-test specified for the detection monitoring program will not be useable in that program or in the compliance monitoring program. In such situations, it is necessary to develop procedures that are tailored to the specific situation at the facility. EPA has established a general narrative standard for such situations. The standard indicates that EPA has two principal concerns in the development of such procedures: (1) That the procedure be appropriate for the distribution of the data used to establish background values or concentration limits; and (2) that the procedure provides a reasonable balance between the risk of false positives and false negatives.

EPA has not specifically required that the procedure be comparable to the t-test protocol described above. The regulations indicate, instead, that the procedure must provide reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be indicated. (The reference to hazardous constituents does not mean that this option only applies to compliance monitoring; the test also applies to monitoring parameters and constituents in the detection monitoring program since they are surrogates indicating the presence of hazardous constituents.)

The t-test protocol will, however, be used as a general benchmark for defining "reasonable confidence" in the proposed procedure. If the owner or operator shows that his suggested test is comparable to the Student's t-test in its results, then it is likely to be acceptable under the "reasonable confidence" test. There may be situations, however, where it will be difficult to directly compare the performance of an alternative test to the t-test protocol. In such cases, the alternative test will have to be evaluated on its own merits.

EPA would like to give further specificity to these general criteria for evaluating statistical procedures. The Agency will be analyzing this issue further to see whether more specific criteria can be developed. The Agency hopes to at least provide further guidance about the kinds of statistical procedures that could be adequate under the general criteria in the regulations. EPA encourages public comment on this issue.

c. *Statistical Procedures for Compliance Monitoring*—The basic t-test protocol specified in the regulations was not applied to the compliance monitoring program. The reason for this is that EPA believes a compliance monitoring program is more likely to be subject to a high "experiment error rate" than is the detection monitoring program. An experiment error rate depends on the number of individual comparisons being made for a facility. Each individual comparison of a constituent at a compliance point to the concentration limit for that constituent is subject to an error rate (i.e., probability of a false positive) that is determined by the significance level used with the test. When many individual comparisons are made, this error rate is compounded such that the probability that at least one comparison will falsely indicate statistical significance will greatly increase.

EPA expects that the list of constituents to be monitored in the compliance monitoring program will be greater than that in the detection monitoring program. The experiment error rate in such a situation could be too high. Therefore, the statistical procedures used in the compliance monitoring program have been generally subjected to the "reasonable confidence" standard. Where the number of hazardous constituents identified in the compliance monitoring program is not too large, it may be quite reasonable to use the t-test protocol in the compliance monitoring program and such an approach would be encouraged.

d. *Other Situations*—There will be other situations where the general standard rather than the t-test protocol should be used to evaluate the owner or operator's statistical procedures. One such situation occurs when the coefficient of variation for the background data is greater than 1.0. In such a situation it is quite possible that the data is not normally distributed. In that situation the general narrative test will be used. It is particularly important in such a situation to ensure that any statistical procedure used is appropriate for the distribution of the data.

A second situation that will probably require the crafting of a specialized procedure is one in which the background level of a constituent is below the detectability limit of the analytical methods used or is recorded as a trace level of the constituent. EPA believes that appropriate statistical procedures can be developed in such cases.

Another situation which may be confronted, in the compliance monitoring mode, involves point in time comparisons between upgradient and downgradient ground-water sample analyses, in contrast to comparisons against previously established background values. In situations where there is a high temporal correlation of upgradient and downgradient ground-water quality, that is upgradient and downgradient quality varies uniformly over time, then well to well comparisons may be judged appropriate by the Regional Administrator. An appropriate statistical comparison procedure will need to be established in permits which incorporate such point in time comparisons.

The statistical procedures developed under the general standard need not always be more complex than those used in the basic t-test protocol. For example, where an alternative concentration limit is a fixed health-based number which has no variance, a simpler version of the t-test than the Cochran's Approximation of the Behrens-Fisher Solution may be used.

11. *Detection Monitoring Program (§ 264.98).* The last three sections of Subpart F (*i.e.*, §§ 264.98, 264.99, and 264.100) set forth the specific elements of each type of ground-water monitoring

and response program. In doing so, these sections define the specific responsibilities that an owner or operator must meet under Subpart F, incorporating the appropriate elements of the other sections of Subpart F.

If hazardous constituents from a regulated unit have not reached ground water at the time of permit consideration, the owner or operator may receive a detection monitoring program permit. The following is a description of what such a program will contain.

a. *Parameters to be monitored*—The purpose of a detection monitoring program is to determine whether a regulated unit is leaking. The Regional Administrator will specify in the facility permit the constituents or parameters that must be monitored in order to make that determination.

The list of parameters to be monitored may include indicator parameters, such as pH, specific conductance, total organic carbon, or total organic halogen. These four parameters are the specific monitoring parameters used in the Part 265 ground-water monitoring regulations. The list of parameters may also include the results of gas chromatography procedures using specific detectors, such as GC/ECD or GC/FID. Where indicator parameters are not capable of detecting all known waste constituents or reaction products in ground water, the Regional Administrator may include specific waste constituents or reaction products in the list of detection monitoring parameters.

The basic test that the Regional Administrator will apply is that the parameters used must provide a reliable indication of the presence of hazardous constituents in ground water. In making that determination, the Regional Administrator will address four major factors. First and foremost, the Regional Administrator will consider the types and quantities of hazardous wastes that are managed at a regulated unit, and the concentrations of constituents within those wastes. The Regional Administrator will consider whether those wastes are inorganic, organic, or both. The Regional Administrator may also consider, for example, whether an organic hazardous waste is a chlorinated compound, the quantity of this waste managed at the regulated unit, and the concentration of constituents within the waste.

Second, the Regional Administrator will consider the quality of the leachate as it passes through soil beneath the waste management area prior to entering ground water. Because an accurate prediction of leachate quality, mobility, stability, and persistence in the unsaturated zone is very difficult, this consideration will often not be critical in selecting detection monitoring parameters. However, there may be situations where approximations of these leachate characteristics will lead to rejection of certain indicator parameters or may assist in selecting others to account for products of leachate reactions with soil. For example, the Regional Administrator could choose an inorganic indicator parameter to detect soil constituents that may be leached from the soil into ground water as a result of leakage from a surface impoundment containing highly corrosive wastes. Third the Regional Administrator will consider the detectability of the potential monitoring parameters or constituents. Routine analytical procedures must yield accurate concentrations or values for monitoring parameters if they are to be usable in detection monitoring programs. Parameters which are extremely difficult to measure in ground-water samples will seldom be specified by the Regional Administrator regardless of how representative they are of the waste managed in a regulated unit.

Fourth, the Regional Administrator will consider the variability of the concentration or value of a monitoring parameter in background ground water that is unaffected by a regulated unit. Today's rules include the use of the coefficient of variation in selecting detection monitoring parameters. The coefficient of variation is derived by dividing the standard deviation of a parameter in background ground water by the average concentration or value. As discussed previously in this preamble, the coefficient of variation has been included in these rules to account for the occasionally wide variation in background ground-water quality over time. In general, ground-water quality tends to vary seasonally, principally due to recharge events, such as heavy spring rain. By comparing the average concentration or value during a given year, the Regional Administrator will draw conclusions about the potential effectiveness of a detection monitoring parameter. Monitoring parameters with large coefficients of variation will be avoided whenever possible because it becomes increasingly difficult to determine statistically significant changes in ground-water quality as the coefficient of variation for a parameter increases.

b. *Detection monitoring system*—The owner or operator must install a ground-water monitoring system at the compliance point that complies with certain basic performance standards. The monitoring system must include a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples that indicate the quality of ground water passing through the point of compliance. This general standard is similar to the Part 265 requirement concerning well placement in that it places the burden on the applicant to develop a system that yields representative samples. Unlike the Part 265 regulations, however, today's regulations do not require a minimum number of downgradient wells. Such a requirement is not as necessary in today's regulations because EPA will be evaluating the adequacy of the system during the permit process. EPA expects that at least three wells, the minimum number of wells specified in the Part 265 rules, will be needed at most facilities. There may be situations, however, where an adequate job may be done with fewer wells. The Agency intends to issue guidance on ground-water monitoring that will assist the applicant on this issue.

EPA anticipates that ground-water monitoring systems installed at most interim status facilities will be sufficient for detection monitoring in today's rules. Systems developed for assessment monitoring under the interim status regulations may not, however, be adequate. For example, such systems may not have been installed at the compliance point. The information provided by sampling at such wells may, however, be useful in the permitting context. The applicant may use data from interim status assessment monitoring to justify an alternate concentration limit for particular hazardous constituents.

As in the Part 265 regulations, today's rules provide that monitoring wells may be placed at the limit of the waste management area when the facility includes more than one regulated unit.

An adequate monitoring system must also comply with requirements concerning well installation. The wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. The casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space above the sample depth must be sealed to prevent contamination of samples and the ground water. These represent standard practices that are designed to prevent contamination of ground-water samples and to avoid the possibility that a ground-water monitoring well could

become a conduit allowing contamination into ground water. The Part 265 regulations contain a similar requirement.

c. *Establishment of background values*—Under the detection monitoring program, the owner or operator determines whether contaminants from a regulated unit have entered ground water by comparing the levels of constituents at the compliance point to background values for those constituents. The first step in the process, then, is to establish a background value for each monitoring parameter or constituent in the facility permit. In most cases, the background value itself will be in the permit. The Regional Administrator may, however, specify in the permit the procedure to be used in calculating background and indicate that whatever value results from that calculation shall automatically become part of the permit. For example, the owner or operator may have only assembled 6 months of background data at the time the permit is ready to be issued. Rather than wait another 6 months until the rest of the one year of background data has been assembled, the Regional Administrator may simply specify how the additional background data will be used to calculate the background value.

The monitoring system used to establish background ground-water quality must meet the same general requirements that the monitoring system at the compliance point must meet, with one modification. The well placement scheme must be designed to yield samples that represent the quality of background ground water that has not been affected by leakage from a regulated unit. As with the monitoring system at the compliance point, today's regulations do not specify a minimum number of wells.

Background calculations must be based on data drawn from the appropriate wells. The general guidelines for what wells should be used in the determination of background values are in § 264.97(g). The owner or operator should use those guidelines in establishing background values (Section VIII.D.9. of this preamble explains those provisions.)

The background values in the detection monitoring program must be calculated in a form that is necessary for the determination of statistically significant increases under § 264.97(h). Thus, in the case of the Student's t-test, the owner or operator would need to calculate the mean and variance of the background data.

d. *Duty to Monitor at Compliance Point*—Once the detection monitoring system has been established, the owner or operator must sample ground water at least semi-annually at the compliance point during the active life of a regulated unit (including the closure period) and the post-closure care period. The duration of the monitoring program is based on the general ground-water protection strategy discussed earlier in this preamble. The frequency of sampling will be specified in the permit. As in the interim status regulations, today's rules require that sampling must occur at least semi-annually.

e. *Ground Water Flow and Direction*—Each time the ground water is sampled at the compliance point, the owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer. Determining the gradient in the aquifer will enable the owner or operator to ensure that upgradient wells continue to be upgradient and downgradient wells continue to be downgradient. Information on ground water flow rates can be useful in deciding what the frequency of monitoring should be and in devising a corrective action program.

f. *Sampling and Analysis Procedures*—The detection monitoring program must include procedures for sampling and analysis that comply with the general performance standards in § 264.97(d) and §264.97(e). The owner or operator must develop sampling and analysis procedures that involve relatively standardized measures for insuring that samples taken from monitoring wells are properly handled to avoid inadvertent contamination from other sources. Ultimately, the objective here is to provide reasonable confidence that the samples taken will reflect true ground water quality. The procedures must address: (1) The procedures for obtaining samples from ground water monitoring wells; (2) procedures for preserving the samples for shipment to the laboratory; (3) the analytical procedures to be followed in analyzing samples; and (4) the "chain of custody" procedures to be used to prevent loss or mislabeling of samples during shipment and analysis. EPA intends to issue guidance on these topics.

The detection monitoring program will also indicate what analytical methods will be used in analyzing ground water samples. The general standard in § 264.97(e) requires that the methods be appropriate for ground water sampling and provide an accurate estimate of the presence of hazardous constituents in ground water samples. Some commenters have asked EPA to indicate what the analytical methods should be. To assist owners or operators, EPA is revising *Test Methods for Evaluating Solid Waste* (SW–846) to include guidance on acceptable analytical methods and procedures for ground-water sample analyses. This guidance should assist in the development of appropriate analytical methods for both the Part 265 and Part 264 monitoring requirements.

g. *Determining Statistical Significance*—Each time the owner or operator takes samples at the compliance point he must determine whether the level of the monitoring parameters and constituents is above (or below in the case of pH) the background values for those parameters and constituents by an amount that is statistically significant. The appropriate statistical procedures to be used are specified in § 264.97(h) and will depend on the pattern of the background data. The permit will specifically detail the statistical test that will be used. (See Section VIII.D.10 of this preamble for a description of the statistical procedures.)

The owner or operator must complete the statistical analysis within a reasonable period of time. EPA has not specified a minimum period of time because it recognizes that the reasonableness of such a time period will depend on several factors. Therefore, the regulations provide that the Regional Administrator will specify a time period within which the statistical analysis must be completed after considering the two key factors that could influence the time needed—the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground water samples.

h. *Response to Finding Statistical Significance*—If the comparison between data at the compliance point and background values shows that a statistically significant increase (or decrease in the case of pH) has occurred, there is a presumption that a regulated unit is leaking. The owner or operator must pursue one of two options in responding to that finding.

The first option is to seek a permit modification to establish a compliance monitoring program (and perhaps a corrective action program) at the facility. Such a permit modification would be justified by the "new information" cause for modification under § 122.15(a)(2). The owner or operator must take several steps as part of this option. First, he must notify the Regional Administrator in writing within seven days that he has detected a statistically significant increase at the compliance point. The notification must indicate what parameters or

constituents have shown an increase. Second, he must sample the ground water at all monitoring wells for all constituents identified in Appendix VIII of Part 261. This will identify all potential hazardous constituents in the ground water.

Third, the owner or operator must begin to take additional samples to determine background values for all constituents detected at the compliance point. The owner or operator may be seeking to establish an alternative concentration limit (ACL) for some of the hazardous constituents. He must, however, collect some background data on such constituents to be ready in the event that the ACL cannot be justified and that "no increase over background" will become the concentration limit. The owner or operator must comply with the other general performance standards for ground water monitoring systems, for determination of background, and for preparing data in a form necessary for statistical analysis when developing this data.

Fourth, the owner or operator must submit a permit application for a compliance monitoring program within 90 days. That application should indicate what hazardous constituents have been found in ground water. For each such constituent found, the owner or operator must indicate what type of concentration limit (background value, NIPDWS level, or alternate concentration limit) should be established. The owner or operator must also describe any appropriate changes to be made to the ground water monitoring system, the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures. In most cases, the permit applicant will at least be modifying the constituents to be monitored, and therefore, the analytical methods to be used. Monitoring frequency is also likely to be increased. Changes to the statistical procedures may also be needed, depending, for example, on the variance found in background data. In most cases, the applicant will not need to make substantial changes to the ground-water monitoring system.

Given that the modifications to the ground water monitoring program will primarily be ones involving changes in operating procedures, EPA believes that the applicant should be able to submit the application within 90 days.

If the owner or operator wants the Regional Administrator to establish alternative concentration limits, the information needed for the application will be more extensive. As indicated earlier in this preamble, EPA does not believe that permit issuance should be unreasonably delayed to allow an applicant to begin to collect data necessary for an ACL showing. Applicants who anticipate that they will want to pursue an ACL demonstration should do some advance planning to allow them to make the demonstration quickly.

In recognition of the fact that an application requesting an ACL will necessarily contain more information and analysis than an application based on the other types of concentration limits, however, today's regulations allow owners and operators additional time to submit the information necessary to justify an ACL. Within 90 days after detecting a statistically significant increase in the concentration of detection parameters or constituents at the compliance point, the owner or operator must indicate whether he intends to seek an ACL variance for each of the Appendix VIII constituents that have been found in the ground water at the compliance point. He indicates his choice by either proposing a concentration limit (background value or NIPDWR limit) or giving notice of his intent to seek an ACL. The owner or operator has an additional 90 days to submit the actual information necessary to support each of the ACL's sought.

Timely ACL demonstrations will be evaluated in the context of the permitting process on the compliance monitoring program. EPA will indicate its decision on the merits of the ACL demonstration when it issues the compliance monitoring permit. The permit will either contain a background value or NIPDWR limit (if EPA rejects the ACL demonstration) or it will contain an ACL (which may be equal to or less than the one proposed by the applicant).

Fifth, the owner or operator must submit within 180 days an engineering feasibility plan for a corrective action program. Once the monitoring indicates that a regulated unit is leaking and that hazardous constituents are present in the ground water, EPA believes that it is reasonable to assume that corrective action is likely to be necessary. In many cases, the Regional Administrator will be specifying a corrective action program in conjunction with a compliance monitoring program. Therefore, EPA believes that the owner or operator should submit a preliminary proposal for corrective action at the facility in conjunction with an application for a compliance monitoring program.

This plan does not need to detail every aspect of the program but rather should be an engineering feasibility plan showing what general corrective action measures can be taken. The plan should be sufficiently specific to allow EPA to determine that the corrective action program proposed could work at the facility. Recognizing that this plan could take some time to prepare, EPA has given the applicant 180 days to submit it.

The regulations also indicate that there are two situations where such a feasibility plan will not be necessary. First, if the only hazardous constituents are those listed in Table 1, and if the concentrations of those constituents at the compliance point are below the contaminant limits specified in Table 1, the likelihood that corrective action will be needed is less clear. Therefore, there is no automatic requirement for a corrective action feasibility plan in those cases. Second, if the owner or operator has requested an ACL for every Apendix VIII constituent significantly above background, or above appropriate NIPDWS levels found in ground water at the compliance point, then he is not required to submit the engineering feasibility study. If an ACL were granted for all of these constituents, it would not necessarily follow that a corrective action program would have to be established. Therefore, where such a comprehensive request for ACL's has been made, the Regional Administrator will make a decision on the ACL demonstration before requiring the submission of information necessary for a corrective action program.

The owner or operator has another option for responding to evidence that there is a statistically significant increase (or decrease in the case of pH) at the compliance point. The owner or operator may submit a report to the Regional Administrator indicating why he believes that the perceived increase was caused by a source other than a regulated unit or was the result of error in sampling, analysis, or evaluation. This report should be accompanied by additional monitoring data which indicates that the values used in the initial analysis of statistical significance are incorrect. Since this report is an action that may substitute for the submission of a permit modification application as described above, it must be submitted within 90 days.

The owner or operator may submit the report just described and a permit modification application. The owner or operator may also choose to file the report in lieu of the permit modification application. If he does so, however, he is subjecting himself to a risk. Such a report can only operate to exempt him from the general duty to file a permit modification application if it clearly indicates that the contamination is from

another source or is due to error. If the report fails to demonstrate such facts and the owner or operator has not filed an application for a permit modification, he is in violation of his permit. EPA could, therefore, take enforcement action if it finds such a report to be inadequate. Therefore, where the owner or operator knows that the data on which he bases his report is somewhat questionable, it may be prudent to also file a permit modification application.

i. *Duty to Modify Program*—The owner or operator has an ongoing responsibility to make sure that the detection monitoring program continues to comply with the requirements of this section. If he determines that it does not meet the general standards contained in this section, he should initiate a permit modification proceeding to make appropriate changes. For example, if his monitoring of ground-water elevation indicates that the gradient of the uppermost aquifer has shifted, he should apply for a permit modification to make appropriate changes to the ground-water monitoring system.

j. *Duty to Ensure Compliance with the Ground-Water Protection Standard*—The monitoring and response program of Subpart F provides for a graduated response over time to the problem of ground-water contamination as the evidence of such contamination increases. Since there is a significant likelihood that ground-water contamination problems will appear some time into the active life of a regulated unit or the post-closure care period, EPA wants to make sure that owners or operators engaged in current waste disposal will remain at the facility to manage any plume of contamination that emerges from a regulated unit. For example, EPA wants to avoid a situation which would allow an owner or operator who has not detected hazardous constituents in ground water to continue to operate while he faces the relatively light burdens of the detection monitoring program and to walk away once significant problems appear in ground water. To clarify a permittee's responsibilities, EPA is amending § 122.21(d) which sets forth the scope of the RCRA permit requirement. The amendment clarifies that owners and operators of hazardous waste management facilities must have permits during any post-closure care period for the facility and during any compliance period for the facility as well as during the active life of the facility. EPA is making a conforming change to § 122.10(b) to clarify that closure activities and post-closure care both must be undertaken pursuant to a permit.

One way of avoiding the possibility that the owner or operator would choose not to operate under a permit once contamination appeared is to provide a specific condition in the initial permit for the facility which obligates the owner or operator to monitor for and clean up hazardous constituents in the future as may be necessary to achieve the ground water protection standard. EPA believes that such a permit condition constitutes sound regulatory policy. EPA believes that the right to dispose of hazardous waste carries with it a correlative duty to insure that future contamination does not cause environmental problems. Thus, a future responsibility should be condition of a present authorization to operate.

Today's regulations indicate that a detection monitoring program will include a general permit condition requiring the owner or operator to take monitoring and corrective action measures that are necessary to assure compliance with the ground water protection standard. The exact nature of that commitment will be fleshed out in later permit proceedings if there is a need to take additional monitoring and corrective action measures.

12. *Compliance Monitoring Program (§ 264.99).* Once the owner or operator determines that there are hazardous constituents from a regulated unit, in ground water, he must establish a compliance monitoring program at the facility. Many of the requirements of this program are analogous to those required for the detection monitoring programs. The discussion here will only elaborate on those elements of the compliance program that differ from the detection program.

a. *Ground Water Protection Standard*—The ground-water protection standard for a facility will be established in the compliance monitoring program permit. The Regional Administrator will specify in such a permit the four elements of the ground-water protection standard: (1) The hazardous constitutents (§ 264.93); (2) the concentration limits for those constituents (§ 264.94); (3) the compliance point (§ 264.95); and (4) the complliance period (§ 264.96). The criteria used to establish these permit conditions are discussed in other sections of this preamble.

b. *Compliance Monitoring System*—The owner or operator must establish a monitoring system at the compliance point that will be used to determine whether the ground water protection standard is exceeded. The ground water monitoring system must satisfy the same general performance standards on well placement and installation (e.g., casing) that apply to detection monitoring systems installed at the compliance point.

c. *Concentration Limits*—The levels of hazardous constituents found at the compliance point must be compared to the concentration limits established in the ground water protection standard. The concentration limit for a constituent will be specified in the permit either in relationship to the background concentration of the constituent or as a specific concentration for the constituent. In both cases, statistical comparison procedures will be utilized.

In the first case, the concentration limit will be specified to allow for a determination of a statistically significant increase in the concentration of a constituent at the compliance point over the concentration of that constituent in ground water unaffected by a regulated unit. In most situations, the background concentration of a constituent will be specified in the permit as a result of pooling upgradient sample analyses over time, principally to account for seasonal variations in the naturally occurring ground water quality.

Where there is a high temporal correlation between ground water quality at the upgradient and downgradient monitoring wells, it may not be necessary to require the pooling of samples over time to account for seasonal variations. In such a situation, it would be acceptable to compare upgradient and downgradient ground-water quality each time the ground water is sampled. Accordingly, today's regulations provide that the Regional Administrator may allow for such a "single-point-in-time" comparison of upgradient and downgradient samples as an alternative to making comparisons of downgradient sampling results against a set background level that was based on a pooling of samples over time. Where this option is used, the Regional Administrator will specify in the permit a procedure for how background values will be calculated each time sampling occurs rather than specific background values.

The Agency has very limited information regarding the prevalence of temporal uniformity in ground water quality for hazardous constituents. The Agency invites comments regarding this phenomena where concentrations of constitutents in ground water vary over time but where the amount of variation at two different monitoring wells in the aquifer is virtually the same. Based on

such further information, the Agency may expand the use of the method just described for determining whether statistically significant increases occur in these regulations.

In the other case, the concentration limits specified in the permit will be either an MCL, for those constituents listed in Table 1 under § 264.94, or an ACL (alternate concentration limit) established under § 264.94(b).

When the concentration limit is one of the maximum concentration limits (MCL's) in Table 1, a problem arises when the MCL is quite close to the background value of the constituent. The MCL may be within the normal range of fluctuating background quality. Thus, when the monitoring system picks up a value that exceeds the MCL, it is not possible to tell whether the increase was due to leachate from a regulated unit or from normal fluctuations in background.

To account for this possibility, today's regulations provide that, when an MCL is within the normal range of background fluctuations of a constituent, the background value will be used as the concentration limit. This approach will provide reasonable confidence that corrective action will be triggered by an increase over an MCL only when the increase was not caused by normal background fluctuations.

The test used to determine whether the MCL or the background value will be used relies on a statistical concept. If analysis indicates that the MCL does not exceed the background value of a Table 1 constituent by a statistically significant amount, then the concentration limit will be based on the background value of the constituent. In addition, if the background value for a constituent is greater than the MCL, the background value will be used.

The system used for the collection of background data must meet the general performance standards applied to such systems. The data must be drawn from the proper wells as outlined under § 264.97(g) and must be expressed in a form necessary for the determination of statistically significant increases under § 264.97(h).

d. *Compliance Point Monitoring*—Under a compliance monitoring program, the owner or operator must sample ground water at the compliance point throughout the compliance period to determine whether a concentration limit is exceeded. Since a compliance monitoring program is used when hazardous constituents are in the ground water, EPA believes that sampling must be more frequent than it is in the detection monitoring program. EPA has, therefore, required that sampling should occur at least quarterly. The data collected must be expressed in a form necessary for the determination of statistically significant increases.

e. *Ground Water Flow and Direction*—The owner or operator must determine ground water flow rate and direction in the uppermost aquifer each time samples are taken at the compliance point. The rationale for this requirement is explained in the preamble to the detection monitoring program.

f. *Duty to Search for Additional Hazardous Constituents*—Since the hazardous constituents in a regulated unit will leak into ground water at different rates, it can be expected that the quality of leachate entering the ground water will change over time. Therefore, an assessment of leachate quality at the time that the leading front of the plume reaches the compliance point will not necessarily reflect the range of hazardous constituents that will appear at the compliance point during the compliance period.

To account for this fact, owners or operators are required to sample and analyze the ground water to determine whether additional hazardous constituents besides those identified in the permit are appearing at the compliance point. In order to make this determination, the owner or operator must analyze the ground water samples for Appendix VIII constituents at least annually. If this analysis reveals constituents that had not been found in the sampling used in the initial determination of the list of hazardous constituents, then the owner or operator must report his findings to the Regional Administrator. It will then be up to the Regional Administrator to reopen the permit to add hazardous constituents and appropriate concentration limits to the facility permit. The cause for this permit modification would be the new information that the permittee has found additional constituents in the ground water. See § 122.15(a)(2).

g. *Sampling and Analaysis Procedures*—As in the detection monitoring program, the owner or operator must develop sampling and analysis procedures and methods that satisfy general performance standards set forth in the regulations. As described in the preamble discussion of the detection monitoring program, those standards are designed to assure that the program develops accurate and reliable information on ground-water quality at the facility.

h. *Determining Statistical Significance*—Each time samples are taken at the compliance point, the owner or operator must determine whether there is a statistically significant increase at the compliance point over the concentration limit for each constituent. The procedures to be used must meet the requirements in § 264.97(h). As the preamble discussion of that section indicates, different criteria apply to statistical procedures used in the compliance monitoring program than apply in the detection monitoring program. The statistical analysis must be performed within a reasonable period of time, as discussed in the preamble to the detection monitoring program.

i. *Response to Finding of Statistical Significance*—If the analysis indicates a statistically significant increase over a concentration limit, the owner or operator must respond in a manner that is analogous to what is required in the detection monitoring program when a statistically significant increase is found. The owner or operator must notify the Regional Administrator in writing within seven days about what constituents have exceeded their concentration limits. He must also begin to prepare an application for a permit modification to establish a corrective action program for the facility, unless one has already been established in the permit. Where the monitoring data developed during the course of the compliance monitoring program provide the basis for knowing that concentration limits are exceeded, the cause for this permit modification would be the new information of the increase over a concentration limit. See § 122.15(a)(2).

The owner or operator has 90 days to submit an application for a corrective action program. EPA believes this is a reasonable time frame, particularly in light of the fact that in the normal course of permitting he will have aleady submitted an engineering feasibility study for corrective action as part of the deliberations over his compliance monitoring program.

The owner or operator will not have submitted an engineering feasibility study previously, however, if he had attempted to make ACL demonstrations for all Appendix VIII constituents found at the compliance point or if the only constituents found were NIPDWR constituents which were not above levels found in Table 1 under § 264.94. (These two situations are discussed in Section VII.D.11.h. of this preamble.) Where these two situations arise, the regulations allow the owner or operator 180 days, rather than 90 days, to submit the application for a corrective action program.

The application for the corrective action program must provide sufficient

information to allow the Regional Administrator to make two findings. First, the Regional Administrator must be able to determine that the corrective action proposed by the applicant will be able to bring the facility back into compliance with the ground-water protection standard for the facility. This will require a detailed description of how the applicant intends to remove or treat the ground water. This information should also describe any treatment processes that the owner or operator intends to use on ground water that is removed from the aquifer. EPA is particularly concerned that units used to treat these waters meet any applicable requirements of the hazardous waste regulations.

Second, the application must describe a ground-water monitoring program that will be used to demonstrate the effectiveness of the corrective action. In many cases, this program will be essentially the same as the compliance monitoring program, because that program was the one used to determine that the ground-water protection standard was exceeded. Some modifications to the compliance monitoring program may be appropriate, however, to demonstrate the effectiveness of corrective action. For example, it may be necessary to increase the frequency of monitoring or to increase the number of wells at or near the compliance point in those areas where the plume appears to be concentrated. In order to fully evaluate the effectiveness of the corrective action program, owners or operators may wish to install additional monitoring wells beyond the compliance point.

As in the detection monitoring program, the owner or operator may file a report along with, or in lieu of, the permit modification application that explains why the statistically significant increase was caused by a source other than a regulated unit or was the result of error in sampling, analysis, or evaluation. As in the detection monitoring program, the owner or operator takes the risk that he will ultimately be in violation of his permit if he files the report in lieu of a permit application and the report fails to demonstrate that the statistically significant increase was not caused by leachate from a regulated unit.

j. *Duty to Modify Program*—As in the detection monitoring program, the owner or operator has an ongoing responsibility to make sure that the compliance monitoring program continues to comply with the requirements of this section and to seek permit modifications when needed. This provisions is explained in more detail in the preamble for the detection monitoring program.

k. *Duty to Ensure Compliance with the Ground-water Protection Standards*—As described in the preamble for the detection monitoring program, EPA believes that the current right to dispose of waste carriers with it a correlative duty to control adverse effects from that activity that appear in the future. Therefore, today's regulations indicate that the facility permit will include a general condition obligating the owner or operator to conduct future monitoring and corrective action measures as may be necessary to achieve the ground-water protection standard.

13. *Corrective Action Program (§ 264.100).* If hazardous constituents from a regulated unit exceed the ground-water protection standard established for a regulated unit, the owner or operator must have a corrective action program designed to bring the unit back into compliance with the standard. A corrective action program may stand on its own in the permit or may be specified in conjunction with a compliance monitoring program. The following describes the general elements of a corrective action program.

a. *Ground-water Protection Standard*—The goal of the corrective action program is to bring the regulated unit into compliance with the ground-water protection standard. Accordingly, the elements of the ground-water protection standard will be specified in the permit including the list of hazardous constituents, the concentration limits for each constituent, the compliance point, and the compliance period.

b. *Objective of Corrective Action*—While the general goal of the corrective action program is to achieve compliance with the ground-water protection standard, today's regulations indicate that this goal must be achieved by removing the hazardous constituents or treating them in place. This is consistent with the general ground-water protection strategy described earlier in this preamble. EPA believes that the appropriate way to protect ground water is to prevent generation of hazardous waste leachate, where feasible, and to remove such leachate from the subsurface environment when it appears. EPA believes that in situ treatment of hazardous constituents is analogous to removal because it also provides long/term protection of human health or the environment. While the Agency recognizes that in situ treatment is an emerging technology, with chemical and biological techniques applied in only limited circumstances to date, in situ treatment may be an effective corrective action strategy.

EPA does not believe that measures which only prevent migration of hazardous constituents in the ground water for some period of time provide an adequate level of protection. Such approaches simply defer adverse ground-water effects until some later time. Therefore, EPA does not believe that measures which only modify the gradient in the aquifer or create barriers (*e.g.*, slurry walls) provide a fully adequate solution under the Subtitle C program. Such measures can, however, be combined with other measures, such as counterpumping, to constitute an adequate corrective action program.

The regulations do not describe in great detail the specific measures that must be taken for corrective action. Corrective action measures are highly dependent on site-specific factors. Moreover, the state of the art of ground-water cleanup will probably improve substantially in the next few years. EPA does not want to establish rigid guidelines for corrrective action that stifle innovation in this area. Therefore, EPA will rely on the broad performance standards established in § 264.100 to evaluate specific corrective action measures.

c. *Timing of Corrective Action*—EPA recognizes that is will take time to install corrective action measures and that the time needed will depend on site-specific factors. Therefore, today's regulations do not attempt to establish a minimum time period for installing corrective action measures. Instead, the regulations simply provide that corrective action must begin within a reasonable period of time to be specified in the permit by the Regional Administrator.

Some permits may combine the elements of the compliance monitoring program with the corrective action program. In such a situation, the appropriate response to the discovery of a statistically significant increase is the initiation of the approved corrective action program rather than submission of a permit modification application. In § 264.100(c), today's regulations make this point clear.

Corrective action must extend as long as is necessary to achieve the ground-water protection standard. EPA has not specified a minimum time limit within which the standard must be achieved. EPA believes that any such limit should be based on site-specific factors. EPA anticipates that the owner or operator may be switching back and forth

between the compliance monitoring and corrective action mode during the course of the compliance period as ground-water quality fluctuates above and below the concentration limits specified in the permit. EPA should be able to specify in the permit the conditions under which these shifts in the mode of the monitoring and response program take place such that permit modifications will not be necessary.

Corrective action must continue through the compliance period to the extent necessary to meet the ground-water protection standard. If corrective action is still needed at the end of the compliance period, the owner or operator must continue the corrective action until it has achieved the standard. In defining what it means to "achieve" the standard, EPA must indicate how long the owner or operator must demonstrate through monitoring data that the ground-water protection standard has not been exceeded. In order to provide an adequate margin of safety, EPA has provided that the ground-water protection standard must not be exceeded for a period of three consecutive years before the corrective action program can be terminated.

d. *Duty to Clean Up Contamination Past the Compliance Point*—At the time that EPA considers a regulated unit at an existing facility for permitting, it is possible that a plume of contamination will have migrated beyond the compliance point. Clearly, such a plume of contamination can present a risk of adverse effects on human health and the environment. Corrective action measures designed to remove the plume of contamination at the compliance point will be at least partially successful in controlling contamination beyond the compliance point, but there is no guarantee that such a plume will be completely removed.

Some or all of the plume may be within the facility property boundary and thus within the areal jurisdiction of Section 3004. Therefore, it is within EPA's authority to require cleanup of this contamination under the permit.

EPA has decided that it is reasonable to require the owner or operator to take corrective action measures to clean up a plume (or portion of a plume) of contamination that has migrated beyond the compliance point but not beyond the property boundary as a condition for receiving a permit under today's regulations. EPA's decision is based on several considerations. First, the existence of such a plume may constitute a very real and present danger to human health and the environment. In fact, the proximity of such a plume to the facility property boundary indicates that it may present a threat that is even more imminent than that presented by the portion of the plume that is just arriving at the compliance point at the time of permit consideration.

The fact that the plume can be linked to wastes placed before these regulations were issued does not negate the fact that the existence of the plume is a present condition that may cause present and future harm to human health and the environment if the plume is allowed to continue to migrate. In requiring the corrective action program to address the plume beyond the compliance point, EPA is not imposing new requirements directly on past practices, but rather is requiring the owner or operator to address a current ground-water contamination problem that may cause present and future damage.

Second, this approach, in conjunction with the decision about what constitutes a regulated unit, provides fair notice to the owner or operator about what his responsibilities will be. The ground-water protection standard in today's regulations only applies to plumes of contamination from regulated units (i.e., units that receive waste after the effective date of today's regulations). If the owner or operator can show that a particular plume does not originate from a regulated unit, the permit would not require him to clean up such a plume. (EPA could, of course, seek cleanup of such plumes under other authorities, including Section 7003 of RCRA.) Thus, the regulations provide the owner or operator with a reasonable time period (i.e., the time between the issuance of today's regulations and their effective date) to define the units (and thus the potential plumes) that will be subject to the requirements of this Section.

Third, this approach links the scope of the owner or operator's responsibility to the scope of his control. The property boundary defines the area within which the owner or operator can feasibly conduct corrective action measures such as counter-pumping. In some situations, it might also be possible for him to obtain permission to enter neighboring property to conduct corrective action to reach a plume that has migrated off-site. EPA has not required, however, that the owner or operator attempt to clean up the portion of a plume from a regulated unit that has migrated beyond the facility property boundary because there is no guarantee that the owner or operator could obtain such permission. It is inappropriate, therefore, to impose this as a general requirement for all facilities. Plumes migrating beyond the property boundary could, however, be addressed under other authorities such as CERCLA.

Accordingly, today's regulations require that the owner or operator take corrective action to clean up significant plumes (or portions of plumes) of contamination from regulated units that are in the ground water between the compliance point and the facility property boundary at the time of permit consideration. The regulations require (in § 264.91(a)) that a corrective action program is necessary if hazardous constituents under § 264.93 exceed concentration limits under § 264.94 in the ground water between the compliance point and the downgradient facility property boundary. The nature of that corrective action program is defined in § 264.100(c).

The Regional Administrator will determine whether there is a need to clean up a plume beyond the compliance point using some of the same general criteria used to determine whether the groundwater protection standard is exceeded. Thus, corrective action is triggered if hazardous constituents under § 264.93 from the regulated unit exceed concentration limits under § 264.94. These same general criteria will be used to define when the corrective action is complete. Corrective action measure may be terminated when hazardous constituents no longer exceed their respective concentration limits.

The corrective action program to clean up a plume beyond the compliance point must be initiated and completed within a reasonable period of time, considering the extent of contamination. The permit will specify the measures that the owner or operator will take to satisfy this provision and will set forth a schedule for when these activities must be completed. These measures may be carried out in conjunction with other corrective action measures designed to achieve compliance with the ground-water protection standard. In § 264.100(d), today's regulations also indicate that the monitoring program needed to determine whether the ground-water protection standard is being achieved should also be capable of determining whether § 264.100(e) is being met where there is a plume from a regulated unit beyond the compliance point.

Today's regulations do not specify that the facility property boundary, for purposes of this provision, is the boundary in existence at any particular point in time. While EPA expects that, in most cases, a facility's property boundary will not change substantially between the effective date of these regulations and the date of permit

issuance, it is possible that an owner or operator may sell a piece of the property during that interim period. EPA is concerned that today's regulations should not create an incentive for an owner or operator to sell pieces of the facility property in order to avoid the responsibility of cleaning up plumes (or portions of plumes) of contamination under this provision.

Accordingly, EPA seeks public comment on how it can better define the concept of the facility property boundary to avoid such undesirable results. Specifically, EPA requests comment on whether the regulations should require corrective action at permitting for any plume (or portion of a plume) that is within the facility property boundary as it existed on the effective date of these regulations, the date that the permit application was submitted, the date of permit issuance, or some other point in time.

e. *Corrective Action Monitoring*—The corrective action program must include a monitoring program that is capable of demonstrating that the corrective action measures have been successful. The monitoring program should be based on the compliance monitoring program of § 264.99, since this is the program that is designed to determine compliance with the ground-water protection standard. Where a compliance monitoring program is established in the same permit as the corrective action program, or has been established in an earlier permit, such a program should be sufficient for the corrective action monitoring. In some cases, however, it may be necessary to have more frequent monitoring or to have a different configuration of wells during the corrective action stage than during the compliance monitoring stage. The Regional Administrator will specify in the facility permit the monitoring program to be used. It must be at least as effective as the compliance monitoring program in determining whether the ground-water protection standard is exceeded.

f. *Reporting*—Today's regulations provide that the owner or operator must report in writing semi-annually on the effectiveness of the corrective action program. EPA believes this requirement is reasonable in light of the fact that the permit may not specify when corrective action must be completed. EPA believes that an ongoing reporting requirement is needed under these circumstances to ensure that the owner or operator does not simply continue to implement measures that are not achieving the ground-water protection standard.

E. Design and Operating Standards: General Discussion (Part 264, Subparts K,L,M,N)

1. *Introduction.* The Part 264 regulations promulgated today for surface impoundments, piles, landfills, and land treatment units used to treat, store, or dispose of hazardous wastes include a set of design and operating standards in Subparts K–N in addition to the ground-water protection requirements in Subpart F. The design and operating standards are of two types. First is a set of standards that are analogous and, in some cases, identical to the interim statutes standards that have already been established for these units in 40 CFR Part 265. These standards generally require sound operating practices. Second is a set of new and generally more rigorous standards that emphasize environmentally protective design and construction features as well as complementary operating and maintenance practices. This preamble discussion will focus on the latter set of standards.

In developing the design and operating standards, EPA has considered all of its previous rulemaking activities (see the discussion in section II of this preamble) and the public comments received as part of the rulemaking process. While the comments submitted to EPA were by no means uniform, the following general guidelines appear to reflect a broad consensus and, in EPA's opinion, a sound approach to writing the design and operating standards (as well as the Subpart F ground-water standards).

(1) The standards should reflect clearly articulated regulatory goals.

(2) The standards should be understandable by the regulated community and the general public and capable of being administered efficiently by permit-issuing authorities.

(3) The standards should require different units to achieve consistent environmental results, while providing ample flexibility for site-specific factors to be considered during the permitting process.

(4) The standards should be specific enough to provide as much certainty as possible, but, again, should be flexible enough to allow environmental results to be achieved in the manner that is most cost-effective for a specific combination of wastes, unit, and location and that does not stifle innovation.

Accordingly, the major feature of the Subparts K–N regulations promulgated today is a set of design performance standards. The standards clearly set forth the environmental results to be achieved (e.g., there must be no migration of wastes from a landfill during its active life) in terms of generalized design requirements (e.g., a landfill must have a liner to prevent the migration of wastes from the landfill during its active life).

The design performance requirement sets forth general performance goals (e.g., a liner must have appropriate chemical properties and sufficient strength and thickness to prevent failure). However, EPA recognizes that there are many ways to achieve such goals. Therefore, detailed specifications are not set forth in these rules but, rather, are left to be determined during the permitting process. EPA has developed in the past and will continue to develop technical manuals and guidance documents to assist permit applicants and permitting authorities in evaluating the appropriateness of various equipment, materials, and designs in the context of specific units, wastes and locations (see the discussion in Section VII. E.8. below.)

The design and operating standards generally apply to all surface impoundments, waste piles, land treatment units, and landfills, including both new and existing units. However, portions of units on which wastes have been placed prior to permit issuance are exempt from certain design requirements which would require burdensome and possibly hazardous retrofitting of the units. (See Section VII E.6. below.) Furthermore, the regulations provide a waiver from some design and operating standards if the permit applicant demonstrates that there will never be any ground water or surface water contamination if the waiver is granted.

2. *Major Features of the Design and Operating Standards.* The regulatory goal adopted in the design and operating standards is to minimize the formation and migration of leachate to the adjacent subsurface soil or ground water or surface water. Thus, while the ground water protection requirements are intended to result in detection, evaluation and, if necessary, correction of ground water contamination, the design and operating standards are intended to minimize the possibility of such contamination. Thus, these two sets of standards are complementary. One set is preventive; the other offers a cure for situations in which the preventive measures have not sufficed to eliminate threats to human health and the environment.

The regulatory goal of minimizing the formation and migration of leachate is

achieved differently with respect to different units. For land treatment units, the design and operating standards require that hazardous constituents be degraded, transformed, or immobilized within the treatment zone. Due to the unique features of land treatment units, these units are discussed separately below in Section VII.H. of this preamble.

For surface impoundments, piles, and landfills, any treatment that occurs is usually not instantaneous and is often incomplete. (An exception is neutralization surface impoundments in which treatment may be very quick and complete. See the discussion above in Section IV.B.2. of this preamble.) Therefore, EPA has assumed in writing the standards that some hazardous constituents will be capable of migrating from these units to adjacent subsurface soil or ground water or surface water. For these units, therefore, EPA has developed regulations to minimize the rate and volume of waste and leachate migration. The regulations have the following key features:

(1) Each impoundment, pile, or landfill (except existing portions) must have a liner that is designed and installed to prevent any migration of wastes out of the unit to the adjacent subsurface soil or ground water or surface water throughout the active life of the unit.

(2) To minimize the potential for release of hazardous constituents both during the unit's active life and after the unit is closed:

a. Piles and landfills must have leachate collection and removal systems (during their active lives and, after closure, until leacate is no longer detected), as well as measures to prevent run-on of liquids into the unit.

b. Surface impoundments must have all wastes and waste residues either removed or solidified at closure. Piles must have all wastes and waste residues removed at closure.

(3) To further minimize post-closure leaching of hazardous constituents, any unit in which hazardous constituents are not entirely removed or decontaminated at closure must have a final cover (cap) placed on top to minimize the percolation of liquids into the unit. The cap must be maintained until the end of the post-closure period.

3. *Rationale Underlying the Design and Operating Standards.* In developing standards for land disposal units, EPA considered and rejected the option of promulgating ground water standards in conjunction with only those operating requirements already in the Part 265 interim status standards. EPA expects that today's Part 264 ground water protection standards in Subpart F will, in most cases, adequately protect human health and the environment from ground water contamination. They also address surface water contamination threats to some degree, since land disposal units that contaminate surface water often do so by leaching waste constituents to ground water, which then serves as a conduit to adjacent surface water. However, EPA concludes that sound policy as well as the law support an approach that supplements those standards, where appropriate, with design and operating standards that minimize contamination threats by controlling the source of contamination, i.e., the unit itself.

First, at present, the technologies for detecting and remedying ground-water contamination, while fairly advanced, remain subject to error. To detect ground-water contamination, one must carefully study the hydrogeologic setting to properly place monitoring wells. Because each setting is unique and often is heterogeneous, occasional errors in well placement are inevitable despite the best efforts of owners and operators to comply with Subpart F. Furthermore, the technology of performing corrective action is new. The Agency's and the regulated community's experience in conducting remediation activities (beyond the feasibility study stage) is fairly limited to date. Thus, while ground-water monitoring and remediation techniques are important activities and thus are appropriately required in Subpart F, design and operating standards will significantly increase confidence by reducing the potential for ground-water contamination.

Second, corrective action can be expensive. It may involve pumping and treating large volumes of contaminated ground water for many years. In some cases, the owner or operator may lack the financial resources to perform the required corrective action. Elsewhere in this preamble (Section IV.B.1.) EPA discusses and invites public comment on options for financial responsibility requirements to address this problem. Any such requirements that might be promulgated are likely to reduce, but cannot eliminate entirely, the possibility that owners or operators of land disposal units will lack the finances needed to perform necessary corrective action. Furthermore, if ground-water contamination occurs after the owner or operator has completed all required post-closure maintenance and monitoring activities required in his permit, substantial sums of money may need to be drawn from the Fund established in CERCLA or otherwise expended by the public. Design and operating practices can reduce this problem by minimizing the amount and rate of leachate migration to the subsurface soil and ground water.

For the above reasons, EPA believes that design and operating standards are necessary to protect human health and the environment. EPA emphasizes, however, that despite the promulgation of design and operating standards, the Subpart F standards are also necessary to fully protect human health and the environment. Design and operating features, like the ground-water monitoring and response program, are effective but not fail-safe. Most land disposal units, however well designed, will eventually leak after closure to some extent. Furthermore, many existing units lack adequate liners and may already be leaking. When leaking occurs, EPA expects that compliance with the Subpart F requirements will, in most cases, result in detection of contamination that may threaten human health and the environment and in remediation of the threats. In addition, EPA anticipates that the technologies needed to implement Subpart F will continue to advance, just as they have rapidly improved in recent years. Thus, the standards promulgated today provide a two-part "prevention and cure" system, each part adding to confidence in the system as a whole.

This combined approach, including both design and operating standards and monitoring and corrective action requirements, comports with the language and intent of Section 3004 of RCRA. This Section requires EPA to promulgate regulations establishing such performance standards as may be necessary to protect human health and the environment, and direct that these standards include requirements respecting:

(1) Operating methods, techniques and practices as may be satisfactory to the EPA Administrator;

(2) Reporting, monitoring, and inspection;

(3) Location, design, and construction of facilities; and

(4) Contingency plans for effective action to minimize unanticipated damage from hazardous waste treatment, storage, or disposal.

EPA believes that the two-pronged approach promulgated today successfully addresses the various factors listed by Section 3004. We further believe that the regulatory approach will help a concerned public gain confidence that land disposal units permitted pursuant to the standards promulgated today will protect human health and the environment.

4. *Rationale for Requiring Liners that Prevent Migration of Wastes During the Active Life of the Unit.*

During our development of the requirement that each impoundment, pile, and landfill have a liner designed to "prevent" migration of wastes out of the unit during the active life of the unit, EPA considered requiring instead that the liner merely "minimize" migration. This distinction has significant practical consequences with respect to the types of materials that may be used for liners. For example, while a clay liner minimizes migrations, it does not completely prevent migration, since liquids will slowly enter the pores of the clay, move through it, and ultimately flow out of it.

EPA decided to require a design to prevent migration during the unit's active life. This standard, together with requirements to minimize post-closure migration, represent the best available technology to achieve the goal of minimizing the rate and volume of leachate migration for all time. Merely designing to minimize migration during the unit's active life would result in an increased risk of ground-water contamination both during the unit's active life and after closure.

When a synthetic membrane liner, for example, is installed in a landfill, the leachate collection and removal system installed above the liner (as required by today's regulations for landfills and piles) can achieve virtually a 100% removal efficiency. In contrast, if a clay liner is used, some leachate will seep into the liner rather than be removed through the drainage layer. This leachate will remain in the soil after closure and will likely migrate to the ground water at some future time.

Prevention, rather than minimization, of leachate migration similarly produces better environmental results in the case of surface impoundments used to dispose of hazardous wastes. As discussed in Section VII.F. of this preamble, an impoundment is not required to have a leachate collection system, and thus no leachate is removed during its active life. One of the regulatory options for closing a surface impoundment is to solidify remaining wastes and cover the impoundment with a low permeability cap (i.e., to close the unit in the same manner as a landfill). These measures will likely nearly eliminate further migration of hazardous constituents from the impoundment for the near term and will minimize migration into the distant future. If the liner has prevented migration throughout the active life of the impoundment, then all wastes and leachate will still be above the liner at closure where they can be dealt with relatively easily. But if the leachate has migrated into a soil-based (e.g., clay) liner prior to closure, future migration of these wastes is more likely. A liner that prevents rather than minimizes leachate migration provides added assurance that environmental contamination will not occur.

The above rationale does not apply fully to a pile or to a surface impoundment from which all wastes and waste residues will be removed at closure (i.e., "storage" piles or surface impoundments; some of these may treat the wastes as well as store them). Since all contaminated liners will be removed or decontaminated at closure, it is environmentally acceptable for leachate to enter into such liners during the pile's or impoundment's active life. For example, suppose that a five-foot clay liner (but not the underlying soils) received some leachate during the active life, after which the entire contaminated liner system is removed. In that case, the standard of preventing migration out of the unit during its active life would have been met, and the environmental goal of long-term minimization of leachate migration would also have been achieved.

In accordance with the rationale explained above, the regulation requires that landfills, surface impoundments, and piles have liners designed to prevent migration to the adjacent subsurface soil or ground or surface water during their active lives. First, it further provides that in the case of a storage unit (i.e., a pile or a surface impoundment from which wastes and waste residues will be removed or decontaminated at closure), the liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the unit, provided that the liner is removed at closure. Thus, in appropriate situations, clay or admixed materials may be acceptable liner materials. Second, in the cases of landfills and of surface impoundments used to dispose of hazardous waste, the regulations provide that the liner must be constructed of materials that prevent wastes from passing into the liner. Synthetic liners are the only commonly-used materials of which EPA is aware that would meet this standard.

EPA recognizes that even a thin, 30-mil synthetic liner can sorb a *de minimis* quantity of wastes into its structure and allow some vapor to pass through. EPA of course, does not interpret such *de minimis* sorption or passage to violate the requirement that disposal units not allow wastes to pass into the liner. However, clay liners, even if relatively "tight," would violate this requirement.

It should be noted that the standard of designing to prevent migration is a design performance standard. It requires that liners be "designed constructed and installed" to prevent migration during the unit's active life. If the permittee complies with this requirement and the liner fails subsequent to installation despite such compliance, the permittee will not be in violation of the permit as it relates to this standard.

EPA is not requiring that liners prevent migration of wastes after the unit is closed rather, the regulations require that post-closure migration of liquids be "minimized". Absolute prevention of migration forever or for very long times is beyond the current technical state of the art. Thus, at some time some migration will probably occur. Thus, instead of relying on bottom liners to provide post-closure protection of ground water, EPA is relying principally on final cover (caps), as discussed below.

5. *Closure of Land Disposal Units.* A cap is a top liner, placed on the unit at closure. Caps, like bottom liners cannot be expected to last forever. However, a properly designed and maintained cap can prevent the entry of liquids into the closed unit, and thus the formation and migration of leachate, for many years and can minimize it thereafter in the absence of damage. Therefore, EPA requires that the cap be designed and constructed to provide long-term minimization of the movement of liquids into the closed unit. Because clays will generally last longer than synthetic materials, clay caps rather than synthetic caps should usually be the materials chosen to provide long-term minimization.

To avoid the build-up of liquids in the closed landfill or impoundment (the "bathtub effect") EPA requires that the cap be as impermeable as the bottom liner. This will require the installation of a synthetic membrane cap whenever the bottom liner is synthetic. Thus, many units will be required to have two-layer caps consisting of a synthetic layer to avoid the bathtub effect and provide short-term prevention of infiltration, and a clay layer to provide long-term minimization of precipitation infiltration and leachate generation. EPA believes that this will provide maximum short-term and long-term protection of human health and the environment.

EPA recognizes the need for certainty and uniformity in implementing the regulatory concept of "long-term minimization" of liquids migration.

Therefore, EPA is currently developing numerical limits for liquid migration. The technical approach being used is discussed in EPA's Guidance Document for Landfill Design—Liner Systems and Final Cover (see Section 9 of this preamble discussion below). EPA hopes to propose these numerical limits within six months.

6. *Existing Portions.* The design and operating standards contain a limited exemption for "existing portions" (defined today in § 260.10). An existing portion is any area on which waste has been or is being placed at the time of permit issuance. This may be one cell or trench of a landfill, an impoundment, or a section of a pile. Existing portions are exempt from the requirements to install liners and leachate collection systems. However, they remain subject to the remainder of the design and operating requirements (*e.g.*, placing a cover over wastes remaining at closure) as well as the ground-water protection requirements of Subpart F.

Installing liners and leachate collection systems at existing portions would create severe difficulties for many facilities. Owner or operators would have to remove wastes before installing liners and leachate collection systems. This presents several types of problems.

Some facilities may lack space in which to store the wastes temporarily while retrofitting. Even worse, in some cases, the ongoing waste disposal operation is integral to production operations. For example, some facilities use large volumes of water as part of their manufacturing processes and use surface impoundments to treat wastewater or to store or dispose of sludge. Unless additional space is available to construct a new impoundment to receive the wastes being removed from the existing impoundment, it may be impossible to retrofit the old impoundment without shutting down production facilities.

A second problem is safety. Exhuming wastes from a landfill, for example, may create significant hazards for workers and others who are nearby and may be exposed to the wastes.

The Congress recognized the problem of retrofitting existing units when it amended Section 3004 of RCRA in 1980 to add the following provision:

> In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations.

This provision does not absolutely require EPA to have separate standards for new and existing units but does indicate that EPA must consider whether distinctions should be drawn. The legislative history of this provision specifically indicates that the Congress was concerned about burdensome retrofitting problems that existing units might have in complying with location and design requirements that EPA might appropriately specify for new portions. H.R. Rep. No. 96–1444 (1980).

The limited exemption for existing portions in these rules implements the legislative intent. The exemption applies only to those requirements which would require dangerous or impracticable retrofitting at existing units (i.e., bottom liners and leachate collection and removal systems). Moreover, it applies only to existing portions of existing units. New portions of existing units (e.g., lateral extensions of existing landfills such as new cells or trenches) are not entitled to the exemption since they would not experience the retrofitting problems pertaining to existing portions.

EPA is concerned that this exemption may be too broad in some situations and too narrow in others. It may be that there are some situations where waste can be removed with minimal risk and at a reasonable cost even at existing portions, so that the policy concern behind the exemption is inapplicable. For example, it may be quite simple to remove a small waste pile or a small or partially filled landfill trench and place a liner underneath it. Similarly, it may be feasible to retrofit an existing surface impoundment that is used infrequently (e.g., to hold overflows) or that is not essential to daily production needs. Also, EPA realizes that there may be little environmental gain in requiring owners and operators of units very near the end of their operating life to comply with the liner requirements. For example, if 95 percent of the capacity of a landfill is consumed at the time of permitting, there may be little benefit to requiring a liner system under the remaining 5 percent. EPA does not currently have enough information to distinguish among various types and sizes of existing portions to fashion a narrower exemption. EPA requests public comment about the scope of the exemption and welcomes suggestions about how this exemption can be better crafted to address those situations where substantial retrofitting would not be necessary or could be accomplished without causing environmental harm or excessive burdens or, alternately, where upgrading practices at existing facilities may provide *de minimis* additional protection.

7. *Waiver from the Liner and the Leachate Collection and Removal Requirements.* If an owner or operator of an impoundment, pile, or landfill can demonstrate to the Regional Administrator that the use of alternate design and operating practices, in combination with location and waste characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water forever, then he may obtain an exemption from the liner and the leachate collection and removal requirements. The basis for the exemption is that such requirements become superfluous if no potential threat to ground water or surface water will occur at any time.

An example of a situation for which this exemption may be appropriate is one where: (1) A large unsaturated zone below the unit is composed of materials that are capable of attenuating any hazardous constituents in the leachate before it reaches ground water or surface water (e.g., attenuating hazardous constituents through ion exchange); (2) the unit is located in an arid area in which precipitation does not recharge ground water; and (3) the unit handles only a small quantity of wastes. Given an appropriate combination of such factors, together with proper design and operating practices, (e.g., the use of a thick liner possessing substantial attenuative capacity), it may well be that the owner or operator could demonstrate that no hazardous constituents could ever migrate as far as the ground water or surface water.

Although the requirements for liners and leachate collection and removal systems apply only during the life of the unit, the waiver of these requirements is based on a demonstration that migration to ground or surface water will not occur at any future time. These requirements, while operative during the unit's active life, are designed to ensure that the post-closure migration of liquids is minimized to the extent that ground- or surface-water contamination will never occur. Therefore, a waiver of these requirements must logically be based on a showing that the equivalent environmental result will be achieved, i.e., that ground- or surface-water contamination will never occur.

EPA also considered granting a waiver from the closure provisions in situations as described above, where it is demonstrated that hazardous constituents cannot reach the ground water. However, the closure provisions have other benefits in addition to ground-water protection, including: (a) Prevention of the "bathtub" effect (i.e.,

filling with leachate and overflowing); (b) protection of surface water from run-off; and (c) discouragement of direct access to the wastes. The Agency has, therefore, decided not to waive the closure requirements where ground-water contamination is not possible.

Another waiver from the design and operating requirements considered by the Agency involved facilities located over aquifers which are not underground sources of drinking water (exempted aquifers under the Safe Drinking Water Act—see 40 CFR 122.35 and Section VII.D.5.c. of this preamble. The argument can be made that if an aquifer or a portion of an aquifer is, for some reason, not usable as a drinking water supply, then there is little reason to install devices (e.g., liners) to protect it. The Agency is concerned, however, that exempted aquifers or portions of aquifers under the Safe Drinking Water Act may be only temporarily exempted in some cases, and that they may flow into nonexempted portions, into surface water bodies, or into nonexempted interconnected aquifers (e.g., underlying aquifers). The Agency has not had time, however, to fully evaluate to what extent, if any, such an exemption may be protective and has, therefore, not included it in this promulgation. Existing facilities over exempted aquifers or exempted portions of aquifers will, however, be considered low priority for permitting pending review of this issue.

The Agency solicits comments on these and other waivers from the design and operating requirements which might provide adequate protection.

8. *Special Provisions for Double-lined Units: Exemption from the Ground Water Protection Requirements of Subpart F.* The design and operating standards contain special sets of standards for surface impoundments, piles, and landfills with double liners and leak detection systems. Compliance with these standards is not mandatory. However, if an owner or operator voluntarily applies for and is issued a permit to comply with these special standards (in addition to the other standards generally applicable to these units), then he is not subject to the ground water protection regulations contained in Subpart F (except under special circumstances discussed below).

These special standards require that there be two liners underlying the unit and a leak detection system between the two liners. The two liners must be designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. This can be achieved by lapping or sealing the edges of two synthetic membrane liners at the surface. A leak detection system is any system (e.g., a drain and pump, or appropriate instrumentation) that enables the owner or operator to detect whether any liquid has entered into the space between the liners. If liquids are detected in the leak detection system, it may be concluded that the liquids resulted from a leak in one of the liners. Some water may enter the space between the liners at the time of installation. This would occur only once, at the time of unit start-up. A prudent owner or operator would remove this water at that time, since the presence of water in the leak detection system at a later time will be assumed to indicate that one of the liners is leaking.

If liquid leaks into the leak detection system, indicating a leak in at least one of the two liners, the owner or operator must notify the Regional Administrator within seven days after detecting the leak. He then has two options. One is to repair or replace the liner and obtain a certification from a qualified engineer that the leak has been stopped. This must be done within a period of time specified in the permit. The period of time should be set to ensure expeditious repair or replacement but, since one liner is still intact, can be set reasonably to cause minimal disruption of production processes that are dependent on the unit's continued operation.

For many units, repair or replacement is impractical, just as retrofitting an existing portion to install a liner is impractical, as discussed in the preceding section of this preamble. The second option is to forfeit the exemption from the Subpart F ground-water protection standards and to begin to comply with a detection monitoring program, under § 264.98, to ensure that any migration of leachate to ground water will be detected. However, this option is available only if such a program is already incorporated in the permit. Otherwise, after detection of the leak, ground-water contamination could ensue while proceedings are still being conducted to modify the permit to establish a detection monitoring program.

Ordinarily, a permit written for a double-lined unit seeking an exemption from Subpart F would not contain any detection monitoring requirements. In that case, if an owner or operator discovers a leak in the leak detection system, he will have to repair or replace the leaking liner or else be in violation of the permit. Therefore, EPA recommends that those who anticipate retrofitting problems in attempting to repair or replace leaking liners should request that detection monitoring programs be established in their permits in accordance with the requirements of § 264.98, as contingent requirements. Such requirements would be automatically triggered in the event of a leak, but would not have to be complied with until such a leak occurred. The permit would specify well placement, detection parameters to be monitored, and the frequency of monitoring. If a leak occurred, the permittee would then install the wells and begin monitoring in accordance with a schedule set forth in the permit.

The regulations require that the liners must meet the requirements normally applicable to liners in single liner systems: they must prevent the migration of wastes to subsurface soil or to ground water or surface water during the life of the unit. This is consistent with the policy objectives outlined in Sections VII.E.1. and VII.E.2. above. Furthermore, it should be noted that, as a practical matter, owners or operators seeking to use this exemption from Subpart F will insure that both liners prevent migration. Otherwise, leakage into the leak detection system will occur, resulting in the need to repair or replace the leaking liner or begin groundwater monitoring, as discussed above.

The leachate collection and removal requirements for single-lined piles and landfills also apply to double-lined systems. The leachate collection and removal system must be placed on top of the upper liner, and must be maintained and operated to collect and remove the leachate. This implements the policy objective of reducing the amount of leachate that can leach in the future to the subsurface soil or ground water or surface water.

Finally, to be eligible for the exemption from the Subpart F ground-water protection requirements, a double-lined unit (including the liners and leak detection system) must be placed entirely above the seasonal high water table. Placement of units in the ground water poses special problems associated, among other things, with external pressures applied by the saturated earth. The Agency is concerned that these pressures can cause disruption (collapse or caving in) of the liner system and disruption of the leak detection system to the point that it may not work. While collapse of the liner system can occur when a single liner unit is located in the ground water, the ground-water monitoring system can be expected to function to detect contamination. Since ground-water monitoring is waived for double-lined facilities, it is imperative that the leak detection system function. The Agency

is not confident at this time that it can specify design safeguards that will ensure continued function when the unit is placed in the saturated zone (i.e., in the ground water).

9. *Specification of Design and Operating Requirements in Permits.* The design and operating standards in these rules are written as performance standards. The purpose in using the performance-standard approach is to address the legitimate concern of many commenters that the regulatory standards provide flexibility in meeting the performance goals established by EPA. This allows the use of cost-effective, site-specific designs, equipment, and operating practices, and encourages innovation.

In promulgating performance standards, EPA is relying on the issuance of permits to clearly establish the specific designs and operating requirements which each individual owner or operator must comply with. It is thus the permit-issuing authority's task to translate general standards into specific detailed obligations. The permit writer will do so in accordance with the procedural requirements of 40 CFR Part 124, which provide for the issuance of a draft permit, documentation explaining the basis for the conditions in the draft permit, a public comment period a public hearing if requested, the issuance of a final permit, and a right of administrative appeal.

The regulations for each type of land disposal unit contain a provision that requires that the Regional Administrator will specify in the permit all design and operating practices that are necessary to insure that the general design and operating standards are complied with. For example, the landfill standards require that leachate depth over the liner not exceed one foot. This requirement may be complied with by using a combination of design features (*e.g.*, slope and permeability of the drainage layer above the liner) and operating practices (*e.g.*, the amount of bulk liquids placed in the landfill) based upon assumptions concerning natural conditions (*e.g.*, expected precipitation rates). The permit writer will not only approve the design features but will also specify the operating practices in the permit. The documentation prepared to support the permit issuance (a statement of basis under § 124.7 or a fact sheet under § 124.8) would indicate the assumptions concerning natural conditions that were used in deriving appropriate design and operating conditions. Thus, the design features and operating practices incorporated in the permit will be those used by the owner or operator to demonstrate compliance with the performance standard (*i.e.*, the one-foot depth limit).

10. *Technical Resource Documents and Guidance.* EPA recognizes the need for guidance to assist applicants in understanding what specific designs and operating practices would be considered acceptable to EPA and to assist permit writers in establishing specific permit conditions. Accordingly, EPA has developed two groups of documents.

The first group is a series of eight detailed technical resource documents dealing with various technical issues. These documents discuss (a) facility design and operating technologies, and (b) methods for evaluating the performance of designs, but are not necessarily correlated with the regulations. These documents, in their current draft form (EPA expects to revise them by early 1983), are available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. The documents are as follows:

(1) Evaluating Cover Systems for Solid and Hazardous Waste (EPA Publication No. SW–867, NTIS Publication No. PB–81–166–340).

(2) Hydrologic Simulation on Solid Waste Disposal Sites (EPA Publication No. SW–868, NTIS Publication No. PB–81–166–332).

(3) Landfill and Surface Impoundment Performance Evaluation (EPA Publication No. SW–869, NTIS Publication No. PB–81–166–357).

(4) Lining of Waste Impoundment and Diposal Facilities (EPA Publication No. SW–870, NTIS Publication No. PB–81–166–365).

(5) Management of Hazardous Waste Leachate (EPA Publication No. SW–871, NTIS Publication No. PB–81–189–359).

(6) Guide to the Disposal of Chemically Stabilized and Solidified Waste (EPA Publication No. SW–872, NTIS Publication No. PB–81–181–505).

(7) Closure of Hazardous Waste Surface Impoundments (EPA Publication No. SW–873, NTIS Publication No. PB–81–166–894).

(8) Hazardous Waste Land Treatment (EPA Publication No. SW–874, NTIS Publication No. PB–81–182–107).

The second group is a set of four guidance documents correlating to the most important performance requirements (*e.g.*, liners and caps) contained in the design and operating standards promulgated today. These documents contain design specifications which the Agency believes will generally lead to compliance with the performance requirements. The purpose of these documents is to reduce the uncertainty associated with translating the general performance standards into specific and operating requirements for particular units. Thus, if an applicant follows one of the example specifications set forth in the guidance, he will generally receive a draft permit from EPA. (Of course, the final permit may contain different provisions from the draft permit, based upon an evaluation of comments received on the draft permit.)

At present, the draft guidance documents contain only a few design examples. The examples will be expanded over time as EPA gains experience implementing the regulations. The current drafts are available at U.S. Environmental Protection Agency, Central Library, Room 2404, 401 M Street, S.W., Washington, D.C. 20460 and in EPA's Regional office libraries. The documents are:

(1) Surface Impoundments—Liner Systems, Final Cover, and Freeboard Control;

(2) Waste Pile Design—Liner Systems;

(3) Land Treatment Units;

(4) Landfill Design—Liner Systems and Final Cover. These documents will soon be available from the National Technical Information Service. EPA will announce their availability in the **Federal Register.**

F. Surface Impoundments (Part 264, Subpart K)

Subpart K contains the design and operating standards for surface impoundments used to treat, store or dispose of hazardous waste. The basic requirements are: (1) A liner to prevent migration of wastes out of the impoundment into the subsurface soil and ground water or surface water throughout the impoundment's active life (with an exemption for existing portions); (2) prevention of overtopping the sides of the impoundment; (3) assurance of structural integrity; and (4)(a) removal or decontamination of waste residues and contaminated soils and equipment at closure, or (b) solidification of remaining wastes, capping the wastes and conducting post-closure care. An exemption from the ground-water protection requirements of Subpart F is provided for impoundments that have double liners and leak detection systems. A variance from the liner requirement is provided to any impoundment if the owner or operator demonstrates to the Regional Administrator that hazardous constituents will never migrate from the impoundment into ground water or surface water.

Many of these features of the Subpart K regulations are discussed above in Section VII.E. of this preamble. The remainder are discussed below.

1. *Relationship to Previously Promulgated or Proposed Rules for Permitting Surface Impoundments.* These rules supersede two previous regulations covering surface impoundments. On January 12, 1981, EPA promulgated Subpart K standards applicable only to storage surface impoundments (impoundments that are designed to prevent migration of wastes out of the impoundments during active life and that have all wastes and waste residues removed at closure). These rules required surface impoundments to install double liners and leachate detection, collection, and removal systems and to remove all wastes at closure (40 CFR Part 264 Subpart K, 46 FR 2802). No ground-water monitoring or remediation requirements were established for these impoundments. The regulations did not cover surface impoundments used to dispose of hazardous wastes.

Many members of the regulated community objected to the January 12, 1981 regulations as inappropriate for existing impoundments because extensive retrofitting would be required for many existing sites. They argued that such retrofitting would require costly reconstruction and could in some cases result in shutting down plants, resulting in severe economic disruption. (See the discussion of retrofitting in Section VII.E.6.) On October 20, 1981, EPA proposed to suspend the effective date of these rules, as applied to existing impoundments pending a re-examination of the rules' appropriateness for existing impoundments (46 FR 51407). Pending this reexamination, EPA announced that it would not begin processing permit applications for existing surface impoundments, although EPA announced willingness to process voluntarily submitted applications.

Subpart K, as promulgated on January 12, 1981, is entirely superseded by the new Subpart K promulgated today. Today's regulations have a broader scope; they cover both storage and disposal surface impoundments. Furthermore, the October 20, 1981 proposal is withdrawn. Similarly, the permitting policy announced in the proposal is now withdrawn, and, consistent with its overall permit priorities, EPA will begin requesting the submission of Part B applications from the types of storage surface impoundments described in the January 12, 1981 standards. In addition, on the effective date of today's regulations, EPA will begin calling in Part B permit applications for all types of surface impoundments covered by these standards.

Although the January 12, 1981, regulations have been superseded, many ideas in those regulations are incorporated in the new standards. For example, today's exemption of double-lined impoundments, piles and landfills from the ground-water protection standard is consistent with a similar approach in the January 12 regulations. Similarly, as was true under the January 12 regulations, post-closure care and monitoring are not required if all waste is removed at closure. Some of today's other requirements (e.g., overtopping controls and inspection) are also similar to those contained in the January 12 regulations.

However, today's regulations apply more broadly and are more flexible than the January 12 regulations. They cover disposal impoundments as well as storage impoundments. Even for impoundments used for storage (or storage and treatment only), more control options are now offered. Whereas the January 12 regulations required double liners, the new standards allow a single liner coupled with ground-water monitoring as an alternative option. And whereas the January 12 regulations required that all hazardous wastes and hazardous waste constituents be removed from the impoundment at closure, the new standards allow as additional options, the decontamination or solidification and stabilization or wastes left in place, covering by a cap, and post-closure monitoring and maintenance.

A second set of regulations superseded by today's standards are the Part 267 regulations for new surface impoundments and other land disposal units. See the discussion above in Section II.C. of this preamble.

It should also be noted that the new standards do not incorporate the "seepage facilities" concept for which standards were proposed (but never promulgated) on February 5, 1981 (46 FR 11216). Seepage facilities are lagoons that are designed intentionally to leak. Depending on design, they may also be considered as underground injection units or land treatment units. In any case, EPA has concluded that land disposal facilities should be designed not to leak at all during their active lives, except in rare cases (see § 264.221(b)). Therefore, most new impoundments must be lined in accordance with these standards, and land treatment facilities must prevent release of hazardous constituents by treating them within the treatment zone. Thus, new seepage facilities (other than existing portions that comply with the Subpart F ground-water protection requirements and other applicable requirements) may not be permitted under these regulations. EPA invites public comment on its decision not to authorize seepage facilities.

2. *Absence of Leachate Collection and Removal Requirements for Surface Impoundments.* Unlike piles and landfills, surface impoundments are not required to have leachate collection and removal systems above the liners. Surface impoundments are needed in many industrial facilities to properly treat wastewaters and thereby minimize surface water pollution. These impoundments are often designed to handle large flows, in many cases exceeding one million gallons per day. Often, rather long retention times are required to ensure appropriate treatment of the wastewaters. Since a surface impoundment is intentionally designed to hold liquid wastes, often in extremely large volumes, it makes little sense to require a virtual drain at the bottom. The liquid removed from the drainage layer would itself need to be managed, very likely in a second impoundment. No environmental purpose would be served by such a liquids management program.

The key liquids management goals, for impoundments as well as piles and landfills, are to prevent migration of waste during the unit's operating life and to minimize migration afterwards. The former goal is achieved by the liner. The second goal is best achieved, in the case of a surface impoundment, by dewatering, solidifying, or removing the contents, of the impoundment at closure.

The regulatory approach for surface impoundments achieves environmental results analogous to those achieved for piles and landfills. In most cases, these units must be designed, constructed, and installed so that no migration occurs during the active life of the facility. In the case of piles and landfills, which contain relatively small amounts of liquids, leachate collection and removal is practicable and results in a reduced volume of hazardous constituents available for post-closure migration. In the case of surface impoundments, for which the collection and removal of relatively large amounts of liquids is not practicable, removal or solidification of liquid wastes at closure likewise results in a reduced volume of hazardous constituents available for post-closure migration.

3. *Liner Requirements (Section 264.221(a)).* The regulations for liners in surface impoundments (as well as landfills and piles) include several subsidiary performance standards intended to assure that each liner will meet the performance goal of preventing the migration of wastes to adjacent subsurface soil or ground water or surface water at any time during the impoundment's active life. These standards consist of general common-sense engineering goals, leaving the details to be specified on a case-by-case basis in permits.

First, the liner must be constructed of materials that will resist degradation. Synthetic liners can be degraded by exposure to imcompatible wastes or leachate and in some cases by excessive exposure to sunlight. Clay liners can develop highly increased permeabilities (sometimes by several orders of magnitude) when exposed to certain types of chemicals. The regulation thus requires appropriate materials to be used to avoid such problems. When the permit is issued, the appropriateness of the liner material will be considered in the specific context of the wastes to be placed in the impoundment.

Second, liner materials must be of sufficient strength and thickness to prevent failure due to physical stresses (e.g., earth-moving equipment, dredging equipment, and the weight of large volumes of liquid wastes). While this requirement applies to all liners, it is especially crucial for synthetic liners, which can rupture if they are mishandled or are too thin. Most synthetic liners need to be at least 30 mils (thousandths of an inch) thick to assure that this requirement is complied with.

Third, the foundation underneath the liner must be capable of supporting the liner and resisting pressure gradients. If the support system settles, compresses, or uplifts, the liner may rupture or crack.

Finally, the liner must cover all surrounding earth likely to be in contact with the waste or leachate. This assures that liners will be placed not only underneath the wastes but also on the sides of the wastes. Thus, lateral as well as vertical migration will be prevented.

4. *Control of Overtopping (Section 264.221(c)).* Section 264.221 requires that a surface impoundment be designed, constructed, maintained and operated to prevent overtopping (the flow of liquids over the top and out of the impoundment) resulting from normal or abnormal operations; overfilling, wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms and other equipment; and human error. This language reflects the variety of potential causes of overtopping. Constructing dikes to provide a large amount of freeboard above expected levels in the impoundment is one means of controlling overtopping. Operating practices such as adjusting inflows and outflows to regulate the impoundment level, or using automatic level controllers or alarms, will also help prevent overtopping when potential problems, such as unusually large storms, occur.

The regulatory language differs from that contained in the January 12 regulations, which required 2 feet of freeboard or any alternative amount of freeboard based on documentation acceptable to the Regional Administrator showing that no overtopping will occur. In substance, however, the new standard is similar. It sets forth a general performance standard to prevent overtopping, and leaves to the Regional Administrator the task of specifying the specific design features and operating practices in the permit.

The term "prevent" is absolute and quite stringent, reflecting the Agency's view that outflow of liquid hazardous wastes over the top of an impoundment poses a potentially very serious threat to human health and the environment. Not only is there the very real threat posed by the actual escape of hazardous wastes, but also overtopping can threaten the structural integrity of the dike itself, creating the potential for catastrophic damage. EPA realizes, however, that certain events or combinations of events that can cause overtopping will be so improbable that they must and should be ignored. Some of these might even be considered to border on the absurd, e.g., the possibility that all of the production storage tanks and basins associated with a manufacturing operation will break at once, releasing the contents to a surface impoundment, causing it to overflow. The Agency does not intend that overtopping resulting from highly improbable events be protected against. One common event that will frequently have to be addressed is overtopping potential resulting from drainage of stormwater into the impoundment. In this case EPA believes the impoundment should be designed and operated to prevent overtopping resulting from at least the flow generated by the 24-hour, 100-year storm event. This storm event is recommended since it is the rarest event for which data are readily available.

EPA had deleted a requirement contained in the January 12 regulations that run-on be diverted away from a surface impoundment. We agree with commenters who noted that run-on is acceptable so long as the design and operation of the impoundment are such as to ensure that run-on does not cause overtopping. Therefore, EPA has simply included run-on as a factor to be addressed in preventing overtopping.

5. *Structural Integrity of Dikes (Sections 264.221(d) and 264.226(c)).* Surface impoundments must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure. This requirement is essentially the same as in the January 12 regulations, with one exception.

The January 12 regulations provided that structural integrity of the dikes should be maintained without dependence on any liner system included in the surface impoundment design. This requirement reflected the importance of absolutely preventing any dike failures, which have in the past resulted in sudden release of very large quantities of liquid wastes from impoundments. Even though these regulations require that liner systems not leak during the active life of the unit, some liners will leak due to physical or chemical damage. It is not prudent, therefore, to depend on the integrity of the liner system as a necessary condition for dike stability. Therefore, dikes must be constructed to prevent collapse due to scouring or piping in the event of liner leakage.

However, the January 12 language failed to distinguish between cases where the liner is a part of the dike and cases where it is not. In some cases, on the one hand, several feet of compacted clays may be used as part of the dike in a storage surface impoundment and may contribute to structural stability in ways other than retarding leakage. On the other hand, a synthetic liner would not normally be considered by engineers in the field to provide strength to the dike itself, and even a clay liner may fail to provide additional structural integrity if it is not intentionally designed to achieve that purpose.

In light of the variety of circumstances summarized above, today's regulations simply contain a performance standard requiring structural integrity to prevent massive failure. The extent to which a particular liner should or should not be considered in assuring structural integrity will be determined on a case-by-case basis.

Due to the importance of structural integrity, § 264.223(c) requires that prior to permit issuance, the owner or operator must obtain a certification from a qualified engineer that the dike has structural integrity. Furthermore, a

recertification is required if an impoundment is about to begin operation after it has been out of service for six months or more. The recertification is necessary to assure that no changes to the dike (*e.g.*, erosion during the shut-down period) have impaired its structural integrity. The period of six months is based on EPA's judgment that significant changes may occur during a period of that length.

The certification must cover two aspects of structural integrity: (1) The force exerted on the dike by the contents of the impoundment and (2) the dike's resistance to scouring and piping in the event that the liner leaks. The former ensures that the dike will not collapse or be swept away simply as a result of the pressure exerted against it by its contents. The latter assures that the dike will not collapse or be washed away if liquid begins to seep through it. While seepage through a dike is important from the standpoint of its inherent pollution potential, it also can cause the dike's constituents (usually soil) to become more fluid, to move, and to flush through, creating a hole and massive collapse—a very serious consequence. Although evaluations of structural integrity are not foolproof, the Agency believes that an evaluation and certification provides an important measure of protection.

6. *Monitoring and Inspection (Section 264.226(c)).* Section 264.226 contains several types of inspection requirements, apart from the certification of dike structural integrity already discussed in Section VII.F.5. above. First, liners and caps must be inspected during construction and installation for uniformity, damage and imperfections, and after installation to insure tightness of seams and joints and the absence of tears, punctures, and blisters.

EPA considers the liner inspection to be very important. Properly constructed or installed synthetic liners should prevent any migration of wastes for many years. However, improperly constructed or installed liners can result in migration of wastes almost immediately after startup of the unit.

Section 264.226 also requires inspections, weekly and after storms, of design features and equipment necessary to prevent overtopping; for sudden drops in the level of the impoundment's contents; for the presence of liquids in leak detection systems; and of dikes. These inspections are not very expensive or time consuming; thus weekly inspection of these important features is reasonable. However, EPA does agree with the commenters who argued that the daily inspections required in the January 12, 1981, rules were unnecessarily frequent and burdensome.

7. *Emergency Repairs (Section 264.227).* The January 12 regulations required that whenever there is a "positive indication of a failure of the containment system," the impoundment must be removed from service. "Positive indication" was described as including waste detected in the leachate detection system or a breach (e.g., hole, tear, crack, or separation) in the liner. Commenters argued that the harsh remedy of immediately removing an impoundment from service should only be required to prevent or remedy massive or catastrophic failure and not to deal with relatively small-scale liner breaks. EPA agrees and has modified the regulatory language to deal only with the truly emergency situtations.

Section 264.277(a) requires removal of an impoundment from service when the level of liquids in the impoundment drops suddenly and the drop is not known to be caused by changes in the flows into or out of the impoundment. In such a case, rapid discharge through the liner must be presumed. For example, it may be that the liner is leaking and that channels in the underlying soils are permitting rapid migration of wastes out of the impoundment. EPA does not anticipate that these circumstances will occur in many cases. A second and probably more likely situation requiring removal from service is a leaking dike. This indicates the potential for massive dike failure. Even though dikes are required to be constructed to prevent failure, even in the event of leakage, our ability to predict structural integrity of dikes is not perfect and the potential damage associated with dike collapse is so great that the Agency believes immediate action is necessary in the event active leakage is discovered. Minor deterioration of the dike (e.g., erosion) which can be easily repaired would not require the removal of the impoundment from service.

Removal of the impoundment from service is defined in § 264.227(b) as consisting of several steps: (1) Stopping the addition of wastes to the impoundment; (2) containing surface leakage; (3) stopping future leakage; (4) taking other necessary steps to prevent catastrophic failure; (5) if necessary to stop the leak or prevent catastrophic failure, emptying the impoundment, and (6) notifying the Regional Administrator of the problem. Section 264.277(c) requires that the contingency plan for the impoundment include procedures for complying with these requirements.

If the impoundment is returned to service after removal from service under § 264.277(a), the dike's structural integrity must be recertified. If it has been removed from service due to a sudden drop in liquid level and it has a liner which was installed to comply with § 264.221, the repaired liner must be certified as complying with the applicable conditions.

If an existing impoundment which is exempted from the liner requirements, has experienced a sudden drop in liquid level, then a liner that complies with § 264.221 must be installed prior to its return to service. Due to the extreme failure of the impoundment, installing a liner is absolutely essential to ensure that substantial leakage to ground water will not occur in the future.

If the impoundment is not returned to service, § 264.227(e) requires that it must be closed. This requirement is necessary to assure that the failed impoundment is not left with liquid wastes in it for an unnecessary period of time.

8. *Closure and Post-closure Care (Section 264.228).* Section 264.228 offers owners or operators of surface impoundments two alternatives for closing their facilities. The first alternative is to remove or decontaminate all wastes at closure. The second is to leave the wastes in place, eliminate free liquids, stabilize the wastes, place a cap (final cover) on top of the waste, and conduct post-closure monitoring and maintenance.

If the owner or operator elects the first alternative, he must remove or decontaminate all wastes, waste residues, contaminated system components such as liners, contaminated subsoils and contaminated structures and equipment. This is necessary because under this option, no post-closure care or monitoring is required. The impoundment is a storage unit leaving no hazardous constituents in the ground after closure. All the removed residues, subsoils and equipment must be managed as hazardous wastes unless the provisions of § 261.3(d) are complied with.

If the owner or operator makes all reasonable efforts to comply with his closure plan and to remove or decontaminate all residues and contaminated subsoils (*e.g.*, he removes or decontaminates all waste and waste residues above the liner as well as some contaminated subsoil) and then finds that he cannot comply with his closure plan because he is unable to remove or decontaminate all of the remaining contaminated subsoils, he must close the unit under the second option and perform post-closure care as described below. This situation is likely to occur

often in the case of existing portions that do not have liners or have inadequate liners. In a few cases, liners installed in accordance with the requirements of § 264.221 of these regulations may also fail. In any of these cases, contamination may have migrated a considerable distance from the impoundment and possibly even entered the ground water. This situation necessitates closure under the second alternative to minimize the rate of migration and monitor for potential ground water contamination. In contrast, facilities with good liners that do not fail will be able to avoid post-closure responsibilities.

The second alternative for closing a surface impoundment requires several steps. First, free liquids must be eliminated, by removing liquid wastes and/or solidifying the remaining waste residues. As discussed above in Section VII.F.2, this is an important step in minimizing the rate of leachate migration.

Second, the remaining wastes must be stabilized to a bearing capacity to support final cover (including the top liner and earth materials placed above that liner to protect the liner, allow the growth of shallow-rooted vegetation, and promote drainage). Failure to do so is likely to result in substantial differential settlement of the final cover over time, thereby creating channels through which liquids can enter the impoundment and eventually leach the waste constituents into the ground water.

Third, a final cover must be placed over the closed impoundment. The cover must be designed and constructed to provide long-term minimization of the migration of liquids into the closed impoundment. In addition, the cover must be at least as impermeable as the bottom liner. The purpose of these requirements has been discussed in Section VI. E. 5. of this preamble.

The final cover must also be designed to minimize erosion, since erosion would result in exposure of the covered wastes and increased infiltration. Such protection is provided by installing proper sloping, covering with appropriate vegetation, and other construction techniques. Finally, the cover must accommodate settling and subsidence so that its integrity is maintained.

Several practices can help minimize and accommodate settling and subsidence at some closed impoundments and especially at closed landfills (which are subject to the same general closure requirements as surface impoundments). These include placing wastes and fill material (especially if biodegradable material) uniformly throughout the unit and constructing the final cover with a slightly greater slope than ultimately desired. Another potentially useful approach involves phasing of final closure. For example, the permittee may place an interim, partial, or temporary cover (cap) on the unit and, after the initial (and likely most severe) subsidence and settling have occurred, install the final cover. In such a case, the Regional Administrator can extend the 180-day closure period of § 264.113(b), provided that the interim cover will adequately minimize infiltration or that the bottom liner is still functioning.

Once the final cover has been installed and compliance with the closure provisions has been certified, the post-closure period begins. Post-closure care consists of maintaining the final cover and performing monitoring. Generally, monitoring consists of continued ground water monitoring and, if necessary, corrective action under Subpart F just as was required during the unit's active life. In a case where the impoundment has a double liner and leak detection system, leak detection, rather than ground water monitoring, must be continued during the post-closure period. If a leak is discovered, the owner or operator must notify the Regional Administrator, who will then modify the permit to require compliance with the ground water protection requirements of Subpart F. (After closure, repair or replacement of a leaking liner would involve at least a temporary destruction of the final cover, resulting in the potential for significant infiltration of liquids, and thus is not desirable.) The presence of a final cover on top of the unit should minimize infiltration of liquids into the unit and the discharge of liquid out of the unit. Thus, detection monitoring should be in place well before any ground water contamination could occur.

9. *Financial Responsibility for Piles and Surface Impoundments from which Wastes are Removed at Closure (Sections 264.228(d) and 264.258(d)).* As noted above, an owner or operator of a pile or surface impoundment who removes (and properly disposes of) or decontaminates all wastes, waste residues, and contaminated equipment and soils, has no further closure or post-closure obligations (except to have closure properly certified (§ 264.115)). However, the regulations recognize that complete removal may not be practicable in some cases and provide in such cases for placing a final cover over the unit and conducting post-closure monitoring and maintenance.

If capping and post-closure care become necessary, funds must be available for those tasks. In preparing the regulations, EPA became concerned that units whose owners or operators planned to remove or decontaminate all wastes at closure would have closure plans that address only removal and would have no post-closure plans. Correspondingly, these units would have financial responsibility only for the expected means of closure. Yet, further closure activities and postclosure care might be necessary in some cases due to unanticipated difficulty in removal or decontamination.

The above concerns presented a dilemma. On one hand, if EPA does not require owners and operators to have closure and post-closure plans to provide for capping the units and performing post-closure monitoring and maintenance, then sufficient funds might not be available to take these actions in appropriate circumstances. On the other hand, if EPA requires owners or operators to have financial responsibility for these activities, those who successfully remove all contamination at closure will have unnecessarily expended extra funds to demonstrate financial responsibility for capping and post-closure care.

EPA has attempted to balance these two competing considerations by correlating the financial responsibility requirements for capping and post-closure care to the likelihood that such activities will actually become necessary at particular piles or storage impoundments. Therefore, EPA separately considered two types of units: (1) Those that do not have liners that comply with the design standard of preventing migration (i.e., most existing portions), and (2) those that do have such liners.

Piles and storage surface impoundments that lack liners meeting the design standards, by definition do not prevent the migration of wastes to the subsurface soil or ground or surface water. At best, they minimize such migration, and at worst, they provide little or no control. At these units, it will often not be possible to remove all contaminated soils at closure. In some instances, leachate may already have contaminated the ground water. It is thus reasonable to conclude that these units will often need to be covered at closure and will require post-closure maintenance and monitoring. Therefore, EPA is requiring that such storage piles and storage impoundments have: (1) Closure plans to remove or decontaminate the wastes, waste residues, and contaminated equipment

and soils; (2) contingent closure plans to cover the units; and (3) contingent postclosure plans to perform post-closure monitoring and maintenance. The contingent plans must be followed only if compliance with the primary closure plan does not result in the removal of all contaminated soils.

The financial responsibility requirements for these units (contained in §§ 264.228(d) and 264.258(d), with conforming amendments in Subparts G and H) cover only the contingent plans. (If the owner or operator uses a trust fund for financial responsibility, he must pay for the waste removal or decontamination and no money is paid out from the fund to reimburse him for this activity unless he successfully completes removal or decontamination.) Thus, the owner or operator must demonstrate financial responsibility only for final cover and post-closure care. If the owner or operator is unable to pay for closure, funds will be available to cover the unit and provide post-closure care. Although the wastes will not have been removed in this event, society will be in no worse a position than it would have been if the unit had been permitted and closed as a disposal unit.

The Agency is aware that in some cases, it may be cheaper to close surface impoundments (or piles) as a disposal facility. Thus, this rule would result in less financial assurance than if coverage of closure as a storage impoundment (or pile) were required. The Agency believes that in these cases, owners or operators will simply apply for a permit as a disposal operation anyway. And, in the final analysis, it is ultimate protection that is sought; this can be provided by ensuring adequate closure as a disposal facility.

Piles and storage surface impoundments that have liners designed to prevent migration during their active lives should, in the normal course of events, succeed in such prevention if they plan to remove or decontaminate their wastes, etc., at closure. Therefore, EPA is not requiring contingent closure plans to cover the units or contingent post-closure plans to maintain or monitor the units. Consistent with this approach, financial responsibility for such activities is also not required. However, in some cases, a liner will fail to meet its design objective of preventing migration throughout the unit's life. In such a case, the owner or operator will need to obtain a permit modification that imposes final cover requirements as well as post-closure monitoring and maintenance requirements.

10. *Special Requirements for Ignitable or Reactive Waste and Incompatible Wastes (Sections 264.229 and 264.230).* Sections 264.229 and 264.230 continue the good-operating-practice provisions contained in the January 12, 1981, Subpart K regulations concerning the appropriate handling of ignitable and reactive wastes and incompatible wastes. The comments contained in those regulations have been deleted, however, since they merely reiterated the requirements of §§ 264.13, 264.17, and 264.73.

G. Waste Piles (Part 264, Subpart L)

Subpart L contains the design and operating standards for wastes piles used to store or treat hazardous wastes. Waste piles may not be used to intentionally dispose of wastes. If the owner or operator of a pile wishes to dispose of wastes, he must apply for a landfill permit and manage the pile as a landfill.

The basic requirements for waste piles are: (1) a liner to prevent migration of wastes out of the pile and into the subsurface soils and ground water or surface water during the pile's active life (with an exemption for existing portions); (2) leachate collection and removal; (3) control of run-on and run-off; and (4) removal of wastes at closure. Two exemptions from the ground-water protection requirements of Subpart F are provided. One is for piles that have double liners and leak detection systems. The other is for any pile that has a single liner from which the wastes are periodically removed so that the liner can be inspected for cracks, leaks or potential leaks. In addition, an exemption from both the Subpart L liner and leachate collection and removal standards and the Subpart F ground-water protection requirements is provided to dry piles that are inside or under structures protected from precipitation, run-on and wind dispersal. Finally, a variance from the liner and leachate collection and removal requirements is provided if the owner or operator demonstrates to the Regional Administrator that hazardous constituents will never migrate from the pile into ground water or surface water.

Many of the features of the Subpart L regulations (liners, leachate collection and removal systems, and double liners and leak detection systems to obtain exemptions from Subpart F) are explained in the general discussion of design and operating standards (see Section VII.E.2. of this preamble) or in the discussion of analogous provisions in Subpart K for surface impoundments (see Section VII.F. of this preamble) and will not be discussed again here. Features that relate specifically to piles are discussed below.

1. *Relationship to Previously Promulgated Design and Operating Standards for Piles.* These rules supersede the Subpart L design and operating standards for piles that were promulgated on January 12, 1981 (40 CFR Part 264 Subpart L. 46 FR 2802), and amended on November 6, 1981 (46 FR 55110). The January 12, 1981 regulations contained two sets of standards for piles that are contained, in revised format, in today's regulations. First, today's regulations, like the January 12 regulations, cover double-lined piles with leak detection systems between the liners. Second, they address single-lined piles that are periodically removed from their liners so that the liners may be inspected for puncture, cracking, or other similar damage. In addition, requirements for leachate collection and removal are contained, as are exclusions from ground-water protection requirements. (However, as discussed previously, today's regulations contain new provisions for imposing ground-water protection requirements in case of liner failure, unless the liner is repaired or replaced.)

An additional set of standards that is continued in today's regulations is the November 6, 1981 regulations for "indoor" piles (see 45 FR 55111). Those regulations provided that a pile is exempt from liner and leachate collection requirements if it (1) Is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated; (2) receives no free liquids; (3) is protected from run-on; and (4) will not generate leachate through decomposition or other reaction. In addition, such piles were not subject to ground-water protection requirements. Today's § 264.250(b) contains this set of standards.

Today's regulations provide greater flexibility than the January 12, 1981 standards by providing a set of standards authorizing the permitting of piles that have single liners and that are not periodically removed for liner inspection, provided that they comply with the Subpart F ground-water protection requirements. This additional standard is consistent with the basic regulatory philosophy for landfills and surface impoundments.

2. *Design and Operating Requirements (Section 264.251).* a. *Liners and Leachate Collection Systems*—Waste piles (except for existing portions) must have liners and leachate collection and removal systems above the liners. To reduce pressure

head on the liner, the leachate collection and removal system must be designed and operated to assure that leachate depth over the liner does not exceed one foot. The appropriate technologies needed to meet this requirement depend on the size of the pile, waste permeability, and climatic conditions. If the pile is small or the waste is permeable, a separate drainage layer below the waste may not be needed. Instead, merely using a relatively impermeable liner and sloping the liner so that any leachate will flow can provide a leachate collection and removal system which will meet the maximum one-foot head requirement. For larger piles and less permeable wastes, a separate drainage layer of relatively permeable material and, perhaps, a tile drainage system, will be needed to meet the maximum one-foot head requirement. Other techniques include diversion of run-on and covering the pile to prevent rain infiltration.

All leachate collection systems, but most importantly those incorporating drainage layers and tile drains, must be designed and built so that they will continue to function. More specifically, they must be capable of (1) withstanding the chemical attack that can result from contact with leachate; (2) withstanding the forces exerted by wastes, equipment, earth pressures, etc.; and (3) operating without clogging. Any of these phenomena (chemical attack, external forces, or clogging) can reduce or destroy the efficiency of these systems.

b. *Control of run-on and run-off*—Section 264.251(c)-(e) contains specific requirements regarding run-on and run-off. To minimize leachate generation, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm. To minimize hazards from run-off of contaminated liquid, a runoff management system must collect and control the water volume resulting from at least a 24-hour, 25-year storm. Finally the collection and holding facilities associated with run-on (if any) and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain capacity of the system. This last requirement, not contained in the January 12, 1981 regulations, is intended to ensure that capacity of the system is not consumed by successive storm events.

The basic run-on and run-off control standards are similar to the January 12, 1981 requirements, except that the design storm to be protected against are now specified in the regulations. This specification responds to commenters who argued that the previous requirements were so vague as to leave owners and operators uncertain as to the extent of their responsibilities.

EPA chose the 25-year storm as the storm size which should be protected against in run-on and run-off systems for both piles and landfills. EPA is unaware of any hard data to quantify the relative degrees of risk reduction provided by differently sized run-on and run-off control systems. Differences in cost can be calculated more easily. EPA estimates that managing a 100-year storm requires a 7 to 25 percent increase over the cost required for a 25-year storm, depending on location, watershed size and unit size and design. For example, for a typically sized landfill, the cost difference might typically amount to $10,000. While this does not seem to be a prohibitive expense, EPA does not wish to require the additional protection if the potential benefits are *de minimis*. It can be argued, for example, that a storm more severe than a 25-year storm would produce such a large volume of run-off and such a short contact time with the waste that any hazardous constituent levels in the run-off would be very low.

However, in the absence of substantial data base, EPA remains concerned that, at least in some situations, designing only to accommodate a 25-year storm is inadequate. For example, if a pile or landfill has a 25-year active life, there is at least a 50-percent chance that the design capacity of the system will be exceeded during the unit's active life. Therefore, EPA requests information, including any available data, on the following questions:

(1) What relative benefits (in terms of types and magnitude of averted damage) can be expected from designing for a 100-year storm event versus designing for a 25-year event?

(2) What are the relative costs for 25-year and 100-year storm designs for variously sized and located piles and landfills?

(3) Under what circumstances and conditions does overflow of run-off and run-off control systems cause an adverse environmental or human health impact? Are there sensitive areas or conditions under which more stringent design is warranted? Can these be succinctly and clearly defined?

Readers should note that the selection of a 25-year criterion for run-on and run-off controls differs from the selection of a 100-year criterion set in the floodplain standards in § 264.18. Flooding is a potentially more serious event than either run-on or run-off, since a flood is capable of washing away large quantities of bulk wastes and drums of wastes, and may transport them considerable distances. Therefore, EPA believes that protection against a 100-year flood is necessary.

The final design and operating standard contained in § 264.251 continues the January 12, 1981 requirement that wind dispersal be controlled (e.g., by cover or wetting). The language has been modified to clarify that only particulate matter must be controlled. As explained in section VI.C. of this preamble, EPA is not regulating volatile emissions in the design and operating standards being promulgated today.

3. *Exemption of Certain Piles From the Ground-water Protection Requirements of Subpart F (Section 264.253).* Apart from the exemption from Subpat F for piles, impoundments and landfills that have double liners and leak detection systems, discussed above in Section VII.E.8. of this preamble, § 264.253 provides a special exemption from Subpart F for any waste pile that is periodically removed from the liner so that the liner may be inspected for cracks, erosion, or other conditions that could result in leakage. This exemption relies on inspection of the liner to assure that the liner is intact and is not allowing leachate to migrate through the liner. This inspection procedure obviates any need to monitor the ground water.

The liner must prevent migration of wastes into the subsurface soil or ground or surface water during the active life of the unit. Thus, it must be a low-permeability liner. Furthermore, it must be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste on the liner or remove waste from the liner for inspection.

Synthetic membrane liners are not likely to be capable of withstanding damage from repeated removal and replacement of wastes during liner inspections. Clay liners will also be unsuitable in many cases, because when exposed to air, they tend to dry out to some extent and crack, resulting in the development of channels through which leachate may migrate. Therefore, EPA expects that reinforced concrete with appropriate coatings will be the liner material chosen by most owners and operators wishing to qualify for a Subpart F exemption under § 264.253.

For piles obtaining a Subpart F exemption pursuant to § 264.253, the regulations further provide that the inspection plan generally required by

§ 264.15 include a schedule of inspection which includes periodic removal of the waste pile and testing of the liner to ensure that it has not deteriorated to the point at which it is no longer capable of containment or is already leaking.

This exemption is intended for, and as a practical matter will apply to, small piles, especially small piles where the normal operation of the pile periodically or routinely results in removal of the waste. The removal of the waste from other than small piles on a periodic and routine basis to inspect the liner, as required by the rule, would normally be impractical because of handling and storage difficulties. As discussed above in Section G.2.a., larger piles of less permeable wastes in wetter climates will need a relatively permeable drainage layer (e.g., gravel or sand) and possibly a tile drainage system in order to comply with the one-foot head requirement. To remove the wastes and drainage layers from such piles in order to meet the inspection requirement, will normally be impractical. Usually, only small piles will have sufficient drainage to the sides of the pile to meet the one-foot head requirement without a drainage layer. Exceptions might include large piles that are covered, located in areas of low rainfall, or that contain waste which is impermeable. The regulations do not specify the pile size in an exemption, but the practicality of both inspecting the liner and meeting the one-foot head requirement will limit the size in practice.

Finally, the rule requires that if the liner is leaking, the owner or operator must notify the Regional Administrator and either repair or replace the liner or else begin a detection monitoring program under Subpart F if such a program has already been incorporated in the pile's permit as a contingency. These two options are identical to the two options available for double-lined piles, impoundments and landfills that are exempt from Subpart F. (See discussion above in Section VII.E.8. of this preamble.)

4. *Monitoring and Inspection (Section 264.254).* Section 264.254 contains requirements for inspections of liner systems before and after installation. These are similar to the liner inspection requirements for surface impoundments discussed above in Section VII.F.7. of this preamble. Special inspection requirements for piles exempted from the Subpart F ground-water protection requirements are set forth in §§ 264.252 and 264.253.

5. *Special Requirements for Ignitable or Reactive Wastes and for Incompatible Wastes (Sections 264.256 and 264.257).* The language of the January 12, 1981, regulations for ignitable or reactive wastes has been modified to conform to the language contained in the analogous surface impoundment requirements in § 264.228. However, the substance of the regulations is unchanged. The regulatory language of the January 12, 1981 version of § 264.257 (incompatible wastes) has been retained, but the comments to that section have been deleted because they were merely explanatory and lacked regulatory effect.

6. *Closure and Post-closure Care (Section 264.258).* Since piles are storage facilities, all waste residues, and contaminated subsoils and equipment must be removed or decontaminated at closure. This requirement is identical to the first alternative for closing surface impoundments under § 264.228(a)(1), and is discussed in more detail in Section VII.F.9. of this preamble.

If the owner or operator removes or decontaminates all waste residues and makes all reasonable efforts to remove or decontaminate all contaminated containment systems, subsoils, structures, and equipment and finds after such efforts that some contamination remains that he cannot remove or decontaminate, then the pile will be considered a disposal unit under these regulations and must be closed in accordance with the closure requirements for landfills. Thereafter, the owner or operator must comply with the landfill post-closure requirements. The procedure is the same as for a surface impoundment whose owner or operator has planned to remove all wastes at closure and, because he finds that he cannot practicably remove or decontaminate all contaminated soil at closure, becomes a disposal unit subject to the second closure alternative under § 264.228(a)(2) and to post-closure requirements.

A "reasonable effort" to remove all contaminated subsoils includes removal of all wastes and waste residues in the unit, all contaminated liners and equipment, and at least some subsoil. After making reasonable attempts to remove all contaminated subsoil and failing thereby to remove all contaminated subsoil, the owner or operator may then cease further removal attempts but must close the unit and perform post-closure activities as he would do in the case of a landfill.

7. *Small Piles.* Several commenters on the January 12, 1981, regulations suggested that small, low-hazard temporary waste piles should be exempted from Subpart L requirements. While EPA believes that there may be some merit to these comments, it has not to date received enough information to be able to define the size, duration and contents of piles that might deserve such an exemption. EPA solicits information that would pertain to the appropriateness of such an exemption. In addition, the Agency solicits information supporting the possibility of exempting certain type of piles from particular design and operating requirements or Subpart F ground-water protection requirements.

H. Land Treatment (Part 264, Subpart M)

EPA believes that land treatment can be a viable management practice for treating and disposing of some types of hazardous wastes. Land treatment involves the application of waste on the soil surface or the incorporation of waste into the upper layers of the soil in order to degrade, transform or immobilize hazardous constituents present in hazardous waste. The success of land treatment particularly depends upon the operational management of the units. Unlike many landfills or surface impoundments, for example, land treatment does not use highly impermeable liners to contain wastes. Rather, land treatment relies on the dynamic physical, chemical, and biological processes occurring in the upper layers of the soil for the degradation, transformation, and immobilization of hazardous constituents. In this sense, land treatment can be viewed as an "open" system.

Because land treatment depends upon a number of soil/waste interactions for success, it is especially important that the units be carefully operated. Maintenance of proper soil pH to optimize microbial action and metal immobilization, careful management of waste application rate to prevent exceeding the soil's treatment capacity, and control of surface water run-off to prevent untreated hazardous waste from leaving the facility are several of the key operational aspects. In addition, well-managed land treatment includes monitoring in the unsaturated zone to provide information that the owner or operator will use in modifying his operating practices to maximize the success of treatment processes.

As described in other sections of this preamble, one of the principal objectives of the design and operating requirements applicable to each type of unit is to provide effective management of liquids at the facility to minimize the risk of ground-water contamination. At surface impoundments, landfills and piles this objective is principally served by the construction of barriers that

prevent liquids from entering the units and from entering the soil.

The general approach must be modified somewhat for land treatment units. Land treatment units are dissimilar to other land disposal units in that they are not designed and operated to minimize *all* releases to ground water. On the contrary, they are open systems that freely allow liquid to move out of the unit. The goal of land treatment, therefore, is to reduce the hazardousness of waste applied in or on the soil through degradation, transformation and immobilization processes.

The land treatment regulatory approach, however, does seek to minimize the uncontrolled migration of hazardous constituents into the environment. This is accomplished by using a defined layer of surface and subsurface soils (referred to as the "treatment zone") to degrade, transform or immobilize the hazardous constituents contained in the leachate passing through the system. Such treatment processes achieve the same general objectives as the liquids management strategy used at other types of land disposal in that they act to prevent hazardous constituents from migrating into the environment.

1. *Applicability (Section 264.270).* The regulations in this Subpart apply to owners and operators of new and existing land treatment units. There is no exemption for "existing portions" as found in the regulations for other types of land disposal. The requirements for land treatment units do not require the placement of liners under the waste and, thus, should not pose major retrofitting problems for existing portions.

2. *Treatment Program (Section 264.271).* The key element of a land treatment unit is the program which the owner or operator establishes to degrade, transform or immobilize the hazardous constituents in the wastes managed at the unit. Today's regulations indicate that there are three principal elements to the treatment program that will be specified in the facility permit. First, the permit will specify the wastes that may be handled at the unit. (The Regional Administrator will base his selection of the wastes allowed at the unit on the treatment demonstration under § 264.272.) EPA is concerned that parties who engage in uncontrolled dumping of waste not be allowed to claim that they are conducting a land treatment operation simply because some breakdown of waste constituents occurs when the waste is dumped. Therefore, EPA believes that land treatment should be reserved for those hazardous wastes having hazardous constituents that can be completely degraded, transformed, or immobilized through land treatment.

At present, the Agency believes that land treatment should be confined to wastes that are primarily organic and that can be greatly reduced in volume by physical, chemical, and biological decomposition in surface soils. The Agency also believes that the smaller inorganic or persistent organic fractions of these wastes can also be effectively treated in surface soils. Hazardous constituents such as heavy metals and persistent organic compounds are either unaffected or are only slowly affected by the primary treatment mechanisms—degradation and transformation. Instead, these hazardous constituents can be treated by immobilization in surface soils.

Effective immobilization of hazardous constituents at land treatment units can occur through chemical or physical processes. Hazardous constituents may be effectively immobilized via chemical reactions, such as precipitation, complexation, and cation exchange reactions, or via physical attenuation processes which entrap hazardous constituents within the soil matrix.

Dilution, however, does not constitute an acceptable treatment process. Dilution does not provide chemical, biological, or physical "treatment" (i.e., degradation, transformation or immobilization) of hazardous constituents. Rather, dilution allows wide dispersal of hazardous constituents in the soil matrix. Since they remain untreated, such constituents may eventually migrate and concentrate to unacceptable levels in ground water or surface water.

Second, the land treatment program will include a set of design and operating measures that are necessary to maximize degradation, transformation and immobilization of hazardous waste constituents. (The Regional Administrator will also base his selection of these design and operating conditions on the treatment demonstration under § 264.272.)

The waste application rate and the timing of such applications are two of the most important elements of a program for managing a land treatment unit. The Regional Administrator will, therefore, explicitly address these two factors in the facility permit. Another critical factor is pH control. Soil pH has a major influence on the magnitude of microflora populations, which are essential for degradation, and on the mobility of metals. There are many unit-specific operations that will be necessary to achieve the intended performance, such as proper tilling frequencies, maintenance of microbial populations (perhaps by the addition of fertilizers), and careful management of the water content of the treatment zone. These specifics of unit operation will also be addressed in the facility permit.

Third, the treatment program will include an unsaturated zone monitoring program. The purpose of this program is to determine the success of treatment in the treatment zone. The information provided by this monitoring will help in making modifications to the operating practices at the unit to maximize the success of treatment. Thus, the purpose of the monitoring is to assist in "fine-tuning" the land treatment program. The elements of the unsaturated zone monitoring program will be discussed in more detail later in this preamble.

As part of the development of the land treatment program, the Regional Administrator will define a list of hazardous constituents that are of concern. These are the constituents that the owner or operator must seek to degrade, transform or immobilize. As in Subpart F, the basic universe from which hazardous constituents are selected is the list of constituents in Appendix VIII of Part 261. (The preamble discussion of Subpart F explains the basic rationale for using Appendix VIII).

In the land treatment regulations, the hazardous constituents are those Appendix VIII constituents that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone. The owner or operator must assist in establishing what the hazardous constituents will be at the facility by conducting a thorough waste analysis of the wastes that will be handled at the facility. (This step is required under the general waste analysis provision of § 264.13 because such information is necessary to ensure compliance with Subpart M.) It may be possible to develop waste analysis procedures that attempt to characterize broad classes of waste; if so, it will not be necessary to analyze each batch of waste that might be handled at the unit.

Another basic element of the treatment program is a clear definition of the treatment zone, the portion of the unsaturated zone in which the owner or operator intends to accomplish degradation, transformation and immobilization of hazardous constituents. The Regional Administrator will specify the vertical and horizontal dimensions of the treatment zone.

One of the crucial concerns about the treatment zone is its depth. EPA considered several options for defining

the appropriate depth of the treatment zone. One option was to make the treatment zone the "zone of incorporation." (This was the approach included in the February 5, 1981 proposed rules.) Commenters pointed out, however, that liquid hazardous wastes are sometimes spread on the surface of the soil and thus are not incorporated. In such cases a "zone of incorporation" is not a meaningful concept. Therefore, EPA decided not to use this approach.

A second option was to let the owner or operator define the treatment zone as long as it was above the water table. While this approach had the advantage of flexibility, EPA was concerned that an owner or operator could defeat the basic purpose of the unsaturated zone monitoring program by selecting a deep treatment zone. The purpose of the unsaturated zone monitoring program is to give relatively prompt feedback on the success of treatment in the treatment zone. If the treatment zone was deep, there would be a considerable lag time (possibly several years) between the time that waste was applied and the time that the failure of the treatment process was detected. EPA, therefore, concluded that there needed to be a maximum depth for the treatment zone.

Ultimately, EPA concluded that the treatment zone should be no deeper than 1.5 meters (5 feet).This depth from the initial surface soil elevation was chosen as a maximum depth for the treatment zone because soil conditions below this depth are generally not conducive to degradation and immobilization of hazardous constituents. Under the anaerobic and reducing conditions which occur in most soils below 1.5 meters, the solubility of most heavy metals increases. Also, the anaerobic conditions limit survival of the soil microflora necessary for degradation of most wastes. The 1.5 meter depth, as a maximum, should enable nearly all land treatment units the opportunity to operate successfully.

Today's regulations place one more constraint on the depth of the treatment zone. The Agency is today requiring a minimum distance of one meter (3 feet) between the bottom of the treatment zone and the seasonal high water table. This minimum distance is necessary to (1) allow for installation and implementation of the unsaturated zone monitoring, and (2) provide some minimum buffer to account for fluctuation in the seasonal high water table.

Unsaturated zone monitoring at land treatment units must include soil monitoring and soil pore-liquid monitoring immediately below the treatment zone. At least 15 cm (6 inches) of soil depth below the treatment zone is needed for adequate soil sampling. Thirty cm (12 inches) of soil will be sufficient, in most cases, for placement of the soil pore-liquid sampling device wholly below the treatment zone. However, due to the difficulties associated with field monitoring, sample collection will often occur somewhere above or below the desired depth. Hence, sufficient soil depth (above the seasonal high water table) must be available to account for the inherent errors associated with field monitoring. The Agency believes that a one meter soil depth will accomplish this.

The seasonal high water table, as specified in local soil surveys (which have often been conducted jointly by the Soil Conservation Service and the State Agricultural Extension Agency), will often fluctuate over time. The degree of fluctuation will vary depending on the hydrologic and geologic characteristics of a particular site. In most cases, the Agency believes that a one meter soil buffer will adequately account for this fluctuation.

3. *Treatment Demonstration (Section 264.272).* The first step in the establishment of a land treatment program is to conduct a treatment demonstration. The purpose of this step is to establish what combination of operating practices at the unit (given the natural constraints at the site such as soild characteristics and climate) can be used to completely degrade, transform or immobilize the hazardous constituents in the wastes that the owner or operator seeks to manage at the unit.

The treatment demonstration is used to define two elements of the land treatment program. First, it establishes what wastes may be managed at the unit. The owner or operator may only apply those hazardous wastes that he has shown can be degraded, transformed or immobilized such that hazardous constituents are not expected to emerge from the treatment zone. Second, the treatment demonstration will define the initial set of waste management practices (including waste application rates) that will be incorporated into the facility permit. These practices may be modified over time as data from the unsaturated zone monitoring program indicates the need for adjustments.

The treatment demonstration occurs before the unit is at full-scale operation under a permit. The information generated from the demonstration will be submitted to the Regional Administrator and will be used to set permit conditions.

The treatment demonstration presents issues that are analogous to those that EPA has addressed for trial burns in the hazardous waste incinerator regulations. A treatment demonstration may involve field testing of particular wastes on a sample soil plot, or it may involve laboratory testing. (These are not the only methods of making a treatment demonstration, as will be discussed later in this preamble.) Where field testing or laboratory analyses are used, hazardous waste disposal or treatment is occurring and RCRA provides that such an activity requires a permit. EPA has provided a limited mechanism under the permit regulations, in § 122.27, for the issuance of phased land treatment permits that will allow some owners and operators to make a treatment demonstration using field testing or laboratory analyses without first receiving a disposal or treatment permit separate from the actual facility permit.

The basic criterion used in evaluating a treatment demonstration is that it must be possible to achieve complete degradation, transformation or immobilization of the hazardous constituents in a waste if that waste is to be applied at the unit. Within the limits of the tests used in the demonstration, this is a standard that requires 100% treatment. EPA believes that land treatment should be limited to wastes for which complete treatment is possible; therefore, the "100% treatment" criterion is most appropriate. EPA recognizes that it will not always be possible to achieve 100% treatment at an operating unit because of variations in climatic and other conditions not fully under the control of the owner or operator. Thus, the failure to achieve 100% treatment at an operating unit does not necessarily constitute a permit violation but rather it will often be grounds for modifying permit conditions to maximize the success of treatment at the unit.

The treatment demonstration can be accomplished using information derived from published literature, laboratory studies, field studies or actual facility operating experience (i.e., monitoring results). Successful demonstrations will most often involve data obtained from several of the above sources.

A literature search on the particular waste in question should first be conducted. Information in the published literature may assist in the design of laboratory or field experiments, or significantly reduce or eliminate the need for additional experimentation. However, the Agency believes that, for most land treated hazardous wastes, an inadequate data base is available in the

literature to predict unit-specific waste-soil interactions.

Laboratory studies may be used as rapid screening techniques for examining, within a reasonable time frame, the effects of various factors on treatment effectiveness. Extrapolation of this data to field conditions, however, may often be difficult because of the complex interactions occurring in the field. Therefore, field studies often will be necessary to verify certain lab-generated results.

For existing units, actual operating data (i.e., monitoring results) can also be effectively used to demonstrate treatment. The monitoring data must include results from soil-core, soil pore-liquid, and ground-water monitoring.

All data used to demonstrate the treatability of the hazardous constituents in a specific waste in a particular land treatment unit must be generated under conditions similar to those present at the unit. At a minimum, the following unit-specific characteristics and conditions must be simulated in the treatment demonstration:

(1) Characteristics of the land-treated waste;

(2) The depth and characteristics of the treatment zone;

(3) Topography of the treatment zone;

(4) Climate of the area; and

(5) Operating practices (such as waste application method and rate, tilling depth and frequency, and soil conditioning practices (*e.g.*, pH adjustment, fertilization, etc.)).

Specific guidance regarding the necessary elements of the treatment demonstration is provided in the *RCRA Land Treatment Guidance Document.*

4. *Design and Operating Requirements (Section 264.273).* In § 264.273, the regulations indicate what general design and operating requirements apply to land treatment units. The principal design and operating measures are those that are required as part of the land treatment program. These requirements can include limits on waste application rates and methods, measures to control soil pH, measures to enhance microbial or chemical reactions (*e.g.*, fertilization, tilling) and measures to control the moisture content of the treatment zone. The Regional Administrator will specify these design and operating conditions in the facility permit based on the results of the treatment demonstration under § 264.272.

In addition, there are other general design and operating requirements that apply to land treatment units that are analogous to those required at other types of land disposal units. The unit must have effective run-on and run-off management systems. These control systems are essential in limiting the transport of hazardous constituents either through the treatment zone toward ground water or off of the surface of the unit in an untreated condition where they may contaminate surface water or an off-site location.

Run-on controls are particularly important at land treatment units. EPA believes that proper treatment requires careful management of the soil's moisture content. Excess water in the treatment zone caused by run-on can significantly limit the treatment effectiveness and can also hinder such operations as tilling. In addition, run-on will increase the amount of water flowing down through the treatment zone and, therefore, increase the likelihood of the transport of hazardous constituents out of the treatment zone towards ground water.

Today's regulations provide that the owner or operator must design, construct, operate and maintain a run-on control system that is capable of preventing flow onto the active portion of the unit during the peak discharge from at least a 25-year storm. The peak discharge will have to be determined on a unit-specific basis and will depend on the rainfall patterns in the region as well as the size and terrain of the watershed. The rationale for the 25-year storm event is explained in the preamble discussion of the design and operating standards (Section VII.G.).

Today's rules also require that owners and operators of land treatment units must design, construct, maintain, and operate a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 25-year storm. The preamble discussion of the design and operating standards (Section VII.G.) contains further discussion of the rationale for this design.

Besides the general requirements to establish run-on and run-off systems, today's regulations require that the owner or operator manage the treatment zone in a manner designed to minimize run-off. In order for hazardous constituents to be properly treated, it is necessary that these constituents not be allowed to run off the surface of the unit. Minimization of run-off can be achieved through proper unit siting and design, particularly with regard to soil characteristics and slope, as well as through proper management of unit operation, including the method, rate, and scheduling of waste application.

Another requirement calls for control of wind dispersal at the unit if the treatment zone contains particulate matter that is subject to wind dispersal. Wind dispersal can be a serious concern at land treatment units because hazardous waste is generally placed on or barely under the soil surface. Measures to control wind dispersal will, however, be somewhat different than those used at other types of land disposal units. Potential control measures for land treatment units include establishment of vegetative cover, maintenance of proper surface soil moisture, and the use of chemical soil stabilizing agents.

5. *Food-chain Crops (Section 264.276).* In some cases an owner or operator may grow food-chain crops on a land treatment unit. This practice raises public health concerns. Accordingly, EPA has placed restrictions on the growth of food-chain crops on land treatment units. The Agency believes that food-chain crops can be safely grown on land treatment units if these standards are met.

Today's regulations on food-chain crops are basically the same as the restrictions found in the interim status standards. Growth of food-chain crops is not allowed unless the owner or operator complies with two primary criteria. First, he must demonstrate (for every hazardous constituent except cadmium) that hazardous constituents will not occur in greater concentrations in or on the crop grown on the unit than in or on the same crop grown on untreated soils under similar conditions in the same region. Second, if cadmium is a hazardous constituent at the unit, the owner or operator must comply with certain specified management practices that are designed to limit the entry of cadmium into the food chain.

The owner or operator must make the demonstration necessary to meet the first criterion before the crop is actually planted. This demonstration must describe the crop to be planted, the soil characteristics of the treatment zone (*e.g.*, pH, cation exchange capacity) and describe the procedures used in conducting any tests of crops, including the sample selection criteria, the sample size, the analytical methods and the statistical procedures used. Any tests attempting to measure crop uptake must be based on the specific wastes and application rates being used at the unit because these are critical factors in the validity of the test. The owner or operator may make this demonstration using field tests, greenhouse studies, available data, or, in the case or existing units, operating data. Of course, if the owner or operator wants to use field tests or greenhouse studies to make the demonstration, and he is not the owner

or operator of an existing unit already growing the specific crop, he will have to obtain a permit for conducting such activities.

The analysis provided by the owner or operator must show that hazardous constituent levels in the crop grown at the unit will not exceed those found in the same crop grown on untreated soils under similar conditions in the same region. (This test does not, however, mean that the comparison crop would be from another hazardous waste land treatment unit; data from such units cannot be used as the basis for comparison.)

The basic philosophy of this requirement is similar to that used in Subpart F for ground-water protection. In the absence of specific standards for hazardous constituents in food, EPA believes it reasonable to assure that there will be no significant increase of such constituents in the human food chain as a result of hazardous waste disposal.

In defining the crop to be used for comparison purposes, EPA considered several options. These included (1) dropping the "in the same region" test or (2) revising the test to call for comparisons to a national average of hazardous constituents found in crops grown on untreated soils. EPA rejected the first option because it does not want to encourage owners and operators to "shop around" for comparison data from the region of the country where the crops contain the highest levels of certain metals or other constituents. This might allow more highly contaminated food-chain crops to be marketed from land treatment units.

The Agency rejected the second alternative because it believes that there is not yet an adequate national data base for most hazardous constituents in crops grown on untreated soils. Therefore, because the Agency has been unable to identify less burdensome but adequately protective demonstration alternatives, the alternatives in today's rules are the same as those in the interim status standards.

EPA has not provided for a health-based variance from the food-chain crop standard based on narrative criteria. EPA believes that specific contaminant limits for food should be established in national rulemaking to allow for input from Federal agencies like the Food and Drug Administration, which are chiefly responsible for setting such standards.

Today's regulations differ from the interim status standards in identifying the constituents of concern under the standard. The interim status standards require that the comparison must be made for constituents listed in Appendix VII and in Table I of § 261.24. Today's rules, however, require this same demonstration to be made for all hazardous constituents (i.e., all Appendix VIII constituents) that are reasonably expected to be in, or derived from, the waste being land treated.

The Agency has made this demonstration more comprehensive in light of several comments stating that the safety of food-chain crops grown on land treatment units could not be ensured if the required demonstration included only Appendix VII and Table I constituents. Commenters have observed that may hazardous constituents not listed in Appendix VII or Table 1 of § 261.24 could threaten human health if present in food-chain crops from land treatment units. The Agency agrees with these commenters and has decided, because of the high level of risk that could be associated with inadvertent or undetected non-compliance with the standards for food-chain crops, to require this more comprehensive demonstration.

If the owner or operator demonstrates that the food-chain crops grown at the unit will not have contaminant levels above those found in similar crops grown on untreated soils under similar circumstances in the same region, the Regional Administrator will indicate in the facility permit that these crops may be grown at the unit. The owner or operator may not plant any food-chain crop not identified in the permit.

The second component of the food-chain crop standard applies only to cadmium. The regulations set forth two sets of management practices that can be used to ensure that cadmium will not cause any adverse effects on human health or the environment. These requirements are nearly identical to those established in the Criteria for the Classification of Solid Waste Disposal Facilities and Practices (40 CFR Part 257). The rationale for the requirements are the same.

It should be noted that today's regulations provide for "phasing in" the limits on annual application rates according to the same schedule found in the Criteria. On February 5, 1981 EPA had proposed to eliminate this phasing-in approach from the Part 264 regulations. EPA has decided, however, to retain the phasing approach to maintain equity between solid and hazardous waste facility owners and operators. Since both standards address aggregate cadmium levels in the waste, hazardous wastes present no greater risks to food-chain crops than solid wastes if the standards are met.

6. *Unsaturated Zone Monitoring (Section 264.278).* As indicated earlier, the purpose of unsaturated zone monitoring is to provide feedback on the success of treatment in the treatment zone. The information obtained from this monitoring will be used to adjust the operating conditions at the unit in order to maximize degradation, transformation and immobilization of hazardous constituents in the treatment zone.

For example, if a significant increase of a hazardous constituent is detected in unsaturated zone monitoring, the owner or operator will examine more closely the facility characteristics that significantly affect the mobility and persistence of that constituent. These significant facility characteristics may include treatment zone characteristics (*e.g.*, pH, cation exchange capacity, organic matter content), or operational practices (*e.g.*, waste application method and rate). Modifications to one or more of these characteristics may be necessary to maximize treatment of the hazardous constituent within the treatment zone and to minimize additional migration of that constituent to below the treatment zone.

It should be emphasized that unsaturated zone monitoring is not a substitute for ground-water monitoring. Both are required at land treatment units. Ground-water monitoring is designed to determine the effect of hazardous waste leachate on the ground water. Unsaturated zone monitoring cannot perform that function as a general matter. Instead, unsaturated zone monitoring simply gives an indication of whether hazardous constituents are migrating out of the treatment zone.

Likewise, unsaturated zone monitoring is not equivalent to the leak detection monitoring that is used at some other types of disposal units (*e.g.*, double-lined surface impoundments). Leak detection monitoring is used in conjunction with a relatively "closed" design (*e.g.*, two liners with a drainage layer between them) that is designed to pick up any liquid migrating from the unit. EPA believes that such a design can be a substitute for the ground-water monitoring and response program of Subpart F.

Unsaturated zone monitoring, however, operates in an open system that allows liquids to pass through the unsaturated zone. While EPA believes that unsaturated zone monitoring is generally reliable, it cannot provide the same level of certainty about the migration of hazardous constituents from the facility that a double-lined surface impoundment (with a leak detection monitoring program) can

provide. Therefore, unsaturated zone monitoring cannot be a substitute for ground-water monitoring.

Some commenters have expressed concern about the reliability and practicality of unsaturated zone monitoring, particularly soil-pore liquid monitoring. EPA believes that adequate technology and expertise is available to develop effective and reliable systems.

The Agency also believes that the inconvenience cited by some commenters can be avoided. Commenters stated that the placing of lysimeters (one type of device for monitoring soil-pore liquid) on the active portion of a land treatment unit would hinder site operations. However, the Agency knows of a number of existing land treatment units with monitoring systems engineered so that the above-ground portion of the device for sampling soil-pore liquid is located off the actual treatment zone. This and other methods can be used to avoid any inconvenience associated with the location of these devices.

The unsaturated zone monitoring program must be designed to determine the presence of hazardous constituents below the treatment zone. Generally this means that the owner or operator must monitor for the hazardous constituents identified for each hazardous waste that is placed in or on the treatment zone.

EPA believes, however, that there may be some situations where this general monitoring burden may be reduced without compromising the objectives of the unsaturated zone monitoring program. Some hazardous constituents will be more difficult to degrade, transform or immobilize than others. Therefore, if the owner or operator monitors for the constituents that are difficult to treat and can demonstrate that such constituents are not migrating from the treatment zone, then EPA can be reasonably certain that other hazardous constituents are being adequately treated.

The Regional Administrator may address this situation by selecting principal hazardous constituents (PHCs) for the unit. A PHC is a hazardous constituent contained in the waste applied at a unit that is difficult to degrade, transform or immobilize in the treatment zone. The owner or operator may ask the Regional Administrator to establish PHCs at the unit if the owner or operator can demonstrate to the Regional Administrator's satisfaction that degradation, transformation or immobilization of the PHCs will assure adequate treatment of the other hazardous constituents in the waste.

The Regional Administrator will be particularly concerned with two factors when deciding whether to establish PHCs. First, he will be concerned with the mobility of the constituent. Since PHCs will be monitored in the area below the treatment zone, the Regional Administrator will want to assure that the PHCs give an early warning of the failure of the treatment process. Therefore, a PHC must be one of the most mobile constituents in the treatment zone. Second, a PHC must be one of the most concentrated and persistent constituents in the treatment zone. This is to assure that the constituent provides a reliable indication of the success of treatment in the treatment zone.

In the selection of principal hazardous constituents, the Regional Administrator will evaluate the results of waste analyses, literature reviews, laboratory tests, and field studies. Waste analyses will be used to identify the hazardous constituents in the waste. Information obtained from literature reviews, laboratory tests, and field studies (including monitoring results for existing units) will be used to assess the relative mobility and persistence of the various hazardous constituents. The extent of data needed to support the selection of one or more principal hazardous constituents for a particular waste will be determined by the Regional Administrator.

Both soil-core and soil-pore liquid monitoring are required in today's rules. These two monitoring procedures are intended to complement one another. Soil-core monitoring will provide information primarily on the movement of "slower-moving" hazardous constituents (such as heavy metals), whereas soil-pore liquid monitoring will provide essential additional data on the movement of fast-moving, highly soluble hazardous constituents that soil-core monitoring may miss.

The general elements of the unsaturated zone monitoring program are patterned after those required for ground-water monitoring in Subpart F. As in the detection monitoring program, the unsaturated zone monitoring program is designed to determine whether the level of hazardous constituents in the soil or soil-pore liquid below the treament zone shows statistically significant increases over the background levels of those constituents in the soil or soil-pore liquid. In addition, today's regulations include requirements for monitoring systems, sampling frequency and sampling and analysis procedures and methods that are analogous to those in Subpart F. Some modifications of the Subpart F monitoring program must be made, however, to make it compatible with land treatment.

First, the basis for establishing background values differs. In the ground-water monitoring program, background values are based on data taken from upgradient monitoring wells. Such a concept is not applicable to land treatment units. Background values at land treatment units are established by sampling the soil and soil-pore liquid in a background plot. A background plot is generally a segment of the soil near the unit that has characteristics similar to that of the treatment zone and that has not been contaminated by hazardous waste. At a new unit, however, the owner or operator could use the actual treatment zone prior to waste application as the background plot. The key characteristic of the background plot is its similarity to the treatment zone.

Second, the unsaturated zone monitoring program will rely on statistical procedures that are somewhat different than those used for detection monitoring programs under Subpart F. In order to account for seasonal variations in soil-pore liquid quality, background values will be based on one year of quarterly sampling as in the detection monitoring program. Since background soil levels are not likely to change significantly during such a time frame, today's rules allow that background soil levels may be established following a one-time sampling. Unsaturated zone monitoring is similar to compliance monitoring, however, in that there may be several constituents to be monitored. Thus, the probability of an experiment error rate is high. Therefore, the statistical procedures used in the unsaturated zone monitoring program will be based on a narrative standard as used in the compliance monitoring program.

This standard seeks to provide "reasonable confidence" that the migration of hazardous constituents from the treatment zone will be indicated after balancing the risk of false positives and the risk of false negatives. (This preamble discusses the rationale for this standard in Section VII.D.10.) If the number of constituents to be monitored is small, then this standard can be met by the use of the Student's t-test protocol described in § 264.97(h).

While EPA believes that the standard for statistical procedures just described should be adequate for most situations, EPA intends to further analyze the appropriateness of other statistical procedures for unsaturated zone monitoring. For example, EPA is

considering whether other factors that might affect background levels of soil pore-water quality should be specifically addressed in devising the monitoring protocols. EPA specifically asks for public comment on this issue.

Third, the unsaturated zone monitoring program does not call for measurements of the flow and direction of ground water. The gradient in the ground water is not relevant to unsaturated zone monitoring and, thus, such information is not necessary.

Fourth, the response to the detection of a statistically significant increase in Subpart M differs from the response required in Subpart F. The results of unsaturated zone monitoring are to be used in the modification of the operating practices at the unit. Thus, the required response is the submission, within 90 days, of a permit modification application that sets forth how the owner or operator will adjust his operating practices (including waste application rates) to maximize degradation, transformation and immobilization of hazardous constituents in the treatment zone. However, an opportunity exists in today's rules for not submitting the permit modification application, but only if the owner or operator can successfully demonstrate to the Regional Administrator that the statistically significant increase results from an error in sampling, analysis, or evaluation. This error demonstration must be submitted to the Regional Administrator within 90 days of the owner or operator's knowledge of the statistically significant increase.

As indicated earlier in this preamble, the appearance of hazardous constituents below the treatment zone does not in itself constitute a violation of the regulations. (This is analogous to the fact that a landfill liner which has been designed not to leak does not violate the design standards if the liner fails at some future time.) Under the regulatory strategy in these regulations, contaminants that are not controlled by the design and operating measures will be addressed by the monitoring and response program in Subpart F.

7. *Recordkeeping (Sections 264.279).* Today's rules state that the operating record for the unit (as required in § 264.73) must include information on the dates and rates of the application of hazardous wastes. Waste application dates and rates are two vital factors, as discussed earlier in this preamble, which the owner or operator must carefully track and manage in order to achieve proper waste treatment.

8. *Closure and Post-closure Care (Section 264.280).* The closure and post-closure care requirements in today's regulations are quite similar to those that are required in the interim status regulations. The interim status regulations, however, expressed the requirements as a set of considerations that were designed to achieve general environmental objectives stated in the regulations. Today's regulations state the general design and operating "considerations" as actual duties that the owner or operator must meet. Those duties are designed to achieve the same general environmental objectives as the interim status requirements.

During the closure period the owner or operator must continue the operating practices that are designed to maximize degradation, transformation, and immobilization at the unit. Operating practices designed to maximize treatment include tilling of the soil, control of soil pH and moisture content, and fertilization. These practices must generally be continued throughout the closure period. In addition, during the closure period, the owner or operator must continue those practices that were designed to minimize run-off from the treatment zone and to control wind dispersion (if needed). The run-on and run-off systems must be maintained. The owner or operator must also adhere to the restrictions on food-chain crops specified in the permit.

The owner or operator must continue to operate the unsaturated zone monitoring program as provided for under §264.278 with one exception. Soil-pore liquid monitoring may be terminated 90 days after the last application of waste at the unit. EPA expects that the fast-moving constituents that the soil-pore liquid monitoring system is designed to detect should migrate out of the treatment zone soon after these constituents are applied if they are to migrate at all. EPA believes that any such migration is likely to occur in less than 90 days after the waste is applied. After the 90 days, the soil-core monitoring program becomes the principal mechanism for detecting migration out of the treatment zone.

The major element of the closure procedures at a land treatment unit is the placement of a vegetative cover that is capable of maintaining growth without extensive maintenance. Section 264.280(a)(8) requires the owner or operator to establish a vegetative cover at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents. Thus, the vegetative cover must not be established until sufficient treatment has occurred so that the placement of the cover and termination of certain operating practices (e.g., tilling) will not substantially inhibit treatment processes.

Once the vegetative cover is established, certain general practices designed to maximize treatment processes (e.g., tilling) cannot be conducted without damaging or destroying the vegetative cover. Such practices should not, therefore, continue once the cover is established. Accordingly, today's regulations provide in § 264.280(a)(1) that those practices aimed at enhancing degradation, transformation, and immobilization of hazardous constituents that would be inconsistent with the establishment of the vegetative cover under § 264.280(a)(8) should not be continued once the cover is established.

A vegetative cover consists of any plant material established on the treatment zone to provide protection against wind or water erosion, or to aid in the treatment of hazardous constituents. The major function of the vegetative cover during closure and post-closure care is to minimize wind and water erosion. Perennial grasses are often used because they can be rapidly established into a thorough cover. However, the best suited plant species will depend on the season and region of the country. Agronomists from the State Agricultural Extension Service, USDA, or nearby universities can be valuable sources of information regarding crop selection and cultivation practices which are best suited to a given region.

Section 246.115 of the general requirements for closure requires that the owner or operator submit a certification from an independent registered professional engineer that a unit has been closed in accordance with the approved closure plan specified in the permit. In the case of land treatment units, EPA believes that a qualified soil scientist should be as qualified as a professional engineer to evaluate the adequacy of such measures as vegetative cover. Therefore, today's regulations provide that an independent qualified soil scientist may make the certification.

During the post-closure care period, the owner or operator must continue many of the activities required during the active life (including the closure period). These include control of wind dispersal, maintenance of run-on and run-off systems and continuance of food-chain crop restrictions. The owner or operator must also continue soil-core monitoring but may suspend soil-pore liquid monitoring 90 days after the date of the last waste application. (This time

period may have already passed during the closure period.) In addition, the vegetative cover established during closure must be maintained.

The owner or operator must also continue to take actions that foster degradation, transformation and immobilization processes in the treatment zone. These operating measures must be tempered somewhat during the post-closure care period. Only those measures that do not interfere with the other post-closure care requirements should be continued. Thus, the application of lime to maintain the pH in the treatment zone is an acceptable practice but tilling of the soil that destroys the vegetative cover at the unit should not be continued. The Regional Administrator may wish to state in the facility permit, the level of treatment, particularly degradation or transformation, required at a particular site prior to the start of post-closure care. This would greatly influence the type and extent of actual "treatment" activities necessary during the post-closure care period and may assure greater control over completion of these treatment processes. Guidance for specification of levels of treatment is provided in the *RCRA Land Treatment Guidance Document.* (See Section VII.G. of this Preamble.)

The post-closure care regulations also set out a variance that would allow the owner or operator to be relieved from compliance with the post-closure care requirements as well as the closure requirement for establishment of a vegetative cover. This variance can be obtained if the Regional Administrator finds, based on a demonstration by the owner or operator that the level of hazardous constituents *within* the treatment zone does not exceed the background values for those constituents by statistically significant amounts. Such a demonstration may be made at any time after the last application of waste is made at the unit. The sampling and data evaluation standards, including the requirements for evaluation of statistical significance, are specified in today's rules. These requirements are almost identical to corresponding standards contained in § 264.278. They include only soil monitoring and analysis, however, not soil-pore liquid monitoring.

It is important to note that an owner or operator who can successfully make the showing that hazardous constituents are no longer present in the treatment zone at statistically significant amounts may be eligible for a further exemption during the post-closure care period. If the owner or operator can also demonstrate that no hazardous constituents have migrated below the treatment zone during the active life of the land treatment unit, there is little prospect that corrective action measures under Subpart F would be necessary. Accordingly, the regulations provide that an owner or operator that can make both such demonstrations to the Regional Administrator may be exempted from Subpart F.

9. *Special Requirements for Ignitable or Reactive Waste (Section 264.281).* As is required for the other types of land disposal units, today's regulations restrict land treatment of ignitable and reactive waste. The rationale for this provision is the same for land treatment as it is for the other types of disposal units.

10. *Special Requirements for Incompatible Wastes (Section 264.282).* As is required for other types of land disposal units, today's regulations restrict land treatment of incompatible waste. The rationale for this provision is the same for land treatment as it is for the other types of disposal units. It should be recognized, however, that one way a waste is incompatible with a land treatment unit occurs when it operates to undermine treatment processes in the treatment zone (*e.g.,* by destroying microbial populations).

I. Landfills (Part 264, Subpart N)

Subpart N contains the design and operating standards for landfills used to dispose of hazardous wastes. The basic requirements are: (1) A liner to prevent migration of wastes out of the landfill and into the subsurface soil or ground water or surface water during the landfill's active life (with an exemption for existing portions, such as cells or trenches that already contain wastes); (2) a leachate collection and removal system; (3) control of run-on and run-off; and (4) capping the wastes at closure and conducting post-closure care. An exemption from the ground-water protection requirements of Subpart F is provided for landfills that have double liners and leak detection systems. A waiver of the liner and leachate collection and removal requirements is provided if the owner or operator demonstrates to the Regional Administrator that hazardous constituents will never migrate from the landfill into ground or surface water.

Many of the features of the Subpart N regulations (liners; leachate collection and removal systems; and double liners and leak detection systems installed to qualify for exemptions from Subpart F) are explained in the general discussion of design and operating standards (see Section VII.E. of this preamble) or in the discussion of analogous provisions in Subparts K and L for surface impoundments and piles (see Section VII.F. and VII.G. of this preamble). They will not be discussed again here. The few remaining issues that are unique to landfills will be discussed below.

1. *Special Requirements for Ignitable or Reactive Wastes and for Incompatible Wastes (Sections 264.312 and 264.313).* Sections 264.312 and 264.313 are based upon the analogous Part 265 interim status standards. Section 265.312 was amended on June 29, 1981, and § 264.312 is based on the amended version. A discussion of the basis for the current restriction on landfilling ignitable and reactive wastes is set forth in the preamble to those standards at 46 FR 33402 (June 29, 1981).

2. *Special Requirements for Liquid Waste (Section 264.314).* Section 264.314 restricts the disposal of liquids in landfills. It is based upon the analogous Part 265 interim status standards, including portions which were recently promulgated on March 22, 1982 (47 FR 12316).

3. *Special Requirements for Containers (Section 264.315).* Section 264.315 provides that containers (except for very small containers) must be either (1) at least 90 percent full when placed in a landfill, or (2) crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill. The purpose of the rule is to minimize subsidence in the landfill resulting from decaying containers having void spaces.

The analogous interim status standard in § 265.315 provides only that an empty container must be crushed, etc., before placement in the landfill. However, it fails to define the term "empty" (and "full") and to address the subsidence that may be caused by the disposal of partially empty containers. Today's promulgation of § 264.315 (and the proposal of a parallel modification of § 265.315) addresses these regulatory gaps.

In the February 5, 1981 proposal, EPA proposed that to be considered full, containers have either 3 inches or less of void space or 10 percent or less volume of void space, whichever is less. Some commenters argued for less stringent numbers. Other commenters argued that crushing or shredding empty containers is impractical. These commenters did not provide EPA with data to support their comments.

The Agency believes that by allowing only full containers or those that have been crushed or otherwise reduced in void space to be placed in a landfill, disruptive subsidence of the final cover

resulting from the placement of partially filled containers in landfills can be avoided. The Agency disagrees with the commenter who suggested that crushing or shredding empty containers is impractical. Several landfills are currently doing so and container crushing equipment is readily available.

Those owners or operators having containers which are partially filled may either (a) fill them to greater than 90 percent of their capacity, (b) empty them and then crush or shred them to the maximum extent practical, or, (c) to the extent technology and safety allow, reduce the volume of the partially full containers. The provision allowing landfilling of containers that are 90% full means that there could be about 4 inches of void space in the typical 55-gallon drum.

The Agency would prefer to set a performance limit on the required effectiveness of volume reduction and has considered imposing a requirement limiting maximum remaining void space after crushing to 10 percent of the precrushed volume. EPA presently lacks the data necessary to determine the practicality of such a limit. The Agency is, therefore, seeking comment, particularly from those currently crushing drums and those manufacturing crushing equipment, as to what numeric performance level may practically be required.

One commenter suggested that all containers which are so small that void spaces in them would not significantly affect the stability of a landfill should be allowed. The Agency agrees and is, therefore, exempting very small containers, such as an ampule.

4. *Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs) (Section 264.316).* Section 264.316 provides that small containers of hazardous wastes in overpacked drums, commonly known as "lab packs," may be placed in landfills if certain requirements are met. This provision allows disposal of ignitable or liquid wastes in drums in accordance with these special conditions. This regulation is based upon the recently promulgated interim status standard for lab packs (46 FR 56592, November 17, 1981).

J. Interim Status Conforming Changes (Part 265)

Some of the regulations promulgated today in Part 264 suggest conforming changes to parallel sections of Part 265. The Part 265 requirements were previously promulgated in interim final form and interested parties have commented on them. The changes made today are necessary to ensure consistency in application of policy decisions or to ensure a lack of conflict between the provisions of the two parts. Some changes, however, must be proposed because they contain significant changes to existing rules and the public has not had an opportunity to comment on the appropriateness of applying them during the interim status period. These are proposed in another section of today's **Federal Register.**

A careful side-by-side reading of the Part 264 rules promulgated today and the existing Part 265 rules, will identify a number of additional differences which are not substantive. Most of these differences are necessary because Part 265 is intended to be largely self implementing, whereas the Part 264 requirements are implemented with substantial interaction with the Agency through the permitting process. Therefore, conforming changes have not been made to address those differences. Some other differences represent EPA's effort to make the new Part 264 requirements more easily understood. Conforming changes that are solely a matter of exposition are not made in this rulemaking (except when associated with some other change).

1. *Waste Piles—Containment (Section 265.253).* In the Part 264 regulations, the addition of the 25-year storm event as the design criterion for run-on and run-off control systems resulted from comments on the interim status and permitting requirements which contain only narrative design criteria. EPA has, therefore, adopted the same storm event as the design criterion for interim status as well. The Agency has also adopted as an interim status requirement the Part 264 provision that run-off collection systems be emptied expeditiously to maintain capacity.

2. *Waste Piles—Closure and Post-closure Care (Section 265.258).* The interim status requirements for waste piles contained no closure requirements. At the time they were written, the Agency thought that the requirements would be obvious. Since the rules applied only to storage piles, the wastes would have to be removed at closure in accordance with Subpart G. Any pile which would remain at closure is considered to be a landfill and would be subject to the closure and post-closure requirements of Subpart N. However, some comments and questions received by EPA indicated some confusion on this point. Therefore, a section to clarify the closure requirements is being added to both the Part 264 standards and to the interim status requirements.

3. *Land Treatment—General Operating Requirements (Section 265.272).* This section is being changed to add the 25-year storm design criterion for run-on and run-off control systems and to require them to be emptied or managed expeditiously to prevent successive storm events from filling them up, reducing available capacity. The same changes are being made to the pile requirements (see paragraph 1 above), and the rationale is the same as for the corresponding Part 264 changes.

In addition, a requirement is being added to ensure control of wind dispersal of particulate matter at land treatment units. A similar requirement is contained in the requirements for waste piles and landfills. The Part 265 requirements currently contain a requirement that the owner or operator must consider wind dispersal controls as a part of closure.

4. *Land Treatment—Food Chain Crops (Section 265.276).* Previously, this section of Part 265 required that future property owners be notified by a stipulation in the land record or property deed which stated that food chain crops should not be grown due to a possible health hazard. One commenter on the May 19, 1980 standards suggested that the stipulation state that, rather than not allowing food chain crops to be grown on the site in the future, food chain crops could be grown but only in compliance with the requirements of § 265.276(c)(2). The Agency agrees with this commenter, as it believes that compliance with § 265.276(c)(2) whenever food chain crops are grown provides adequate public health and environmental protection.

5. *Land Treatment—Recordkeeping (Section 265.279).* The redundancy caused by the inclusion of certain recordkeeping requirements in both §§ 265.73 and 265.279 has been eliminated. Since records are required under § 265.73 of the quantity and location of each hazardous waste placed in the unit, there is no need for the same requirements to appear in § 265.279. Section 265.279 now only addresses the keeping of records on hazardous waste application dates and rates. These are additional recordkeeping requirements to those specified in § 265.73.

6. *Land Treatment—Closure and post-closure care (Section 265.280).* Several changes have been made to the closure and post-closure care requirements of § 265.280 in order to make the interim status requirements more consistent with the closure and post-closure care requirements for land treatment units.

In today's rules, under § 265.280(d), several monitoring, maintenance, and control activities are required of land treatment unit owners or operators during the closure period. These are, for the most part, extensions through

closure of activities which are required during earlier unit operations. The unsaturated zone monitoring system must be maintained and operated in compliance with specifications to be provided in the closure plan. (As in the Part 264 regulations, the owner or operator may terminate soil-pore water monitoring 90 days after the last waste application.) The run-on and run-off management systems required under § 265.272 (b) and (c), respectively, must be maintained. These new requirements constitute minimum operation and maintenance standards for unit closure and replace the earlier § 265.280 standards requiring that these operations only be "considered" for inclusion in the closure plan. In addition, control of wind dispersal of hazardous waste during closure (as well as post-closure) is now required.

In response to a comment received on the May 19, 1980 standards, today's rules allow the use of an independent qualified soil scientist to verify that the unit has been closed in accordance with the specifications in the approved closure plan. A qualified soil scientist will have a knowledge of the factors most likely to influence the fate and transport of hazardous waste constituents in the soil.

The existing § 265.280 requirement that the unsaturated zone monitoring system be operated and maintained during the post-closure care period is also being revised today. Under today's rules, both Parts 264 and 265, only soil core monitoring and not soil-pore water monitoring is required during the post-closure care period. Because waste is no longer being applied to the unit during the post-closure care period, the Agency believes that soil-pore water monitoring, which is primarily intended to detect the movement of the more mobile hazardous constituents, is unnecessary. Soil-core monitoring should provide all the monitoring information necessary to determine whether hazardous constituents are migrating toward ground water during the post-closure care period.

7. *Land Treatment—Special requirements for ignitable or reactive waste (Section 265.281).* In response to a comment on the May 19, 1980 regulations, a paragraph has been added to § 265.281 to allow the land treatment of ignitable or reactive wastes if they are protected from conditions leading to ignition or reaction. This clause provides greater flexibility to the owner or operator. The Agency does not think, however, that such ignition, or especially reaction, can be prevented very easily in a land treatment unit unless the wastes were rendered non-ignitable or non-reactive.

8. *Landfills—General operating requirements (Section 265.302).* As with the waste pile and land treatment regulations, the interim status requirements for landfills are being modified to adopt the 25-year storm criterion for design of run-on and run-off control systems (see paragraphs 1 and 3 above). The common sense requirement that these systems be expeditiously emptied after storms to maintain capacity has similarly been added.

9. *Landfills—Special requirements for ignitable or reactive wastes (Section 265.312).* As a result of a delayed compliance date for the restriction on landfilling of liquid waste in containers (§ 265.314(c)), the language in the regulations respecting ignitable waste is more complicated and confusing than is necessary. Accordingly, these provisions have been simplified in both Parts 264 and 265. The change divorces consideration of the physical state of the waste (i.e., whether it is a liquid or a solid) from the management requirements regarding its ignitability. Requirements respecting ignitability are covered in §§ 264.312 and 265.312, and those requirements relating to liquids are covered in §§ 264.314 and 265.314. This does not represent a substantive change, only a clarification. Previous rulemaking actions on this topic have indicated EPA's intent to address the problems associated with the ignitable characteristic of a waste under § 265.312 and the liquid nature of a waste under § 265.314. The restrictions on liquid wastes in general, coupled with the requirements that ignitable wastes be in containers when landfilled, as a practical matter, result in a virtual ban on the landfilling of liquid ignitable wastes.

10. *Landfills—Special requirements for liquid wastes (Section 265.314).* The standards adopted in § 264.314 concerning the acceptance of bulk liquids in landfills are slightly different from the interim status requirements promulgated May 19, 1980. The language has been changed to specify that bulk liquids can be placed in landfills only when the facility is equipped with a liner system (underliner and leachate collection system) that meets the requirements of the regulations (§ 264.302(a)). The same change is also being made to the interim status requirements (§ 265.314). The new language replaces the May 19, 1980 requirement that a facility receiving bulk liquids have a liner system which is chemically and physically resistant to the liquid and a functioning leachate detection system capable of removing the percolating liquids. Since that requirement does not specify the design or required effectiveness of the liner system in any way, the Agency is concerned that a substantial portion of the added liquids would be allowed to pass through the liner and escape. The changes made today specifying compliance with the liner performance standards of Part 264, will ensure that bulk liquids will be placed in landfills only when the liner system has been designed to fully contain the wastes so that all leachate can be collected and removed. According to EPA's information, only a relative few existing landfills are equipped with appropriate liners and leachate collection units. Therefore, bulk disposal of liquids in many existing landfills may be curtailed upon the effective date of these requirements, at least until new, appropriately designed cells can be built at those landfills.

K. Permitting Requirements (Part 122)

On May 19, 1980, EPA promulgated the consolidated permit regulations (40 CFR Part 122, 45 FR 33418) which include requirements for permitting hazardous waste management facilities under RCRA. Owners and operators of facilities which treat, store, or dispose of hazardous waste must obtain permits from EPA, and EPA must issue those permits in accordance with the Part 122 and Part 124 regulations.

1. *Introduction.* Part 122 provides for a two-part hazardous waste permit application; Part A and Part B. Requirements for the content of Part A of the permit application remain unchanged from the May 19, 1980 promulgation. (40 CFR 122.24, 45 FR 33434). Requirements for the content of Part B of the permit application were amended January 12, 1981 (40 CFR 122.25, 46 FR 2889) to provide specific information requirements for owners and operators of hazardous waste treatment and storage facilities. Today's amendments to § 122.25 specify the contents of Part B of the permit application for new and existing waste piles, surface impoundments, land treatment units, and landfills. In order to receive a RCRA permit for any of these types of units, owners or operators must submit sufficient information in Parts A and B to enable EPA to determine whether the unit is in compliance with the Part 264 standards, or for a new unit, whether it will be in compliance with those standards.

2. *Background.* On May 19, 1980, EPA promulgated certain general regulations under Parts 264 and 122 applicable to

hazardous waste management facilities to be permitted under RCRA (45 FR 33221, 33434). The Part 264 regulations contained administrative and technical standards for operating permitted facilities. The Part 122 regulations, among other things, specified what information owners or operators of facilities had to submit to EPA in their permit applications to demonstrate their compliance with the Part 264 standards. Sections 122.4, 122.24 and 122.25 set forth the required content of Parts A and B of the permit application, respectively.

On January 12, 1981, EPA supplemented the May 19, 1980 rules by promulgating specific standards for several types of hazardous waste treatment and storage facilities, among them surface impoundments and waste piles (Part 264, Subparts K and L, 46 FR 2868–2872). At that time, EPA also added companion requirements to § 122.25, directing permit applicants for treatment and storage facilities to submit information in their Part B's pertinent to the new Part 264 standards (46 FR 2889–2891).

On February 13, 1980, EPA promulgated temporary standards for permitting new land disposal facilities (40 CFR Part 267, 46 FR 12429). Those regulations included technical and administrative requirements for new disposal surface impoundments, new land treatment units, and new landfills. No specific permit application requirements were promulgated at that time.

As explained earlier in this preamble, today's amendments to Part 264 Subparts K, L, M and N subsume and replace the specific standards for surface impoundments, waste piles, land treatment units, and landfills as promulgated January 12, 1981, and February 13, 1981. Similarly, today's new Part B permit application requirements subsume and replace the Part B requirements of January 12, 1981, for surface impoundments and waste piles, and add new Part B requirements for land treatment units and landfills.

3. *Contents of Part B for Surface Impoundments, Waste Piles, Land Treatment Units, and Landfills.* The required content of Part B of the permit application is specified in three subsections in § 122.25. Paragraph (a) lists general information required for all types of units. Paragraph (b) lists information required for individual types of units (e.g., waste piles, landfills). Paragraph (c) lists ground-water monitoring information required for surface impoundments, waste piles, land treatment units, and landfills.

Section 122.25(a) remains substantially unchanged from the January 12, 1981 promulgation. (Conforming cross-references have been added to paragraphs (a)(5) and (a)(13).) Thus, applicants for RCRA permits for waste piles, surface impoundments, land treatment units, and landfills must address in their Part B permit applications the general information requirements (paragraph (a)) published in the January 12, 1981 **Federal Register**, as well as the specific information requirements (paragraph (b)) published today for each respective unit type, and, where applicable, the ground-water monitoring information requirements (paragraph (c)) published today. Part B requirements pertaining to ground-water monitoring apply to all four types of units unless they are exempted by § 264.90 (applicability of Subpart F).

As in the January 12, 1981, promulgation of § 122.25(b), today's specific Part B requirements are each tied to a Part 264 standard and, wherever possible, parallel the structure of the respective Subparts in Part 264. In general, the Part B requirements in today's rules state the form and subject matter of the information required (e.g., detailed plans of liner systems) and refer to the companion regulation in Part 264 which is germane to the permit application.

In the Part B submission, the permit applicant must submit information in sufficient detail to enable the Regional Administrator to judge whether the unit will be in compliance with the Part 264 standards, and thus eligible for a RCRA permit. The applicant must address each aspect of design and operation included under individual Part 264 standards. For example, § 122.25(b)(7)(ii) requires that detailed plans and an engineering report be submitted which describe the liner system to be used in a landfill, as required under § 264.301. Section 264.301 lists, among other things, a number of design standards for liners, including the strength, thickness, and chemical properties of the liner material. Each of these characteristics of the liner material must be addressed in the Part B submission for landfills. If the applicant submits a Part B which does not address each requirement with enough detail so that the Director[1] can make an informed judgment as to whether the unit will meet the Part 264 standards, the applicant will be asked to clarify his submission by providing more information (see § 124.3(c)).

[1] The term "Director" is used in EPA's permitting regulations to mean the Regional Administrator in any State where EPA is running the RCRA hazardous waste program, and the State Director in any State with authorization to run its hazardous waste program (or a part of its program) in lieu of EPA's running the Federal program.

4. *When to Submit Parts A and B.* As provided in § 122.21 in EPA's May 19, 1980 hazardous waste regulations (45 FR 33432), the submission of Part A of the permit application is a condition of "interim status" for existing hazardous waste management facilities. That regulation further provides that the Director shall set a date, giving at least six months notice, for submission of Part B of the permit application for existing facilities. Therefore, owners and operators of existing facilities are not required to submit Part B until requested by EPA, although they may voluntarily submit Part B of the permit application before it has been requested by EPA. Owners and operators of new facilities must submit Part A and Part B of the permit application at least 180 days before physical construction is expected to commence. Owners and operators may not commence construction of new facilities until a permit has been issued.

5. *Special Permitting Procedures for Land Treatment Units.* Section 264. 272 provides that a treatment demonstration must be made prior to the permitting of any land treatment unit. The purpose of the treatment demonstration is to show that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone. The § 264.272 requirements allow the owner or operator to use, among other means, field tests or laboratory analyses to make the treatment demonstration. Therefore, the owner or operator of a new land treatment unit, or the owner or operator of an existing unit who wants to land treat new waste, needs the opportunity to use field tests or laboratory analyses to make this demonstration. However, field tests and laboratory analyses can only be performed under a permit because they involve the treatment and disposal of hazardous waste.

Paragraph (c) has been added to § 122.27 to allow an owner or operator who needs to make a treatment demonstration to obtain a phased permit which will cover not only the field test and laboratory analyses but also facility construction and operation. In this way, the owner or operator may not have to obtain a permit separate from the actual facility permit to conduct field tests or laboratory analyses. If the Director finds, based on the information submitted by the owner or operator in Part B of the permit application for a land treatment unit, that substantial information exists upon which to base the issuance of an operation permit (i.e., the applicant has submitted information indicating a likelihood that he can

achieve complete treatment at his facility), the Director may issue a two-phase facility permit.

The issuance of a two-phase facility permit would avoid the necessity of two separate permitting procedures—the first for permitting the field tests or laboratory analyses for the treatment demonstration, and the second for design, construction, operation, and maintenance of the actual land treatment unit. However, if the Director finds that owner or operator has not submitted substantial information indicating a likelihood that he can achieve complete treatment at his facility (based, for example, on land treatment of very similar waste) a two-phase facility permit will not be issued. In this latter case, the owner or operator must apply for and receive a demonstration permit to conduct the field tests or laboratory analyses and perform these tests or analyses prior to the Director's consideration of a facility permit. Section 122.27(c)(1) provides that a demonstration permit need only contain conditions implementing the requirements of § 264.272(c). Thus the conditions that would be included in any demonstration permit would be the same as those that would be included in the first phase of a two-phase land treatment facility permit. Minimum conditions are specified, but the Director may include any conditions he finds may be necessary to protect human health and the environment.

An owner or operator who wants to receive a two-phase permit to accommodate conducting field tests or laboratory analyses, must include a treatment demonstration plan in Part B of his permit application. See § 122.25(b)(6)(i). The demonstration plan must propose that the field tests or laboratory analyses be performed under conditions similar or directly relating to those present in the treatment zone of the unit. Specific conditions for which similarity or direct relevance are necessary are listed in § 264.272(c). These include: waste characteristics, climate, topography, soil characteristics (including treatment zone depth), and operating practices (including unsaturated zone monitoring). It is important to note that any waste constituents listed in Appendix VIII of Part 261 that are reasonably expected to be in, or derived from, waste to be land treated at the actual unit are those constituents for which a treatment demonstration is required. An owner or operator may, of course, use a combination of field tests, and laboratory analyses, and other data to demonstrate that all Appendix VIII constituents contained in the waste can be treated completely.

Following receipt of the Part B application, including the treatment demonstration plan, the Director will process the two-phase facility permit completely through the Part 124 procedures, including preparation of a draft permit and an opportunity for public comment and hearing, assuming he has enough information on which to base draft permit conditions for the design, construction, operation and maintenance of the unit. After completion of this process, and if the Director deems it appropriate, the two-phase facility permit will be issued. The first phase of the permit will become effective as provided in § 124.15(b). The second phase will not be effective until after the owner or operator has successfully completed the treatment demonstration and the Director has made any modifications necessary to ensure compliance with all Subpart M requirements.

Included in the first phase of the permit will be the conditions for performance of the treatment demonstration. The conditions will be established based upon the treatment demonstration plan submitted by the owner or operator. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and all other Part 264 requirements which the Director finds appropriate. In order for the owner or operator to proceed with actual construction and operation, *i.e.*, proceed into phase two of the permit, it is necessary that he complete the treatment demonstration satisfactorily.

The Director will include, as conditions in the second phase of the facility permit, all Subpart M requirements pertaining to unit design, construction, operation, and maintenance, as well as all other applicable Part 264 requirements. The Director will establish the conditions in the second phase of the permit based upon the substantial but inconclusive or incomplete information contained in the Part B application.

Following completion of the field tests or laboratory analyses, the owner or operator must submit to the Director a certified statement, signed by a person authorized to sign a permit application or report under § 122.6, that the tests or analyses were carried out in accordance with the conditions specified in phase one of the permit. All data collected during the field tests or laboratory analyses must also be provided to the Director.

The Director will then determine whether the results of the field tests or laboratory analyses, together with any other data submitted by the owner or operator relevant to the treatment demonstration, meet the requirements of § 264.272, *i.e.*, that the hazardous constituents in the waste can be completely degraded, transformed, or immobilized under conditions similar to those of the treatment zone. If the Director determines that the hazardous constituents can be completely treated, he will (1) modify the second phase of the permit to incorporate any additional requirements which he finds will be necessary for operation of the unit in compliance with Part 264, Subpart M, based upon the data from the completed treatment demonstration and (2) make the second phase of the permit effective.

The permit modification to include changes based upon the completed treatment demonstration may proceed as a minor modification under § 122.17, if any such change is minor. Otherwise, it will proceed as a permit modification under § 122.15(a)(2).

The Agency thinks that adjustments to a number of the operating procedures at land treatment units will, in many cases, be considered minor modifications. For example, modifications to (1) waste application rate, technique, or frequency, (2) liming or fertilization practices, or (3) tilling depth and frequency would usually be considered minor modifications, except where there were substantial increases in the waste application rate or frequency. Examples of modifications likely to be considered "major" include significant changes in (1) characteristics of the land treated wastes (e.g., moisture content) and (2) treatment zone characteristics (e.g., depth of soil, soil texture, slope).

If the results of the first treatment demonstration are inconclusive and the owner or operator wants to do additional field tests or laboratory analyses, the Director may modify the permit (whether it is an individual permit that covers only a treatment demonstration or whether it is the treatment demonstration phase of a two-phase permit) to authorize such additional tests, incorporating in the permit those terms and conditions necessary to meet § 264.272(c) requirements. The modification of a permit to allow a second treatment demonstration may be made as a minor modification, provided the conditions

for the second demonstration are substantially the same as the conditions for the first demonstration.

A permit applicant seeking a demonstration permit (rather than a two-phase facility permit) must also submit a treatment demonstration plan in Part B of his application. Such a permit applicant should consult with the Director before submitting his Part B information because the Director may allow him to submit less information in his Part B application than would be required for a two-phase facility permit. Once a complete application has been received, the Director will process it under the Part 124 procedures using the substantive standards in § 264.272(c).

6. *Clarification of the Scope of the RCRA Permit Requirement.* EPA is today making two clarifying changes to § 122.21(d), "scope of the RCRA permit requirement". The first change clarifies that owners and operators of hazardous waste management facilities are required to have permits during any post-closure period (see § 264.117) and any compliance period (see § 264.96) applicable to their facilities, as well as during the active life of the units (including the closure period).

a. *Post-closure Permits*—EPA has always intended that owners and operators be required to have permits during the active life of their units and, for disposal units, through the post-closure care period as well. EPA could have issued regulations (like the Part 265 interim status standards) that are enforceable independent of a permit to impose many of the requirements that apply to a facility after closure, but imposing standards through the permit allows EPA and facility owners and operators a much greater opportunity to tailor the requirements to individual facilities. Such individualized requirements provide a greater assurance of human health and environmental protection because they allow site specific implementation of general standards (such as the location of ground-water monitoring wells).

Using a permit as the vehicle for imposing post-closure care requirements also means that EPA has an existing system—the permitting procedures and requirements in 40 CFR Parts 122 and 124—to use when interaction between EPA and the facility owner or operator is necessary during the post-closure care period. For example, this would be necessary if the Regional Administrator wanted to extend the post-closure care period under § 264.117(a)(2)(ii) because of data obtained after facility closure. Such interaction would also be critically important under the Subpart F ground-water monitoring standards promulgated today. If an owner or operator found hazardous constituents in ground water under his facility while doing detection monitoring, he then would be required to establish a compliance monitoring program. If he were violating the ground-water protection standard for his facility while doing compliance monitoring, he would then need to establish a corrective action program. EPA think that the establishment of such ground-water monitoring programs should be done through the permitting process. That process ensures procedural protections for owners and operators of hazardous waste management facilities and also ensures an opportunity for public participation as mandated under Section 7004(b) of RCRA.

Although EPA's intent, as evidenced in the Parts 122 and 264 regulations,[2] has always been that disposal facilities are required to obtain permits during the post-closure care period, that was not stated as clearly as it might have been in the regulations. EPA is remedying that deficiency today by amending the Part 122 regulations to expressly provide that disposal facilities are required to get permits for the post-closure care period.

EPA intends that all disposal facilities, including those that close during interim status, be required to have post-closure permits. This is a logical corollary to the definition of "regulated unit" included in today's Part 264 regulations. EPA believes that, to assure adequate protection of human health and the environment, it is important that any wastes disposed after today's Part 264 standards become effective be subject to those standards, although the standards will not be directly applied until a permit is issued for the unit. The fact that an owner or operator may close a unit or his entire facility before EPA issues him a permit should not preclude the Agency from issuing a permit that incorporates applicable Part 264 post-closure care standards, including Subpart F ground-water monitoring requirements.

In addition to sacrificing some measure of human health and environmental protection, the Agency thinks that it would be inequitable to allow the owner or operator of one hazardous waste disposal unit to operate under the less protective interim status requirements, then close when EPA required him to submit Part B of his permit application, and thereafter be subject only to the interim status requirements, while another operator would be subject to the stricter Part 264 requirements because his Part B application was requested earlier. Such a system would create inequities whereby persons whose permits were processed last could get a significant competitive advantage.

As noted above, today's regulations do limit the applicability of the Part 264 regulations to "regulated units"—*i.e.*, units that continue to receive wastes after the effective date of the regulations. To be consistent, post-closure permits will be limited to the same class of units. Thus, disposal units which stop accepting waste before the effective date of today's regulations will not have to get permits covering the post-closure care period. However, those disposal units that continue to receive waste after the effective date of today's regulations will be required to have post-closure permits, even if they close before receiving an initial RCRA permit.

A conforming change to § 122.10, Schedules of compliance, is also being made to clarify how and when permit applicants or permittees cease conducting regulated activities at hazardous waste disposal facilities. The change to that section points out that owners and operators of treatment and storage facilities have closure responsibilities and that owners and operators of disposal facilities have both closure and post-closure responsibilities.

b. *Permits for Individual Units.* The second change EPA is making to the scope of the RCRA permit requirement clarifies that EPA can issue or deny a permit to one or more units at a facility without affecting the interim status of any remaining units for which a permit has not been issued or denied. EPA normally would permit all of the hazardous waste management activities at a facility simultaneously but there may be circumstances where this would be impossible or undersirable. For example, an owner or operator might want to add a new surface impoundment to his facility, but he may also be storing hazardous waste in an underground tank that cannot be entered for inspection, a process for which EPA has not issued permitting standards. In such a situation, EPA would want to be able to proceed with permitting the new surface impoundment without affecting the interim status of any unpermitted units such as the facility's underground tank.

[2] For example, § 264.118 requires a post-closure care plan that must be approved as part of the permitting process and becomes a condition of the permit. Section 122.15(a)(7) notes that allowable permit modifications include changes in the period for post-closure care and permission to disturb the integrity of the containment system under § 264.117(c).

The Agency is making a conforming change to § 122.15(a)(7) to provide that any permit issued to a facility for less than all of the units at the facility may be modified to include conditions applicable to units that are permitted later.

7. *Changes to the Conditions Under Which EPA May Modify Permits.* EPA is today adding four causes for permit modification to § 122.15(a)(7) (in addition to the conforming change described above) and three causes for minor permit modifications to § 122.17(e). The circumstances under which these causes for modifications would be invoked are discussed in the preamble to the accompanying regulations in Subparts F and M of Part 264.

8. *Request for Part 122 Comments.* Today's amendments to §§ 122.10, 122.15, 122.17, 122.21, 122.25, and 122.27 are promulgated in interim final form. EPA solicits comments from the public on all of these amendments. The Agency would especially welcome comments on the Part B requirements for surface impoundments, waste piles, land treatment units and landfills, and on the special permitting procedures for land treatment units. Comments pertaining specifically to regulatory amendments to Part 122 should be sent to "Docket 3005—permitting requirements for land disposal facilities." The Agency will consider all timely comments before promulgating these regulations in "final final" form.

VIII. General Solicitation of Public Comments

EPA generally solicits comment on today's rules and their supporting rationale provided in this preamble. On many regulatory issues, the Agency is particularly interested in the public's response and has highlighted these areas throughout the preamble. For convenience, the areas on which the Agency has specifically requested comments are catalogued below. EPA seeks comment on:

1. Requiring financial assurance for corrective action to remedy ground-water contamination at facilities and how to structure these requirements.

2. Promulgating regulations that would consist of general environmental performance standards similar to those contained in 40 CFR § 267.10 to be used in permitting unique facilities that do not fit into the descriptions of classes of facilities we now have standards to cover (containers, tanks, surface impoundments, waste piles, land treatment units, landfills, and incinerators.)

3. Exempting from Subpart F (Ground-water Protection Standard) facilities located over an uppermost aquifer which is so dirty that it would never be used for any purpose and which, regardless of any future level of contamination is not capable through hydraulic connection of significantly contaminating another usable aquifer or surface water.

4. Factors that can be employed to demonstrate that no adverse health and environmental effects can potentially result from a flood washout if a variance from the floodplain requirement for designing to prevent washout is to be granted.

5. How to construct a statistical test procedure that when used in a ground-water monitoring program involving a large number of comparisons will have low probability of falsely identifying a non-contaminating unit, yet provide high probability of identifying a truly contaminating unit.

6. How to give further specificity to the general criteria for evaluating statistical procedures employed in ground-water monitoring.

7. Alternatives to the coefficient of variation in defining when ground-water monitoring data are likely to be normally distributed.

8. Crafting the liner and/or leachate collection system exemption for existing portions of units to better address those situations where substantial retrofitting would not be necessary and no exemption is warranted, and to better handle those situations where upgrading at an old site may provide very little additional environmental protection and an exemption may be desirable.

9. The decision by the Agency not to grant a waiver from the facility closure standards where a site may be able to show location characteristics that may make it unnecessary for ground-water protection. (EPA still wants to have a cover designed in accordance with the closure requirements to provide air and surface water protection.)

10. EPA's decision not to provide a waiver now from the design and operating requirements to any sites over State-exempted aquifers that are contaminated and that are not protected under the Underground Injection Control Program.

11. Where seepage facilities may be appropriate.

12. Where small or short-term piles not currently exempted from Subpart F ought to be exempted.

13. The relative benefits and costs of designing piles and landfills to protect against the 25-year and 100-year storm event.

14. The circumstances and conditions where overflow of run-on and run-off control systems may cause an adverse environmental or human health impact.

15. Exempting small, low hazard, temporary waste piles from Subpart L requirements.

16. Alternative statistical procedures to be used in the conduct of unsaturated zone monitoring at land treatment units.

17. The reasonableness of the requirement that containers destined for landfill be either (1) at least 90 percent full or else (2) crushed, shredded, or similarly reduced in volume.

Specifically, EPA seeks data on the quantitative relationship between landfill void space and subsidence. EPA also seeks data from manufacturers and users of drum-crushing equipment.

18. Part B permit application requirements for surface impoundments, waste piles, land treatment facilities, and landfills, and on the special permitting procedures for land treatment units.

IX. Regulatory Analysis

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. The order further requires that a final RIA be transmitted to the Office of Management and Budget (OMB) at least 30 days before the Agency publishes the major rule. EPA has determined that the land disposal regulation promulgated today is a major rule. However, EPA has concluded that the existing facility portion of this rule is exempt from the requirement that a final RIA be submitted to OMB 30 days prior to promulgation. Section 8 of the Executive Order, *Exemptions,* states that the "procedures prescribed by this Order shall not apply to: . . . (2) Any regulation for which consideration or reconsideration under the terms of this order would conflict with deadlines imposed by statute or by judicial order."

Completing an RIA and transmitting it to OMB 30 days before EPA publishes these regulations for existing facilities would conflict with judicial deadlines. A court order in *State of Illinois v. Gorsuch* (D.D.C., Civil Action No. 78–1689), signed on November 13, 1981, directed EPA to promulgate regulations for existing hazardous waste land disposal facilities on or before February 1, 1982. Although the order was temporarily stayed, the appeals court has now ordered that these regulations

be promulgated by July 15, 1982. If EPA were to delay promulgation until completing the RIA and transmitting it to OMB, it would violate the deadline ordered by the Court. Therefore, EPA is exempt from compliance.

EPA began work on an RIA for land disposal facilities before November 13, 1981, but preparing the analaysis requires collecting data that are currently unavailable in-house and then analyzing these data. The effort is now in its data gathering stages. When complete, the RIA will examine the need for the regulation, alternative approaches, and the costs, benefits, and distributional effects of the alternative approaches. EPA expects to complete a draft of this analysis in May of 1983, and will consider these results to determine whether any changes to the land disposal standards are warranted.

Within time and data constraints, EPA was able to address some of the analytical requirements of the Executive Order. The Agency prepared preliminary estimates for the range of costs these regulations may impose on regulated units of particular kinds and sizes, on facilities, and for the total costs of the regulations. EPA then allocated these costs to particular waste generating industries and compared them to other economic parameters to obtain measures of the relative significance of the costs resulting from this rule. The results are summarized in D through H of this section:

D. *Individual Unit Costs;* E. *Closure Analysis;* F. *Total Costs;* G. *Industry Analysis;* and H. *Sensitivity Analysis.* The docket for this rulemaking and the EPA regional libraries contain a more extensive report on this analysis.

Athough the Agency has not completed its formal benefits analysis for land disposal regulations, it expects these regulations to provide important benefits. First, they will promote economic efficiency. By internalizing the costs of waste management, the regulations promote the allocation of resources to the area of their highest social value through the free market pricing system. Second, they will promote equity. Currently, people living near hazardous waste facilities bear some of the cost of disposal in the form of risk of ground-water contamination and the damages that can result to property values and to health. These regulations will provide a uniform, nation-wide protective floor that requires the owners of hazardous waste facilities to take steps that will reduce the likelihood that populations will be exposed to harmful ground-water contamination. They will thus shift some of the cost of land disposal from those who live near the sites to users of the products that generate the waste.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a final Regulatory Flexibility Analysis (RFA) when it promulgates a final rule. (5 U.S.C. 604). The purpose of the RFA is to describe the effects the regulations will have on small entities and examine alternatives that may reduce these effects. An agency head may delay completing the analysis for up to 180 days after publishing the rule in the **Federal Register,** if he publishes a finding that the final rule is being promulgated in response to an emergency that makes timely compliance impracticable. (5 U.S.C. 608).

EPA intends to study the impact of today's regulations on small entities. However, as in the case of the RIA, developing an RFA is a difficult and time-consuming task. EPA finds that the court-ordered deadline constitutes an emergency and that completing the RFA by the Court-ordered deadline has not been practicable. EPA will publish the RFA within 180 days of today's publication, in compliance with the Regulatory Flexibility Act.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), EPA will submit the reporting and recordkeeping provisions that are included in this final rule to OMB for approval. They will not become effective until EPA obtains OMB approval. A notice of the effective date of the reporting and recordkeeping provisions of this interim final rule will be published in the **Federal Register** when OMB approval is obtained.

D. Individual Unit Costs

EPA estimated unit costs using engineering models. A number of engineering models were developed because the unit costs and costs per unit of waste vary significantly with the size and type of unit. The resulting unit costs provide the basis for the total cost of the design and operating standards. Although we show costs for corrective action following, EPA based calculations of the total cost of corrective action on a facility basis rather than on a unit basis.

1. *General Approach.* The cost estimation procedure for model units has three components: estimating costs for design and operating changes, estimating costs for a range of corrective action scenarios, and transforming costs into "annual revenue requirements." All cost estimates are in 1981 dollars.

First, to estimate costs for design and operating measures, the steps owners and operators of hazardous waste disposal units might take to comply with the regulations were identified. Since some of the these measures were already required under the Interim Status Standards (ISS regulations), the analysis separated these requirements in order to estimate the cost of the additional requirements resulting from this Part 264 rulemaking.[3] The analysis also separated pre-ISS costs for landfills and surface impoundments. The ISS baseline costs used in this analysis do not reflect state requirements.

Where the under-liner requirements of the design and operating standards were applicable, the Agency examined three possibilities: (1) Owners and operators would install only the single synthetic liners needed under the regulations, (2) they would install the double liner (synthetic/clay) system suggested by the guidance, or (3) they would install double synthetic liners to enable them to avoid monitoring the ground water.

Second, EPA estimated the costs of corrective action activities using three different timing assumptions for the length of corrective action and two counterpumping strategies reflecting hydrogeologic conditions. Timing will depend on how well units and facilities perform, and on how quickly ground-water quality can be restored. The counterpumping strategy used will reflect the judgments of owners or operators, Regional Administrators and State Directors; technical conditions will affect but not control those decisions.

To keep the total number of cost cases presented manageable a single set of unit cost estimates and a "median" set of hydrogeologic assumptions were used. The hydrogeologic assumptions were used as averages although they do not necessarily reflect average nationwide conditions. EPA believes that the values used are the best available for estimating total costs, given time and resource constraints. However, actual facility costs in particular cases may be higher or lower than the estimates presented in this section. To present a more complete picture of potential costs, the sensitivity analyses examine the effects of varying key technical assumptions. In addition, the docket report contains a more detailed description of the assumptions

[3] ISS requirements currently in place were used. No adjustments were made to reflect conforming changes to ISS regulations published with today's rule.

used in preparing these estimates, and includes analysis of the sensitivity of results to alternative unit cost assumptions.

Third, the stream of costs over time was converted into "annual revenue requirements" using discounted cash flow analysis. Annual revenue requirements are the added revenues a facility would have to obtain (through increased prices for its products or for its waste management services) in each year of facility operation, in order to cover the costs of these regulations. This approach provides a consistent basis for presenting and comparing relevant costs. However, it implicitly assumes that future costs can be predicted, and recovered at an even rate over a facility's operating life.[4] Since each facility will face great uncertainty about corrective action costs, and different competitive conditions, revenue requirements estimated using this perfect amortization assumption are not necessarily good predictors of actual pricing behavior under Part 264 regulations.

Because annualizing smooths uneven cash flows, this analysis also reports first year costs to provide an indication of the maximum cash flow burden that facilities could face for design and operating requirements, and for corrective action if necessary.

Costs for regulatory requirements related to bulk and containerized liquids, and the permitting process are not included in the estimates reported here. These costs may be significant, but additional data are needed before reliable estimates can be made. Costs for floodplain standards are addressed in the sensitivity analysis.

2. *Design and Operating Standards.* To comply with the design and operating standards, new storage and disposal facilities and lateral expansions of existing units must install liners, and in the case of piles and landfills, leachate collection systems. While the regulations do not absolutely require a synthetic liner for landfills, waste piles, and surface impoundments, in nearly all cases, at least a single synthetic liner is the practical result of the regulatory requirement. Those installing double liner systems with a leak detection system between them are exempt from ground water monitoring and the other requirements of Subpart F. Additionally, waste piles may be placed on a sturdy impermeable base and regularly inspected in lieu of the requirements of Subpart F.

Owners and operators will choose to install the liner system that is most advantageous for them. This will not necessarily lead them to install the lowest cost liner that EPA will allow, since greater investment in the liner system should lower the probability that corrective action will need to be taken. The probability that corrective action will be needed depends on the containment system used, and on hydrogeologic conditions, but EPA is currently unable to quantify these relationships. The Agency believes that some owners and operators will choose each of the different liner systems, reflecting their local hydrogeologic conditions and their differing estimates of the relationship between liner investments and the probability of having to perform corrective action. To indicate the range of potential liner costs, the cost for each of the liner systems is shown.

3. *Corrective Action Costs and Timing.* The costs associated with corrective action for a unit or facility depend on when contamination is discovered, the specific contaminants, the magnitude of the plume, and numerous site-specific hydrogeologic factors. The Agency can estimate corrective action costs for simple sets of conditions, but does not know what conditions are actually like for the average of all facilities. For this analysis it was assumed that ground water begins 10 feet down, that plumes reach a depth of 75 feet, and that the aquifer can be characterized by "median" hydrogeologic conditions.[5]

The Part 264 regulations require removal of contamination from ground water, at the "waste boundary" for new plumes, and to the property boundary for existing plumes. For this analysis, EPA chose to make the conservative assumption that corrective action would need to deal with well-established plumes. Cost estimates are based on counterpumping, and include costs for treating pumped water, preparing corrective action plans, and monitoring ground water as required in the regulations.

Costs for corrective action are sensitive to assumptions about when corrective action begins and how long it must continue in order to remove all statistically significant contamination. To bound the range of actual costs an owner or operator could encounter, EPA developed costs for three scenarios: action beginning in year zero and continuing 150 years,[6] action beginning in zero and continuing for 20 years, and action beginning in year 49 and continuing for 20 years. (The 20 year figure was chosen to match the assumption that operating lives are 20 years.)

The analysis also used two different counterpumping strategies because corrective action costs are also fairly sensitive to the pumping strategy required. Where hydraulic gradients are unidirectional, (i.e., in "simple" cases) recovery wells can be located at the downgradient toe of the plume. This is Strategy 1, and involves minimum costs for a counterpumping program. The simple conditions needed for this approach probably are not very common. Where hydraulic gradients are not unidirectional,[7] another strategy is needed to assure that all contamination is contained. Wells are located inside the plume and pumping is maintained at a rate sufficient to reverse all gradients in the vicinity of the plume. This is Strategy 2, and it involves higher costs.

The range of cost estimates that results from these alternative assumptions reflects EPA's uncertainty about conditions at actual facilities.[8] To

[4] In computing annual revenue requirements a 3% real discount rate and a twenty-year facility operating life were used in all cases.

[5] Plume depths of 75 feet will be typical only for well-established plumes; new plumes will be shallower and less expensive to control. The median hydrogeologic conditions used were hydraulic gradient (change in ground water "elevation") of 5 feet per mile, and transmissivity (flow rate across a one square mile cross-section, per foot of hydraulic gradient) of 100,000 gallons per foot per day. These assumptions result in an aquifer discharge (total ground water flow volume) of 0.5 million gallons per square mile of aquifer cross-section per day.

[6] The discounted present value of costs incurred over a long but finite furture period is essentially identical to the discounted costs incurred in pumping "forever," if costs are incurred as expenditures are made. A corrective action period of 150 years captures about 99% of the cost of continuing the action forever.

[7] This can occur due to complex hydrogeology, the pressure of emplaced wastes on the aquifer, or pumping at off-site wells surrounding the plume.

[8] The unit cost data, hydrogeologic assumptions and algorithms used here to estimate containment costs have been subjected to some peer review and testing, and EPA believes the cost estimates that result from use of this model are the best estimates available at this time. However, the algorithms and data must still be considered to be incompletely verified and validated.

Several key assumptions should be noted. (1) A simplified treatment cost model was used that may significantly underestimate costs for higher concentrations and more complex mixtures of contaminants, and may somewhat overestimate costs for smaller plumes and for treatment of volatiles. (2) Cost estimates are probably less reliable for facilities with small waste piles and the smallest surface impoundments than for other facilities because corrective action costs for plumes of less than one-half acre in area were not modelled. (3) The cost estimating model is directly applicable only within the limits established by the assumptions made to facilitate cost estimation. The use of two counterpumping strategies compensates for this simplification to some extent. (4) In addition, the alogrithms do not account for replacement or retirement of wells or treatment facilities. Wells can become unuseable within months, or last for years, depending on corrosivity and other characteristics of the plume. Treatment may be required as long as pumping continues, or may be unnecessary during the latter stages of corrective action. For economic analysis purposes EPA assumed that wells will last for 30 years and that treatment facilities will be used for as long as remedial action continues.

display the alternative cases, the relevant tables have columns displaying each timing scenario discussed above. For each timing case, the range of costs shown reflects cost differences between Strategy 1 and Strategy 2.

To estimate the cost of counterpumping it was necessary to estimate the size of the plumes to be contained. Plume width is the most sensitive parameter within the modelling framework used for corrective action cost estimates, and their is reason to expect that unit width serves as a conservative estimate of plume width. If a unit fails becuase of age, then a general failure across the unit is likely so that the width of the unit might approximate the width of the plume; if a unit fails due to a localized problem or single rupture, then the plume width should be smaller than the unit width. Thus, using unit width as a proxy for plume width should result in a conservative measure of the cost of counterpumping.[9]

Corrective action costs will occur only to the extent that ground water is contaminated and to the extent that protection of the environment requires taking corrective action.

4. *Cost for Landfills.* Table 1 shows the annual revenue requirements needed to compensate for the cost of Part 264 requirements for on-site landfills of different sizes without corrective action. It covers the annual revenue requirements associated with the cost of required liners, final cover and leachate collection systems. It assumes that waivers are not obtained, and that no landfills currently use any of the features required under Part 264. This tends to overstate costs since there are landfills that are at favorable locations that would qualify for some site specific waivers or include these features.

TABLE 1.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 REGULATIONS WITHOUT CORRECTIVE ACTION: [1] LANDFILLS BY UNIT SIZE

Size (MT [2]/yr)	Single synthetic liner		Double liner (synthetic/clay)		Double synthetic liner	
	Per Year ($000)	Per MT [2]	Per Year ($000)	Per MT [2]	Per Year ($000)	Per MT [2]
500	$31	$62	$52	$104	$43	$86
2,000	49	25	94	47	82	41
5,000	79	16	164	33	145	29
7,000	98	14	207	30	184	26
15,000	149	10	323	22	290	19
35,000	277	8	622	18	561	16
60,000	379	6	862	14	779	13

[9] When estimating corrective action costs for facilities, EPA assumed that facility width, rather than unit width, approximates the plume width.

TABLE 1.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 REGULATIONS WITHOUT CORRECTIVE ACTION: [1] LANDFILLS BY UNIT SIZE—Continued

Size (MT [2]/yr)	Single synthetic liner		Double liner (synthetic/clay)		Double synthetic liner	
	Per Year ($000)	Per MT [2]	Per Year ($000)	Per MT [2]	Per Year ($000)	Per MT [2]
123,000	566	5	1,306	11	1,180	10

[1] Costs shown are those estimated for on-site landfills in these size categories. They are slightly different from costs estimated for off-site landfills. If costs were based on off-site landfills, double liner (synthetic/clay) costs would be lower than double synthetic liner costs.
[2] MT indicates metric ton.

Table 2 shows the additional annual revenue requirements associated with corrective action if it is needed.

TABLE 2.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 CORRECTIVE ACTION REGULATIONS: LANDFILLS BY UNIT SIZE

Size (metric tons per year)	Detect year 0 pump 150 years		Detect year 0 pump 20 years		Detect year 49 pump 20 years	
	Per year ($000)	Per metric ton	Per year ($000)	Per metric ton	Per year ($000)	Per metric ton
500	138–198	276–396	65–95	130–190	17–24	34–48
2,000	149–225	75–113	71–109	36–55	18–27	9–14
5,000	172–267	34–53	82–128	16–26	21–31	4–6
7,000	178–275	25–39	85–132	12–19	21–32	3–5
15,000	194–309	13–21	93–148	6–10	24–36	2–2
35,000	216–361	6–10	104–174	3–5	26–42	1–1
60,000	232–391	4–6	113–190	2–3	28–46	[1]–1
123,000	252–422	2–3	123–206	1–2	30–50	[1]–[1]

[1] Less than 50 cents.
[2] MT indicates metrc tons.

Thus, if a 15,000 MT/year landfill with a double synthetic liner did not contaminate ground water to the extent that corrective action was necessary, the incremental annual revenue requirement would be $290,000 or $19 per metric ton. If contamination were detected immediately resulting in immediate counterpumping for 20 to 150 years, an additional revenue requirement of between $93,000 to $194,000, or $6 to $13 per ton would be added to the basic Part 264 costs (using Strategy 1 counterpumping).

To help put these costs in perspective, costs estimated in the absence of regulations (pre-ISS) range from $11 to $240 per metric ton for the large and small on-site landfills, respectively. ISS incremental cost estimates for these two sizes range from $6 to $128 per metric ton. Prices at commercial landfills in 1981 ranged from $55 per metric ton to $240 per metric ton, depending on the type of waste and whether it was in drums or bulk. This does not include transportation, which averaged about $0.15 per ton mile.

Table 3 shows the costs that existing landfills could incur in the first year as a result of the Part 264 requirements. Potential first year costs for design and operating requirements (D&O) using a double liner (synthetic/clay) and for immediate corrective action are reported separately for Strategy 1 and Strategy 2.[10] In the example discussed above, the first year cost is $305,000 if no corrective action is needed, and an additional $315,000 to $465,000 if counterpumping is undertaken immediately.

TABLE 3.—FIRST YEAR COSTS PER UNIT DUE TO PART 264 REGULATIONS: LANDFILLS BY UNIT SIZE

Size (metric tons per year)	Basic cost: no corrective action/double liner [1]	Corrective action cost: immediate counterpumping ($000)
500	$50	$185–$295.
2,000	91	205–365.
5,000	156	255–405.
7,000	196	265–415.
15,000	305	315–465.
35,000	584	375–585.
60,000	810	425–685.
123,000	1,226	475–795.

[1] (Synthetic/clay.)

5. *Costs for Surface Impoundments.* EPA estimated costs for existing surface impoundments using basically the same methods that were used to estimate the cost for landfills, but varied some features to reflect differences in the regulations and the units affected, and estimated two additional cost cases. It was assumed that surface impoundments close as landfills in all cases. (Costs for units where all waste, liners and contaminated subsoils are removed at closure, and for clay-lined storage impoundments, are not reported.)

[10] First year Part 264 D&O costs are approximately the same as annual revenue requirements because the major incremental cost element in the cost model is the cell liner, which is installed for one cell in each year of the landfill's operating life.

The no-corrective-action case was estimated in much the same way as the no-corrective-action case for landfills. However, surface impoundments generate dredged material that must be landfilled; [11] the incremental cost of disposing of this material in a Part 264 landfill rather than in an ISS landfill is counted as a surface impoundment cost in this section.[12] In addition, operators of existing surface impoundments may choose to (1) continue operations without installing liners; (2) close the existing unit and construct a new impoundment lined with one of the three liners described earlier; or (3) retrofit the existing impoundment with any of these three liners. Costs are estimated for all of these cases. The retrofit case includes the costs of disposing of contaminated material from the existing impoundments, and the replacement case including closure and post closure care costs for existing units. Neither case includes land costs nor the economic costs of disrupted plant operations, which are likely to vary a great deal across sites.

Tables 4, 5, and 6 summarize these results. Costs are reported on the basis of the size of the impoundment rather than per unit of waste because the amount of liquid processed through an impoundment of a given size can be highly variable. The cost for an impoundment will depend on the compliance elements that the unit selects or is required to undertake—no scenario would include more than one kind of corrective action or more than one kind of alteration.

[11] For this analysis it was assumed that dredged material is disposed of in a 123,000 MT/yr. landfill. Landfill disposal costs vary depending on the type of liner system. It was assumed that the landfill would not need corrective action. If corrective action were necessary, costs would be slightly higher.

[12] Because these higher landfilling costs are also included in the landfill cost estimates, landfill and surface impoundment costs cannot simply be added to get total costs.

TABLE 4.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 REGULATIONS WITHOUT CORRECTIVE ACTION: SURFACE IMPOUNDMENTS BY UNIT SIZE

Size (acres)	Base cost ($000)	Retrofit cases			Replacement cases		
		Single synthetic liner ($000)	Double liner ($000)	Double synthetic liner ($000)	Single synthetic liner ($000)	Double liner ($000)	Double synthetic liner ($000)
0.25	$4–6	$9	$13	$9	$19	$23	$18
0.5	6–9	15	22	18	26	31	27
1.0	10–16	25	37	34	35	45	42
2.0	16–25	48	71	71	59	78	76
5.0	48–81	92	148	157	106	153	156
11.0	95–157	228	348	374	252	354	367

TABLE 5.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 CORRECTIVE ACTION REGULATIONS: SURFACE IMPOUNDMENTS BY UNIT SIZE.

Size (acres)	Detect year 0 pump 150 years ($000)	Detect year 0 pump 20 years ($000)	Detect year 49 pump 20 years ($000)
0.25 & 0.5 [1]	$122–$163	$58–$77	$15–$19.
1.0	128–180	61–86	16–22.
2.0	138–198	65–95	17–24.
5.0	149–225	71–109	18–27.
11.0	169–261	81–125	20–31.

[1] Costs for plumes associated with surface impoundments smaller than 0.5 acre were not estimated. Cost reported is for a 0.5 acre impoundment.

TABLE 6.—FIRST YEAR COSTS PER UNIT DUE TO PART 264 REGULATIONS: SURFACE IMPOUNDMENTS BY UNIT SIZE

Size (acres)	Basic cost: no corrective action	Corrective action cost: [1] counter-pumping	Facility alteration [2]	
			Retrofit liner	Replace facility
.25	([3])	$159–$209	$123	$142
.5	$1	159–209	226	220
1.0	2	169–254	442	390
2.0	3	189–299	862	718
5.0	8	209–369	2,141	1,765
11.0	18	254–399	4,622	3,868

[1] Assumes corrective action is taken in Year Zero.
[2] Assumes double synthetic liner
[3] Less than $500.

Thus, if a 2-acre surface impoundment did not contaminate ground water to the extent that corrective action was necessary, the incremental revenue requirement would by $16,000 to $25,000 per year, depending on the type of liners used by off-site landfills where the dredged material is disposed of. If the owner chooses to retrofit, the incremental annual cost will be $46,000 to $71,000; if he replaces the impoundment, the incremental annual cost will be $59,000 to $78,000, depending on the type of liner system installed.

If corrective action is necessary and counterpumping is undertaken immediately, an additional annual revenue requirement of $65,000 to $138,000 would be added to the basic Part 264 cost (under Strategy 1 counterpumping).

The first year cost for the basic requirement is $3,000; if counterpumping is undertaken, the first year cost is $189,000 to $299,000; and if the unit elects to retrofit the first year cost is $862,000.

Current prices that could provide perspective for these costs are not readily observed, because most surface impoundments are on-site. However, it was possible to estimate the total revenue requirements for new impoundments constructed and operated to comply with ISS requirements, using assumptions consistent with those used for Part 264 cost estimates. These annualized revenue requirements ranged from $42,000 for the smallest facility, to $424,000 for the largest, including revenue requirements of $6,000 to $174,000 in the absence of any regulation.

6. *Costs for Land Treatment Units.* The Agency estimated costs for land treatment units on a model plant basis, as for landfills and surface impoundments, and calculated corrective action costs in an identical fashion (i.e. for action by all facilities in Year Zero or Year 49), though for units of different sizes. It was necessary to make assumptions about the numbers of units that would be required to undertake certain operating modifications under Part 264 rules. EPA assumed that ten percent of land treatment units would require a pH adjustment, 90 percent would require irrigation and a crop cover to control wind dispersal, 25 percent would need to increase their soil monitoring and number of lysimeters. EPA assumed that all units would conduct one waste field test, and that all would close with hazardous constituents in the treatment zone. It was also assumed that ten percent of all units would encounter problems during operation (i.e., they would fail ongoing tests of soil core and soil pore liquids), resulting in operating modifications: three percent of all units (30 percent of those with problems) would adjust their pH, five percent would expand the treatment area, and two percent would reduce their waste

loadings. Tables 7, 8, and 9 summarize the results.

TABLE 7.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 REGULATIONS WITHOUT CORRECTIVE ACTION: LAND TREATMENT BY UNIT SIZE

Size (acres)	Basic cost (no corrective action)	
	Per year ($000)	Per metric ton[1]
1.7	$17	$48
6.5	19	14
20.1	45	11
74.3	122	8
247.1	361	7

[1] Based on an average application rate of 206 MT per acre per year. In practice the amount of waste processed per acre is highly variable.

TABLE 8.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 CORRECTIVE ACTION REGULATIONS: LAND TREATMENT BY UNIT SIZE

Size (acres)	Detect year 0 pump 150 years	Detect year 0 pump 20 years	Detect year 49 pump 20 years
1.7	$134–187	$63–89	$16–22.
6.5	154–236	73–114	19–28.
20.1	178–276	85–133	21–33.
74.3	225–371	109–180	27–44
247.1	285–472	140–234	34–56

TABLE 9.—FIRST YEAR COSTS PER UNIT DUE TO PART 264 REGULATIONS: LAND TREATMENT BY UNIT SIZE

Size (acres)	Basic cost	Corrective action cost
	No corrective action ($000)	Immediate counterpumping ($000)
1.7	$76	$175–265
6.5	81	205–365
20.1	103	265–425
74.3	134	395–625
247.1	226	565–1,025.

Thus, if the operator of an average size (20.1 acre) land treatment unit applies waste at an average rate (206 MT per acre per year) and does not contaminate ground water to the extent that corrective action is necessary, the incremental annual revenue requirement would be $45,000 or $11 per MT. If contamination is detected immediately resulting in immediate counterpumping, $85,000 to $178,000 per year or $21 to $45 per MT would be added to this basic Part 264 cost (under Strategy 1 counterpumping).

As shown in Table 9, the first year cost if no corrective action is needed for this size unit is $103,000. If corrective action is needed immediately, the first year cost increases by $265,000 to $425,000.

To put these costs in perspective, prices for commercial land treatment in 1981 ranged from $5 to $24 per metric ton.

7. Costs for Waste Piles. Waste pile unit cost estimates assume that all existing waste piles would be managed as storage rather than disposal units. Accumulated wastes must periodically be removed and disposed of in a landfill; therefore, the incremental costs of using a Part 264 rather than an ISS landfill are included here as a waste pile cost. (These costs are also reflected in the landfill cost estimates, so unit costs are not additive.) The analysis assumes that all piles are exposed and are at or above grade. Costs for enclosed piles (including the cost of enclosure) could be significantly lower, and costs for below grade piles are likely to be higher (in practice, many large below grade piles would probably close as landfills).

The analysis looked at three alternative compliance paths to reflect the options available to waste pile owners or operators under the regulations: (1) Retain the ISS sturdy impermeable base and undertake ground-water monitoring; (2) inspect the ISS base periodically (assumed to mean annually) without ground-water monitoring; or (3) install a new base with a double liner system and leachate collection system and dispense with inspections and ground-water monitoring (until leakage is detected). For waste piles, it was again assumed that corrective action consists of counter-pumping in Year Zero or Year 49.

Tables 10, 11, and 12 summarize the results. The annual revenue requirements shown in Table 10 include the cost of disposing of the waste pile and base at the time of closure in a Part 264, 123,000 MT/yr off-site landfill with a double (synthetic/clay) liner that does not require corrective action.

TABLE 10.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 REGULATIONS WITHOUT CORRECTIVE ACTION: WASTE PILES BY UNIT SIZE [1]

Size ($000 ft³)	Compliance option		
	Groundwater montoring ($000)	Base inspection ($000)	Liner and leachate collection system ($000)
2	$15	$7	$7
10	17	9	9
25	21	13	13
100	27	20	19
500	27	23	17
1,000	26	27	15

[1] Costs for waste piles sized at 2,000 to 25,000 cubic feet assume a 1 year operating life. Costs for a 100,000 cubic foot pile assume a 2 year operating life, costs for a 500,000 cubic foot pile assume a 10 year operating life, and costs for a 1,000,000 cubic foot pile assume a 20 year operating life. Because operating lives differ, costs as a function of size do not increase monotonically.

TABLE 11.—ANNUAL REVENUE PER UNIT REQUIRED TO OFFSET INCREMENTAL COSTS DUE TO PART 264 CORRECTIVE ACTION REGULATIONS: WASTE PILES BY UNIT SIZE [1]

Size ($000 ft³)	Detect year 0 pump 150 years ($000)	Detect year 0 pump 20 years ($000)	Detect year 49 pump 20 years ($000)
2–500	$150–$196	$71–$93	$18–$23.
1,000	153–207	72–98	18–24.

[1] Costs for plumes associated with waste piles smaller than 500,000 cubic feet were not estimated. Cost reported is for a 500,000 cubic foot pile.

TABLE 12.—FIRST YEAR COSTS PER UNIT DUE TO PART 264 REGULATIONS: WASTE PILES BY UNIT SIZE

Size ($000 ft³)	Groundwater monitoring ($000)	Inspect base ($000)	Liner and leachate collection system ($000)	Immediate counterpumping ($000)
2	$44	$4	$12	(1)
10	44	4	12	(1)
25	44	4	12	(1)
100	44	4	12	(1)
500	44	4	14	165–$237.
1,000	44	4	17	170–265.

[1] Not estimated. Costs for 500,000 cubic foot pile provide an upper bound.

Thus, if the operator of a 100,000 cubic foot waste pile decides to inspect the unit's ISS base rather than monitor ground water or change to a liner and leachate collection and removal system, and does not contaminate ground water, the additional annual revenue requirement is $20,000. If contamination is detected in year zero and counterpumping is necessary, additional annual revenue requirements of $71,000 to $150,000 would be added to the basic Part 264 cost (under Strategy 1 counterpumping).

First year costs for the three Part 264 options are shown in Table 12. Without corrective action, these costs for the unit discussed above are $4,000 to $44,000, depending on the D&O option chosen. Corrective action taken in Year Zero could add up to $165,000 to $237,000 to these costs.

E. Closure Analysis

This section examines the economics of closing small on-site landfills and shipping wastes to commercial sites and replacing existing on-site surface impoundments. Small on-site landfills may become uneconomic compared to larger commercial facilities as a result of these regulations. Small surface impoundments may close to avoid liability for corrective action (related to past leakage) that could otherwise be imposed through the permit process.

If small landfills choose to close or if small surface impoundments are replaced, a substantial portion of all hazardous waste units will have been significantly affected by these regulations. EPA estimates that there are about 255 small (500 MT/yr. or less) landfills; this represents 44 percent of all landfills. There are about 2,760 small (one acre or less) surface impoundments, or 65 percent of all surface impoundments.

Results of the analysis on small landfill closures indicate that operators of small on-site landfills would in many cases be better off closing and shipping their wastes to off-site commercial facilities for disposal. For small surface impoundments, the economics favor replacing existing units under most circumstances if closure of the existing impoundment eliminates an obligation to undertake corrective action. Each of these issues is summarized below.

Table 13 indicates that under the Part 264 regulations, owner/operators of small on-site landfills could expect their annual revenue requirements to increase by about $62/ton assuming a single synthetic liner design and no corrective action. This is used as the base case. (With a double liner [synthetic/clay], this figure would be $104/ton, or $86/ton with a double-synthetic liner). If corrective action is considered likely, the increases in expected revenue requirements could range from $96 to $458 per ton. These expected cost increases understate the savings that could actually be achieved by closing, since major cost components of ISS like closure, post closure, and financial responsibility, as well as expenses for basic trench or cell construction, could be avoided or recovered if the landfill closed.

These incremental costs (which are conservative estimates of incremental savings from closure) compare with actual 1981 prices for commercial disposal that range from $55/ton to $240/ton. This sensitivity analysis assumes that prices for commercial services will not change as a result of the Part 264 regulations. This assumption is reasonable if commercial facilities already meet most design and operating standards and do not face corrective action requirements, and if commercial capacity is adequate to meet demand at current prices.

TABLE 13.—EFFECTS OF THE INCREMENTAL COSTS OF PART 264 REGULATIONS ON THE ECONOMIC VIABILITY OF SMALL ON-SITE LANDFILLS[1]

	Base case	Base case plus corrective action	
		Low	High
Incremental cost for 500 metric ton/year on-site landfill	$62/ton.	$96/ton	458/ton
Equivalent distance[2] to ship waste for disposal in commercial off-site landfill	0–47 miles.	0–273 miles.	1,453–2,687 miles

[1]Base case cost assumes single synthetic liner and no corrective action and that increased demand for off-site services does not significantly raise prices. Low cost assumes that the small landfill undertakes counterpumping under strategy 1 conditions for 20 years starting in year 49. High cost assumes that the small landfill undertakes counterpumping under strategy 2 conditions for 150 years starting in Year Zero.
[2]Distance calculated using a range of commercial disposal prices of $55 to $240/ton and a transportation cost of $0.15/ton mile.

Under the base case assumptions used in Table 13, it would be advantageous for a firm operating a small on-site landfill to close the landfill and ship its wastes to a commercial facility for disposal if the firm is quoted disposal prices that are at the low end of the actual range. Where the firm faces a price of $55/ton for commercial disposal, it could afford to ship wastes up to 47 miles, assuming a transportation cost of $0.15/ton mile. If the firm is quoted prices closer to $240/ton, it would be more cost-effective for the firm to continue running its landfill.

Where the firm expects that corrective action could be necessary at its landfill, it could close the landfill and ship wastes from 273 to 2687 miles for disposal in a commercial landfill charging $55/ton, instead of bearing the costs and responsibility for corrective action. Where the commercial disposal price is closer to $240/ton, it may be more cost-effective for the firm to continue disposing its wastes on site, but this would depend on the hydrogeologic conditions existing at the site and the expected duration of corrective action.

These economic factors may be offset by concerns over liability potentially associated with sending wastes off site, or by concerns over potential price increases at commercial facilities.

Similar comparisons can be made between the costs of replacing small surface impoundments to limit the possibility that corrective action will be needed, or doing nothing and hoping that corrective action will not be necessary. Actual decisions to close and replace a surface impoundment will be based on individual owner or operators expectations regarding the probability that their impoundments have been leaking or will leak in the future.

Table 14 compares the incremental costs of taking corrective action under various conditions with the costs of replacing 1/4 acre, 1/2 acre and 1 acre surface impoundments.

TABLE 14.—COMPARISON OF CORRECTIVE ACTION COSTS WITH CLOSE/CONSTRUCT COSTS FOR SMALL SURFACE IMPOUNDMENTS; INCREMENTAL ANNUAL REVENUE REQUIREMENTS

Impoundment size	Corrective action[1]			Close and construct[2] ($000)
	In year zero for 150 years ($000)	In year zero for 20 years ($000)	In year 49 for 20 years ($000)	
¼ acre	$126–$167	$62–$91	$19–$23	$19.
½ acre	$128–$169	$64–$83	$22–$28	26.
1 acre	$138–$190	$71–$96	$26–$32	35.

[1]Low end of range of corrective action costs based on Strategy 1 conditions; high end of range based on Strategy 2 conditions.
[2]Assumes double liner design, most expensive of possible systems.

Based on Table 14, it may often be more advantageous to close existing units and construct new ones where it appears likely that this would eliminate the need for corrective action. This may be the case where an impoundment is believed to have been leaking but has not yet resulted in significant contamination at the waste boundary. (In this case, the owner/operator would need to be able to distinguish contamination from the closed and the new unit, perhaps through use of tracers added to new waste or based on the arrangement of monitoring wells.) Of the three corrective action timing cases examined, electing to continue to operate the existing impoundment when corrective action will be necessary is only advantageous under the "best" assumptions, i.e., when action is not needed until Year 49 (the year before owner/operator responsibility ends) and continues for 20 years.

F. Total Costs

EPA estimates that the total annualized cost of these regulations (for existing facilities [13]) could range from $150 to $1,145 million. Details on the components of these cost estimates are reported in table 15.

The broad range covered by these estimates results primarily from the uncertainty regarding the amount of corrective action that will be needed. ISS monitoring will eventually provide an indication of the severity of current environmental problems. Currently, however, EPA is unable to predict reliably the number of facilities able to comply with the ground-water protection standard specified in the regulations. EPA cannot predict when facilities will fail, or how long corrective action will have to continue at a typical site. Data on a host of other site specific factors that will affect the cost of the corrective action are also unavailable. Finally, EPA cannot predict the number of facilities affecting ground water that might be able to avoid corrective action by showing that actual concentrations of Appendix VIII constituents at the compliance point pose no threat to human health or the environment.

To estimate total D&O costs EPA estimated the size distribution of units from the Part A's.[14] For each model unit, EPA multiplied the revenue requirements reported in *Individual Unit Costs* by the number of units, and summed [15] to obtain an estimate of total D&O costs.

The lower bound estimate of D&O costs assumes that landfills use single synthetic liners, and that waste piles choose to replace the containment system to avoid the need for ground water monitoring. The upper bound D&O estimates assume that landfills have double synthetic liners, that waste piles monitor ground water, and that surface impoundments are closed and replaced by new units with double synthetic liners.

To estimate total corrective action costs, EPA grouped individual units into facilities, and assumed that plume sizes were related to the acreage of the total waste management areas at the facilities. Part A data provided information on the number of facilities with various combinations of units, and allowed EPA to estimate the average total acreage at sites with each combination.[16] EPA added 50 percent to the calculated acreage to allow for common areas, variations in plume shape, and constraints on siting of recovery wells.

EPA assumed that all facilities were permitted simultaneously and immediately. To the extent that some facilities close rather than apply for permits, others apply for but do not receive permits, or permits are issued over time, costs will differ from these estimates.

Under the regulations, corrective action is only required in those cases where Appendix VIII constituents increase in ground water, and where the owner or operator is unable to show that the actual concentration of those constituents pose no threat to human health or the environment. Total costs as high as the high cost case are very unlikely since it assumes that all landfills install double synthetic liner systems, all existing surface impoundments close and build new impoundments with double synthetic liner systems, and that in spite of these actions, all facilities require immediate corrective action lasting 150 years and using an expensive counterpumping strategy. As the need for corrective action increases, and as owners and operators install more expensive liner systems the total cost of the regulations will increase from the low cost case toward the high cost case.[17]

The lower and upper bound costs are shown in Table 15. The annualized D&O cost for the regulations ranges from $150 to $468 million per year. Depending on the frequency, speed and concentration with which Appendix VIII constituents reach ground water, total incremental annualized costs could be as high as $1,145 million.

TABLE 15.—TOTAL ANNUAL REVENUE REQUIREMENTS FOR PART 264 REGULATIONS: ALL LAND DISPOSAL FACILITIES

[Dollars in millions]

	Baseline (pre-ISS + ISS)[1]	Incremental part 264	
		Low estimate	High estimate
Landfills D&O	$301	$81	$159
Surface impoundments D&O	534	102	401
(Adjustment for landfilled material)	(190)	(57)	(118)
Waste piles D&O	16	7	12
(Adjustment for landfilled material)	(10)	(3)	(6)
Land treatment D&O	51	20	20
Corrective action	—	—	677
Total	702	150	1,145

[1] The total baseline costs of $702 million includes pre-ISS costs of about $181 million for landfills and $180 million for surface impoundments. Similar data are not available for waste piles and land treatment units. Pre-ISS costs include land, excavation, and infrastructure costs incurred in establishing a land disposal facility. ISS costs include more than "good housekeeping" requirements. Approximately 72 percent of the ISS costs of $341 million included in the baseline are due to ISS closure ($82 million), post closure ($40 million), ground water monitoring ($42 million), and financial assurance ($82 million) requirements.

G. Industry Analysis

The economic impacts of these regulations will depend in part on how

[13] We were unable to estimate total costs for new facilities due to the difficulty of projecting the number of facilities that would be affected. Determining incremental costs for a single new facility is difficult in any event, because EPA has not previously estimated the costs of the Part 267 regulations that now apply to these facilities.

[14] Complete details are in the docket report. Based on Part A of TSDF permit applications, EPA estimates that there are 573 existing hazardous waste landfills, capable of accepting about 12 million tons of waste per year; 4240 surface impoundments with 11,169 acres of surface area; 241 land treatment facilities with 12,100 acres of operating area; and 608 waste piles with 87 million cubic feet of wastes. Thus, D&O costs are based on 5,662 units. Surveys to verify these estimates are now underway, and it is likely that the final estimates will be lower.

We were unable to simply add the capacities reported on the Part A's, because capacities for some types of units are reported in different units of measure there than the units of measure used in this analysis (i.e., landfills in acre-feet rather than metric tons, and surface impoundments in gallons or liters rather than acres of surface area. In addition, we assumed that the remaining operating like of all units was 20 years. Annual capacity figures for each kind of facility should therefore be viewed as estimated based on available data, rather than as aggregates of reported capacities.

[15] In adding costs for units to obtain totals an adjustment was made to avoid double counting the costs of landfilling surface impoundment sludge and wastes removed from piles.

[16] Once again, it was necessary to make assumptions in order to transform the units reported on the Part A's into acres of surface area. However, the corrective action cost estimates are based on 2484 facilities, the number of disposal facilities which submitted Part A of the permit application.

[17] Actually, the high cost case does not reflect the highest possible costs and the low cost case does not represent the lowest possible cost that could occur under the regulations, because waivers are potentially available for some requirements and because we use median technical assumptions in determining cost. It is, however, extremely unlikely that the true cost of these regulations will fall outside these boundaries.

the costs of the regulations are distributed across industries and firms. As described in *Total Costs,* EPA calculated upper and lower bound cost estimates. These two cost scenarios were then applied to selected industries, in order to obtain a preliminary indication of whether economic impacts might be significant. The industries examined were selected because there were large numbers of on-site land disposal facilities in the industries, or large quantities of waste shipped off-site, or both.

Upper and lower bound costs were allocated to industries using available information on the use of land disposal of hazardous waste in these industrial sectors. This information is sufficient to allow EPA to identify the industries on which these regulations are most likely to impose significant costs. However, cost estimates for any given industry are highly sensitive to the numbers and sizes of facilities attributed to that industry, and the data base used to derive these factors for individual industries is imprecise.

Table 16 lists the industries EPA examined, and their SIC codes. The range of potential annual revenue requirements is reported and compared to total costs of production, value added, and value of shipments in Table 17. The range of potential first year expenditures is compared to an estimate of annual capital expenditures for each industry in Table 18. Table 19, at the end of this section, provides estimates of the range of potential annual revenue requirements (in excess of pre-ISS costs) for the combination of ISS (Part 265) and Part 264 regulations. In all cases cost ranges reflect the upper and lower bound cases used earlier in this analysis.

These comparisons do not constitute an economic impact analysis at either the industry or firm level. At the industry level, they do provide an initial screening to judge whether economic impacts might be large or small. If the upper bound costs do not appear significant compared to economic parameters for an industry, then the analysis indicates that broad and significant economic impacts are unlikely. These comparisons are also useful in identifying those industries where the most significant impacts are likely to occur. However, the high cost case cannot indicate that there will in fact be significant impacts, because costs are probably overstated in the high cost case.

To the extent that economic aggregates such as value added are representative of firms in the industry sectors, the ratios reported here could also provide some insight into potential burdens for "typical" firms in each industry. However, it should be remembered that costs are likely to be overstated in the high cost case,[18] and that there are no truly typical firms. Four-digit SIC codes include highly diverse operations with widely varying costs of production, value added and value of shipments per unit of hazardous waste generated. In addition, facilities will use different mixes of on- and off-site disposal for these wastes, and so face different exposure to the regulations.

The docket report contains a full description of the methodology used to construct these tables.

[18] This scenario is appropriate for a firm with a mix of on- and off-site disposal, required to undertake corrective action lasting 150 years at an early date at all of its on-site facilities after having installed the most expensive technology modelled, and simultaneously faced with higher off-site costs due to the need for early corrective action at all available off-site facilities.

TABLE 16.—INDUSTRIES EXAMINED BY SIC CODES

Industry name	SIC code
Crop Planting and Protection	0721
Oil and Gas Extraction	1300
Wood Preserving	2491
Alkalies and Chlorine	2812
Inorganic Pigments	2816
Industrial Inorganic Chemicals	2819
Plastic Materials and Resins	2821
Synthetic Rubber	2822
Cellulosic Man-Made Fibers	2823
Organic Fibers, Noncellulosic	2824
Medicinals and Botanicals	2833
Paints and Allied Products	2851
Gum and Wood Chemicals	2861
Cyclic Crudes and Intermediates	2865
Industrial Organic Chemicals	2869
Nitrogenous Fertilizers	2873
Phosphatic Fertilizers	2874
Agricultural Chemicals	2879
Explosives	2892
Chemical Preparations, NEC	2899
Petroleum Refining	2911
Lubricating Oils and Greases	2992
Blast Furnaces and Steel Mills	3312
Electro-Metallurgical Products	3313
Steel Wire and Related Products	3315
Gray Iron Foundries	33215
Secondary Nonferrous Metals	3341
Copper Rolling and Drawing	33516
Plating and Polishing, Metal Coating and Allied Services	34719
Motor Vehicles and Bodies	3711
Motor Vehicle Parts and Accessories	3714

TABLE 17.—COMPARISON OF ANNUAL REVENUE REQUIREMENTS DUE TO PART 264 LAND DISPOSAL REGULATIONS TO SELECTED INDUSTRY MEASURES, BY SIC CODE

[Low and high cost cases]

Sic code	Annualized cost ($000)	Annualized cost as a percentage of—		
		Cost of production	Value added	Value of shipments
0721	$322–$3,309	(1)	(1)	(1)
1300	1,392–8,104	(1)	(1)	(1)
2491	774–15,572	.16–3.17	.38–7.61	.13–2.58.
2812	3,187–16,944	.20–1.09	.26–1.37	.13–.68.
2816	3,204–16,318	.44–2.26	.68–3.49	.31–1.57.
2819	1,079–73,034	.15–.97	.19–1.27	.10–.64.
2821	4,896–24,478	.04–.22	.08–.41	.03–.16.
2822	2,484–10,976	.18–.78	.46–2.03	.14–.62.
2823	1,640–7,242	.12–.53	.33–1.46	.11–.48.
2824	1,303–7,378	.05–.27	.08–.46	.04–.20.
2833	218–2,706	.02–.23	.02–.19	.01–.12.
2851	996–5,739	.03–.20	.06–.34	.02–.14.
2861	1,037–6,575	.1.74–11.03	2.44–15.45	1.15–7.31.
2865	2,517–15,885	.12–.73	.21–1.35	.08–.53.
2869	3,756–23,435	.04–.27	.07–.42	.03–.18.
2873	1,003–7,201	.05–.36	.07–.49	.03–.23.
2874	151–2,347	.01–.15	.02–.31	.01–.10.
2879	2,595–12,793	.23–1.13	.38–1.86	.18–.87.
2892	850–7,450	.36–3.19	.38–3.35	.24–2.06.
2899	1,322–7,815	.23–1.37	.33–1.94	.15–.90.
2911	23,939–116,687	.02–.08	.09–.43	.01–.07.
2992	1,068–5,230	.28–1.35	.66–3.24	.21–1.04.
3312	8,495–37,153	.04–.19	.10–.44	.04–.16.

TABLE 17.—COMPARISON OF ANNUAL REVENUE REQUIREMENTS DUE TO PART 264 LAND DISPOSAL REGULATIONS TO SELECTED INDUSTRY MEASURES, BY SIC CODE—Continued

[Low and high cost cases]

Sic code	Annualized cost ($000)	Annualized cost as a percentage of—		
		Cost of production	Value added	Value of shipments
3313	593–4,010	.13–.86	.38–2.59	.11–.76.
3315	1,037–5,500	.20–1.07	.39–2.06	.16–.84.
33215	1,327–6,998	.12–.66	.16–.85	.09–.48.
3341	1,984–10,337	.24–1.23	.94–4.91	.20–1.06.
33516	4,721–20,085	.22–.92	.79–3.37	.19–.79.
34719	6,208–31,520	.65–3.31	.84–4.24	.47–2.41.
3711	930–7,086	.00–.02	.01–.07	.00–.02.
3714	716–7,042	.01–.09	.02–.16	.01–.07.

[1] Necessary data unavailable.

TABLE 18.—COMPARISON OF FIRST YEAR EXPENDITURES DUE TO PART 264 LAND DISPOSAL REGULATIONS TO YEARLY CAPITAL OUTLAYS BY SIC CODE

[Low and high cost cases]

SIC code	First year expenditure ($000)	First year expenditure as percentage yearly capital expenditures
0721	$182–$9,430	(1)
1300	$991–38,997	(1)
2491	$474–42,900	2.37–124.75.
2812	$995–128,807	.25–41.58.
2816	$754–152,243	.73–141.54.
2819	$4,556–461,702	.72–65.01.
2821	$3,090–123,594	.23–8.05.
2822	$590–114,029	1.14–219.32.
2823	$869–46,052	1.51–90.74.
2824	$435–53,985	.11–24.31.
2833	$141–8,507	.07–3.49.
2851	$774–14,883	.12–4.27.
2861	$333–44,958	5.31–648.31.
2865	$698–116,540	.84–131.04.
2869	$1,719–137,204	.10–6.90.
2873	$376–43,233	.04–4.17.
2874	$106–7,358	.10 to 4.52.
2879	$1,115–83,884	.78 to 64.21.
2892	$433–31,665	3.03 to 166.98.
2899	$767–31,433	1.97 to 62.38.
2911	$15,049–783,313	.35 to 17.42.
2992	$863–11,883	4.97 to 40.56.
3312	$6,671–81,084	.52 to 3.83.
3313	$297–19,944	.49 to 50.22.
3315	$889–17,563	3.48 to 52.33.
33215	$949–15,039	8.39 to 68.53.
3341	$1,380–23,654	3.31 to 34.61.
33516	$3,216–84,597	1.02 to 105.25.
34719	$4,424–103,817	1.33 to 98.34.
3711	$155–46,625	.02 to 4.68.
3714	$265–29,022	.05 to 4.38.

[1] Necessary data unavailable.

TABLE 19.—COMPARISON OF ANNUAL REVENUE REQUIREMENTS DUE TO PART 264 LAND DISPOSAL REGULATIONS AND PART 265 LAND DIPOSAL REGULATIONS TO SELECTED INDUSTRY MEASURES BY SIC CODE

[Low and High Cost Cases]

SIC code	Annualized cost ($000,000)	Annualized cost as a percentage of—		
		Cost of production	Value added	Value of shipments
0721	$2–$5	(1)	(1)	(1)
1300	$6–$13	(1)	(1)	(1)
2491	$6–$21	1.24–4.25	2.96–10.19	1.01–3.46
2812	$12–$26	.78–1.66	.99–2.10	.49–1.05.
2816	$12–$25	1.65–3.46	2.54–5.34	1.14–2.41.
2819	$4–$6	.59–1.42	.77–1.85	.39–.93.
2821	$17–$36	.15–.32	.28–.60	.11–.23.
2822	$9–$8	.64–1.25	1.68–3.25	.51–.99.
2823	$5–$11	.38–.79	1.04–2.17	.34–.71.
2824	$5–$11	.19–.41	.31–.69	.14–.30.
2833	$1–$4	.12–.34	.10–.28	.06–.17.
2851	$4–$8	.13–.29	.21–.49	.09–.21.
2861	$4–$9	6.35–15.64	8.91–21.93	4.21–10.37.
2865	$10–$23	.45–1.07	.84–1.98	.33–.78.
2869	$15–$35	.18–.41	.27–.62	.12–.27.
2873	$4–$10	.21–.52	.29–.71	.13–.33.
2874	$1–$4	.06–.20	.12–.42	.04–.13.
2879	$9–$19	.82–1.72	1.34–2.82	.63–1.32.
2892	$4–$10	1.63–4.45	1.71–4.68	1.06–2.88.
2899	$5–$11	.80–1.94	1.13–2.74	.53–1.28.
2911	$89–$181	.06–.12	.33–.67	.05–.11.
2992	$3–$7	.77–1.84	1.84–4.42	.59–1.41.
3312	$23–$52	.12–.26	.27–.61	.10–.22.
3313	$2–$6	.46–1.20	1.39–3.60	.41–1.06.
3315	$4–$8	.72–1.59	1.38–3.05	.57–1.25.
33215	$4–$10	.37–.90	.48–1.17	.27–.66.
3341	$7–$15	.78–1.78	3.11–7.08	.67–1.53.
33516	$15–$31	.69–1.39	2.55–5.13	.60–1.21.
34719	$21–$46	2.20–4.86	2.81–6.22	1.60–3.53.
3711	$4–$11	.01–.03	.05–.11	.01–.03.
3714	$3–$10	.04–.13	.08–.22	.03–.10.

[1] Necessary data unavailable.

H. Sensitivity Analysis

The following reports on analysis of the sensitivity of counterpumping costs to the number of units or facilities affected, plume size, technical assumptions about hydrogeology and treatment costs, and the use of a confining slurry wall to reduce pumping rates and costs. This section also examines the potential cost of floodplain requirements.

1. *Sensitivity of Corrective Action Costs.* Total corrective action costs are very sensitive to whether corrective action occurs at individual units within a facility or at the facility as a whole. As described earlier in this preamble, two distributions were used to develop total costs in this analysis. The first distributed individual land disposal units by size and was used to estimate D&O costs on a unit-by-unit basis and to report costs by unit. The second distribution combined individual units to form multi-unit land disposal facilities and was used to estimate total corrective action costs on the basis of total acreage at land disposal sites.

If corrective action costs were to be estimated using the first distribution (on a unit-by-unit basis), instead of on a facility-by-facility basis, total costs reported would be significantly higher. Ranges of corrective action costs using the two distributions are reported in Table 20.

TABLE 20.—COMPARISON OF CORRECTIVE ACTION COSTS USING UNITS AND FACILITIES ($000,000)

Scenario	Corrective action costs	
	Detect year 49 and pump 20 [1]	Detect year 0 and pump 150 [2]
5,662 units	$96	$1,176
2,424	51	677

[1] Years using strategy 1.
[2] Years using strategy 2.

As table 20 shows, if all 5,662 land disposal units were to undertake corrective action individually, counterpumping costs would range from $96 million to $1,176 million per year and would be 80 to 90 percent higher than the total corrective action costs reported in *Total Costs.*

Both of these estimates depend in part on plume sizes, which in this analysis were necessarily related to the surface areas used for waste management. However, areas used are not directly reported on the Part A of the permit application for some units, and therefore had to be derived. In addition, plumes may be larger than the facility area when corrective action begins due to irregular shapes, the orientation of the facility relative to ground water flow, or site-specific constraints on the location of recovery wells. The 50 percent area add-on used for sites with more than one type of unit-deals with some of this imprecision. In any event, corrective action costs are relatively insensitive to plume size, if hydrogeologic conditions are held constant. As reported in table 21, the cost of corrective action for a 25 acre plume is only 28 to 45 percent more expensive than counterpumping for a 5 acre plume, although the size of the plume has increased by 400 percent. Similarly, while a 125-acre plume is 125 times bigger than a 1-acre plume, the counterpumping cost associated with the 125-acre plume is only 1.9 to 2.6 times greater, depending on the strategy used and the timing of corrective action.

TABLE 21.—COMPARISON OF INCREASES IN COUNTERPUMPING COSTS WITH INCREASES IN PLUME SIZE

Plume size in acres	Counterpumping cost			
	Strategy 1 for 20 years starting in year 49		Strategy 2 for 150 years starting in year 0	
	$000	Percent change from previous value	$000	Percent change from previous value
1	16	—	180	—
5	18	13	225	25
25	23	28	327	45
75	28	22	420	28
125	30	7	466	11

In the corrective action scenario where each unit takes corrective action individually, the average plume size is 7.3 acres. The average plume size increases to 15.6 acres when it is

assumed that corrective action is taken on a facility basis. Even this difference, which probably is greater than the range of error in our plume size estimates, has an insignificant effect on total corrective action costs.

2. *Sensitivity of Costs to Hydrogeologic Assumptions.* EPA examined the effects of alternative assumptions regarding aquifer transmissivity and gradient on corrective action costs for two plume sizes.[19] The Agency found that changing gradient or transmissivity assumptions has almost no effect on costs for small plumes under Strategy 1 conditions. However, for large plumes changing the gradient from 0.5 to 50 feet per mile or changing the transmissivity from 10,000 to 1,000,000 gallons per day per foot can increase the annual revenue requirement calculated for counterpumping by about 50 percent. Under Strategy 2 conditions, the same changes in transmissivity can increase costs for small plumes by 50 percent and costs for large plumes by about 150 percent. Details of this analysis appear in the docket report.

3. *Sensitivity of Costs to Treatment Assumptions.* All corrective action cost estimates displayed in this preamble assume that the ground water removed through counterpumping is treated in a facility built on site to deal with a simple mix of contaminants in low concentrations. EPA used a simple average of costs for three types of treatment: activated carbon; reverse osmosis; and a treatment train consisting of coagulation, flocculation, sedimentation and filtration. These processes are capable of addressing the bulk of potential ground water contaminants, and except in unusual cases the concentrations of pollutants that are likely to be encountered should be within the ranges that can be treated by these systems.

On balance, these estimates give a reasonable indication of likely costs in average situations. Specific scenarios would need to be addressed to substantially improve on these estimates.

Moving from an average of treatment costs to costs for a single approach can change corrective action costs up or down by a third to a half.

Some cost decreases may be possible if the pumped water contains only volatile pollutants that can be treated through air stripping. Where the volumes of recovered water are very low and the contaminants to be removed are of a suitable kind, pre-engineered treatment equipment can be trucked to the site at some cost savings. Large cost increases are possible if the recovered water contains contaminants in high concentrations, or if the recovered water contains a mixture of contaminants. Mixtures can require use of a combination of the approaches examined here, or use of more complex chemical or biological treatment. (Details are contained in the docket report.)

4. *Adding a Slurry Wall to Reduce the Pumping Rate.* EPA also examined an alternative strategy for compliance based on use of a confining slurry wall and a surface cover to minimize the amount of pumping and treatment required. This approach removes contamination, but at a very slow rate, so that for purposes of cost calculation, it must be assumed that the plume will exist for a very long time. EPA found that this approach could save money in many cases, compared to pumping at a higher rate over a shorter period of time. The difficulty in using this technique may be in demonstrating that the plume will be effectively contained and removed.

EPA estimated the cost of this strategy for a small plume (100 ft x 200 ft), since slurry wall costs increase more rapidly with plume size than do counterpumping costs. EPA determined that with a slurry wall in place pumping rates would be in the range of 10,000 to 50,000 gallons per year (38 to 189 MT/year). Because these rates are very low relative to what they would be without the slurry wall (4 to 22 million gallons per year under base case conditions), EPA assumed that the contaminated ground water would be treated in pre-engineered facilities trucked to the site, at a cost of $85 per 1,000 gallons or $22 per metric ton. At this cost, over 250,000 gallons of recovered water—five to twenty-five times the amount expected—could be treated before a slurry wall becomes financially unattractive.

Use of a slurry wall would be even more attractive under pessimistic assumptions regarding gradient and transmissivity, because these changes would not affect the costs of the slurry wall approach. The slurry wall approach would be much less attractive with deeper plumes, and infeasible at depths greater than 150 feet.

5. *Costs of Floodplain Standards.* The Part 264 regulations require that facilities located in 100-year floodplains be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

Dike costs were only estimated for surface impoundments. It was assumed that impoundments are likely to be located in floodplains because they are often part of systems for treating industrial effluent before it is discharged in surface water. It was assumed that dikes are built around 3 sides of the surface impoundment, that there is a 40' buffer zone between the surface impoundment and the dike, and that dike construction is entirely independent from the surface impoundment.

EPA estimated the costs of constructing dikes of various heights to withstand the effects of a 100-year flood. Actual dike heights are likely to vary with floodplain topographies, river depths, and heights during 100-year floods. Costs were estimated for dike heights of 2, 3, 5, and 9 meters, but the 3-meter (about 10 feet) height is used as an average cost estimate. Dike widths varied with height and ranged from 14 meters for a 2-meter high dike to 49 meters for a 9-meter high dike. The width of the dike significantly increases the amount of land required for the facility. For example, a ¼-acre surface impoundment would need to be situated on 1.5 acres to accommodate the buffer zone and a 3-meter dike. Similarly, an 11 acre surface impoundment would require about 16 acres to allow for the buffer area and a 3-meter dike.

Annual revenue requirements for dikes of various heights were estimated in the same way that other D&O revenue requirements were estimated for surface impoundments. Costs for a 3 meter dike ranged from $3,000 for a ¼-acre surface impoundment to $17,000 for an 11-acre impoundment. For smaller surface impoundments, these costs were about 50 percent of the basic costs of complying with the Part 264 regulations, and roughly 20 to 25 percent of the costs of retrofitting or replacing a facility. For large surface impoundments, a 3-meter dike would add about 15 percent to the basic compliance cost, and about 6 percent to the retrofit or replacement cost.

If it is assumed that all surface impoundments construct 3-meter dikes to protect against washout from a 100-year flood, the total incremental cost would be $29 million.[20]

[19] In all cases, the small plume (100 ft x 200 ft) is approximately the size of the plume used to estimate corrective action costs for a ½ acre surface impoundment. This is two and one-half times as large as the plume size for the smallest (500 MT/yr) landfill modelled. The large plume (1000 ft x 2000 ft) is close in size to the plume used to estimate costs for a 35,000 metric ton per year landfill. A 20 acre surface impoundment would involve about the same size plume.

[20] Costs were estimated on a unit-by-unit basis for all 4240 surface impoundments. Estimating costs on

X. List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Waste supply.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 260, 264, 265, and 122 are amended as set forth below.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The Authority citation for Part 260 reads as follows:

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).

§ 260.10 [Amended]

2. 40 CFR Part 260 is amended by removing the following from § 260.10:

"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.

3. 40 CFR Part 260 is amended by adding the following terms and definitions to § 260.10 in alphabetical order:

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Hazardous waste constituent" means a constituent that 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.

"Treatment Zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

4. In 40 CFR Part 264, the Table of Contents is amended by adding listings for Subparts F, M, and N, and revising listings for Subparts K and L, to read as follows:

* * * * *

Subpart F—Ground-water Protection

264.90 Applicability.
264.91 Required programs.
264.92 Ground-water protection standard.
264.93 Hazardous constituents.
264.94 Concentration limits.
264.95 Point of compliance.
264.96 Compliance period.
264.97 General ground-water monitoring requirements.
264.98 Detection monitoring program.
264.99 Compliance monitoring program.
264.100 Corrective action program.
264.101–264.109 [Reserved]

* * * * *

Subpart K—Surface Impoundments

264.220 Applicability.
264.221 Design and operating requirements.
264.222 Double-lined surface impoundments: Exemption from Subpart F ground-water protection requirements.
264.223–264.225 [Reserved]
264.226 Monitoring and inspection.
264.227 Emergency repairs; contingency plans.
264.228 Closure and post-closure care.
264.229 Special requirements for ignitable or reactive waste.
264.230 Special requirements for incompatible wastes.
264.231–264.249 [Reserved]

Subpart L—Waste Piles

264.250 Applicability.
264.251 Design and operating requirements.
264.252 Double-lined piles: Exemption from Subpart F ground-water protection requirements.
264.253 Inspection of liners: Exemption from Subpart F ground-water protection requirements.
264.254 Monitoring and inspection.
264.255 [Reserved]
264.256 Special requirements for ignitable or reactive waste.
264.257 Special requirements for incompatible wastes.
264.258 Closure and post-closure care.
264.259–264.269 [Reserved]

Subpart M—Land Treatment

264.270 Applicability.
264.271 Treatment program.
264.272 Treatment demonstration.
264.273 Design and operating requirements.
264.274–264.275 [Reserved]
264.276 Food-chain crops.
264.277 [Reserved]
264.278 Unsaturated zone monitoring.
264.279 Recordkeeping.
264.280 Closure and post-closure care.
264.281 Special requirements for ignitable or reactive waste.
264.282 Special requirements for incompatible wastes.
264.283–264.299 [Reserved]

Subpart N—Landfills

264.300 Applicability.
264.301 Design and operating requirements.
264.302 Double-lined landfills: Exemption from Subpart F ground-water protection requirements.
264.303 Monitoring and inspection.
264.304–264.308 [Reserved]
264.309 Surveying and recordkeeping.
264.310 Closure and post-closure care.
264.311 [Reserved]
264.312 Special requirements for ignitable or reactive waste.
264.313 Special requirements for incompatible wastes.
264.314 Special requirements for liquid waste.
264.315 Special requirements for containers.
264.316 Disposal of small containers of hazardous waste in overpacked drums (lab packs).
264.317–264.339 [Reserved]

* * * * *

5. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 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), 6924, and 6925).

6. In 40 CFR Part 264, Subpart B, §§ 264.10(b), 264.15(b)(4), and 264.18(b)(1) are revised to read as follows:

§ 264.10 Applicability.

* * * * *

(b) Section 264.18(b) applies only to facilities subject to regulation under Subparts I through O of this part.

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a facility-by-facility basis for all land disposal sites would increase the total cost reported here by about 75 percent.

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(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 of 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 terms and frequencies called for in §§ 264.174, 264.194, 264.226, 264.253, 264.254, 264.303, and 264.347, where applicable.

* * * * *

§ 264.18 Location standards.

* * * * *

(b) *Floodplains.* (1) A facility located in a 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout or any hazardous waste by a 100-year flood, *unless* the owner or operator can demonstrate to the Regional Administrator's satisfaction that:

(i) Procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters; or

(ii) For existing surface impoundments, waste piles, land treatment units, and landfills, no adverse effects on human health or the environment will result if washout occurs, considering:

(A) The volume and physical and chemical characteristics of the waste in the facility;

(B) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

(C) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and

(D) The impact of hazardous constituents on the sediments of affected surface waters or the soils of the 100-year floodplain that could result from washout.

* * * * *

7. In 40 CFR Part 264, Subpart E, § 264.73 is amended by revising paragraph (b)(6), and § 264.77 is amended by redesignating paragraph (c) as paragraph (b). It is further amended by revising newly redesignated paragraph (b) and adding a new paragraph (c) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by Subpart F and §§ 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, and 264.347;

* * * * *

§ 264.77 Additional reports.

* * * * *

(b) Facility closures specified in §264.115; and

(c) As otherwise required by Subparts F and K–N.

8. 40 CFR Part 264 is amended by adding Subpart F to read as follows:

Subpart F—Ground-water Protection

§ 264.90 Applicability.

(a) Except as provided in paragraph (b) of this section, the regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills. The owner or operator must satisfy the requirements of this subpart for all wastes (or constituents thereof) contained in any such waste management unit at the facility that receives hazardous waste after the effective date of this subpart (hereinafter referred to as a "regulated unit"). Any waste or waste constituent migrating beyond the waste management area under § 264.95(b) is assumed to originate from a regulated unit unless the Regional Administrator finds that such waste or waste constituent originated from another source.

(b) The owner or operator is not subject to regulation under this subpart if:

(1) He is exempted under § 264.1;

(2) He designs and operates a surface impoundment in compliance with § 264.222, a pile in compliance with § 264.250(c), § 264.252, or § 264.253, or a landfill in compliance with § 264.302;

(3) The Regional Administrator finds, pursuant to § 264.280(d), that the treatment zone of a land treatment unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of § 264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Regional Administrator finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the post-closure care period specified under § 264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(c) The regulations under this subpart apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, the regulations in this subpart:

(1) Do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under § 264.117 if the owner or operator is conducting a detection monitoring program under § 264.98; or

(3) Apply during the compliance period under § 264.96 if the owner or operator is conducting a compliance monitoring program under § 264.99 or a corrective action program under § 264.100.

§ 264.91 Required programs.

(a) Owners and operators subject to this subpart must conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under § 264.93 from a regulated unit are detected at the compliance point under § 264.95, the owner or operator must institute a compliance monitoring program under § 264.99;

(2) Whenever the ground-water protection standard under § 264.92 is exceeded, the owner or operator must institute a corrective action program under § 264.100;

(3) Whenever hazardous constituents under § 264.93 from a regulated unit exceed concentration limits under § 264.94 in ground water between the compliance point under § 264.95 and the downgradient facility property boundary, the owner or operator must institute a corrective action program under § 264.100; or

(4) In all other cases, the owner or operator must institute a detection monitoring program under § 264.98.

(b) The Regional Administrator will specify in the facility permit the specific elements of the monitoring and response program. The Regional Administrator may include one or more of the programs identified in paragraph (a) of this section in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Regional Administrator will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate such a program could be taken.

§ 264.92 Ground-water protection standard.

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under § 264.93 entering the ground water from a regulated unit do not exceed the concentration limits under § 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under § 264.95 during the compliance period under § 264.96. The Regional Administrator will establish this ground-water protection standard in the facility permit when hazardous constituents have entered the ground water from a regulated unit.

§ 264.93 Hazardous constituents.

(a) The Regional Administrator will specify in the facility permit the hazardous constituents to which the ground-water protection standard of § 264.92 applies. Hazardous constituents are constituents identified in Appendix VIII of Part 261 of this chapter that have been detected in ground water in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Regional Administrator has excluded them under paragraph (b) of this section.

(b) The Regional Administrator will exclude an Appendix VIII constituent from the list of hazardous constituents specified in the facility permit if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Regional Administrator will consider the following:

(1) Potential adverse effects on ground-water quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under paragraph (b) of this section about the use of ground water in the area around the facility, the Regional Administrator will consider any identification of underground sources of drinking water and exempted aquifers made under § 122.35 of this chapter.

§ 264.94 Concentration limits.

(a) The Regional Administrator will specify in the facility permit concentration limits in the ground water for hazardous constituents established under § 264.93. The concentration of a hazardous constituent:

(1) Must not exceed the background level of that constituent in the ground water at the time that limit is specified in the permit; or

(2) For any of the constituents listed in Table 1, must not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1; or

(3) Must not exceed an alternate limit established by the Regional Administrator under paragraph (b) of this section.

(b) The Regional Administrator will establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the Regional Administrator will consider the following factors:

(1) Potential adverse effects on ground-water quality, considering:

TABLE 1.—MAXIMUM CONCENTRATION OF CONSTITUENTS FOR GROUND-WATER PROTECTION

Constituent	Maximum concentration [1]
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene (C(—H/—Cl$, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

[1] Milligrams per liter.

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface-water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under paragraph (b) of this section about the use of ground water in the area around the facility the Regional Administrator will consider any identification of underground sources of drinking water and exempted aquifers made under § 122.35 of this chapter.

§ 264.95 Point of compliance.

(a) The Regional Administrator will specify in the facility permit the point of compliance at which the ground-water protection standard of § 264.92 applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

§ 264.96 Compliance period.

(a) The Regional Administrator will specify in the facility permit the compliance period during which the ground-water protection standard of § 264.92 applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting, and the closure period.)

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of § 264.99.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in paragraph (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the ground-water protection standard of § 264.92 has not been exceeded for a period of three consecutive years.

§ 264.97 General ground-water monitoring requirements.

The owner or operator must comply with the following requirements for any ground-water monitoring program developed to satisfy § 264.98, § 264.99, or § 264.100:

(a) The ground-water monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield ground-water samples from the uppermost aquifer that:

(1) Represent the quality of background water that has not been affected by leakage from a regulated unit; and

(2) Represent the quality of ground water passing the point of compliance.

(b) If a facility contains more than one regulated unit, separate ground-water monitoring systems are not required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the ground water in the uppermost aquifer.

(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 collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(d) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of ground-water quality below the waste management area. At a minimum the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(e) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents in ground-water samples.

(f) The ground-water monitoring program must include a determination of the ground-water surface elevation each time ground water is sampled.

(g) Where appropriate, the ground-water monitoring program must establish background ground-water quality for each of the hazardous constituents or monitoring parameters or constituents specified in the permit.

(1) In the detection monitoring program under § 264.98, background ground-water quality for a monitoring parameter or constituent must be based on data from quarterly sampling of wells upgradient from the waste management area for one year.

(2) In the compliance monitoring program under § 264.99, background ground-water quality for a hazardous constituent must be based on data from upgradient wells that:

(i) Is available before the permit is issued;

(ii) Accounts for measurement errors in sampling and analysis; and

(iii) Accounts, to the extent feasible, for seasonal fluctuations in background ground-water quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

(3) Background quality may be based on sampling of wells that are not upgradient from the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells.

(4) In developing the data base used to determine a background value for each parameter or constituent, the owner or operator must take a minimum of one sample from each well and a minimum of four samples from the entire system used to determine background ground-water quality, each time the system is sampled.

(h) The owner or operator must use the following statistical procedure in determining whether background values or concentration limits have been exceeded:

(1) If, in a detection monitoring program, the level of a constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00:

(i) The owner or operator must take at least four portions from a sample at each well at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Student's t-test as described in Appendix IV of this part. If the test indicates that the difference is significant, the owner or operator must repeat the same procedure (with at least the same number of portions as used in the first test) with a fresh sample from the monitoring well. If this second round of analyses indicates that the difference is significant, the owner or operator must conclude that a statistically significant change has occurred; or

(ii) The owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The Regional Administrator will specify such a procedure in the facility permit if he finds that the alternative procedure reasonably balances the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in paragraph (h)(1)(i) of this section.

(2) In all other situations in a detection monitoring program and in a compliance monitoring program, the owner or operator must use a statistical procedure providing reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be indicated. The Regional Administrator will specify a statistical procedure in the facility permit that he finds:

(i) Is appropriate for the distribution of the data used to establish background values or concentration limits; and

(ii) Provides a reasonable balance between the probability of falsely identifying a non-contaminating regulated unit and the probability of failing to identify a contaminating regulated unit.

§ 264.98 Detection monitoring program.

An owner or operator required to establish a detection monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. The Regional Administrator will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistance of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(3) The detectability of indicator parameters, waste constituents, and reaction products in ground water; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the ground-water background.

(b) The owner or operator must install a ground-water monitoring system at the compliance point as specified under § 264.95. The ground-water monitoring system must comply with § 264.97(a)(2), (b), and (c).

(c) The owner or operator must establish a background value for each monitoring parameter or constituent specified in the permit pursuant to paragraph (a) of this section. The permit will specify the background values for each parameter or specify the procedures to be used to calculate the background values.

(1) The owner or operator must comply with § 264.97(g) in developing the data base used to determine background values.

(2) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under § 264.97(h).

(3) In taking samples used in the determination of background values, the owner or operator must use a ground-water monitoring system that complies with §264.97(a)(1), (b), and (c).

(d) The owner or operator must determine ground-water quality at each monitoring well at the compliance point at least semi-annually during the active life of a regulated unit (including the closure period) and the post-closure care period. The owner or operator must express the ground-water quality at each monitoring well in a form necessary for the determination of statistically significant increases under § 264.97(h).

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of § 264.97 (d) and (e).

(g) The owner or operator must determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to paragraph (a) of this section each time he determines ground-water quality at the compliance point under paragraph (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality at each monitoring well at the compliance point for each parameter or constituent to the background value for that parameter or constituent, according to the statistical procedure specified in the permit under § 264.97(h).

(2) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

(h) If the owner or operator determines, pursuant to paragraph (g) of this section, that there is a statistically significant increase for parameters or constituents specified pursuant to paragraph (a) of this section at any

monitoring well at the compliance point, he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what parameters or constituents have shown statistically significant increases;

(2) Immediately sample the ground water in all monitoring wells and determine the concentration of all constituents identified in Appendix VIII of Part 261 of this chapter that are present in ground water;

(3) Establish a background value for each Appendix VIII constituent that has been found at the compliance point under paragraph (h)(2) of this section, as follows:

(i) The owner or operator must comply with § 264.97(g) in developing the data base used to determine background values;

(ii) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under § 264.97(h); and

(iii) In taking samples used in the determination of background values, the owner or operator must use a ground-water monitoring system that complies with § 264.97(a)(1), (b), and (c);

(4) Within 90 days, submit to the Regional Administrator an application for a permit modification to establish a compliance monitoring program meeting the requirements of § 264.99. The application must include the following information:

(i) An identification of the concentration of any Appendix VIII constituents found in the ground water at each monitoring well at the compliance point;

(ii) Any proposed changes to the ground-water monitoring system at the facility necessary to meet the requirements of § 264.99;

(iii) Any proposed changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of § 264.99;

(iv) For each hazardous constituent found at the compliance point, a proposed concentration limit under § 264.94(a)(1) or (2), or a notice of intent to seek a variance under § 264.94(b); and

(5) Within 180 days, submit to the Regional Administrator:

(i) All data necessary to justify any variance sought under § 264.94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirements of § 264.100, unless:

(A) All hazardous constituents identified under paragraph (h)(2) of this section are listed in Table 1 of § 264.94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought a variance under § 264.94(b) for every hazardous constituent identified under paragraph (h)(2) of this section.

(i) If the owner or operator determines, pursuant to paragraph (g) of this section, that there is a statistically significant increase of parameters or consitutents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (h)(4) of this section, he is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (h)(4) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing within seven days of determining a statistically significant increase at the compliance point that he intends to make a demonstration under this paragraph;

(2) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

(4) Continue to monitor in accordance with the detection monitoring program established under this section.

(j) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(k) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the ground-water protection standard under § 264.92 are taken during the term of the permit.

§ 264.99 Compliance monitoring program.

An owner or operator required to establish a compliance monitoring program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must monitor the ground water to determine whether regulated units are in compliance with the ground-water protection standard under § 264.92. The Regional Administrator will specify the ground-water protection standard in the facility permit, including:

(1) A list of the hazardous constituents identified under § 264.93;

(2) Concentration limits under § 264.94 for each of those hazardous constituents;

(3) The compliance point under § 264.95; and

(4) The compliance period under § 264.96.

(b) The owner or operator must install a ground-water monitoring system at the compliance point as specified under § 264.95. The ground-water monitoring system must comply with § 264.97(a)(2), (b), and (c).

(c) Where a concentration limit established under paragraph (a)(2) of this section is based on background ground-water guality, the Regional Administrator will specify the concentration limit in the permit as follows:

(1) If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constitutents, the owner or operator may establish the concentration limit through sampling at upgradient wells each time ground water is sampled at the compliance point. The Regional Administrator will specify the procedures used for determining the concentration limit in this manner in the permit. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

(2) If a hazardous constituent is identified on Table 1 under § 264.94 and the difference between the respective concentration limit in Table 1 and the background value of that constituent under § 264.97(g) is not statistically significant, the owner or operator must use the background value of the constituent as the concentration limit. In determining whether this difference is statistically significant, the owner or operator must use a statistical procedure providing reasonable confidence that a real difference will be indicated. The statistical procedure must:

(i) Be appropriate for the distribution of the data used to establish background values; and

(ii) Provide a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

(3) The owner or operator must:

(i) Comply with § 264.97(g) in developing the data base used to determine background values;

(ii) Express background values in a form necessary for the determination of statistically significant increases under § 264.97(h); and

(iii) Use a ground-water monitoring system that complies with § 264.97(a)(1), (b), and (c).

(d) The owner or operator must determine the concentration of hazardous constituents in ground water at each monitoring well at the compliance point at least quarterly during the compliance period. The owner or operator must express the concentration at each monitoring well in a form necessary for the determination of statistically significant increases under § 264.97(h).

(e) The owner or operator must determine the ground-water flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix VIII of Part 261 of this chapter at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer. If the owner or operator finds Appendix VIII constituents in the ground water that are not identified in the permit as hazardous constituents, the owner or operator must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the analysis.

(g) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of § 264.97(d) and (e).

(h) The owner or operator must determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to paragraph (a) of this section each time he determines the concentration of hazardous constituents in ground water at the compliance point.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality at each monitoring well at the compliance point for each hazardous constituent to the concentration limit for that constituent according to the statistical procedures specified in the permit under § 264.97(h).

(2) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point, within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

(i) If the owner or operator determines, pursuant to paragraph (h) of this section, that the ground-water protection standard is being exceeded at any monitoring well at the point of compliance, he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded.

(2) Submit to the Regional Administrator an application for a permit modification to establish a corrective action program meeting the requirements of § 264.100 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Regional Administrator under § 264.98(h)(5). The application must at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the ground-water protection standard specified in the permit under paragraph (a) of this section; and

(ii) A plan for a ground-water monitoring program that will demonstrate the effectiveness of the corrective action. Such a ground-water monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(j) If the owner or operator determines, pursuant to paragraph (h) of this section, that the ground-water protection standard is being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (i)(2) of this section, he is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (i)(2) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing within seven days that he intends to make a demonstration under this paragraph;

(2) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(k) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(l) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the ground-water protection standard under § 264.92 are taken during the term of the permit.

§ 264.100 Corrective action program.

An owner or operator required to establish a corrective action program under this subpart must, at a minimum, discharge the following responsibilities:

(a) The owner or operator must take corrective action to ensure that regulated units are in compliance with the ground-water protection standard under § 264.92. The Regional Administrator will specify the ground-water protection standard in the facility permit, including:

(1) A list of the hazardous constituents identified under § 264.93;

(2) Concentration limits under § 264.94 for each of those hazardous constituents;

(3) The compliance point under § 264.95; and

(4) The compliance period under § 264.96.

(b) The owner or operator must implement a corrective action program that prevents hazardous constituents

from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.

(c) The owner or operator must begin corrective action within a reasonable time period after the ground-water protection standard is exceeded. The Regional Administrator will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and such a requirement will operate in lieu of § 264.99(i)(2).

(d) In conjunction with a corrective action program, the owner or operator must establish and implement a ground-water monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under § 264.99 and must be as effective as that program in determining compliance with the ground-water protection standard under § 264.92 and in determining the success of a corrective action program under paragraph (e) of this section, where appropriate.

(e) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under § 264.93 that exceed concentration limits under § 264.94 in ground water between the compliance point under § 264.95 and the downgradient facility property boundary. The permit will specify the measures to be taken.

(1) Corrective action measures under this paragraph must be initiated and completed within a reasonable period of time considering the extent of contamination.

(2) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under § 264.93 is reduced to levels below their respective concentration limits under § 264.94.

(f) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the ground-water protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the ground-water protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the ground-water monitoring program under paragraph (d) of this section, that the ground-water protection standard of § 264.92 has not been exceeded for a period of three consecutive years.

(g) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

§§ 264.101–264.109 [Reserved]

9. In 40 CFR Part 264, Subpart G, § 264.110 is amended by revising paragraph (b), § 264.112 is amended by revising paragraphs (a), introductory text, and (a)(1), § 264.117 is amended by revising paragraphs (a)(1)(i) and (ii), and § 264.118 is amended by revising paragraph (a), introductory text, (a)(1), (2)(i) and (ii) to read as follows:

§ 264.110 Applicability.

* * * * *

(b) Sections 264.117–264.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §§ 264.228 and 264.258.

§ 264.112 Closure plan; amendment of plan.

(a) The owner or operator of a hazardous waste management facility must have a written closure plan. The plan must be submitted with the permit application, in accordance with § 122.25(a)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with § 122.29 of this chapter, the approved closure plan will become a condition of any RCRA permit. The Regional Administrator's decision must assure that that approved closure plan is consistent with §§ 264.111, 264.113, 264.114, 264.115, and the applicable requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. A copy of the approved plan and all revisions to the plan must be kept at the facility until closure is completed and certified in accordance with § 264.115. The plan must identify steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. The closure plan must include, at least:

(1) A description of how and when the facility will be partially closed, if applicable, and finally closed. The description must identify the maximum extent of the operation which will be unclosed during the life of the facility, and how the requirements of §§ 264.111, 264.113, 264.114, 264.115, and the applicable closure requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351 will be met;

* * * * *

§ 264.117 Post-closure care and use of property.

(a)(1) * * *

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

* * * * *

§ 264.118 Post-closure plan; amendment of plan.

(a) The owner or operator of a disposal facility must have a written post-closure plan. In addition, certain piles and certain surface impoundments from which the owner or operator intends to remove the wastes at closure are required by §§ 264.228 and 264.258 to have post-closure plans. The plan must be submitted with a permit application, in accordance with § 122.25(a)(13) of this chapter, and approved by the Regional Administrator as part of the permit issuance proceeding under Part 124 of this chapter. In accordance with §122.29 of this chapter, the approved post-closure plan will become a condition of any permit issued. A copy of the approved plan and all revisions to the plan must be kept at the facility until the post-closure care period begins. This plan must identify the activities that will be carried on after closure and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply

with Subparts F, K, L, M, and N of this part during the post-closure care period;

(2) * * *

(i) The intergrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this part; and

(ii) The function of the facility monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this part; and

* * * * *

10. In 40 CFR Part 264, Subpart H, § 264.144 is amended by revising paragraph (b); § 264.142 is amended by revising paragraph (a), except for the comment; § 264.144 is amended by revising paragraph (a); and § 264.145 is amended by revising the undesignated paragraph preceding paragraph (a) to read as follows:

§ 264.140 Applicability.

* * * * *

(b) The requirements of §§ 264.144 and 264.145 apply only to owners and operators of:

(1) Disposal facilities, and

(2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §§ 264.228 and 264.258.

* * * * *

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. 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 § 264.112(a)).

* * * * *

§ 264.144 Cost estimate for post-closure care.

(a) The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must have a written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117–264.120, 264.228, 264.258, 264.280, and 264.310. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Subpart G of Part 264.

* * * * *

§ 264.145 Financial assurance for post-closure care.

The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility. He must choose from the following options:

* * * * *

11. In 40 CFR Part 264, Subparts K and L are revised to read as follows:

Subpart K—Surface Impoundments

§ 264.220 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 § 264.1 provides otherwise.

§ 264.221 Design and operating requirements.

(a) A surface impoundment (except for an existing portion of a surface impoundment) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with § 264.228(a)(1). For impoundments that will be closed in accordance with § 264.228(a)(2), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of paragraph (a) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see § 264.93) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Regional Administrator will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

(c) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

(d) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(e) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§ 264.222 Double-lined surface impoundments: Exemption from Subpart F ground-water protection requirements.

(a) The owner or operator of a double-lined surface impoundment is not subject to regulation under Subpart F of this part if the following conditions are met:

(1) The impoundment (including its underlying liners) must be located entirely above the seasonal high water table.

(2) The impoundment must be underlain by two liners which are

designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications of § 264.221(a).

(3) A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquids into the space between the liners.

(b) If liquid leaks into the leak detection system, the owner or operator must:

(1) Notify the Regional Administrator of the leak in writing within seven days after detecting the leak; and

(2)(i) Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a qualified engineer that, to the best of his knowledge and opinion, the leak has been stopped; or

(ii) If a detection monitoring program pursuant to § 264.98 has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that program and any other applicable requirements of Subpart F of this part within a period of time specified in the permit.

(c) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§§ 264.223–264.225 [Reserved]

§ 264.226 Monitoring and inspection.

(a) During construction and installation, liners (except in the case of existing portions of surface impoundments exempt from § 264.221(a)) and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers must be inspected for inperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a surface impoundment is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of overtopping control systems;

(2) Sudden drops in the level of the impoundment's contents; and

(3) The presence of liquids in leak detection systems, where installed to comply with § 264.222; and

(4) Severe erosion or other signs of deterioration in dikes or other containment devices.

(c) Prior to the issuance of a permit, and after any extended period of time (at least six months) during which the impoundment was not in service, the owner or operator must obtain a certification from a qualified engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification must establish, in particular, that the dike:

(1) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

(2) Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

§ 264.227 Emergency repairs; contingency plans.

(a) A surface impoundment must be removed from service in accordance with paragraph (b) of this section when:

(1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

(2) The dike leaks.

(b) When a surface impoundment must be removed from service as required by paragraph (a) of this section, the owner or operator must:

(1) Immediately shut off the flow or stop the addition of wastes into the impoundment;

(2) Immediately contain any surface leakage which has occurred or is occurring;

(3) Immediately stop the leak;

(4) Take any other necessary steps to stop or prevent catastrophic failure;

(5) If a leak cannot be stopped by any other means, empty the impoundment; and

(6) Notify the Regional Administrator of the problem in writing within seven days after detecting the problem.

(c) As part of the contingency plan required in Subpart D of this part, the owner or operator must specify a procedure for complying with the requirements of paragraph (b) of this section.

(d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(1) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity must be recertified in accordance with § 264.226(c).

(2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

(i) For any existing portion of the impoundment, a liner must be installed in compliance with §§ 264.221(a) or 264.222; and

(ii) For any other portion of the impoundment, the repaired liner system must be certified by a qualified engineer as meeting the design specifications approved in the permit.

(e) A surface impoundment that has been removed from service in accordance with the requirements of this section and that is not being repaired must be closed in accordance with the provisions of § 264.228.

§ 264.228 Closure and post-closure care.

(a) At closure, the owner or operator must:

(1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies; or

(2)(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(ii) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

(iii) Cover the surface impoundment with a final cover designed and constructed to:

"(A) Provide long-term minimization of the migration of liquids through the closed impoundment;

(B) Function with minimum maintenance;

(C) Promote drainage and minimize erosion or abrasion of the final cover;

(D) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in §§ 264.117–264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit

under § 264.117). The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the leak detection system in accordance with § 264.222, where such a system is present between double liner systems;

(3) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Subpart F of this part; and

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c) (1) If an owner or operator plans to close a surface impoundment in accordance with paragraph (a)(1) of this section, and the impoundment does not comply with the liner requirements of § 264.221(a) and is not exempt from them in accordance with § 264.221(b), then:

(i) The closure plan for the impoundment under § 264.112 must include both a plan for complying with paragraph (a)(1) of this section and a contingent plan for complying with paragraph (a)(2) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) The owner or operator must prepare a contingent post-closure plan under § 264.118 for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.142 and § 264.144 for closure and post-closure care of an impoundment subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a)(1) of this section.

(d) During the post-closure care period, if liquids leak into a leak detection system installed under § 264.222, the owner or operator must notify the Regional Administrator of the leak in writing within seven days after detecting the leak. The Regional Administrator will modify the permit to require compliance with the requirements of Subpart F of this part.

§ 264.229 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment 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) Section 264.17(b) is complied with; or

(b) 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; or

(c) The surface impoundment is used solely for emergencies.

§ 264.230 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this part for examples) must not be placed in the same surface impoundment, unless § 264.17(b) is complied with.

§§ 264.231-264.249 [Reserved]

Subpart L—Waste Piles

§ 264.250 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that store or treat hazardous waste in piles, except as § 264.1 provides otherwise.

(b) The regulations in this subpart do not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under Subpart N of this part (Landfills).

(c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to regulation under § 264.251 or under Subpart F of this part, provided that:

(1) Liquids or materials containing free liquids are not placed in the pile;

(2) The pile is protected from surface water run-on by the structure or in some other manner;

(3) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

(4) The pile will not generate leachate through decomposition or other reactions.

§ 264.251 Design and operating requirements.

(a) A waste pile (except for an existing portion of a waste pile) must have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(i) Constructed of materials that are:

(A) Chemically resistent to the waste managed in the pile and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(ii) Designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of paragraph (a) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see § 264.93) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Regional Administrator will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and ground water or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

(d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(f) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(g) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§ 264.252 Double-lined piles: Exemption from Subpart F ground-water protection requirements.

(a) The owner or operator of a double-lined waste pile is not subject to regulation under Subpart F of this part if the following conditions are met:

(1) The pile (including its underlying liners) must be located entirely above the seasonal high water table.

(2) The pile must be underlain by two liners which are designed and constructed in a manner that prevents the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications of § 264.251(a)(1).

(3) A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquids into the space between the liners.

(4) The pile must have a leachate collection and removal system above the top liner that is designed, constructed, maintained, and operated in accordance with § 264.251(a)(2).

(b) If liquid leaks into the leak detection system, the owner or operator must:

(1) Notify the Regional Administrator of the leak in writing within seven days after detecting the leak; and

(2) (i) Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certificaton from a qualified engineer that, to the best of his knowledge and opinion, the leak has been stopped; or

(ii) If a detection monitoring program pursuant to § 264.98 has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that program and any other applicable requirements of Subpart F of this part within a period of time specified in the permit.

(c) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§ 264.253 Inspection of liners: Exemption from Subpart F ground-water protection requirements.

(a) The owner or operator of a pile is not subject to regulation under Subpart F of this part if the following conditions are met:

(1) The pile (including its underlying liner) must be located entirely above the seasonal high water table.

(2) The pile must be underlain by a liner (base) that meets all the specifications of § 264.251(a)(1).

(3) The wastes in the pile must be removed periodically, and the liner must be inspected for deterioration, cracks, or other conditions that may result in leaks. The frequency of inspection will be specified in the inspection plan required in § 264.15 and must be based on the potential for the liner (base) to crack or otherwise deteriorate under the conditions of operation (*e.g.*, waste type, rainfall, loading rates, and subsurface stability).

(4) The liner must be of sufficient strength and thickness to prevent failure due to puncture, cracking, tearing, or other physical damage from equipment used to place waste in or on the pile or to clean and expose the liner surface for inspection.

(5) The pile must have a leachate collection and removal system above the liner that is designed, constructed, maintained, and operated in accordance with § 264.251(a)(2).

(b) If deterioration, a crack, or other condition is identified that is causing or could cause a leak, the owner or operator must:

(1) Notify the Regional Administrator of the condition in writing within seven days after detecting the condition; and

(2)(i) Repair or replace the liner (base) and obtain a certification from a qualified engineer that, to the best of his knowledge and opinion, the liner (base) has been repaired and leakage will not occur; or

(ii) If a detection monitoring program pursuant to § 264.98 has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that program and any other applicable requirements of Subpart F of this part within a period of time specified in the permit.

(c) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§ 264.254 Monitoring and inspection.

(a) During construction or installation, liners (except in the case of existing portions of piles exempt from § 264.251(a)) and cover systems (*e.g.*, membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (*e.g.*, holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a waste pile is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) The presence of liquids in leak detection systems, where installed to comply with § 264.252;

(3) Proper functioning of wind dispersal control systems, where present; and

(4) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

§ 264.255 [Reserved]

§ 264.256 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be placed in a waste pile unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the pile 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) Section 264.17(b) is complied with; or

(b) 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.

§ 264.257 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this part for examples) must not be placed in the same pile, unless § 264.17(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in containers, other 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.

(c) Hazardous waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with § 264.17(b).

§ 264.258 Closure and post-closure care.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 264.310).

(c)(1) The owner or operator of a waste pile that does not comply with the liner requirements of § 264.251(a)(1) and is not exempt from them in accordance with §§ 264.250(c) or 264.251(b), must:

(i) Include in the closure plan for the pile under § 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 264.118 for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.142 and 264.144 for closure and post-closure care of a pile subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

§§ 264.259–264.269 [Reserved]

12. 40 CFR Part 264 is amended by adding Subparts M and N to read as follows:

Subpart M—Land Treatment

§ 264.270 Applicability.

The regulations in this subpart apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as § 264.1 provides otherwise.

§ 264.271 Treatment program.

(a) An owner or operator subject to this subpart must establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The Regional Administrator will specify in the facility permit the elements of the treatment program, including:

(1) The wastes that are capable of being treated at the unit based on a demonstration under § 264.272;

(2) Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with § 264.273(a); and

(3) Unsaturated zone monitoring provisions meeting the requirements of § 264.278.

(b) The Regional Administrator will specify in the facility permit the hazardous constituents that must be degraded, transformed, or immobilized under this subpart. Hazardous constituents are constituents identified in Appendix VIII of Part 261 of this chapter that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(c) The Regional Administrator will specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone must be:

(1) No more than 1.5 meters (5 feet) from the initial soil surface; and

(2) More than 1 meter (3 feet) above the seasonal high water table.

§ 264.272 Treatment demonstration.

(a) For each waste that will be applied to the treatment zone, the owner or operator must demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under paragraph (a) of this section, he must obtain a treatment or disposal permit under § 122.27(c). The Regional Administrator will specify in this permit the testing, analytical, design, and operating requirements (including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities) necessary to meet the requirements in paragraph (c) of this section.

(c) Any field test or laboratory analysis conducted in order to make a demonstration under paragraph (a) of this section must:

(1) Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(i) The characteristics of the waste (including the presence of Appendix VIII of Part 261 of this chapter constituents);

(ii) The climate in the area;

(iii) The topography of the surrounding area;

(iv) The characteristics of the soil in the treatment zone (including depth); and

(v) The operating practices to be used at the unit.

(2) Be likely to show that hazardous constituents in the waste to be tested will be completely degraded,

transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

(3) Be conducted in a manner that protects human health and the environment considering:

(i) The characteristics of the waste to be tested;

(ii) The operating and monitoring measures taken during the course of the test;

(iii) The duration of the test;

(iv) The volume of waste used in the test;

(v) In the case of field tests, the potential for migration of hazardous constituents to ground water or surface water.

§ 264.273 Design and operating requirements.

The Regional Administrator will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(a) The owner or operator must design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment demonstration under § 264.272. At a minimum, the Regional Administrator will specify the following in the facility permit:

(1) The rate and method of waste application to the treatment zone;

(2) Measures to control soil pH;

(3) Measures to enhance microbial or chemical reactions (*e.g.*, fertilization, tilling); and

(4) Measures to control the moisture content of the treatment zone.

(b) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25-year storm.

(d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities (*e.g.*, tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(f) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

(g) The owner or operator must inspect the unit weekly and after storms to detect evidence of:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) Improper functioning of wind dispersal control measures.

§§ 264.274–264.275 [Reserved]

§ 264.276 Food-chain crops.

The Regional Administrator may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The Regional Administrator will specify in the facility permit the specific food-chain crops which may be grown.

(a)(1) The owner or operator must demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions 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 or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator must make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in Appendix VIII of Part 261 of this chapter that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and must:

(i) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics (*e.g.*, pH, cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he must obtain a permit for conducting such activities.

(b) The owner or operator must comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1)(i) The pH of the waste and soil mixture must be 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 must 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 must not exceed:

Time period	Annual Cd application rate (kilograms per hectare)
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 must not exceed 5 kg/ha if the waste and soil mixture has a pH of less than 6.5; and

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste must not exceed: 5 kg/ha if soil cation exchange capacity (CEC) is less than 5 meq/100g; 10 kg/ha if soil CEC is 5–15 meq/100g; and 20 kg/ha if soil CEC is greater than 15 meq/100g; or

(2)(i) Animal feed must be the only food-chain crop produced;

(ii) The pH of the waste and soil mixture must be 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 must be maintained whenever food-chain crops are grown;

(iii) There must be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan

must describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses; and

(iv) Future property owners must be 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 must not be grown except in compliance with paragraph (b)(2) of this section.

§ 264.277 [Reserved]

§ 264.278 Unsaturated zone monitoring.

An owner or operator subject to this subpart must establish an unsaturated zone monitoring program to discharge the following responsibilities:

(a) The owner or operator must monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(1) The Regional Administrator will specify the hazardous constituents to be monitored in the facility permit. The hazardous constituents to be monitored are those specified under § 264.271(b).

(2) The Regional Administrator may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under § 264.271(b). PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The Regional Administrator will establish PHCs if he finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment at at least equivalent levels for the other hazardous constituents in the wastes.

(b) The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

(c) The owner or operator must establish a background value for each hazardous constituent to be monitored under paragraph (a) of this section. The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

(1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

(2) Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

(3) The owner or operator must express all background values in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(4) In taking samples used in the determination of all background values, the owner or operator must use an unsaturated zone monitoring system that complies with paragraph (b)(1) of this section.

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The Regional Administrator will specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator must express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(e) The owner or operator must use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator must implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under paragraph (a) of this section below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under paragraph (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent, as determined under paragraph (d) of this section, to the background value for that constituent according to the statistical procedure specified in the facility permit under this paragraph.

(2) The owner or operator must determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

(3) The owner or operator must determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The Regional Administrator will specify a statistical procedure in the facility permit that he finds:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(g) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases.

(2) Within 90 days, submit to the Regional Administrator an application for a permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

(h) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the treatment zone, he may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(2) of this section, he is not relieved of the

requirement to submit a permit modification application within the time specified in paragraph (g)(2) of this section unless the demonstration made under this paragraph successfully shows that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing within seven days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this paragraph;

(2) Within 90 days, submit a report to the Regional Administrator demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

§ 264.279 Recordkeeping.

The owner or operator must include hazardous waste application dates and rates in the operating record required under § 264.73.

§ 264.280 Closure and post-closure care.

(a) During the closure period the owner or operator must:

(1) Continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under § 264.273(a), except to the extent such measures are inconsistent with paragraph (a)(8) of this section.

(2) Continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under § 264.273(b);

(3) Maintain the run-on control system required under § 264.273(c);

(4) Maintain the run-off management system required under § 264.273(d);

(5) Control wind dispersal of hazardous waste if required under § 264.273(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under § 264.276;

(7) Continue unsaturated zone monitoring in compliance with § 264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) Establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with § 264.115, when closure is completed the owner or operator may submit to the Regional Administrator certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period the owner or operator must:

(1) Continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

(2) Maintain a vegetative cover over closed portions of the facility;

(3) Maintain the run-on control system required under § 264.273(c);

(4) Maintain the run-off management system required under § 264.273(d);

(5) Control wind dispersal of hazardous waste if required under § 264.273(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under § 264.276; and

(7) Continue unsaturated zone monitoring in compliance with § 264.278, expect that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under paragraphs (a)(8) and (c) of this section if the Regional Administrator finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (d)(3) of this section. The owner or operator may submit such a demonstration to the Regional Administrator at any time during the closure of post-closure care periods. For the purposes of this paragraph:

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under § 264.271 (b).

(i) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(ii) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (d)(3) of this section.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under Subpart F of this chapter if the Regional Administrator finds that the owner or operator satisfies paragraph (d) of this section and if unsaturated zone monitoring under § 264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

§ 264.281 Special requirements for ignitable or reactive waste.

The owner or operator must not apply ignitable or reactive waste to the treatment zone unless:

(a) 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) Section 264.17(b) is complied with; or

(b) 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.

§ 264.282 Special requirements for incompatible wastes.

The owner or operator must not place incompatible wastes, or incompatible wastes and materials (see Appendix V of this part for examples), in or on the same treatment zone, unless § 264.17(b) is complied with.

§§ 264.283–264.299 [Reserved]

Subpart N—Landfills

§ 264.300 Applicability.

The regulations in this subpart apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as § 264.1 provides otherwise.

§ 264.301 Design and operating requirements.

(a) A landfill (except for an existing portion of a landfill) must have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or ground water or surface water at anytime during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm (one foot). The leachate collection and removal system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(ii) Designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of paragraph (a) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see § 264.93) into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Regional Administrator will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and ground water or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(f) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(g) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§ 264.302 Double-lined landfills: Exemption from Subpart F ground-water protection requirements.

(a) The owner or operator of a double-lined landfill is not subject to regulation under Subpart F of this part if the following conditions are met:

(1) The landfill (including its underlying liners) must be located entirely above the seasonal high water table.

(2) The landfill must be underlain by two liners which are designed and constructed in a manner to prevent the migration of liquids into or out of the space between the liners. Both liners must meet all the specifications of § 264.301(a)(1).

(3) A leak detection system must be designed, constructed, maintained, and operated between the liners to detect any migration of liquid into the space between the liners.

(4) The landfill must have a leachate collection and removal system above the top liner that is designed, constructed, maintained, and operated in accordance with § 264.301(a)(2).

(b) If liquid leaks into the leak detection system, the owner or operator must:

(1) Notify the Regional Administrator of the leak in writing within seven days after detecting the leak; and

(2)(i) Within a period of time specified in the permit, remove accumulated liquid, repair or replace the liner which is leaking to prevent the migration of liquids through the liner, and obtain a certification from a qualified engineer that, to the best of his knowledge and opinion, the leak has been stopped; or

(ii) If a detection monitoring program pursuant to § 264.98 has already been established in the permit (to be complied with only if a leak occurs), begin to comply with that program and any other applicable requirements of Subpart F of this part within a period of time specified in the permit.

(c) The Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§ 264.303 Monitoring and inspection.

(a) During construction or installation, liners (except in the case of existing portions of landfills exempt from § 264.301(a)) and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (*e.g.*, holes, cracks, thin

spots, or foreign materials). Immediately after construction or installation:

(1) Synthetic liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers must be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a landfill is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) The presence of liquids in leak detection systems, where installed to comply with § 264.302;

(3) Proper functioning of wind dispersal control systems, where present; and

(4) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

§§ 264.304–264.308 [Reserved]

§ 264.309 Surveying and recordkeeping.

The owner or operator of a landfill must maintain the following items in the operating record required under § 264.73:

(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.

§ 264.310 Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in §§ 264.117–264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under § 264.117). The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the leak detection system in accordance with § 264.302, where such a system is present between double liner systems;

(3) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(4) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Subpart F of this Part;

(5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed benchmarks used in complying with § 264.309.

(c) During the post-closure care period, if liquid leaks into a leak detection system installed under § 264.302, the owner or operator must notify the Regional Administrator of the leak in writing within seven days after detecting the leak. The Regional Administrator will modify the permit to require compliance with the requirements of Subpart F of this Part.

§ 264.311 [Reserved]

§ 264.312 Special requirements for ignitable or reactive waste.

(a) Except as provided in paragraph (b) of this section, and in § 264.316, ignitable or reactive waste must not be placed in a landfill, unless the waste in treated, rendered, or mixed before or immediately after placement in a 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) Section 264.17(b) is complied with.

(b) Ignitable wastes in containers may be landfilled without meeting the requirements of paragraph (a) of this section, provided that the wastes are disposed of in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

§ 264.313 Special requirements for incompatible wastes.

Incompatible wastes, or incompatible wastes and materials, (see Appendix V of this part for examples) must not be placed in the same landfill cell, unless § 264.17(b) is complied with.

§ 264.314 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 and leachate collection and removal system that meet the requirements of § 264.301(a); 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) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid: (i) has been removed by decanting, or other methods; (ii) has been mixed with absorbent or solidified so that free-standing liquid is no longer observed; or (iii) has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in § 264.316 and is disposed of in accordance with § 264.316.

§ 264.315 Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

§ 264.316 Disposal of small containers of hazardous waste in overpacked drums (lab packs).

Small containers of hazardous waste in overpacked drums (lab packs) may be placed in a landfill if the following requirements are met:

(a) Hazardous waste must be packaged in non-leaking inside containers. The inside containers must be of a design and constructed of a material that will not react dangerously

with, be decomposed by, or be ignited by the contained waste. Inside containers must be tightly and securely sealed. The inside containers must be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations (49 CFR Parts 173, 178, and 179), if those regulations specify a particular inside container for the waste.

(b) The inside containers must be overpacked in an open head DOT-specification metal shipping container (49 CFR Parts 178 and 179) of no more than 416-liter (110 gallon) capacity and surrounded by, at a minimum, a sufficient quantity of absorbent material to completely absorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and absorbent material.

(c) The absorbent material used must not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with § 264.17(b).

(d) Incompatible wastes, as defined in § 260.10 of this chapter, must not be placed in the same outside container.

(e) Reactive wastes, other than cyanide- or sulfide-bearing waste as defined in § 261.23(a)(5) of this chapter, must be treated or rendered non-reactive prior to packaging in accordance with paragraphs (a) through (d) of this section. Cyanide- and sulfide-bearing reactive waste may be packed in accordance with paragraphs (a) through (d) of this section without first being treated or rendered non-reactive.

§§ 264.317–264.339 [Reserved]

13. 40 CFR Part 264 is amended by adding Appendix IV to read as follows:

Appendix IV

Cochran's Approximation to the Behrens-Fisher Students' t-test

Using all the available background data (n_b readings), calculate the background mean (X_B) and background variance (s_B^2). For the single monitoring well under investigation (n_m reading), calculate the monitoring mean (X_m) and monitoring variance (s_m^2).

For any set of data ($X_1, X_2 \ldots X_n$) the mean is calculated by:

$$\overline{X} = \frac{X_1 + X_2 \ldots + X_n}{n}$$

and the variance is calculated by:

$$s^2 = \frac{(X_1 - \overline{X})^2 + (X_2 - \overline{X})^2 \ldots + (X_n - \overline{X})^2}{n-1}$$

where "n" denotes the number of observations in the set of data.

The t-test uses these data summary measures to calculate a t-statistic (t^*) and a comparison t-statistic (t_c). The t^* value is compared to the t_c value and a conclusion reached as to whether there has been a statistically significant change in any indicator parameter.

The t-statistic for all parameters except pH and similar monitoring parameters is:

$$t^* = \frac{X_m - \overline{X}_B}{\sqrt{\frac{s_m^2}{n_m} + \frac{s_B^2}{n_B}}}$$

If the value of this t-statistic is negative then there is no significant difference between the monitoring data and background data. It should be noted that significantly small negative values may be indicative of a failure of the assumption made for test validity or errors have been made in collecting the background data.

The t-statistic (t_c), against which t^* will be compared, necessitates finding t_B and t_m from standard (one-tailed) tables where,

t_B = t-tables with ($n_B - 1$) degrees of freedom, at the 0.05 level of significance.

t_m = t-tables with ($n_m - 1$) degrees of freedom, at the 0.05 level of significance.

Finally, the special weightings W_B and W_m are defined as:

$$W_B = \frac{s_B^2}{n_B} \quad \text{and} \quad W_m = \frac{s_m^2}{n_m}$$

and so the comparison t-statistic is:

$$t_c = \frac{W_B t_B + W_m t_m}{W_B + W_m}$$

The t-statistic (t^*) is now compared with the comparison t-statistic (t_c) using the following decision-rule:

If t^* *is equal to or larger than* t_c, then conclude that there most likely *has been a significant increase* in this specific parameter.

If t^* *is less than* t_c, then conclude that most likely *there has not been a change* in this specific parameter.

The t-statistic for testing pH and similar monitoring parameters is constructed in the same manner as previously described except the negative sign (if any) is discarded and the caveat concerning the negative value is ignored. The standard (two-tailed) tables are used in the construction t_c for pH and similar monitoring parameters.

If t^* is equal to or larger than t_c, then conclude that there most likely *has been a significant increase* (if the initial t^* had been negative, this would imply a significant decrease). If t^* is less than t_c, then conclude that there most likely has been no change.

A further discussion of the test may be found in *Statistical Methods* (6th Edition, Section 4.14) by G. W. Snedecor and W. G. Cochran, or *Principles and Procedures of Statistics* (1st Edition, Section 5.8) by R. G. D. Steel and J. H. Torrie.

STANDARD T-TABLES 0.05 LEVEL OF SIGNIFICANCE

Degrees of freedom	t-values (one-tail)	t-values (two-tail)
1	6.314	12.706
2	2.920	4.303
3	2.353	3.182
4	2.132	2.776
5	2.015	2.571
6	1.943	2.447
7	1.895	2.365
8	1.860	2.306
9	1.833	2.262
10	1.812	2.228
11	1.796	2.201
12	1.782	2.179
13	1.771	2.160
14	1.761	2.145
15	1.753	2.131
16	1.746	2.120
17	1.740	2.110
18	1.734	2.101
19	1.729	2.093
20	1.725	2.086
21	1.721	2.080
22	1.717	2.074
23	1.714	2.069
24	1.711	2.064
25	1.708	2.060
30	1.697	2.042
40	1.684	2.021

Adopted from Table III of "*Statistical Tables for Biological, Agricultural, and Medical Research*" (1947, R. A. Fisher and F. Yates).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

14. The authority citation for Part 265 reads as follows:

Authority: Sections 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).

15. In 40 CFR 265, Subpart L, § 265.253 is amended by revising paragraph (a) and removing paragraph (c), and § 265.258 is added to read as follows:

§ 265.253 Containment.

If leachate or run-off from a pile is a hazardous waste, then either:

(a)(1) The pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

(2) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm;

(3) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm; and

(4) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

* * * * *

§ 265.258 Closure and post-closure care.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies; or

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310).

16. In 40 CFR Part 265, Subpart M is amended by revising § 265.272 (b), (c), and (d), and adding paragraph (e), and by revising §§ 265.276(c)(2)(iv), 265.279, and 265.281 and in § 265.280 by revising paragraphs (c) and (d) and adding new paragraphs (e) and (f) to read as follows:

§ 265.272 General operating requirements.

* * * * *

(b) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 25-year storm.

(c) The owner or operator must design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 25-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

§ 265.276 Food chain crops.

* * * * *

(c) * * *

(2) * * *

(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 must not be grown except in compliance with paragraph (c)(2) of this section.

§ 265.279 Recordkeeping.

The owner or operator must include hazardous waste application dates and rates in the operating record required under § 265.73.

§ 265.280 Closure and post-closure care.

* * * * *

(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; and

(3) Monitoring of ground water.

(d) In addition to the requirements of Subpart G of this part, during the closure period the owner or operator of a land treatment facility must:

(1) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) Maintain the run-on control system required under § 265.272(b);

(3) Maintain the run-off management system required under § 265.272(c); and

(4) Control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with § 265.115, when closure is completed the owner or operator may submit to the Regional Administrator certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of § 265.117, during the post-closure care period the owner or operator of a land treatment unit must:

(1) Continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

(2) Restrict access to the unit as appropriate for its post-closure use;

(3) Assure that growth of food chain crops complies with § 265.276; and

(4) Control wind dispersal of hazardous waste.

§ 265.281 Special requirements for ignitable or reactive waste.

Ignitable or reactive waste must not be land treated unless:

(a) 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 §§ 265.21 or 261.23 of this chapter; and

(2) Section 264.17(b) is complied with; or

(b) 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.

17. In 40 CFR 265, Subpart N is amended by revising §§ 265.302 (a), (b) and (c), 265.312, and 265.314(a)(1), to read as follows:

§ 265.302 General operating requirements.

(a) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(b) The owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(c) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

* * * * *

§ 265.312 Special requirements for ignitable or reactive waste.

(a) Except as provided in paragraph (b) of this section, and in § 265.316, 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 a landfill so that:

(1) The resulting waste, mixture, or dissolution or material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this chapter; and

(2) Section 265.17(b) is complied with.

(b) Ignitable wastes in containers may be landfilled without meeting the requirements of paragraph (a) of this section provided that the wastes are disposed in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

§ 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 and leachate collection and removal system that meets the requirements of § 264.301(a) of this chapter; or

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

18. The authority citation for 40 CFR Part 122 is revised to read as follows:

Authority: Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. § 6901 *et seq.;* the Safe Drinking Water Act, 42 U.S.C. § 300f *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.*

19. In 40 CFR Part 122, § 122.10(b) is amended to read as follows:

§ 122.10 Schedules of compliance

* * * * *

(b) *Alternate 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 and (1) for treatment and storage HWM facilities, closing pursuant to applicable requirements, and (2) for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements; by plugging and abandonment for UIC wells; or by termination of direct discharge for NPDES sources) rather than continue to operate and meet permit requirements as follows:

* * * * *

20. In 40 CFR Part 122, § 122.15(a)(7) is amended by adding new paragraphs (iv), (v), (vi), (vii), and (viii) to read as follows:

§ 122.15 Modification or revocation and reissuance of permits.

(a) * * *

(7) *For RCRA only,* the Director may modify a permit:

* * * * *

(iv) When the corrective action program specified in the permit under § 264.100 has not brought the regulated unit into compliance with the ground-water protection standard within a reasonable period of time.

(v) To include a detection monitoring program meeting the requirements of § 264.98, when the owner or operator has been conducting a compliance monitoring program under § 264.99 or a corrective action program under § 264.100 and the compliance period ends before the end of the post-closure care period for the unit.

(vi) When a permit requires a compliance monitoring program under § 264.99, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the ground-water protection standard.

(vii) To include conditions applicable to units at a facility that were not previously included in the facility's permit.

(viii) When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

* * * * *

21. In 40 CFR Part 122, § 122.17 is amended by adding new paragraphs (e)(6), (7) and (8) to read as follows:

§ 122.17 Minor modifications of permits.

* * * * *

(e) * * *

(6) Change the treatment program requirements for land treatment units under § 264.271 to improve treatment of hazardous constituents, provided that the change is minor.

(7) Change any conditions specified in the permit for land treatment units to reflect the results of field tests or laboratory analyses used in making a treatment demonstration in accordance with § 122.27(c), provided that the change is minor.

(8) Allow a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by § 264.272(a), provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

* * * * *

22. In 40 CFR Part 122, § 122.21(d) is amended by adding a third sentence to the introductory text preceding paragraph (1), and adding a new paragraph (4) to read as follows:

§ 122.21 Purpose and scope of Subpart B.

* * * * *

(d) * * *

Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, and, for any unit which closes after [insert date 6 months after date of promulgation], during any post-closure care period required under § 264.117 and during any compliance period specified under § 264.96, including any extension of that compliance period under § 264.96(c).

* * * * *

(4) *Permits for less than an entire facility.* EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

* * * * *

23. In 40 CFR Part 122, § 122.25 is amended by revising paragraphs (a)(5), (a)(13), (b)(3) and (b)(4), and by adding new paragraphs (b)(6), (b)(7) and (c) to read as follows:

§ 122.25 Contents of Part B.

* * * * *

(a) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.194, 264.226, 264.254, 264.273, and 264.303.

* * * * *

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112 and 264.118. Include where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351.

* * * * *

(b) * * *

(3) For facilities that store, treat, or dispose of hazardous waste in *surface impoundments,* except as otherwise provided in § 264.1:

(i) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(ii) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of § 264.221. This submission must address the following items as specified in § 264.221:

(A) The liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by § 264.221(b), submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(B) Prevention of overtopping; and

(C) Structural intergrity of dikes;

(iii) If an exemption from Subpart F of Part 264 is sought, as provided by § 264.222(a), detailed plans and an engineering report explaining the location of the saturated zone in relation to the surface impoundment, and the design of a double-liner system that incorporates a leak detection system between the liners;

(iv) A description of how each surface impoundment, including the liner and cover systems and appurtenances for control of overtopping, will be inspected in order to meet the requirements of § 264.226 (a) and (b). This information should be included in the inspection plan submitted under paragraph (a)(5) of this section;

(v) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under § 264.226(c). For new units, the owner or operator must submit a statement by a qualified engineer that he will provide such a certification upon completion of construction in accordance with the plans and specifications;

(vi) A description of the procedure to be used for removing a surface impoundment from service, as required under § 264.227 (b) and (c). This information should be included in the contingency plan submitted under paragraph (a)(7) of this section;

(vii) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under § 264.228(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.228 (a)(2) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under paragraph (a)(13) of this section;

(viii) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how § 264.229 will be complied with;

(ix) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how § 264.230 will be complied with.

(4) For facilities that store or treat hazardous waste in *waste piles*, except as otherwise provided in § 264.1:

(i) A list of hazardous wastes placed or to be placed in each waste pile;

(ii) If an exemption is sought to § 264.251 and Subpart F of Part 264 as provided by § 264.250(c), an explanation of how the requirements of § 264.250(c) will be complied with;

(iii) Detailed plans and an engineering report describing how the pile is or will be designed, constructed, operated and maintained to meet the requirements of § 264.251. This submission must address the following items as specified in § 264.251:

(A) The liner system (except for an existing portion of a pile). If an exemption from the requirement for a liner is sought, as provided by § 264.251(b), the owner or operator must submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating pratices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(B) Control of run-on;

(C) Control of run-off;

(D) Management of collection and holding units associated with run-on and run-off control systems; and

(E) Control of wind dispersal of particulate matter, where applicable;

(iv) If an exemption from Subpart F of Part 264 is sought as provided by §§ 264.252 or 264.253, submit detailed plans and an engineering report describing how the requirements of §§ 264.252(a) or 264.253(a) will be complied with;

(v) A description of how each waste pile, including the liner and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254 (a) and (b). This information should be included in the inspection plan submitted under paragraph (a)(5) of this section. If an exemption is sought to Subpart F of Part 264 pursuant to § 264.253, describe in the inspection plan how the inspection requirements of § 264.253(a)(3) will be complied with;

(vi) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(vii) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of § 264.256 will be complied with;

(viii) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how § 264.257 will be complied with;

(ix) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under § 264.258(a). For any waste not to be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310 (a) and (b) will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under paragraph (a)(13) of this section.

* * * * *

(6) For facilities that use *land treatment* to dispose of hazardous waste, except as otherwise provided in § 264.1:

(i) A description of plans to conduct a treatment demonstration as required under § 264.272. The description must include the following information:

(A) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(B) The data sources to be used to make the demonstration (e.g., literature, laboratory data, field data, or operating data);

(C) Any specific laboratory or field test that will be conducted, including

(*1*) the type of test (e.g., column leaching, degradation);

(*2*) materials and methods, including analytical procedures;

(*3*) expected time for completion;

(*4*) characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(ii) A description of a land treatment program, as required under § 264.271. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

(A) The wastes to be land treated;

(B) Design measures and operating practices necessary to maximize treatment in accordance with § 264.273(a) including:

(*1*) Waste application method and rate;

(*2*) Measures to control soil pH;

(*3*) Enhancement of microbial or chemical reactions;

(*4*) Control of moisture content;

(C) Provisions for unsaturated zone monitoring, including:

(*1*) Sampling equipment, procedures, and frequency;

(*2*) Procedures for selecting sampling locations;

(*3*) Analytical procedures;

(*4*) Chain of custody control;

(*5*) Procedures for establishing background values;

(*6*) Statistical methods for interpreting results;

(*7*) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in § 264.278(a);

(D) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to § 264.13;

(E) The proposed dimensions of the treatment zone;

(iii) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of § 264.273. This submission must address the following items:

(A) Control of run-on;

(B) Collection and control of run-off;

(C) Minimization of run-off of hazardous constituents from the treatment zone;

(D) Management of collection and holding facilities associated with run-on and run-off control systems;

(E) Periodic inspection of the unit. This information should be included in the inspection plan submitted under paragraph (a)(5) of this section;

(F) Control of wind dispersal of particulate matter, if applicable;

(iv) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under § 264.276(a) will be conducted including:

(A) Characteristics of the food-chain crop for which the demonstration will be made;

(B) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(C) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(D) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(v) If food-chain crops are to be grown, and cadmium is present in the land-treated waste, a description of how the requirements of § 264.276(b) will be complied with;

(vi) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under § 264.280(a)(8) and § 264.280(c)(2). This information should be included in the closure plan and, where applicable, the post-closure care plan submitted under paragraph (a)(13) of this section;

(vii) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of § 264.281 will be complied with;

(viii) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how § 264.282 will be complied with.

(7) For facilities that dispose of hazardous waste in *landfills*, except as otherwise provided in § 264.1:

(i) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(ii) Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and maintained to comply with the requirements of § 264.301. This submission must address the following items as specified in § 264.301:

(A) The liner system and leachate collection and removal system (except for an existing portion of a landfill). If an exemption from the requirements for a liner and a leachate collection and removal system is sought as provided by § 264.301(b), submit detailed plans and engineering and hydrogeologic reports as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituent into the ground water or surface water at any future time;

(B) Control of run-on;

(C) Control of run-off;

(D) Management of collection and holding facilities associated with run-on and run-off control systems; and

(E) Control of wind dispersal of particulate matter, where applicable.

(iii) If an exemption from Subpart F of Part 264 is sought, as provided by § 264.302(a), the owner or operator must submit detailed plans and an engineering report explaining the location of the saturated zone in relation to the landfill, the design of a double-liner system that incorporates a leak detection system between the liners, and a leachate collection and removal system above the liners;

(iv) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of § 264.303 (a) and (b). This information should be included in the inspection plan submitted under paragraph (a)(5) of this section;

(v) Detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with § 264.310(a), and a description of how each landfill will be maintained and monitored after closure in accordance with § 264.310(b). This information should be included in the closure and post-closure plans submitted under paragraph (a)(13) of this section.

(vi) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of § 264.312 will be complied with;

(vii) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how § 264.313 will be complied with;

(viii) If bulk or non-containerized liquid waste or waste containing free liquids is to be landfilled, an explanation of how the requirements of § 264.314 will be complied with;

(ix) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of §§ 264.315 or 264.316, as applicable, will be complied with.

(c) *Additional information requirements.* The following additional information regarding protection of ground water is required from owners or operators of hazardous waste surface impoundments, piles, land treatment units, and landfills, except as otherwise provided in § 264.90(b):

(1) A summary of the ground-water monitoring data obtained during the interim status period under §§ 265.90–265.94, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

(3) On the topographic map required under paragraph (a) (19) of this section, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under § 264.95, the proposed

location of ground-water monitoring wells as required under § 264.97 and, to the extent possible, the information required in paragraph (c)(2) of this section;

(4) A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application is submitted that:

(i) Delineates the extent of the plume on the topographic map required under paragraph (a)(19) of this section;

(ii) Identifies the concentration of each Appendix VIII of Part 261 of this chapter constituent throughout the plume or identifies the maximum concentrations of each Appendix VIII constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground-water monitoring program to be implemented to meet the requirements of § 264.97;

(6) If the presence of hazardous constituents has *not* been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of § 264.98. This submission must address the following items as specific under § 264.98:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground-water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(7) If the presence of hazardous constituents *has* been detected in the ground water at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of § 264.99. The owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of § 264.100, except as provided in § 264.98(h)(5). To demonstrate compliance with § 264.99, the owner or operator must address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with §§ 264.97 and 264.99;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in § 264.94(a), including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of § 264.97; and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under § 264.94 Table 1, or if ground-water monitoring conducted at the time of permit application under §§ 265.90–265.94 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of § 264.100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Regional Administrator that alternate concentration limits will protect human health and the environment after considering the criteria listed in § 264.94(b). An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of § 264.99 and paragraph (c)(6) of this section. To demonstrate compliance with § 264.100, the owner or operator must address, at a minimum, the following items:

(i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the ground water as set forth in § 264.94;

(iii) Detailed plans and an engineering report describing the corrective action to be taken; and

(iv) A description of how the ground-water monitoring program will assess the adequacy of the corrective action.

24. In 40 CFR Part 122, § 122.27 is amended by revising the section title and adding new paragraph (c) to read as follows:

§ 122.27 Short term and phased permits.

* * * * *

(c) Permits for land treatment demonstrations using field tests or laboratory analyses.

(1) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of § 264.272 of this chapter, the Director may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in § 264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

(i) The Director may issue a two-phase facility permit if he finds that, based on information submitted in Part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(ii) If the Director finds that not enough information exists upon which he can establish permit conditions to attempt to provide for compliance with all of the requirements of Subpart M, he must issue a treatment demonstration permit covering only the field test or laboratory analyses.

(2) If the Director finds that a phased permit may be issued, he will establish, as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the Director finds may be necessary under § 264.272(c). The Director will include conditions in the second phase of the facility permit to attempt to meet all Subpart M requirements pertaining to unit design, construction, operation, and maintenance. The Director will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive

information contained in the Part B application.

(i) The first phase of the permit will be effective as provided in § 124.15(b) of this Chapter.

(ii) The second phase of the permit will be effective as provided in paragraph (c)(4) of this section.

(3) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he must submit to the Director a certification, signed by a person authorized to sign a permit application or report under § 122.6, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Director approves a later date.

(4) If the Director determines that the results of the field tests or laboratory analyses meet the requirements of § 264.272 of this Chapter, he will modify the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with Part 264, Subpart M, of this Chapter, based upon the results of the field tests or laboratory analyses.

(i) This permit modification may proceed as a minor modification under § 122.17, provided any such change is minor, or otherwise will proceed as a modification under § 122.15(a)(2).

(ii) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the Director will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in § 124.15(b).

(iii) If modifications under § 122.15(a)(2) are necessary, the second phase of the permit will become effective only after those modifications have been made.

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40 CFR Part 123

[SWH-FRL 2089-4]

Requirements for Authorization of State Hazardous Waste Programs

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule and interim final rule with request for comments.

SUMMARY: On January 26, 1981, EPA published amendments to the schedule for authorization of State hazardous waste programs under the Resource Conservation and Recovery Act. Those amendments were published as an interim final rule with a request for comments. In response to comments, EPA is today changing the schedule for submission of State applications for interim authorization and the date by which State enabling legislation must be in place. These changes, which are promulgated as a final rule, will provide additional flexibility in the State application process but will not alter substantive environmental standards or create significant economic impacts. EPA is also today promulgating the remainder of the January 1981 amendments as a final rule.

In addition, EPA is today promulgating an interim final amendment to Section 123.129, providing a limited exception to the contents of Component A of Phase II interim authorization.

DATES: The amendments to Sections 123.122, 123.125, 123.128, and 123.137 published today are final rules effective July 26, 1982. (The interim final amendments published on January 26, 1981, were effective upon publication.)

The amendment to Section 123.129 published today is an interim final rule effective July 26, 1982. The Agency will accept comments on this amendment until September 24, 1982.

ADDRESSES: Comments on the amendment to Section 123.129 should be sent to Docket Clerk (Docket No. 3006), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460.

The public docket for these regulations is located at the U.S. Environmental Protection Agency, Room S-269C, 401 M St. 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: Bruce R. Weddle, Deputy Director, State Programs and Resource Recovery Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9107.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980 (45 FR 33384), EPA published as a final rule the requirements for interim authorization of State hazardous waste programs under Section 3006(c) of the Resource Conservation and Recovery Act (RCRA). These requirements, codified in 40 CFR Part 123, Subpart F, established among other things two phases of interim authorization and a schedule for State applications for these phases. The first phase (Phase I) authorizes States to administer a hazardous waste program, which includes the identification and listing of hazardous wastes; the regulation of generators and transporters of hazardous wastes; and the enforcement of preliminary standards for hazardous waste treatment, storage and disposal facilities. The second phase (Phase II) authorizes States to administer a permit program for treatment, storage and disposal facilities.

On January 26, 1981 (46 FR 8298), EPA published amendments to the schedule for State applications for Phase II of interim authorization. Those amendments were necessary to reconcile Phase II with changes in the schedule for promulgation of the Federal permitting standards for hazardous waste management facilities, codified in 40 CFR Part 264. As noted in the preamble to those amendments, "the substantive program requirements for Phase II for the most part have not been changed * * * Rather, these amendments implement needed changes in the schedule and related requirements for Phase II to keep the interim authorization program in correspondence with the underlying Federal program" (46 FR 8300).

In those amendments, EPA divided Phase II of interim authorization into "components". Each component corresponds to one or more specific categories of facilities requiring RCRA permits (e.g., incinerators, landfills, etc.). State programs can receive interim authorization to issue permits to the specific category or categories of facilities covered by each component. States may apply for authorization for each component as it becomes available and is announced in the **Federal Register**, or may wait until all components are announced and apply for all of Phase II authorization at that time. This approach gives States the

flexibility to adapt their Phase II application schedule to State needs.

II. Regulatory Changes Adopted Today

EPA received comments on the amendments to Part 123, Subpart F, from several State and local officials and members of the regulated community. In response to those comments, EPA is today changing a number of provisions dealing with the schedule for interim authorization.

Several commenters suggested that 40 CFR §§ 123.122 and 123.125, which establish the schedule for State applications for interim authorization and the deadline for State enabling legislation, be revised. After consideration of these comments, EPA has decided to modify these provisions to provide additional flexibility to the States. These changes are discussed in the following parts of this preamble. Section II.H. discusses an amendment to 40 CFR § 123.129, which provides a limited exception to the contents of Component A of Phase II interim authorization.

A. *Deadline for Interim Authorization Applications.* Section 123.122(c)(1), as amended on January 26, 1981, provides that the interim authorization application period closes six months after the effective date of the final component of Phase II. EPA believes that an application deadline is necessary to signal the end of the interim authorization application process and to encourage States to move on to final authorization. However, EPA recognizes that some States which are committed to administer an interim authorization program may come close but may still not be able to meet this deadline, due to scheduling problems created by State legislative and regulatory processes.

Therefore, today's amendments add a provision that "the Regional Administrator may extend the application period for good cause." EPA intends that this extension only be granted on a case-by-case basis to States which have made a good faith effort to meet the application deadline and which can submit a complete application within a reasonable period of time. States which will not be ready to apply for interim authorization within a reasonable period of time should turn their efforts to preparing a final authorization program. More than a brief extension of the interim authorization application period would be counter-productive, due to the limited duration of interim authorization (it expires 2 years after the effective date of the last component) and the need for States to obtain final authorization by the end of interim authorization (in order to avoid reversion of the program to EPA).

B. *Application Period for Phase I.* In the January 1981 amendments, § 123.122(c)(3) provided that States could apply for Phase I *alone* (without applying for any component of Phase II) until "six months after the effective date of the first component of Phase II." This deadline for applying for Phase I alone was January 13, 1982.

The purpose of this deadline was to ensure that State implementation of Phase II was not unreasonably delayed. Since the adoption of this deadline, however, there have been a number of delays and revisions in the Federal Phase II regulations. As a result, a number of States which desire to implement the RCRA Phase I program are not yet prepared to apply for Phase II.

Therefore, EPA has decided to extend the period during which States may apply for interim authorization for Phase I alone. Section 123.122(c)(3) is today removed from the State authorization requirements. A State may now apply for Phase I at any time prior to the expiration of the interim authorization application period. (This period is established in 40 CFR § 123.122(c)(1), as discussed above.)

C. *Application Period for Individual Phase II Components.* The January 1981 amendments also set time limits for State applications for individual components of Phase II. Sections 123.122 (c)(5) and (6) established a one year period during which a State could apply for a particular Phase II component without also applying for subsequent components. This provision created difficulties similar to those discussed above for the Phase I deadline. Comments received included the request that more time be provided for Phase II applications.

In response to comments, EPA has decided to extend the application period for each component of Phase II. Sections 123.122(c) (5) and (6) are today removed from the State authorization requirements. A State may now apply for an individual component of Phase II (without applying for any other component) at any time prior to the expiration of the interim authorization application period.

D. *Requirement to Apply for All Parts of Interim Authorization.* Section 123.122(c)(7), as amended on January 26, 1981, requires States which have received partial interim authorization (i.e., interim authorization for Phase I alone or Phase I and some components of Phase II) to apply for *all* of Phase II within 6 months of the effective date of the last component of Phase II. Section 123.137 contains the related stipulation that States with partial interim authorization which fail to submit an amended application for all of Phase II by the above deadline will terminate and responsibility for RCRA implementation will revert to EPA.

EPA recognizes, as noted above, that some States may come close but still not be able to meet this deadline. In addition, some States with partial interim authorization may not wish to apply for the remaining elements of interim authorization and may decide, instead, to prepare an application for final authorization. (States may apply for final authorization at any time after the announcement of the last component of Phase II. See § 123.31(c)(1), as amended on January 26, 1981.)

However, States with partial interim authorization may find that they are unable to apply for and receive final authorization by the deadline cited above in §§ 123.122(c)(7) and 123.137, particularly given the delays in the promulgation of the underlying Federal program. In those circumstances, such States would lose their partial interim authorization. This result would disrupt administration of the hazardous waste program and complicate the transition to State responsibility for RCRA implementation.

To avoid such a result, EPA has today added a provision to those sections that "the Regional Administrator may extend this deadline for good cause." EPA intends that this extension be granted to those States which are making a good faith effort to apply for and receive final authorization or the remainder of interim authorization within a reasonable period of time.

It should be noted that as a result of other amendments adopted today, several of the paragraphs in § 123.122(c) have been renumbered. The provision related to partially authorized States is now § 123.122(c)(4).

E. *Conditions for Phase II Application.* Section 123.122(d)(1) currently provides that a State may not apply for a component of Phase II unless it is already authorized for (or is simultaneously applying for) Phase I and previously announced components of Phase II. Several commenters pointed out that the ability of a State to administer a permit program for a particular Phase II component is not necessarily contingent on authorization for the other components. For example, a State may operate a competent permitting program under RCRA for the facilities covered in Component B (incinerators) without also operating a

permitting program for the facilities in Component A (tanks, containers, piles and surface impoundments).

Therefore, in response to comments, EPA has decided to remove the requirement in § 123.122(d)(1) that States must be authorized for (or simultaneously apply for) previously announced components of Phase II when applying for a particular individual component. In other words, application for components in order of their announcement is no longer required. States may now apply for Phase II components in any order (e.g., Component B, then Component A).

However, it continues to be essential that States obtain Phase I authorization before (or at the same time) they receive authorization for any component of Phase II. Phase I contains the basic framework of the hazardous waste program. A State cannot effectively implement the Phase II permitting program without these elements. Therefore, EPA will retain the requirement that States must apply for Phase I before (or at the same time) they apply for a component of Phase II.

F. *Changes in the Federal Regulations.* The January 1981 regulations required that States applying for Phase II authorization must amend their programs to bring them into conformance with the current Federal program (including adopting changes as necessary to conform with changes in the Federal regulations). This basic provision, in § 123.122(d)(2), is retained in today's promulgation, but is slightly modified to account for the change in § 123.122(d)(1) described above. Today's amendment allows States to apply for a particular Phase II component without addressing changes in the Federal regulations covered in *other* components, if the State is not authorized for or seeking authorization for those other components.

In addition, § 123.122(d)(2) has been reorganized and revised to more clearly explain this requirement and to separate the obligations of States already authorized for parts of the RCRA program from those States applying for authorization for the first time. The specific requirements which States must address when applying for a Phase II component are outlined in the **Federal Register** announcement of that component and in the *RCRA State Interim Authorization Guidance Manual.*

G. *Deadline for State Enabling Legislation.* RCRA Section 3006(c) provides that interim authorization may be granted to those States which have "in existence a hazardous waste program pursuant to State law" no more than 90 days after the "promulgation of regulations under Sections 3002, 3003, 3004, and 3005." EPA interprets this provision to mean that, at a minimum, a State must have basic enabling legislation for the program in place, i.e., basic statutory authority to regulate hazardous waste, in order to be eligible for interim authorization.

The application of the 90 day deadline has been a difficult issue, since the Federal program is being implemented in two phases and several components, with a number of separate regulatory promulgations. In the January 26, 1981, amendments, EPA applied the 90 day eligibility requirement for State enabling legislation to *each* component of Phase II, since each component is created by a promulgation under RCRA Section 3004. Section 123.125(a) of those amendments provided that the State enabling legislation for each component must be in existence within 90 days of the promulgation of the Federal regulations comprising that component.

Based on comments received regarding this interpretation, EPA has reconsidered the January 1981 amendment and has modified its interpretation of the 90 day deadline. We now agree that the 90 day requirement in RCRA Section 3006(c) probably was intended by Congress to provide a one-time test to identify those States with existing programs which could qualify for interim authorization. EPA's phased implementation of the hazardous waste program does not provide a convincing reason to establish additional 90 day deadlines or tests which States must meet in order to satisfy basic eligibility for interim authorization.

The remaining question is when the one-time eligibility test should occur. RCRA establishes the Federal hazardous waste program as both a model for the development of State programs and a minimum standard for their approval. EPA believes that States should have an opportunity to review all of the major elements of the Federal program before they are required to undergo an eligibility test based on the existence of statutory authority. Therefore, EPA has decided to tie the 90 day deadline to the announcement of the *final* component of Phase II. At that time, all of the major elements of the Federal program will have been established. The enabling legislation requirement in Section 123.125(a) has been revised to provide that: "The State Attorney General or independent legal counsel must certify that the enabling legislation for the State's program was in existence within 90 days of the announcement of the last component of Phase II."

Most States which have received interim authorization for Phase I will have already demonstrated adequate authority and thus satisfied the enabling legislation requirement. Unauthorized States can satisfy the requirement by certifying that the necessary legislation was in place at any time prior to the date 90 days after the announcement of the final component of Phase II.

The 90 day deadline for State enabling legislation is also mentioned in § 123.128(d) of these regulations, which provides for a limited exception from the generator, transporter, and related manifest requirements. The reference to the 90 day deadline in that paragraph is today changed in conjunction with EPA's modified interpretation of this requirement. States which have received Phase I interim authorization under the terms of that paragraph may now 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 announcement of the last component of Phase II."

H. *Interim Authorization to Permit Storage Surface Impoundments.* The contents of Components A and B of Phase II interim authorization were announced on January 26, 1981 (46 FR 7964). Component A covered tanks, container storage facilities, waste piles and storage surface impoundments. Component B covered incinerators. These components covered both new and existing facilities in those categories.

On October 20, 1981, EPA proposed to temporarily suspend the effective dates of its permitting standards for incinerators and storage surface impoundments, as applied to existing facilities, pending a reexamination of their appropriateness for existing facilities (46 FR 51407). In the preamble to the proposed suspension, EPA stated that the Agency's policy would be to postpone decisions on the authorization of State permitting programs for *existing* incinerators and *existing* storage surface impoundments until the Agency had resolved this issue.

In response to this policy, a few States informed EPA of their intent to submit draft applications for authorization of Component A, excluding existing storage surface impoundments.

Subsequently, EPA received negative comments on the postponement of State authorization for existing storage surface impoundments and existing incinerators, and decided to change this

policy. On February 24, 1982, EPA announced that its new policy would be to authorize State programs that meet the regulatory requirements for Components A and B to permit *both* new and existing incinerators and storage surface impoundments, as well as the other facilities in those components (47 FR 8010).

This change in policy raises questions about the status of those States which planned to apply for Component A without addressing existing storage surface impoundments. Those States relied on the Agency's then-current policy of postponing authorization for such facilities and prepared applications based on this understanding. Furthermore, some States are understandably reluctant to adopt regulations corresponding to EPA's current permitting standards for storage surface impoundments, while EPA is reexamining those standards.

Therefore, EPA today is amending § 123.129 to allow interim authorization for Component A without storage surface impoundments. States will thus have the choice of either (1) including new and existing surface impoundments in Component A, as allowed by the January 26, 1981 announcement and the February 24, 1982 policy statement, or (2) taking advantage of today's amendment by excluding new and existing surface impoundments from Component A.

Today's amendment requires that a State authorized for Component A under this exception must commit in its Memorandum of Agreement with EPA to adopt State permit standards for storage surface impoundments which are substantially equivalent to 40 CFR Part 264 no later than the State's application for the component of Phase II which will correspond to the Federal land disposal standards. This provision ensures that the duration of the exception will be limited.

This exception applies to *all* storage surface impoundments, both new and existing. EPA has decided that the exception should not be directed only at existing storage surface impoundments, as that would create confusion for the public and the regulated community. Instead, States must choose to either apply for *all* of Component A, including both new and existing impoundments, or to apply for Component A under this exception, without being authorized to permit *any* storage surface impoundments, existing or new.

EPA's permit standards for storage surface impoundments (40 CFR Part 264 Subpart K) will remain in effect in States which are authorized for Component A under this exception. EPA will follow the policy announced on October 20, 1981, for not calling in Part B permit applications for existing surface impoundments, pending a final decision on the proposed suspension. However, the Agency will process voluntarily submitted permit applications for these facilities, including applications from new facilities.

III. Other Actions on the January 1981 Amendments to Part 123

EPA received other comments on the January 1981 amendments to Part 123 which are not discussed in the preceding section of this preamble. EPA's written response to these comments on the January 1981 promulgation is available for public inspection at the RCRA Docket Room, Room S–269C, 401 M Street S.W., Washington, D.C. 20460.

Today, EPA is promulgating the January 1981 amendments to Part 123, Subpart F, including the additional changes in §§ 123.122, 123.125, 123,128, and 123.137, as a final rule. Also, EPA is today promulgating the additional change in § 123.129 as an interim final rule, with a request for comments. EPA printed the entire Subpart F of Part 123, as amended, in the January 1981 promulgation. Today EPA is publishing only the changes discussed in the preceding section of this preamble.

On January 26, 1981, EPA also published two minor amendments to 40 CFR Part 123, Subpart B, the requirements for final authorization of State hazardous waste programs. Those amendments changed the application and effective dates for final authorization, in conjunction with the changes in the schedule for interim authorization. (See 46 FR 8300.) EPA received no comments on those changes in the final authorization dates. Those changes to Part 123, Subpart B, are also today promulgated as a final rule.

IV. Interim Final Promulgation

EPA believes that use of advance notice and comment procedures for the amendment to § 123.129 would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. 553(b)(B)). As discussed in Section II.H. above, without this amendment, States which relied on EPA's policy statement of October 20, 1981, in preparing their applications for interim authorization might not be able to receive interim authorization in an orderly and timely fashion.

V. Effective Date

RCRA does not specify when EPA's regulations governing the authorization of State programs are to take effect (see Section 3010(b) of RCRA, 42 U.S.C. 6930(b)). The Administrative Procedure Act (see 5 U.S.C. 553(d)) requires that the effective date for a regulation be not less than 30 days from the date of publication, unless there is good cause for an earlier date.

EPA finds that good cause exists for making these amendments effective upon publication. Most of the amendments were promulgated as interim final rules on January 26, 1981, in substantially the same form, and have been in effect since that date. The additional interim final amendment to § 123.129 is being promulgated to ensure that States which relied on EPA policy statements in preparing applications can receive interim authorization in an orderly and timely fashion. This is a rule that recognizes an exemption and thus may be made immediately effective (see 5 U.S.C. 553(d)(1)).

The process for Phase II interim authorization of State programs has begun and is continuing. A delayed effective date would confuse and disrupt the ongoing process. Furthermore, these amendments provide additional flexibility to the States by simplifying and relaxing the schedule for interim authorization applications. Persons affected by these amendments will therefore not need lead time to comply with new regulatory requirements. Accordingly, EPA is making all of these rules effective upon publication.

VI. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The amendments promulgated here are not major because they will not result in an effect on the economy of $100 million or more and will not result in an increase in costs or prices. These amendments will not result in any of the other significant adverse effects addressed in the Executive Order. These amendments merely simplify and add flexibility to requirements related to the schedule for interim authorization of State hazardous waste programs.

These amendments were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so

as to require a regulatory flexibility analysis. No regulatory flexibility analysis is required where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments promulgated here merely simplify and add flexibility to requirements related to the schedule for interim authorization of State hazardous waste programs and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that these regulations will not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection requests contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 123 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2000–0387.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

Title 40 CFR, Part 123, Subpart F, is amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123, Subpart F, reads as follows:

(Secs. 1006, 2002(a) and 3006 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 6926)

2. The interim final rules amending Part 123 which were published on January 26, 1981 (46 FR 8298) are adopted as final rules and further amended as follows:

a. Section 123.122 is amended by revising paragraphs (c) and (d) to read as follows:

§ 123.122 Schedule.

* * * * *

(c)(1) 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 effective date of the last component of Phase II. The Regional Administrator may extend the application period for good cause.

(2) A State applying for interim authorization prior to the announcement of the first component of Phase II shall apply only for interim authorization for Phase I.

(3) A State may apply for interim authorization for a component of Phase II upon the announcement of that component, provided that the State meets the requirements of paragraph (d) of this section.

(4) A State which has received interim authorization for Phase I (or interim authorization for Phase I and for some but not all of the components of Phase II) shall amend its original submission to include all of the components of Phase II not later than 6 months after the effective date of the last component of Phase II. The Regional Administrator may extend this deadline for good cause.

(d)(1) No State may apply for interim authorization for a component of Phase II unless it: (i) has received interim authorization for Phase I; or (ii) is simultaneously applying for interim authorization for that component of Phase II and for Phase I.

(2) When a State applies for interim authorization for a particular component of Phase II, it shall demonstrate that its interim authorization program for Phase I (and, if applicable, its program for any other components of Phase II) is substantially equivalent to the Federal program, including modification to the Federal program, as follows:

(i) Any State already authorized for parts of the Federal program shall amend its original submission to include any additional requirements for Phase I (and any additional requirements for other Phase II components for which the State is authorized) which were promulgated on or before the announcement date of the particular Phase II component being applied for.

(ii) Any State not yet authorized for any of the Federal program shall include in its submission those Phase I requirements which were promulgated on or before the announcement date of the particular Phase II component being applied for. Any new State program which is applying for more than one component of Phase II shall include in its submission the additional requirements for such other components which were promulgated on or before the announcement date of the particular Phase II component being applied for.

(b) Section 123.125 is amended by revising paragraph (a) to read as follows:

§ 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 State's program was in existence within 90 days of the announcement of the last component 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 a component of Phase II, the Attorney General's statement submitted for interim authorization for Phase I (or for Phase I and other components of Phase II) shall be amended and recertified to demonstrate adequate authority to carry out all requirements of that component.

* * * * *

c. Section 123.128 paragraph (d) is amended by inserting the following words in the twenty-first line after the phrase "within 90 days" and by removing the words "of the promulgation of Phase I":

§ 123.128 Program requirements for interim authorization for Phase I.

* * * * *

(d) Limited exceptions from generator, transporter, and related manifest requirements.

* * * of the announcement of the last component of Phase II. * * *

* * * * *

d. Section 123.137 is amended by revising paragraph (a) to read as follows:

§ 123.137 Revision of State programs.

(a) A State program approved for interim authorization for Phase I or for Phase I and for some but not all components of Phase II shall terminate on the last day of the 6th month after the effective date of the last component 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). The Regional Administrator may extend this deadline for good cause.

* * * * *

e. Section 123.137 paragraph (b) is amended by inserting the following words in the tenth line after the phrase "pursuant to" and by removing the words "§ 123.122(c)(7)":

§ 123.137 Reversion of State programs.

* * * * *

(b) * * * § 123.122(c)(4) * * *

3. Section 123.129(a) is amended as an interim final rule by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 123.129 Additional program requirements for interim authorization for Phase II.

(a) * * *

(4) The Administrator may authorize a State program for Phase II Component A, even though the State program does not have standards corresponding to 40 CFR Part 264 Subpart K (Surface Impoundments), if the State commits in its Memorandum of Agreement to adopt State standards substantially equivalent to 40 CFR Part 264 Subpart K no later than the State's application for the Phase II component corresponding to the Federal land disposal standards.

(5) Any State which receives interim authorization for Component A without surface impoundment standards, pursuant to paragraph (a)(4) of this section, may not receive interim authorization for the Phase II component corresponding to the Federal land disposal standards unless it has standards substantially equivalent to 40 CFR Part 264 Subpart K in effect.

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[FR Doc. 82-19473 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 123

[SWH-FRL 2173-2]

Authorization of State Hazardous Waste Programs

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Announcement of Component C of Phase II Interim Authorization, and Beginning of Final Authorization.

SUMMARY: The regulations governing authorization of State hazardous waste programs under the Resource Conservation and Recovery Act provide that EPA will announce each of the components of Phase II interim authorization in the **Federal Register**. This notice describes the content, application requirements, and effective date of the last component of Phase II (Component C), which corresponds to the Federal permitting standards for land disposal facilities. States may commence the application process for Phase II Component C with this announcement.

The announcement of the last component of Phase II enables the final authorization process to begin, because the major elements of the Federal hazardous waste program are now in place. States may commence the application process for final authorization with today's announcement.

This notice also describes several important deadlines in the interim authorization process which are created by today's announcement.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weddle, Deputy Director, State Programs and Resource Recovery Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9107.

FOR FURTHER INFORMATION ON IMPLEMENTATION CONTACT:

Region I, Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5775.

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10278, (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, 111 West Jackson Street, Chicago, Illinois 60604, (312) 886-7435.

Region VI, R. Stan Jorgensen, 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 East 11th Street, Kansas City, Missouri 64106, (816) 374-3307.

Region VIII, Louis W. Johnson, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80295, (303) 327-2221.

Region IX, Philip Bobel, Chief, Hazardous Materials Branch, 217 Freemont Street, San Francisco, California 94105, (415) 974-8165.

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) provides for two types of EPA approval of State hazardous waste programs to operate in lieu of the Federal program:

1. State programs which are "substantially equivalent" to the Federal program may receive a temporary "interim authorization"; and

2. State programs which are "equivalent" to and "consistent" with the Federal program and "provide adequate enforcement" may receive a "final authorization".

The final authorization process has not been available to States up to now, because the major elements of the Federal hazardous waste program were not in place. Instead, State programs have been granted interim authorization in phases and components corresponding to the phased development of the Federal program.

On May 19, 1980, EPA published the requirements for interim authorization of State hazardous waste programs (see 45 FR 33384). These requirements, codified in 40 CFR Part 123, Subpart F, established, among other things, the two phases of interim authorization and a schedule for State applications for these phases. The first phase (Phase I) authorizes States to administer a hazardous waste program, which includes the identification and listing of hazardous wastes; the regulation of generators and transporters of hazardous wastes; and the enforcement of preliminary standards for hazardous waste treatment, storage and disposal facilities. The second phase (Phase II) authorizes States to administer a permit

program for treatment, storage and disposal facilities.

Phase II of interim authorization, in turn, is divided into three "components" corresponding to the major Federal permitting standards for hazardous waste management facilities, codified in 40 CFR Part 264. Each component corresponds to one or more specific categories of facilities requiring RCRA permits (e.g., incinerators, landfills). State programs can receive interim authorization to issue permits to the specific category or categories of facilities covered by each component. States may apply for authorization for each component as it becomes available and is announced in the **Federal Register**, or may wait until all three components are announced and apply for all of Phase II authorization at that time. This approach gives States the flexibility to adapt their Phase II application schedule to State needs. States with interim authorization must, however, apply for all of Phase II within six months of the effective date of the last component. (See amendments to Part 123 published on January 26, 1981, 46 FR 8298, and elsewhere in today's **Federal Register**.)

EPA has to date announced the first two components of Phase II. The contents of Components A and B of Phase II interim authorization were announced on January 26, 1981 (46 FR 7964). Component A covers tanks, container storage facilities, waste piles and storage surface impoundments. Component B covers incinerators. The remaining component of the Phase II program, Component C, covers land disposal facilities.

Final authorization can begin once the major elements of the Federal program are in place, which occurs when the Phase II permit program is complete. Section 123.31(c) provides that States may apply for final authorization "at any time after the promulgation of the last component of Phase II."

Today's promulgation of standards for land disposal facilities elsewhere in the **Federal Register** completes the establishment of the basic Federal hazardous waste program. This event has a number of significant effects on the State authorization process, which are described in this notice.

Today, EPA:

- Announces the contents, application requirements, and effective date of Component C of Phase II, corresponding to the Federal permitting standards for land disposal facilities. Component C will be the last Phase II component.
- Announces the beginning of the final authorization process.
- Announces several important deadlines in the interim authorization process, which are created by the above events.

The remainder of this notice discusses these actions in more detail.

II. Component C of Phase II, Interim Authorization

A. Content of Component C

Component C corresponds to the Federal standards for issuing permits to four types of land disposal facilities: landfills, land treatment units, waste piles, and surface impoundments. Component C also includes the new options for storage surface impoundments and waste piles added by today's promulgation. The Federal technical regulations for land disposal are codified in 40 CFR Part 264, Subparts F, K, L, M, and N. A State receiving interim authorization for Phase II, Component C, will be authorized to administer a State permit program under RCRA for the above categories of facilities, in lieu of the Federal permit program for these facilities.

B. Relationship Between Components A and C

Subparts K and L of Part 264 (Surface Impoundments and Waste Piles) were originally promulgated on January 12, 1981 (see 46 FR 2802). Those regulations addressed storage and treatment in certain classes of surface impoundments and waste piles, and were included in Component A (see 46 FR 7964, January 26, 1981). Subparts K and L are today being amended as part of the land disposal promulgation, and these amendments will replace the January 12, 1981 versions of those Subparts when the amendments become effective on January 26, 1983. Given this situation, States may apply for interim authorization for Subparts K and L in the following manner:

1. States which submit a complete application for Component A to EPA and for which EPA has published a notice of public hearing prior to the effective date of today's amendments to Subparts K and L may apply for Component A based upon the original announcement of Component A, including the January 12, 1981 provisions of Subparts K and L.[1] A number of States are currently preparing to apply for Component A based on the original EPA announcement, and this policy enables such States to proceed to complete application without a sudden change in the application requirements. States which receive interim authorization for Component A based on the January 12, 1981 provisions of Subparts K and L, will be authorized to issue RCRA permits to the categories of facilities covered in those provisions, but will not be authorized to issue RCRA permits to other types of surface impoundments or waste piles. (A State will still be able to apply for Component A under the exception clause at § 123.129(a)(4), without covering surface impoundments at all.)

2. After the effective date of today's amendments to Subparts K and L, States will be able to apply for interim authorization to permit surface impoundments and waste piles by applying for Component C, which corresponds to the amended provisions of Subparts K and L. After that point, the contents of Component A will be limited to storage and treatment in containers and tanks. This is because the January 12, 1981 provisions of Subparts K and L originally included in Component A will have been replaced by today's amendments. Therefore, States will need to address these amendments by applying for Component C in order to receive interim authorization to permit surface impoundments and waste piles. This change in the content of Component A does not affect any State that receives authorization for Component A based on a complete application submitted before the effective date of today's amendments to Subparts K and L.

3. States with interim authorization must apply for *all* of Phase II within one year of today's announcement (see § 123.122(c)(4)). Therefore, States will have to apply for Component C, including today's amendments to Subparts K and L, by that date or face reversion of the RCRA program to EPA. (See discussion of "States with Partial Interim Authorization" in Section IV of this preamble.)

[1] Prior to the effective date of today's amendments to Subparts K and L, EPA will review such applications for Component A based upon the original announcement of Component A, including the January 12, 1981 provisions of Subparts K and L. After the effective date of today's amendments to Subparts K and L, EPA will review such applications for Component A based upon the portions of the amended Subparts K and L, corresponding to the January 12 provisions, since those amendments replace the previous language of those Subparts. EPA anticipates that any State program which adopts the January 12, 1981 standards for permitting double-lined storage surface impoundments and waste piles with liners will be found substantially equivalent to the amended provisions of Subparts K and L for those limited categories of facilities.

C. Requirements for State Applications for Component C

In order to receive interim authorization for Phase II, Component C, a State must demonstrate that:

1. Its land disposal permit program provides "substantially the same degree of human health and environmental protection" as the Federal permitting standards for land disposal facilities (see § 123.129(a)(1)). These Federal standards include the administrative permit standards (40 CFR Part 264, Subparts A–E, G–H), as they apply to land disposal facilities, and the technical land disposal standards (40 CFR Part 264, Subparts F, K, L, M, and N).

2. Its permitting requirements and procedures are substantially equivalent to the Federal regulations cited in §§ 123.7 (a) and (b). Those regulations are the applicable Federal procedures from 40 CFR Parts 122 and 124 (see § 123.129(d)).

3. It has received interim authorization for Phase I or is simultaneously applying for interim authorization for Phase II (see § 123.122(d)(1), as amended elsewhere in today's **Federal Register**).

4. Its interim authorization program (for any phase or component) is substantially equivalent to applicable modifications to the Federal program (see § 123.122(d)(2)). Some of the Federal regulations have been revised since their original promulgation. A State applying for Component C must demonstrate that its program is substantially equivalent to all applicable requirements, including regulatory amendments, which have been promulgated *on or before* the date of this notice. Amendments to the regulations cited above in items (1), (2), and (3) would have to be addressed, if such amendments make the Federal program more stringent. For example, a State authorized for Phase I based on the May 19, 1980 regulations and applying for Component C would have to address additions to the regulated universe of hazardous waste and the establishment of the financial responsibility requirements for facilities with interim status. In addition, a State authorized for or seeking authorization for Phase II Components A and/or B and applying for Component C would have to address amendments to the Federal regulations corresponding to Components A and/or B, if such amendments make the Federal program more stringent.

States applying for Component C (or other Phase II components) will not be required to address changes to the Federal program adopted *after* today's date. Such changes, including amendments to Part 264 covering new processes not currently subject to standards (e.g., underground tanks which cannot be entered for inspection), would be addressed as part of the final authorization process established in § 123.13(e). Since Component C is the last Phase II component, interim authorization will not be available for permitting such new processes, and EPA will retain permitting responsibility until the State receives final authorization for the relevant program element. (See discussion below under Final Authorization.)

EPA will soon distribute to the States and other interested persons an addendum to the *RCRA State Interim Authorization Guidance Manual* which will specify the application process and requirements for Component C in more detail. This Manual will contain checklists outlining the requirements contained in the various regulations mentioned above, including a list of specific amendments to the Federal regulations which must be addressed in the State application for Component C.

D. States Authorized for Components A or B Under Exception Clauses

Recent amendments to § 123.129(a) allow States to receive interim authorization for Phase II Components A and/or B without coverage of certain requirements if specific conditions are met (see 47 FR 16552, April 16, 1982, and amendments promulgated elsewhere in today's **Federal Register**). A State authorized under these exception clauses must take the following actions in order to receive interim authorization for Phase II Component C:

1. A State which received interim authorization for Phase II Component A or B, or both, pursuant to § 123.129(a)(2) must adopt State liability coverage requirements by the time of its application for Component C. The State liability coverage requirements must be in effect before such a State can receive interim authorization for Component C.

2. A State which received interim authorization for Phase II Component A pursuant to § 123.129(a)(4) must adopt State standards substantially equivalent to today's amendments to 40 CFR Part 264 Subpart K (Surface Impoundments) by the time of its application for Component C. These State standards must be in effect before such a State can receive interim authorization for Component C.

E. Effective Date of Component C

States may apply for interim authorization for Phase II, Component C commencing with this announcement. State interim authorization for Phase II, Component C can take effect on or after January 26, 1983.

III. Final Authorization of State Hazardous Waste Programs

A. Final Authorization Program

As noted earlier, a State may apply for final authorization at any time after the announcement of the last component of Phase II, which completes the establishment of the basic elements of the Federal hazardous waste program. Today's announcement of Component C notes that it is the last Phase II component. Therefore, the application process for final authorization may begin commencing with this announcement.

Section 123.31(c)(2) provides that State programs under final authorization may take effect on the effective date of the last component of Phase II. Therefore, State final authorization can take effect on or after January 26, 1983.

Unlike interim authorization, final authorization does not expire after a limited period of time; likewise, the application period for final authorization does not close at a set time. States must satisfy the requirements of 40 CFR Part 123 Subparts A and B to receive final authorization, regardless of their interim authorization status. States need not have received interim authorization in order to qualify for final authorization.

EPA will soon distribute to the States and other interested persons a *RCRA State Final Authorization Guidance Manual* which will specify the application process and requirements for final authorization. This Manual will contain checklists outlining the requirements contained in 40 CFR Part 123 Subparts A and B.

B. Future Changes and Additions to the Federal Regulations

The promulgation of the land disposal permitting standards completes the establishment of the basic Federal hazardous waste program. However, EPA anticipates that there will be some future modifications to the Federal program, as new information is obtained regarding the characteristics of hazardous wastes, technologies for treatment, storage, and disposal, and implementation of the current regulations. EPA is conducting Regulatory Impact Analyses on the major hazardous waste regulations and is examining a "degree of hazard" approach to managing hazardous wastes. EPA also plans to add permitting standards for several

processes not currently covered by the Part 264 standards for owners and operators of hazardous waste management facilities. These new standards will address such processes as (1) treatment or storage in certain types of "underground tanks" not now covered by Part 264, (2) thermal treatment of hazardous wastes (in devices other than incinerators), and (3) treatment of hazardous wastes by chemical, physical or biological methods (in other than tanks, surface impoundments or land treatment facilities).

Despite these plans to revise and supplement the scope of the Federal permit standards, EPA believes that the basic elements of the RCRA permit program are now in place and that final authorization of State programs should commence. Permit standards have been promulgated for the hazardous waste facilities which handle the vast majority of wastes and generally represent the most serious environmental and public health concerns (i.e., landfills, surface impoundments, and incinerators). The future promulgation of the few remaining standards (e.g., thermal treatment), while important additions, will serve to "fill out" a large completed regulatory framework.

EPA announced on January 26, 1981, that it might "allow final authorization to begin . . . with one or two Part 264 Subparts unpromulgated. EPA may decide to do this if, for example, the standards for thermal treatment or chemical, physical and biological treatment have not been promulgated when the land disposal standards are promulgated" (46 FR 8300). The land disposal standards have been the major "missing piece" of the RCRA program, and their promulgation establishes a program which is sufficiently comprehensive for final authorization to begin. Furthermore, the interim authorization program is limited in duration by the language of RCRA. EPA does not believe that any further extension of interim authorization and the further postponement of final authorization are warranted. It was clearly the intent of Congress that once the major regulatory elements were in place, final authorization should be made available. Therefore, EPA will proceed with the final authorization process as described in today's notice.

This decision raises two questions concerning the future additions to the Federal regulatory program: (1) When will States that receive final authorization be required to adopt those new standards, and (2) what is the status of facilities for which EPA has not yet promulgated Part 264 standards but which are located in States with final authorization?

The final authorization regulations contain procedures for the revision of already approved State programs when Federal regulations are modified or supplemented. Section 123.13(e) provides that State programs approved for final authorization must make revisions required by changes to the Federal RCRA standards "within one year of the date of promulgation of such [new or modified] 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." This language provides a clear and orderly process for maintaining the "equivalence" of State programs that have received final authorization.

Owners and operators of facilities located in a State with final authorization are generally subject to that State's RCRA program, since the State program operates "in lieu of" the Federal program. However, such a State may not issue a RCRA permit to a facility before the appropriate facility standard (e.g., the standard for thermal treatment) has been promulgated by EPA and the State's program is judged equivalent to and consistent with the Federal program. This is because there would be no Federal program covering that group of facilities for the State to be "equivalent" to or to operate "in lieu of" prior to EPA's promulgation of such standards. A State may regulate and permit such facilities independently under the provisions of State law, but such State permits would not be considered RCRA permits. *After* the appropriate Federal facility standard has been promulgated, the authorized State would be required to modify its program according to the dates established in § 123.13(e).

Under current regulations, the affected facility would *not* be subject to the RCRA standards until the State adopted equivalent standards and those were approved by EPA. Section 264.1(f) provides that the Federal standards for owners and operators of hazardous waste facilities are not applicable in States with final authorization. Therefore, there could be a one (or two) year period during which the new RCRA standards would not apply in such a State, until the State adopted an equivalent and consistent standard. RCRA permits could not be issued to affected facilities during the one (or two) year period described above, and operation (and, in some cases, construction) of new facilities in the subject categories would not be allowed.

Such a de facto ban on construction and operation of the affected new facilities is clearly undesirable, given the general need for additional capacity for the treatment, storage and disposal of hazardous wastes and the prospect that new facilities in the categories under discussion would operate with a higher level of environmental protection than many older, more conventional facilities. To avoid this situation, EPA, elsewhere in today's **Federal Register**, is amending § 264.1(f) to make Part 264 permit standards for new categories of facilities applicable to facilities in States with final authorization until the State has adopted equivalent State standards. This will allow EPA to issue RCRA permits during the one (or two) year period when the authorized State lacks RCRA permitting authority for those new categories of facilities. This amendment is directed at the small number of new facilities in the designated categories which would otherwise be unable to conduct necessary activities during this period of State regulatory development. This amendment also clarifies the applicability of permit standards for new categories of facilities in States with Phase II interim authorization.

IV. Deadlines in the Interim Authorization Process

A number of important deadlines for interim authorization are triggered by the announcement of the final Phase II component. This section of the notice identifies these deadlines.

A. Expiration of Interim Authorization

RCRA § 3006(c) provides that interim authorization extends for 2½ years after the promulgation of the Federal hazardous waste regulations. Section 123.122(b) of the State authorization requirements interprets this provision to mean that interim authorization "may extend for a 24-month period from the effective date of the last component of Phase II." (This expiration date is 2½ years after the promulgation of the last major element of the Federal regulations.)

Since Component C is the last Phase II component, the two year prior begin on January 26, 1983. At the end of that period, "all interim authorizations automatically expire and EPA shall administer the Federal program in any State which has not received final authorization" (see § 123.122(b)(2)). EPA encourages all authorized States to prepare and apply for final authorization well in advance of this deadline, in

order to avoid reversion of the RCRA program to EPA.

B. End of Interim Authorization Application Period

Section 123.122(c)(1) provides that a State may apply for interim authorization until the end of the 6th month after the effective date of the last Phase II component. The interim authorization application period will close on July 26, 1983.

EPA is amending this provision elsewhere in today's **Federal Register** by adding that "the Regional Administrator may extend the application period for good cause." The preamble to this amendment notes that "EPA intends that this extension only be granted on a case-by-case basis to States which have made a good faith effort to meet the application deadline and which can submit a complete application within a reasonable period of time".

C. States With Partial Interim Authorization

Section 123.122(c)(4), as amended elsewhere in today's **Federal Register**, requires States which have received partial interim authorization (i.e., interim authorization for Phase I alone or Phase I and some components of Phase II) to apply for *all* of Phase II within 6 months of the effective date of the last component of Phase II. This deadline will occur on July 26, 1983. Section 123.137 contains the related stipulation that State programs with partial interim authorization which fail to submit an amended application for all of Phase II which meets the requirements of the Federal program by the above deadline will terminate and responsibility for RCRA implementation will revert to EPA.

Alternatively, State programs with partial interim authorization can avoid program reversion to EPA by applying for and receiving final authorization by the above deadline. In addition, today's amendments to these two sections provide that the Regional Administrator may extend the deadline for good cause. This extension is intended to be granted in the same amanner as the extension to the application deadline discussed earlier.

D. Deadline for State Enabling Legislation

RCRA Section 3006(c) provides that interim authorization may be granted to those States which have "in existence a hazardous waste program pursuant to State law" no more than 90 days after the "promulgation of regulations under Sections 3002, 3003, 3004, and 3005." EPA interprets this provision to mean that, at a minimum, a State must have basic enabling legislation for the program in place, i.e., basic statutory authority to regulate hazardous waste, in order to be eligible for interim authorization.

The deadline by which the State enabling legislation must be in place is found in § 123.125(a). This section is amended elsewhere in today's **Federal Register** to tie the deadline to the final Phase II component, which establishes the last major elements of the Federal program. This section is revised to provide that: "The State Attorney General or independent legal counsel must certify that the enabling legislation for the State's program was in existence within 90 days of the announcement of the last component of Phase II." This deadline will occur on October 25, 1982.

Most States which have received interim authorization for Phase I will have already demonstrated adequate authority and thus satisfied the enabling legislation requirement. Unauthorized States which desire to apply for interim authorization can satisfy the requirement by certifying that the necessary legislation was in place at any time prior to the date given above.

V. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The notice published today is not major because it will not result in an effect on the economy of $100 million or more and will not result in an increase in costs or prices. It will not result in any of the other significant adverse effects addressed in the Executive Order. The notice announces the last component of Phase II interim authorization, the beginning of final authorization, and several deadlines in the interim authorization process. These announcements are based on and carry out regulations promulgated under RCRA.

This notice was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VI. Authority

Sections 1006, 2002(a) and 3006 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 6926.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-19471 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 264

[SW-FRL 2173-1]

Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA announces that States may commence the application process for final authorization. As described in that announcement, EPA plans to add permitting standards for several processes which are not currently covered by the Part 264 standards for owners and operators of hazardous waste management facilities. Section 123.13(e) requires States with final authorization to make revisions to their programs "within one year of the date of promulgation of such [Federal] regulations, unless a State must amend or enact a statute . . . in which case such revision shall take place within two years." Under the current regulations, until a State makes those revisions, neither EPA nor that State has the authority to issue RCRA permits to facilities covered by those new permitting standards, including new facilities which need a RCRA permit in order to commence operation (and, in some cases, construction).

To remedy this problem, EPA is today amending its hazardous waste management regulations to enable certain facilities located in States with final authorization to obtain a federally-issued RCRA permit during the time preceding the State's authorization for those new standards. EPA is also today clarifying the applicability of new permit standards in States with Phase II interim authorization.

The Agency expects that this amendment will result in savings to the regulated community by enabling new facilities subject to these post-authorization standards to obtain a RCRA permit and begin operation before the State adopts equivalent new

standards. New facilities are expected to operate with a higher level of environmental protection than older, more conventional facilities. Therefore, this amendment will have a positive environmental impact by allowing these new facilities to obtain RCRA permits sooner than they would otherwise be able.

DATES: *Effective date:* January 26, 1983.

Comment date: EPA will accept public comment on this amendment until September 24, 1982.

ADDRESS: Comments should be sent to the Docket Clerk (Docket 3004—Additions to federal regulations after state authorization), Office of Solid Waste (WH–562), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Terrance Grogan, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382–2224; or the RCRA Hotline toll-free at (800) 424–9346 or in Washington, D.C. at 382–3000.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, and May 19, 1980, EPA published regulations pursuant to the Resource Conservation and Recovery Act of 1976, as amended (RCRA), establishing the first phase of a comprehensive program for the handling and management of hazardous waste (45 FR 33066–33285, now codified in 40 CFR Parts 260–265). These regulations require, among other things, that facilities which treat, store, or dispose of hazardous waste must obtain a permit from EPA or an authorized State. The permit must be based on standards promulgated by EPA in 40 CFR Part 264.[1]

Section 3006 of RCRA allows a State which seeks to administer and enforce a hazardous waste program to obtain authorization from EPA to run the program in lieu of the Federal Government. EPA will authorize a State if it determines that the State's program is "equivalent" to and "consistent" with (in the case of final authorization), or "substantially equivalent" to (in the case of interim authorization), the Federal program. The authorized State can then issue and enforce permits for the treatment, storage, or disposal of hazardous waste, under RCRA.[2]

On May 19, 1980, EPA promulgated regulations which spell out in detail, among other things, the requirements for States to receive authorization to administer the RCRA permit program in lieu of the Federal permit program. (See 45 FR 33377, codified in 40 CFR Part 123).

Elsewhere in today's **Federal Register**, EPA is promulgating permitting standards for land disposal facilities, which represent the last major piece of the RCRA hazardous waste program. However, EPA intends to add permitting standards for processes not currently covered by the Part 264 standards. For example, the Part 264 standards do not currently cover treatment and storage of hazardous waste in certain types of underground tanks; thermal treatment of hazardous waste in devices other than incinerators; or treatment of hazardous waste by chemical, physical or biological methods (other than in tanks, surface impoundments or land treatment units).

Adding Part 264 permitting standards to the Federal regulations after States have obtained final authorization raises the following problem under the existing regulations. Section 123.13(e) provides that State programs approved for final authorization must make revisions required by changes to the Federal RCRA program "within one year of the date of promulgation of such [new or modified] regulation, unless a State must amend or enact a statute in order to make the required revision in which case such revisions shall take place within two years." This language provides a clear and orderly process for maintaining the "equivalence" of State programs that have received final authorization. However, there may still be a one or two year gap between the time new standards are promulgated by EPA, and the time that the State adopts and is authorized for equivalent standards.

The problem arises when a person plans to build a new facility (or expand an existing one) with processes covered by the new Part 264 standards during this one or two year period in a State with final authorization.[3] Such a person could not receive a RCRA permit for these processes from the authorized State during this period. This is because the State's RCRA authorization includes only those portions of the Federal program for which the State has been judged to have equivalent and consistent standards. State programs cannot operate "in lieu of" this new part of the Federal program until they have received authorization for those new Part 264 standards.

In addition, the person could not receive a federally-issued RCRA permit if he or she is located in a State with final authorization, because § 264.1(f) as currently worded provides that the requirements of Part 264 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 Part 123.[4] (This provision was originally promulgated on the assumption that by the time of final authorization, Part 264 standards would be in place for all categories of facilities.)

The owner or operator of a new facility could therefore face a period of time in which he cannot obtain a RCRA permit from either the authorized State or the Federal government. This effectively places a ban on the operation (and, in some cases, construction) of the facility. EPA did not intend to impose this de facto ban, and believes it is undesirable. These new facilities may provide needed additional treatment, storage, and disposal capacity at a higher level of environmental protection than older, more conventional facilities.

The Agency is today amending § 264.1(f) to rectify this problem. Under this amendment, Part 264 will apply to these facilities until the State receives final authorization for the new standards. Facilities subject to these new standards may therefore obtain a federally-issued RCRA permit during that limited period of time. They will not have to wait until the State in which they are located adopts equivalent and consistent standards.

The language of § 264.1(f) is also being amended to clarify the applicability of Part 264 in States with Phase II interim authorization under RCRA § 3006(c).[5] This amendment ensures that States authorized for any of the Phase II components will operate the RCRA permit program in lieu of EPA for facilities covered in their authorized components. For example, if a facility conducted incineration of hazardous wastes, and the facility was located in a State with interim authorization for Phase II, Component B (the component covering incinerators), then it would not

[1] Portions of 40 CFR Part 264 were promulgated on May 19, 1980 (45 *FR* 33154), January 12, 1981 (46 *FR* 2802), and January 23, 1981 (45 *FR* 7667). The major missing piece of the RCRA performance standards was the land disposal regulations, until their promulgation elsewhere in today's **Federal Register**.

[2] States may issue hazardous waste permits under State law in any case, whether or not they are authorized under RCRA.

[3] Facilities in existence on November 19, 1980, may qualify for interim status when the new standards are promulgated. See Section 3005(e) of RCRA and 40 CFR Part 122.22(a).

[4] Part 264 does currently apply to underground injection, if the authorized State program does not cover it. See 40 CFR § 264.1(f).

[5] For a discussion of Phase II interim authorization, see amendments to Part 123 published on January 26, 1981, 46 FR 8298, and the announcement of Phase II Component C elsewhere in today's **Federal Register**.

be subject to Part 264, and the State's "substantially equivalent" standards would operate in lieu of the Federal standards.

However, Part 264 will apply to the permitting of new processes (e.g., underground tanks) added to the coverage of Part 264 after the announcement of Component C. Since Component C is the last Phase II component, interim authorization would not be available for permitting these new processes. EPA would retain permitting responsibility for such new processes in States with interim authorization, since the processes would not be included in the State's authorization for Phase II. States would receive authorization to operate the RCRA permit program in lieu of EPA for such new processes as part of final authorization, under the provisions in § 123.13(e) described above.

EPA requests comments on the approach taken in this amendment for both final and interim authorization. In particular, comments are solicited on alternatives to Federal permit issuance in authorized States during the period between addition of new RCRA permit standards and State authorization for equivalent and consistent standards.

II. Interim Final Promulgation

EPA believes that the use of advance notice and comment procedures for this amendment to the applicability section of 40 CFR Part 264 would be impracticable and contrary to the public interest, and therefore finds that good cause exists for adopting this change in interim final form (see 5 U.S.C. § 553(b)(B)).

This amendment is designed to make the language of § 264.1(f) consistent with the Agency's original intent in promulgating that section. EPA never intended a situation where a facility could not obtain a RCRA permit from either EPA or an authorized State after the appropriate Part 264 standards were promulgated. The current language of § 264.1(f) was based on the assumption that Part 264 standards would be in place for all categories of facilities by the time of final authorization. However, this did not happen, and thus certain new facilities could face a temporary ban on operation (and, in some cases, construction) in States with final authorization due to current regulatory language. Today's amendment rectifies this situation by allowing continued operation of the RCRA permitting process, as originally intended.

This interim final amendment will take effect in six months, at the same time that final authorization can take effect. This timing ensures that the RCRA permitting process will not be disrupted in States with final authorization.

EPA will accept comments on this amendment for 60 days, and will make any further changes deemed necessary as a result of those comments.

III. Executive Order 12291

Under Executive Order 12291, (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not major because it will not result in an effect on the economy of $100 million or more nor will it result in a major increase in costs or prices to consumers, industry or government entities. There will be no adverse impact on the ability of the U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being prepared.

This amendment was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, whenever an agency is required to publish a rulemaking, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, I hereby certify that this regulation, if issued in final form, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

Title 40 CFR Part 264 is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, (42 U.S.C. §§ 6905, 6912(a), and 6924).

2. Section 264.1(f) is revised to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(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 in a State authorized under Subpart F of Part 123 of this chapter for the component or components of Phase II interim authorization which correspond to the person's treatment, storage or disposal processes; except that this part will apply:

(1) 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; and

(2) To a person who treats, stores or disposes of hazardous waste in a State authorized under Subparts A and B of Part 123 of this chapter, at a facility which was not covered by standards under this part when the State obtained authorization, and for which EPA promulgates standards under this part after the State is authorized. This paragraph will only apply until the State is authorized to permit such facilities under Subparts A and B of Part 123 of this chapter.

* * * * *

[FR Doc. 82-19470 Filed 7-23-82; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL 2173-3]

Hazardous Waste Management System: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Elsewhere in today's Federal Register the Environmental Protection Agency is promulgating standards around which hazardous waste surface impoundments, waste piles, land treatment units, and landfills will be permitted. These rules suggest some conforming changes to Part 265, the Interim Status Standards, for consistency and compatibility. Most of these are promulgated as part of today's rulemaking. A few however, potentially have more impact and could benefit, in the Agency's view, from additional public input. For these reasons,the Agency is proposing the following conforming changes.

(1) A variance to the two foot freeboard requirement for surface impoundments.

(2) Final cover performance requirements for surface impoundments and landfills.

(3) An additional variance allowing placement of some ignitable or reactive wastes in surface impoundments.

(4) More definitive requirements respecting placement of containers in landfills.

DATES: EPA will accept comments on the proposed rules on or before November 23, 1982.

ADDRESS: Comments should be sent to Docket Clerk (Docket 3004—Land Disposal Interim Status Proposal), 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 proposed rule is located in Room S-269, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 800-424-9346 (in Washington, D.C. call 382-3000) or Rodney Jenkins (202) 382-4658, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Explanation of the Proposal

Elsewhere in today's Federal Register, EPA has promulgated regulations affecting treatment, storage, and disposal of hazardous wastes in surface impoundments, waste piles, land treatment units, and landfills. Those rules establish standards that must be met for facilities to receive a permit under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulatory program. Also included are a series of conforming changes to the interim status requirements of Part 265, which were made to provide consistency and compatibility. There are, however, a few additional conforming changes which the Agency believes should be adopted during interim status. Because they may have substantial impact on interim status operations as well as on the environment, and because, in most cases, the public has not had sufficient opportunity to comment on the appropriateness of applying them to the interim status period, EPA is proposing these changes today.

A. Surface Impoundments—General Operating Requirements

Section 265.222 contains the rules designed to prevent overtopping of impoundment dikes. The current interim status regulations require not only that overtopping not occur but that a minimum freeboard of two feet be maintained to ensure it. The Agency received numerous comments claiming that the two foot requirement is not necessary if the performance requirement to prevent overtopping is in place. In any event, some claimed, the two foot minimum might not be suffcient in some cases.

EPA generally agrees with these commenters and, in the Part 264 regulations, the Agency requires only that overtopping be prevented. As with most Part 264 requirements, this will be implemented through the permitting process, when the applicant will demonstrate that design features and operating practices at the facility will, in fact, prevent overtopping. During interim status, in the absence of Agency review provided by the permitting process, EPA has concern that a general performance requirement, such as "prevent overtopping", can be adequately self-implementing or readily enforced. Therefore, the Agency is proposing today to expand the two feet minimum freeboard requirement by allowing a lesser level if a qualified engineer certifies that alternate design features or operating procedures will prevent overtopping. EPA believes that a qualified engineer can review design and operating features and adequately conclude whether overtopping is possible. The owner or operator would also be required to maintain the certification and the basis for it at the facility to facilitate enforcement inspections. The Agency believes this approach to be self-implementable and to provide a degree of protection equivalent to that of the two foot minimum.

B. Surface Impoundments—Closure and Post-Closure Care

The current interim status requirements allow surface impoundments to be closed by digging up remaining wastes and contaminated liners, equipment, and surrounding soils. Alternately, the owner or operator may solidify liquids and apply a final cover in accordance with the landfill requirements for closure (§ 265.310). Also, in the second case, he must carry out the post-closure care requirements as if his impoundment were a landfill.

The Agency does not propose to change this basic approach and, in fact, has adopted it as the basis for the Part 264 permitting standards. EPA believes that the new standards in Part 264 are more easily understood and that they are as applicable during interim status as for permitted facilities. The Agency further believes the new Part 264 rules are readily implementable during interim status as well since the existing interim status closure and post-closure care review process is similar to the review process for closure and post-closure care plans conducted during the permitting process. Therefore, the Agency is proposing to adopt, as interim status requirements, the new Part 264 closure and post-closure care requirements for surface impoundments (§ 264.228) except for some of the post-closure care requirements. (Interim status facilities are not required to have leak detection systems or leachate management facilities and, thus, the post-closure requirements of Part 264 respecting them are inappropriate for interim status facilities.)

The fundamental requirements are not greatly different than the interim status requirements promulgated on May 19, 1980. The new requirements proposed today are, however, much more explicit, identifying more clearly what is expected of the final cover. They are also somewhat more stringent. The cover must now "minimize" infiltration instead of simply "controlling" it. It must not be any more permeable than the bottom liner to prevent the "bathtub"

effect. Since the bottom liner may be highly impermeable, the cap may also have to be impermeable as well. It must also accommodate settling and subsidence. The reasons for these requirements are discussed at length in the preamble to the Part 264 requirements promulgated today elsewhere in this issue of the **Federal Register.**

The proposed interim status post-closure care requirements also contain some differences from those now in place. The new provisions require that erosion from precipitation be prevented. This requirement is appropriate for interim status just as it is for permitted units. The current interim status provisions relating to leachate collection systems, gas collection systems, maintenance of benchmarks, and restriction of access would be dropped as inappropriate under this Proposal, the first three because surface impoundments are not required to have such equipment, and the last because it is redundant to § 265.117(b).

C. Surface Impoundments—Ignitable or Reactive Waste

The existing limitations on placing ignitable or reactive waste in surface impoundments allow the practice only if placing the waste in the impoundment results in the waste not being ignitable or reactive any more; or the impoundment is used solely for emergencies. The new Part 264 requirements allow use of impoundments for ignitable or reactive waste if the waste is protected from conditions that could cause it to ignite or react. EPA doesn't expect this variance to be used much, but concedes that protection against carelessly thrown matches and from certain reactions may be practical. Since the management methods providing protection can be reviewed during permitting, EPA agrees that the new variance provides additional flexibility to the owner or operator without sacrificing human health or environmental protection.

Adoption of the same variance during interim status, however, is fraught with the same enforcement and self-implementation problems as adoption of the freeboard variance discussed in Section A. The Agency proposes to circumvent these difficulties by using the same approach proposed for the freeboard variance, namely that the owner or operator obtain certification from a qualified chemist or engineer that the design features of this facility or the operating practices employed will prevent ignition or reaction. EPA expects that a qualified engineer or chemist can evaluate the operation and adequately determine that it is safe. Enforcement of the rule can adequately be carried out by comparing the basis for the certification kept at the facility against actual practice.

D. Landfills—Closure and Post-Closure Care

The Part 264 Subpart N requirements for closure and post-closure care promulgated today elsewhere in this **Federal Register,** are being proposed here in modified form for adoption as interim status rules. As discussed in Section B of this preamble for surface impoundments, the new rules are clearer and more explicit. Because of this, they should be more easily implemented during interim status than the existing rules.

The interim status closure and post-closure requirements in place now are very general in nature, requiring that owners or operators develop a plan to "control" infiltration based on consideration of certain factors. The new requirements are more specific and are more stringent. Covers must be designed to "minimize" infiltration instead of simply "controlling" it. They must also allow no more precipitation to pass through than would the bottom liner to prevent the "bathtub effect". Additionally, the cover must accommodate settling and subsidence. These provisions are as applicable to landfills which close under interim status as they are to permitted landfills.

The post-closure care requirements for interim status units adopted today are somewhat different than those adopted in Part 264. The Part 264 provisions include some requirements relating to unit components (e.g., leachate collection and treatment systems) which are not required during interim status. Post-closure care provisions affecting these systems would, therefore, be inappropriate.

E. Landfills—Special Requirements for Containers

The current interim status requirements mandate that empty containers be crushed flat prior to placement in the landfill. The purpose of this requirement is to minimize subsidence due to empty containers. Collapse of empty containers is thought to be a leading cause of differential subsidence which in turn poses a serious threat to the continuity and proper functioning of the final cover.

Commenters on this provision made three basic points:

(1) Small containers should be exempted,

(2) Provide guidance on when a container is empty (or full) for purposes of this rule, and

(3) Provide guidance on how much crushing and shredding is necessary to comply.

The agency agrees with all of these points, and, in the Part 264 requirements promulgated today, has accommodated points (1) and (2). The rationale for the various provisions is discussed in the Preamble to that issuance. EPA believes those provisions respond to the commenters requests with regard to interim status but wishes to propose them to obtain added comment.

The Agency is not yet able to provide more specific general guidance at present on how much shredding or crushing is necessary to comply with the rule. EPA believes that crushing sufficiently to produce a void space of 10 percent or less of the volume originally present should adequately minimize differential subsidence. The Agency is not absolutely certain, however, that shredding and crushing equipment can actualy achieve that level. In the Preamble to the Part 264 promulgation, EPA has asked for data and may propose a change at a later time.

II. Classification

The regulations proposed today are Interim Status Part 265 conforming changes to the Part 264 permitting standards promulgated elsewhere in today's **Federal Register.** Considering the magnitude of the costs and impacts of the promulgated regulations, the Agency does not believe these proposed requirements will result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or in domestic or export markets. Therefore, EPA does not expect today's proposed rule to be subject to the major rule provisions of Executive Order 12291 and, therefore, does not believe that a regulatory impact analysis is necessary.

The proposed rules might have a significant impact on small entities, however, thereby triggering the requirements of the Regulatory Flexibility Act. As part of the Regulatory Flexibility Analysis being conducted for the Part 264 permitting regulations promulgated today, EPA will consider the impact of these proposed rules on small entities. The results of that analysis will be available for review,

prior to any action to finalize these proposed rules. In performing this analysis EPA will determine in more detail the costs to the economy of the proposal and, if necessary, perform a regulatory impact analysis.

The certification requirements of proposed §§ 265.222(b) and 265.229(b) are subject to the OMB clearance requirements of the Paperwork Reduction Act of 1980.

This proposal was submitted to the Office of Management and Budget for review as required by Executive Order 12291 and the Paperwork Reduction Act.

III. Request for Comment

EPA invites comments on all aspects of the proposed rule. All comments should be addressed to the Docket Clerk (see Addresses above) and should prominently bear the notation: "Docket 3004—Land Disposal Interim Status Proposal". All comments should contain specific documentation in their support.

Lists of Subjects in 40 CFR 265

Hazardous materials, Packaging and containers, Reporting and record-keeping requirement, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: July 9, 1982.

Anne M. Gorsuch,

Administrator.

For the reasons set out in the preamble, Part 265, Subparts K and N, of Title 40 of the Code of Federal Regulations are proposed to be amended as follows.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 reads as follows:

Authority: Sections 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).

2. In 40 CFR 265, Subpart K, §§ 265.222, 265.228, and 265.229 are revised to read as follows:

§ 265.222 General operating requirements.

(a) 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 (two feet) of freeboard.

(b) A freeboard level less than 60 centimeters (two feet) may be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with a written identification of alternate design features or operating plans preventing overtopping, must be maintained at the facility.

§ 265.228 Closure and post-closure care.

(a) At closure, the owner or operator must:

(1) Remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies; or

(2)(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(ii) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

(iii) Cover the surface impoundment with a final cover designed and constructed to:

(A) Provide long-term minimization of the migration of liquids through the closed impoundment;

(B) Function with minimum maintenance;

(C) Promote drainage and minimize erosion or abrasion of the cover;

(D) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) In addition to the requirements of § 265.117, during the post-closure care period, the owner or operator of a surface impoundment in which wastes remain after closure in accordance with the provisions of paragraph (a)(2) of this section must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Subpart F of this part; and

(3) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

§ 265.229 Special requirements for ingnitable or reactive waste.

Ignitable or reactive waste must not be placed in a surface impoundment, unless:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment 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) Section 265.17(b) is complied with; or

(b)(1) 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; and

(2) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(3) The certification and the basis for it are maintained at the facility; or

(c) The surface impoundment is used solely for emergencies.

3. In 40 CFR 265, Subpart N, §§ 265.310 and 265.315 are revised to read as follows:

§ 265.310 Closure and post-closure care.

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(T) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and miminmize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in §§ 265.117–265.120 including maintenance and monitoring throughout the post-closure care period. The owner or operator must:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events.

(2) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Subpart F of this part;

(3) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(4) Protect and maintain surveyed benchmarks used in complying with § 265.309.

§ 265.315 Special requirements for containers.

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

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Monday
July 26, 1982

Part III

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Medicare Supplemental Policies

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 401, 402, 403 and 404

Medicare Program; Medicare Supplemental Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule establishes a Federal program of certification of Medicare supplemental health insurance policies (Medicare supplemental policies) that insurers voluntarily submit for review. This rule implements requirements of section 507 of the Social Security Disability Amendments of 1980.

HCFA will administer the Federal certification program. This program goes into effect July 1, 1982, and will apply only to policies issued in those States that do not have in effect a program for regulating Medicare supplemental policies equal to or more stringent than the one established under the law. A Supplemental Health Insurance Panel, consisting of the Secretary or a designee and four Commissioners or Superintendents of Insurance appointed by the President, determines the adequacy of a State's program in relation to the standards contained in the statute.

These regulations: (1) Set standards for the certification of policies voluntarily submitted to HCFA, (2) establish procedures for the certification program, and (3) specify requirements regarding submittal of loss ratio data to HCFA for review.

DATES: These regulations are effective July 1, 1982. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this final rule in §§ 403.232 and 403.239–403.258 will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and a notice to that effect has been published in the **Federal Register.**

Although these regulations are final, we are providing for an additional comment period for 42 CFR 403.256, concerning loss ratio information that must accompany a policy sent to HCFA for review, because the provisions of this section were not specified in detail in the notice of proposed rulemaking. To assure consideration, comments should be received by August 25, 1982. We will publish a notice in the **Federal Register** giving the status of the OMB review and of review of the comments received. (See the supplementary information for a further discussion of the effective date of these regulations.)

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please refer to BPP–91–FC. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION, CONTACT: Thomas Hoyer, 301–594–9446.

SUPPLEMENTARY INFORMATION:

I. Medicare and Private Insurance to Supplement Medicare

Medicare is a Federal health insurance program, provided for under title XVIII of the Social Security Act, for people 65 and older the some people under 65 who are disabled. The Medicare program consists of two parts, a Hospital Insurance Program (Part A) and a Supplementary Medical Insurance Program (Part B). The Medicare program was never designed to cover the total cost of providing medical care for its beneficiaries. Both Parts A and B have deductible and coinsurance cost sharing provisions. Also, there are a number of items not covered under either of Medicare's two insurance programs, such as custodial nursing home care, dental care, and eyeglasses. Beneficiaries must pay the full cost of these services out-of-pocket or may choose to purchase additional private insurance protection to help pay the costs.

About two-thirds of Medicare beneficiaries have purchased private health insurance in order to obtain assistance in meeting health care expenses not covered by the Medicare program. The policies they purchase are commonly referred to as Medicare supplemental or "Medigap" policies and principally include Medicare supplemental policies, indemnity policies, and specified disease policies.

Over the past ten years, investigations and studies by Congressional committees, the Federal Trade Commission, the news media, and various other individuals and agencies have revealed certain problems with Medigap insurance. Some of the problems relate to the nature of the policies, and some of them relate to the manner in which they are sold:

1. There is such a wide variety of Medigap policies that it is difficult, if not impossible, for a beneficiary to compare them and effectively assess their relative benefits and costs.

2. The policies themselves are often written in complicated language that obscures the extent of their coverage or the nature of their exclusions. For example, many policies contain clauses which limit or exclude payment for services received in connection with medical conditions which were known to exist at the time the policy was sold. These pre-existing condition clauses can negate coverage described in other portions of the policy.

3. It is also virtually impossible for Medicare beneficiaries to determine the value of the policy's benefits in relationship to the premiums paid. This relationship, known as the loss ratio, is a way of determining how much of the aggregate premium income from a policy an insurance organization returns in aggregate benefits. Some policies return 80 to 90 cents, or more, on the premium dollar, while other policies have been reported to return less than 25 cents.

4. Elderly beneficiaries tend to rely on insurance agents for information about the Medicare program and the coverge available under the Medigap policies they are offered, and they are particularly vulnerable to misrepresentation and other abuses. Evidence of fraud, forgery, and intimidation has been uncovered.

II. Legislation of Health Insurance and Related Initiatives

A. NAIC Activities

There have been several significant initiatives in recent years to address the problems associated with Medigap policies. The National Association of Insurance Commissioners (NAIC), an association of the chief executive officers for the regulation of insurance of the 50 States, the District of Columbia, Guam, Puerto Rico, American Samoa, and the Virgin Islands, has played a major role in the effort. The NAIC provides model laws and regulations that are adopted by many States as the

basis for the regulatory programs for insurance that is marketed within their borders. In 1979, the NAIC amended its model standards for individual accident and sickness insurance policies to include specific standards that States can use to regulate Medicare supplemental policies (Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act, as it applies to Medicare supplemental policies, hereafter referred to as "NAIC Model Standards"). The amended model, adopted by the NAIC on June 6, 1979, contains minimum standards for policies and addresses such issues as minimum coverage requirements, limits on exclusions of coverage because of pre-existing conditions, disclosure requirements, and refund requirements.

Also the NAIC, in collaboration with HCFA, developed a "Guide to Health Insurance for People with Medicare". Over six million copies of the pamphlet have thus far been distributed through social security offices, insurance companies, State insurance departments, and senior citizen interest groups.

B. Federal Legislation

In an effort to address the abuses associated with Medigap policies, Congress enacted section 507 of Pub. L. 96–265 (the Social Security Disability Amendments of 1980). That section of the law encouraged States which had not done so to establish regulatory programs that meet specified minimum standards for Medicare supplemental policies, and established a Federal voluntary certification program for Medicare supplemental policies issued in States whose programs do not meet specified standards (section 1882 of the Social Security Act (42 U.S.C. 1395ss)). (The voluntary certification program, as provided for in section 1882 of the Act and these regulations, addresses only Medicare supplemental policies, and not the other types of policies sold to Medicare beneficiaries, that is, limited benefit health insurance, indemnity, and specified disease policies.) The intent of the legislation is to assist Medicare beneficiaries in identifying Medicare supplemental policies for purchase that are represented accurately both by sales agents and promotional literature, do not duplicate Medicare or other health insurance coverage, and provide fairly priced minimum protection against health care expenses that are not paid for by Medicare.

In the debate that preceded enactment of Pub. L. 96–265, and in the law itself, Congress recognized the progress already made by the States in the area of Medigap regulation. Further, it recognized and chose not to alter the traditional role of the States in regulating insurance. Its intention in developing Federal legislation was to provide the States and insurance industry with an incentive to speed up their activities to improve the regulation and quality of Medicare supplemental policies. At the same time, Congress established an alternative mechanism—the voluntary certification program—that could be implemented at the national level for policies issued in those States that have not established or cannot be expected to establish specified regulatory programs by July 1, 1982.

While the law relies on improved State regulation of Medicare supplemental policies and the new Federal program as a major means of identifying and curbing abuses in the sale of those policies, it also places strong reliance on consumer education as a force in improving the general quality of policy offerings. The presumption is that beneficiaries, assisted by information provided by HHS, the States, insurance companies and other sources, will become better informed purchasers of insurance to supplement Medicare and that insurance organizations will therefore improve the quality of the policies they offer for sale in order to retain their competitive position in the market.

The basic provisions of section 1882 of the Act addressed in these regulations are as follows:

1. The statute mandates that the Secretary of HHS establish a voluntary program of review of Medicare supplemental policies, and of certification of those policies that meet or exceed requirements specified in the statute and implemented through these regulations. The Secretary's program is voluntary in that it provides for review of only those policies that are voluntarily submitted by insurers (section 1882(a) of the Act). It goes into effect July 1, 1982. (The Secretary has determined that HCFA will administer the voluntary program.)

2. Policies must meet the applicable NAIC Model Standards, as amended and adopted by the NAIC on June 6, 1979, and certain additional standards specified below in item 3, in order to be certified in the Secretary's program. (The NAIC has standards applicable to the full range of individual health insurance policies sold to the elderly, including Medicare supplemental policies, indemnity policies, and specified disease policies. However, it is important to note that Congress incorporated the NAIC Model Standards into the Act only to the extent that those standards specifically address "Medicare supplemental policies" as defined in section 1882(g) of the Act.)

3. Congress structured the voluntary program so that it would extend the NAIC Model Standards to certain group policies as well as individual policies. It also established minimum loss ratio requirements for each category of policy (section 1882(c) of the Act).

4. The Secretary's voluntary certification program will apply only to policies issued in those States that have not established, under State law, a regulatory program that applies standards equal to or more stringent than those specified in the statute (section 1882 (b) and (i) of the Act). It should be noted that Congress did not intend to encourage States to limit their regulatory programs to the minimum level specified in the law. On the contrary, the intent of Congress was to encourage States to implement regulatory programs that they determine are appropriate to their particular needs and to assure States that those programs meeting or exceeding specified minimum standards would be approved by a panel, as specified below. (See H.R. Rep. No. 96–944, 96th Congress, 2d Session 76–77 (1980).)

5. The statute also provides for a Supplemental Health Insurance Panel that will determine whether or not State regulatory programs for Medicare supplement policies meet the requirements of the law. The Panel consists of the Secretary or a designee, who serves as chairperson, and four State Commissioners or Superintendents of Insurance, appointed by the President (section 1882(b) of the Act).

6. The Secretary will authorize the use of an emblem by an insurer to indicate that a policy has been certified as meeting the standards of the voluntary certification program (section 1882(a) of the Act).

The statute also contains provisions which do not require regulations. These include new criminal penalties that allow the prosecution of abusive companies and agents under Federal law (section 1882(d) of the Act). These penalties apply to cases in which false statements or misrepresentations are made about a policy's certification or about the extent and nature of the policy's benefits (including economic value) for the purpose of obtaining certification. They also apply to cases of misrepresentation by an insurance agent that he or she is an employee or agent of the Federal government (for example, of the Medicare program), and to cases in

which an individual sells a policy that is known to be duplicative of Medicare coverage or other health insurance the individual has but that will not pay duplicative benefits. There is also a penalty governing the use of the mails for the advertisement, solicitation, offer for sale, or delivery of certain Medicare supplemental policies that have not been approved for sale in a State.

Section 1882(f) of the Act requires the Secretary to undertake a comprehensive study of the comparative effectiveness of various State regulatory approaches in (a) limiting marketing and agent abuse, (b) assuring the dissemination of information to Medicare beneficiaries (and to other consumers) that is necessary for informed purchase of health insurance policies, (c) promoting policies that provide reasonable economic benefits for the insured, (d) reducing the purchase of unnecessary duplicative coverage, (e) improving price competition, and (f) establishing effective State regulatory programs. At the same time, the Secretary's study must consider the need for standards for, or certification of, health insurance policies, other than Medicare supplemental policies, sold to Medicare beneficiaries.

The Secretary is also required to submit to Congress, no later than July 1, 1982, and at least every two years thereafter, a report evaluating the effectiveness of the certification procedures and the criminal penalties established under the law (section 1882(f)(2) of the Act). The report must include an analysis of the impact that the certification program and the penalties have on the types, market share, value, and cost of policies certified by the Secretary. The report will also address whether the certification program and the criminal penalties should be continued or changed.

Finally, section 1882(e) requires that the Secretary furnish all Medicare beneficiaries information that will enable them to make informed choices when purchasing Medicare supplemental policies. Before the enactment of this provision, HCFA's Office of Beneficiary Services began distributing informational materials and conducting training classes for, and issuing training materials to, individuals who have contact with Medicare beneficiaries on the State and local levels. Trained individuals are then in a position to inform beneficiaries about problems inherent in the selection of health insurance and about the certification program. HCFA will continue these activities as part of its ongoing program to assist Medicare beneficiaries in making more informed decisions about the purchase of insurance to supplement Medicare.

III. Notice of Proposed Rulemaking

In order to develop regulations for administration of the Federal certification program, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 21, 1981 (46 FR 6296). Because the statute is clear in most respects, the NPRM to a great extent reiterated the provisions that are contained in section 1882 of the Act. That is, the NPRM contained the following provisions:

1. Federal regulations would not affect the right of a State to regulate policies marketed in that State.

2. A Medicare supplemental health insurance policy would mean a health insurance policy or other health benefit plan that a private entity offers a Medicare beneficiary, and that provides payment for expenses not reimbursed under Medicare. This definition would apply to both individual policies and to group policies. However, group policies of employers, labor organizations, and, under certain circumstances, professional, trade, and occupational organizations would be excluded. The definition would also exclude any policy or plan of a professional, trade, or occupational association if the association (a) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation; (b) has been maintained in good faith for a purpose other than obtaining insurance; and (c) has been in existence for at least two years before offering a Medicare supplemental health policy. These exclusions are in accordance with section 1882(g) of the Act and the Conference Committee Report on H.R. 3236 (H.R. Rep. No. 96–944, 96th Congress, 2nd Session 77 (1980)).

3. In order to be certified under the voluntary program, we would require that policies meet the following conditions:

a. Policies must meet applicable State requirements.

b. Policies must meet or exceed the NAIC Model Standards identified in the law.

c. Policies must have or must be expected to have a loss ratio of 75 percent in the case of group policies, and 60 percent in the case of individual policies. We would require a qualified actuary to submit loss ratio determinations that are calculated according to specifications in the regulations.

d. The above conditions could be met by two or more policies issued in conjunction with one another in the case of a nonprofit hospital association or a medical service association, but they would have to be met by a single policy in all other cases.

4. Certified policies could bear an emblem approved by HHS where not prohibited under applicable State law. If a policy displaying the emblem were to lose certification, the insurer would have to inform policyholders of that fact within 60 days.

5. A Supplemental Health Insurance Panel (Panel) would assess State programs for regulating Medicare supplemental policies and determine whether they meet minimum standards.

6. A State would have an approved regulatory program if the Panel determines that the State has established a program under State law that applies standards, to all Medicare supplemental policies issued in that State, that are equal to, or more stringent than, the standards Congress established for the voluntary program.

7. The Federal certification program would not apply to policies issued in States with approved programs.

8. Policies issued in States with approved programs would be deemed certified, and HCFA would authorize the State to permit imprinting the emblem on them.

9. HCFA would administer the voluntary certification program. The proposed regulations set forth the following procedures with respect to certification:

a. HCFA review of policies that insurers voluntarily submit and certification of policies that meet the requirements specified above.

b. Submittal of required documentation by insurers both for initial certification and annual review.

c. Authorization given by HCFA to insurers to imprint the emblem on certified policies.

d. HCFA decertification of policies that do not meet the requirements of the regulations.

e. Administrative review, if requested by an insurer, when HCFA determines not to certify or to decertify a policy.

f. HCFA notice to all States regarding its decisions to certify or decertify policies.

g. Transfer of policies from a State program to the voluntary certification program when the Panel determines that the State's program for regulating policies no longer meets the requirements of the law.

We received comments on the proposed rule from 25 sources, including

insurance organizations, State insurance officials, medicare beneficiaries, group health associations, consumer advocates, and professional associations and organizations, such as the American Academy of Actuaries and the Health Insurance Association of America. We also received comments from fifteen actuaries in response to a special solicitation of comments on the loss ratio provisions discussed below in "Discussion of Loss Ratio Provisions".

IV. Summary of Changes in the Final Rule

After consideration of the comments, we have made the following changes from the proposed regulations. Our reasons for each change are given below in the discussion of the significant comments:

1. The definition of a Medicare supplemental policy has been revised in two ways. The definition now follows the NAIC Model regulation's wording and it applies to individuals who are eligible for Medicare by reason of age. Also, Medicare supplemental policies do not includes policies issued to employees, or to members of labor organizations, as additions to franchise plans in existence before a specified date. (Those policies are discussed in detail below in section V.A., "Definition of Medicare Supplemental Policy".)

2. The emblem will be used only by the Federal voluntary certification program, not by States with programs approved by the Panel, as provided in the NPRM.

e. The supplementary loss ratio information that insurers must submit to HCFA for review has been revised as follows:

a. Loss ratio supporting data are specified. For example, the insurer must indicate the age of beneficiaries at the time of purchase of a policy.

b. The final rule contains a list of loss ratio assumptions, such as morbidity and mortality, that the insurer must account for in the loss ratio calculations.

c. The submittal of material for annual review of a previously certified policy has been simplified. For purposes of the annual review, the insurer is required to submit only the material that has changed since the last review.

4. We have deleted the administrative procedures for the transfer of policies from a State program to the voluntary program when the Panel determines that a State ceases to have an approved program.

V. Discussion of Comments Regarding the Proposed Rule

A. Definition of Medicare Supplemental Policy

Comment 1: Representatives of Health Maintenance Organizations (HMOs) and Group Practice Prepayment Plans (GPPPs) noted that the proposed regulations would have excluded their group health plans because the statutory and regulatory language speaks to provision of reimbursement for services rather than provision of services. The commenters requested that regulations be amended to allow for the manner in which they finance and provide for services. They maintain that they could suffer a competitive disadvantage if they cannot display the emblem on their policies.

Response: As the major commentors recognized, the regulation's exclusive focus on insurance policies derives from the language in the statute and the NAIC model regulation which it incorporates by reference. The two major statutory obstacles to including HMOs are as follows. First, section 1882(g)(1) of the law defines a "Medicare supplemental policy", in part, as a policy or health plan that provides *reimbursement* for services incurred. HMOs do not meet that definition since they contract to provide *services* rather than reimbursement for them. Further, HMOs would not be able to meet the explicit loss ratio requirements in section 1882(c) because they do not value their benefits in terms of loss ratios.

We recognize that the ability of HMOs to obtain certification of their benefit plans under the voluntary program could be desirable from a marketing standpoint. We are sensitive to the concerns these organizations have expressed and we are continuing to consider the problem.

We note, however, that HMOs can already advertise themselves as Federal or State qualified under existing laws (see 42 U.S.C. 300e). Also through the publication, the "Guide to Health Insurance for People with Medicare", and its National Medigap Training Program, HCFA seeks to provide a good description of the comparative benefits of Medicare supplements, catastrophic or major medical expense policies, and HMOs. The guide is made available, in English and Spanish, free of charge, to Medicare beneficiaries and concerned individuals; and persons wishing a copy should contact their local Social Security office, by phone or mail, or in person. The training program is conducted for individuals who have contact with Medicare beneficiaries on the State and local levels.

Comment 2: An insuring organization noted that there are various lines of health insurance policies, including major medical, basic hospital, and basic medical/surgical policies that are intended primarily for the non-Medicare population. However, these policies are sometimes offered to an individual eligible for Medicare because they contain provisions that coordinate their benefits with other primary payers, including Medicare. The proposed regulations conditioned the definition of a Medicare supplemental policy, among other things, on the fact that the policy is *offered* to a person eligible for Medicare. This provision in the NPRM would have required a State program to regulate all of these policies in order to be approved by the Panel. The commenter recommends that the definition of "Medicare supplemental policy" adopt the terminology of NAIC Model Standards. Those standards specify that the policy is *designed primarily*, or is *advertised, marketed*, or *otherwise purported*, to supplement Medicare (NAIC Model Standards, section 7,I).

Response: We accept this recommendation. Because both the statute and these regulations incorporate by reference the NAIC Model Standards, we believe it is appropriate to use clarifying terminology and phraseology from those standards, when possible.

Comment 3: A consumer advocacy group suggested that the definition of Medicare supplemental policy be expanded to include any policy sold to any person, if the policy is designed and marketed primarily to supplement Medicare *when and if* that person becomes a Medicare beneficiary. The group reasons that, in exchange for higher premiums while the insured is still working, the insurer may promise lower premiums and better coverage after Medicare beneficiary status is achieved. Certification would assist the consumer in evaluating the policies.

Response: There is nothing in the statute or these regulations prohibiting the individual from applying for, or an insurer from offering, the policy. However, these regulations provide for review and certification of policies issued under a conversion privilege, as discussed below, in "Comment 4".

Comment 4: One commenter pointed out that the NAIC Model Standards (section 3) state that the Model does not apply to individual policies or contracts issued under a conversion privilege of a group or individual policy or contract, when the basic policy or contract includes provisions that are inconsistent

with the requirements of the Model. (The privilege allows the individual to purchase a Medicare supplemental policy, without being subject to the regular underwriting procedures, when the individual becomes eligible for Medicare.) Moreover, the Model does not apply to policies issued to employees, or to members of labor organizations, as additions to franchise plans in existence on the effective date of the State regulations that incorporate the NAIC Model Standards. (A franchise plan is an agreement between the insurer and the employer and employees of the same entity. Under this agreement, the insurer offers the same individual health policy to all employees. The advantage of this arrangement is that group underwriting procedures are followed, such as a waiver of the medical examination that is ordinarily required for individual policies.) The commenters suggested that final regulations should specifically exclude those conversion and additional policies or contracts.

Response: The definition of Medicare supplemental policy in 42 CFR 403.205 of this final rule (that is, a policy sold primarily for the purpose of supplementing Medicare) does not include policies whose only reference to Medicare is that they contain a conversion or coordination of benefit clause that enables the policyholder to purchase a Medicare supplement. We believe, however, that the definition should apply to policies sold to policyholders who exercise the conversion privilege. We understand that the general practice of the insurance industry is to honor conversion requests by selling the beneficiary a policy that meets the terms of the conversion and is also commonly available on the market at the time the conversion is requested. We believe that it is appropriate that these latter policies be included in the definition. Therefore, we are not revising the definition of Medicare supplemental policy to exclude policies sold under a conversion privilege.

We believe that the NAIC approach to additions to franchise plans is reasonable because it recognizes that the content of the policies sold under these agreements was determined by the terms of a prior contract. Actual sales of the policies under the franchise agreement are done under the terms of the prior contract. Therefore, we include a similar provision in these regulations. We exclude additions to franchise plans from the definition of a Medicare supplemental policy—and from the obligations concurrent with such a policy—if the plan is in existence July 1, 1982, the date HCFA can begin to certify policies.

Comment 5: The proposed rule would exclude group health insurance policies of trade, professional, and occupational associations from the definition of, and requirements regarding, Medicare supplemental policies. Commenters supported the exclusion and recommended that it be extended to policies offered to former members of the associations, and not restricted to policies offered to present members. Congress intended that group health policies of professional, trade, and occupational associations should not be treated differently from group policies of employer or labor organizations (H.R. Rep. No. 96–944, 96th Congress, 2nd Session 77 (1980)). The statute specifies that group policies of employer or labor organizations are excluded from the provisions regarding Medicare supplemental policies, even if they are offered to both present and former employees or members (section 1882(g)(1) of the Act). Therefore, the exclusion provisions should apply to association group health policies that are offered to present or former members of those associations.

Response: We do not concur with this recommendation. The language of that Conference Committee Report (H.R. Rep. No. 96–944, 96th Congress, 2nd Session 77 (1980)) addresses policies that these associations offer to their *respective memberships.* We conclude, therefore, that Congress did not intend to exclude Medicare supplemental policies offered to former members of these associations from the provisions of Pub. L. 96–265.

B. State Regulation of Insurance

Comment: Commenters from the insurance industry believe that the proposed rule would have a harmful impact on State regulation of insurance, particularly on certificates. They explain, first of all, the difference between a "certificate" and a "policy". In the case of a group policy, a single master contract is issued to the holder of the group policy. Certificates, containing a description of benefits, claims procedures, etc., are issued to individuals covered under the master contract. The group policy, including the master contract and certificates, is filed and approved under the laws of the State where the group policy is issued. Even though certificates of coverage issued in one State are marketed in other States, such States generally have reciprocity provisions.

Commenters maintain that the provisions of the NPRM imply that HCFA would not permit a certificate issued under an approved master policy to bear the emblem unless each State into which the certificate is delivered specifically reviewed that certificate as a policy and authorized its sale. If so, States could be required to abrogate existing reciprocity provisions that permit them to honor the laws of the State where the master policy is issued and to expand their own regulatory procedures to include certificates issued under that master policy. Commenting further, some respondents noted that the NPRM improperly identifies a "certificate" as a "policy" and recommended that the final rule clarify the distinction between a certificate and a policy.

Response: The intent of the proposed regulations was to reflect the statutory provisions of section 1882(j) of the Act by assertng that no provisions of the regulations are intended to prohibit States from making or enforcing (within the limits of their sovereignty) laws to regulate insurance. There was no specific intention to encourage States to initiate new regulations regarding certificates or to discontinue reciprocal agreements concerning certificates marketed within their borders when the master policy is registered and approved in another State. The proposed rule was intended to make clear to organizations submitting policies for certification under the voluntary program that the Department's review and approval of a policy does not free the insurer from the need to obtain State approval under any applicable State laws before selling the policy in that State.

Because we believe that Federal regulations should clarify that State regulation of insurance is not affected, we have not deleted the provisions in question from the final rule. However, as a result of comments received and our own review, we are making several revisions:

1. The final rule clearly identifies the relationship of a certificate to a group policy by stating that a certificate is issued under a group policy.

2. The final rule requires the insurer to submit to HCFA a list of States in which the individual or group policy is "approved for sale". In the NPRM we required a list of States in which "the insuring organization is authorized to market the policy". The wording in the final rule is more in conformity with accepted terminology of the insurance industry and State insurance agencies.

3. The regulations provide that certification of a policy by HCFA must not be construed as authorizing the insuring organization to market a policy

in a State if the policy has not been approved for sale in conformance with the applicable laws of that State. The voluntary certification program will not review a policy for certification and display of the emblem before it has been approved for sale by that State.

C. General Requirements for Policies

Comment 1: In the NPRM we stated that policies issued in a State with an approved program would be "deemed certified". Commenters noted that the terms "certificate" and "deem", for purposes of State approval of a policy, have specific, technical meanings commonly accepted by the insurance industry and State insurance agencies. (In the discussion above of the difference between a policy and a certificate issued under a policy, the term "certificate" refers to one type of contract between the insurer and the insured. In this discussion, the same term is used in reference to State approval of the contract, a usage common in States and the insurance industry.)

A "certificate" is a signature affirming the validity of the material submitted to the State regulatory agency. A filing package may include several "certificates" or signatures. Many States have a statutory "deemer" provision which sets a time limit for the review and approval of policies. If a decision is not reached by the end of this period, the insurer may market the policy, subject to review at a later date by the State if the State so chooses. While the proposed Federal regulations did not use the terms "certificate" and "deem" in the way commonly accepted by the States and the insurance industry, commenters noted that the use of "deemed certified" in regulations could mislead one to believe that States review and certify policies as does the voluntary certification program.

Response: The language of the NPRM was intended to reflect the statute which provides that a policy issued in a State with an approved program "shall be deemed" to meet the NAIC standards and loss ratio requirements of the statute. (See section 1882(b)(1) of the Act.) In order to avoid any misunderstanding, however, we have revised the regulations to delete the phrase "deemed certified" when referring to policies issued in a State with an approved program. The final regulations provide that those policies are accepted as meeting the NAIC Model Standards and loss ratio requirements specified in the final rule.

Comment 2: Proposed regulations would have provided that the NAIC model standards and the loss ratio requirements must be met in a single policy, but could be met in two or more policies issued in conjunction with one another in the case of a nonprofit hospital association or a medical service association. A commenter from the NAIC suggested that we qualify the exceptions. They were provided for in the statute (section 1882 (c)(1) of the Act) for those cases where State law or regulation prohibits the inclusion of all benefits in a single policy, and it is appropriate that regulations limit the exceptions to those cases. Also, the NAIC Model Standards, defined below in this preamble, impose the same limitation on these exceptions. (See Drafting Note that follows section 7, I of the NAIC Model Standards.)

Response: We have accepted this suggestion and incorporated it into the final rule.

D. NAIC Model Standards

Comment 1: Commenters stated that the NAIC provisions apply the term "Medicare supplement policy" (which corresponds to the term "Medicare supplemental policy" as defined in section 1882 of the Act) only to a policy offered to an individual eligible for Medicare "by reason of age" (section 7, I of the NAIC Model Standards). Since the Federal statute incorporates the standards adopted by the NAIC, Federal regulations should adhere to them wherever possible. Specifically, Federal regulations should adopt the "by reason of age" limitation. Also, commenters maintained that application of these standards to policies offered to the under 65 age group (that is, those eligible for Medicare by reasons of disability) would generate administrative burdens and costs out of proportion to the benefits achieved. States would have to review more policies in order to have an "approved" program for the regulation of Medicare supplemental health insurance; and insurers would have to revise their solicitations to identify those under 65 who are eligible for Medicare (a group that insurers do not now make an effort to identify). Commenters asserted that so few policies are sold to the disabled that the costs of these efforts would exceed benefit to the public.

Response: We agree with these comments and have amended the regulations to permit the application of the NAIC definition of a Medicare supplemental policy; that is, one offered to an individual eligible for Medicare "by reason of age". In making this change, we have brought the regulatory definition into conformance with the programs of some 38 States whose regulations embody this principle of the NAIC model. The broader definition contained in the NPRM is inconsistent with the interpretations of the majority of the States and retaining it would discourage the wide State cooperation and support that the Congress hoped to elicit through the Medigap provision.

Comment 2: In the preamble to the NPRM, we had summarized the provisions of the NAIC Model Standards, for the convenience of the readers of the proposed rule. In that summary, we noted that, under the NAIC standards, policies must provide for coverage of 20 percent of Medicare eligible expenses under Part B, subject to a maximum calendar year out-of-pocket deductible of $200 of such expenses. (See section 7, I (2)(d) of the NAIC Model Standards.) Commenters asked if the $75 annual Medicare deductible is to be included in the $200 NAIC standards deductible. (Part B of Medicare has an annual deductible that is adjusted periodically by legislative mandate. For 1982, this deductible is $75.)

Response: The $75 deductible is included in the calculation of the $200. The intent of the NAIC model is that the individual not be required to pay more than $200 out-of-pocket for Medicare eligible expenses under Part B. Not to include the $75 Medicare deductible would subject the individual to a $275 out-of-pocket expenditure.

We wish to note at this point that we are not publishing a summary of the NAIC Model Standards in this final rule, as we did in the NPRM. To ensure complete accuracy, we believe that concerned parties should rely on the complete, official text, rather than on a summary which, however carefully prepared, will necessarily suffer from compression and the absence of complete cross-references to other NAIC model laws and regulations. Complete copies of the NAIC Model Standards may be obtained from the National Association of Insurance Commissioners at 350 Bishops Way, Brookfield, Wisconsin 53004, and from the NIARS Corporation, 318 West Franklin Avenue, Minneapolis, Minnesota 55404.

E. The Emblem

Comment 1: Several commenters representing both sellers of insurance and regulators of insurance noted that section 1882(a) of the Act provides that the Secretary is to authorize the use of the emblem specifically on policies that have been certified under the voluntary program. In other words, the emblem is an integral part of the voluntary program and should be displayed only

on policies that are appoved by HCFA under that program. Commenters are also concerned that the Secretary will have limited control over State use of the emblem, and that some insurers would tend to use it to give a "government look" to their policies. Therefore, the commenters recommend that regulations be revised so that States with approved programs not be permitted to authorize the use of the emblem on policies issued under their jurisdictions.

Response: In the NPRM we proposed that States use the emblem to enable beneficiaries in States with approved programs to identify policies that meet the standards of these regulations. Also, we believe that Federal monitoring would ensure its proper use in those States. However, we concur with the comments and the final rule provides that the emblem will be used only by the Federal voluntary certification program.

Comment 2: In the case of a policy displaying the emblem, the proposed rule would require the insurer to notify each policyholder, in writing, within 60 days of the loss of certification. Five consumer groups supported this provision, but they suggested that the time period is too lenient. They also noted that, in the case of a policy that should lose certification, for example, for failing to meet loss ratio requirements, the insurer could continue to market that policy for over four months while the insurer requests and receives an administrative review. (That period covers the following steps: The insurer has one month to appeal an HCFA decision to decertify a policy, and HCFA has three months to initiate and complete a review of material submitted for a reconsideration. If HCFA's final decision were to decertify the policy, the determination would go into effect in 15 days.)

Other commenters did not support this provision of the proposed rule and recommended that it be deleted. They maintain that such a notice would create an environment for hasty replacements and generate confusion and alarm among the policyholders. As an option, they suggested that a notice not be required when loss ratios fall below the required level, but only that the insurer be prohibited from selling additional policies as certified.

Response: Congress clearly intended that the emblem be displayed on condition that the insurer agree to notify policyholders of the loss of certification when the Secretary determines that the policy no longer satisfies the standards and requirements of the voluntary certification program (H.R. Rep. No. 96–944, 96th Congress, 2nd Session 76 (1980)). The proposed rule reflects the intent of Congress. For that reason, and because we think beneficiaries who purchased policies on the strength of their certification clearly are entitled to know when that certification ends, we believe that the provision should not be deleted. However, to avoid undue delays in final decisions while still allowing sufficient opportunity for review, we are providing that HCFA must initiate and complete the review within 90 days of the HCFA notice that the policy is losing certification or is not being certified by HCFA.

We acknowledge that potential misunderstandings can arise from the notification process. For example, a policy can lose certification because it fails to meet loss ratio requirements; and the policyholder might interpret this to mean that the policy no longer provides for certain benefits. Therefore, we have revised the notification process. The insurer must send the notice of loss of certification in the next regular premium notice to the policyholder, but not later than 60 days after the policy loses certification. The first option enables the insurer to avoid a special mailing, while the second option guarantees the insurer at least 60 days to inform policyholders if the loss of certification occurs just before the insurer planned to send the premium notice.

Finally, these regulations require that the insurer notify the policyholder if the policy was marketed as a certified policy, whether or not it displays the emblem. Moreover, in the case of a group policy, each holder of a certificate issued under the policy and marketed as "certified" must be notified.

F. State With Approved Program

Comment 1: The NPRM defined the term "policy issued in that State" as a means of delineating the universe of policies to which a State regulatory program would need to apply. The term was originally defined to mean a group policy if the holder of the master policy resides in that State, and an individual policy if the holder of the policy resides in that State. Commenters noted that it is not workable to determine whether or not a policy is issued in a State by reference to the residence of the policyholder. For example, if an individual owning a policy resides in State A, and then moves to State B, it is not accurate to speak of the policy as issued in State B. Similarly, there is no existing law to prevent an individual in State A, which will not approve a given policy, from traveling to State B and purchasing the policy there. Again, it would be incorrect to speak of that policy as being issued in State A, the residence of the policyholder. Therefore, a commenter recommends that an individual policy be defined as "issued, delivered, or issued for delivery in that State" if the policy is issued in, or issued for delivery in, that State.

Response: We concur and have revised the regulations to incorporate this suggestion.

Comment 2: Several persons inquired what provisions were being made for the transfer of policies, particularly those bearing the emblem, from the Federal program to the State program when the Panel determines the State has an approved program.

Response: In the case of a policy issued in a State that has an approved program after HCFA certifies the policy, the insurer may continue to display the emblem on the policy, unless otherwise prohibited by the State law or regulation. However, the insurer may continue to do so only until the date that the insurer would have had to submit material to HCFA for review in order to retain certification in the absence of a State program. We believe that this provision is appropriate. The intent of the emblem is to identify a policy that meets specified standards, and has been so certified by HCFA. The fact that the policy is now issued in a State that has an approved program assures that the policy continues to meet those standards. To obligate the insurer to cease using the emblem immediately, in the absence of restrictive State regulations, could confuse policyholders unduly and create an unnecessary financial burden for the insurer.

Finally, HCFA will inform the public, through its continuing education and training programs, which States have approved programs. This is particularly important information when an individual is considering a policy not certified by HCFA. If that policy is issued in a State with an approved program, the buyer can assume that the policy at least meets the minimum requirements specified in these regulations.

G. Submittal of Data to HCFA for Review to Obtain or Retain Certification

Comment: The NPRM would have required the insurer, for purposes of the annual review, to resubmit all of the material that was submitted for the previous year's certification, recertification (after a loss of certification), or annual review. Commenters suggested that the insurer should submit only that material that has changed since the last submittal. Commenters noted that no purpose is

served by the insurer's resubmittal of material that HCFA already has on file.

Response: In response to the above comments, we have simplified the refiling requirements. The final regulations provide that the insurer needs to submit only the following for the annual review:

a. Loss ratio information, regarding past experience, specified below in "Loss Ratios: Supporting Actuarial Data".

b. Material that has changed since the last submittal, for example, changes in benefits.

c. A statement, signed by the company president or designee, to confirm that the material is accurate and that the policy continues to meet the requirements of the regulations.

H. Decertification of Policies

Comment: The NPRM described HCFA as decertifying a certified policy that fails to continue to meet specified standards. Some insuring organizations maintain that HCFA does not "decertify" a policy; rather, the policy "loses its certification". They maintain that the law authorizes the Secretary only to certify a policy, not to decertify it.

Response: Certification shows that a policy meets specified standards and that the policy may display the emblem signifying HHS certification. Sound management of the voluntary certification program requires that all concerned parties know when a policy that has been sold as "certified" ceases to have that status. (Also, section 1882(d) of the Act provides for Federal penalties in cases where an individual makes a false statement regarding the use of the emblem, which is authorized for use only on certified policies.) For this reason, the NPRM provided for a clearly identifiable point in time when a policy ceases to be certified—when HCFA decertifies a policy. We also chose this term based on reasoning that, since the statute gives the authority to "certify" a policy, the statute implicitly gives the authority to "decertify" that policy if it ceases to meet specified requirements.

In the light of the comments, however, we have revised the regulations to provide for "loss of certification", rather than for "decertification". "Loss of certification" occurs when a policy ceases to meet the requirements for certification under the voluntary program. This can occur either when the insurer chooses not to continue to meet the requirements or when HCFA determines that the policy fails to meet the requirements.

J. Termination of a State Program

The proposed rule contained detailed provisions for the transfer of policies from State jurisdiction to the voluntary certification program in cases where the Panel determines that the State ceases to have an approved program of its own for regulating policies. Our concern was to provide for an orderly transfer of policies that display the emblem, without undue burden on the insurer and without confusing the policyholders. Because these final rules do not authorize States with approved programs to use the emblem, we have deleted the provisions regarding transfer of policies from the final rule. We note, however, that when the Panel determines that a State ceases to have an approved program, policies issued in that State may be submitted for review under the Federal voluntary program.

VI. Discussion of Loss Ratio Provisions

A. Federal Programs and Loss Ratios

One manner of assessing the value of a policy is to determine how much of the aggregate premium income from a policy the insurer returns in aggregate benefits to the policyholders. The relationship of benefits to premiums is the loss ratio. The statute (section 1882(c) of the Act) provides the following basic guidelines regarding loss ratios:

1. A policy must be expected to return to policyholders, in the form of aggregate benefits, at least 75 percent of aggregate premiums in the case of group policies, and at least 60 percent in the case of individual policies.

2. Loss ratios are to be determined according to "accepted actuarial principles and practices".

3. Loss ratios are to be calculated for the period for which rates are computed for coverage purposes.

4. Loss ratios are to be based on incurred claims experience and earned premiums for that period.

The law, however, does not contain specific guidelines for use by actuaries who calculate loss ratios (other than that they must be calculated according to "accepted actuarial principles and practices"), or by reviewers who must determine whether or not a policy provides a minimum level of benefits in relation to premiums paid. Therefore, we believe Federal regulations must provide specifications to guide both actuaries and reviewers. Accordingly, the proposed rule included the basic guidelines contained in the law and also specified in some detail how the insurer would compute "benefits" and "premiums" for purposes of loss ratio determinations. In addition, the NPRM would have required a qualified actuary to certify the appropriateness of the loss ratio calculations. In the proposed rule, we also specifically invited comments on how the following aspects of loss ratio calculations should be provided for in the final rule:

1. The impact on premiums and benefits that is caused by the expected future change in the age and sex distribution of the insured group.

2. The impact of screens used to select the insured and to exclude pre-existing conditions.

3. Assumptions that are made regarding a variety of factors, such as lapse of policies, interest on reserves, mortality, and morbidity.

4. Supporting data that the insurer should submit with loss ratios (for example, scale of gross premiums, a description of assumptions, formula used to calculate gross premiums, and expected level of earned premiums and incurred claims).

In addition to publishing the proposed rule, HCFA studied the practices of various States and consulted insurance and actuarial groups and other professionals in the field to develop specifications regarding loss ratios. In the course of this study, we received comments from fifteen professionals. We are including their comments, together with comments received in response to the NPRM, in the following discussion.

B. Loss Ratios: General Provisions

Comment 1: Insuring organizations commented that Federal regulations should not attempt to guide the actuary through each step of the calculations, as was proposed in the NPRM.

Response: The loss ratio formula and specific components in the NPRM embody provisions of the statute, that is, that the *expected* level of earned premiums be taken into account and that calculations be according to *accepted actuarial principles and practices.* (See section 1882(c)(2) of the Act.) The provisions of our regulations are intended to ensure that, for purposes of Federal certification, insuring organizations calculate loss ratios consistently and according to statutory requirements. Our major reason, however, for including these specifications is to provide criteria that HCFA will use to review all policies that insurers submit under the voluntary certification program, thereby assuring a consistent and equitable review of all policies.

Comment 2: Community or pool rated policies develop a premium rate for a short period of time reflecting the aggregate anticipated experience of

people insured. This rating method is distinct from the "level premium" approach that seeks to charge a rate that will be adequate on the average to cover costs over a longer term policy lifetime. Commenters recommend, therefore, that regulations specifically provide for the different ways that premium rates are calculated.

Response: In view of the comment received, we have revised the regulations to enable insurers to calculate benefits of community and pool related policies that are rerated on an annual basis in a way that conforms to the rating method specific to those policies. In order to calculate benefits, insurers are simply to determine the expected incurred benefits in the loss ratio calculation period. We have deleted the need to account for policy reserves because in the case of these policies, whose premiums are calculated for a year or less, the method that the insurer uses to account for policy reserves is not a significant variable in determining the loss ratio.

C. Loss Ratio Dates and Time Frames

Comment: The American Academy of Actuaries commented on the proposed wording of the NPRM that would enable the insurer, for purposes of calculating "present values", to use an "aggregate computed for a period not to exceed twelve consecutive months". While the intent of this provision might be to permit the actuary in the case of short term policies to ignore the potential impact of such factors as lapse of policy and survivorship on the loss ratio, it might be misconstrued to require that long-term policies have a loss ratio each year at least equivalent to the minimum loss ratio. Such a requirement is not specified in the law. On the contrary, the statute specifically refers to the loss ratio that is "estimated for the entire period for which rates are computed to provide coverage" (section 1882(c)(2) of the Act). The commenter recommended that the wording be changed to read: "Discounting may be ignored for periods not exceeding twelve months". (Discounting is the actuarial procedure that provides for the impact of such factors as lapse of policies and survivorship of policyholders on the loss ratio.)

Response: Our intent in the proposed rule was to provide assurance that in the case of one-year term policies, discounting would not be required over the one-year term period. However, we believe that the recommended wording is more appropriate and are incorporating it in the final rule.

D. Loss Ratios: Supporting Actuarial Data

Comment 1: The proposed rule would require insurers to submit the formula used to calculate gross premiums to HCFA for review. Actuaries noted that this formula is not necessary for a review of the loss ratio calculations.

Response: We concur with this comment and have deleted this requirement from the regulations.

Comment 2: The NPRM proposed that the insurer submit an actuarial certification, signed by an actuary, stating that the assumptions used in the loss ratio calculations are reasonable and appropriate. The American Academy of Actuaries and other commenters suggested that we substitute the words "statement of actuarial opinion" for the phrase "actuarial certification". They believe the term "certification" misrepresents the nature of the actuary's function by implying a level of exactness and precision that is inappropriate in this situation. On the other hand, they believe the term "statement of acturial opinion" more accurately characterizes the actuary's professional role. It is analogous to professional opinions that are issued routinely in law, medicine, accounting, and other professions.

Response: We concur with this suggestion and have revised the regulations.

E. Additional Data Requirements:

As a result of our analysis of the proposed rule, we are requiring that the insurer submit additional data that are necessary for HCFA to perform an actuarial review of the expected loss ratio to determine whether or not the policy meets the standards of the law. We believe that these are data the insurer will have available because the insurer needs them to determine a policy's benefits and premiums, and therefore no additional effort will be required to supply them. Accordingly, final regulations require the insurer to send the following information to HCFA:

1. Why the policy should be considered, for purposes of the loss ratio determination, an individual or a group policy.

2. The earliest age at which policyholders can purchase the policy.

3. The general marketing method and the underwriting criteria used for selection of applicants to whom coverage will be offered.

4. What policies are to be included under the one policy form, by the dates the policies are issued, for example, "all policies issued on or after July 1, 1981".

5. The loss ratio calculation period.

6. The scale of premiums for the loss ratio calculation period.

7. In the case of a policy submitted for recertification or annual review, details of all changes in information regarding items 1–6 above, since HCFA last reviewed the policy.

8. In the case of a policy submitted for recertification or annual review, past loss ratio experience (including the experience of all policies, riders, and endorsements issued under the policy form). The loss ratio experience data must include earned premiums, incurred claims, and total policy reserves that are calculated—

a. For all years of issue combined; and

b. Separately for each calendar year since the policy was first certified.

F. Loss Ratios: Actuarial Assumptions

In calculating loss ratios, the actuary must provide for the impact of a variety of factors (morbidity, mortality, etc.—identified as actuarial assumptions) on future benefits and premiums. The selection of assumptions and their interpretation depend to a great extent on the actuary's professional judgement. Therefore, in order to identify which actuarial assumptions are necessary for calculating and reviewing loss ratios, for purposes of the voluntary certification program, we specifically invited comments and suggestions regarding this issue.

In addition to the general request for suggestions in the NPRM, we prepared a list of actuarial assumptions, that we considered appropriate for the voluntary certification program, and sent it to actuaries for review and comment. The list included the following:

a. Morbidity.

b. Mortality.

c. Lapse.

d. Assumed increases in the Medicare deductible.

e. Impact of inflation on reimbursement per service.

f. Expected distribution, by age and sex, of persons who will purchase the policy in the coming year.

g. Expected impact on morbidity by policy duration of (1) the processes used by the insurer to select insureds from among those that apply for the policy and (2) pre-existing condition clauses of the policy.

In addition to the above listing, we also asked the actuaries to comment on a proposal that would enable actuaries to use policy reserves that are calculated in accordance with State laws and regulations, rather than according to the provisions of the NPRM. Because States wish to assure the insurers' fiscal solvency, they

generally require that insurers maintain a conservative policy reserve, generally higher than the provisions of our proposed rule would have required. Our proposal would allow the insurer to use State-mandated policy reserves, but would require the insurer to indicate this when submitting material to HCFA for review. This provision would ease the burden on insurers by enabling them to use policy reserve calculations that have already been determined to comply with State requirements, rather than calculating policy reserves specifically for purposes of the voluntary certification program. However, the insurer who used this alternate method would be required *to be capable of demonstrating* that the alternate method results in a loss ratio that is the same or lower than that obtained if the provisions of the proposed rule were used.

Comment: Commenters generally supported our intent to require that insurers submit the actuarial assumptions itemized above. However, they did recommend two revisions. First, regulations should not require the insurer "to be capable of demonstrating" that the State specifications for calculating policy reserves does not result in a higher loss ratio than the specifications provided in Federal regulations. This provision could be interpreted as mandating dual calculations by the insurer and thereby increasing the burden; therefore, it should be deleted. Second, the list of assumptions should be expanded to include interest on reserves—an item generally provided for according to accepted actuarial principles.

Response: We agree with these suggestions and have revised the regulations accordingly.

G. Confidentiality

Insurers have requested assurances that we maintain confidentiality for some of the loss ratio information that they must submit to us for review. Although the loss ratio percentages are generally available to the public, some portions of the supporting data, for example, morbidity, that the insurer uses to calculate those percentages are not public information. To reveal that data to the public could result in a competitive disadvantage or harm to the insuring organization. Insurers are concerned that under the Freedom of Information Act (FOIA) (5 U.S.C. 552), we would be obligated to share that data with a third party upon request.

Under provisions of the FOIA, "trade secrets and commercial or financial information" are exempt from release by the agency (5 U.S.C. 552(b)(4)). Accordingly, the Secretary will exempt privileged or confidential information when its disclosure would likely cause substantial harm to the submitting organization's competitive position; or when its release would impair the Department's ability to obtain similar information in the future. In the event of an FOIA request, we would review material on a case-by-case basis to determine if it falls under the exemption cited above and release only as much material as is appropriate.

H. Request for Additional Comments

These regulations, at 42 CFR 403.256, require the insurer to submit certain supplementary loss ratio information to HCFA for review. This information consists of supporting data and assumptions that the insurer used to determine the policy's loss ratio. We did not provide for this material in the proposed regulations, but we did invite comments regarding this material and state that we would provide for additional comments in the final rule. Accordingly, we are inviting comments on 42 CFR 403.256 of these final regulations; and we will publish any revisions in the **Federal Register** that are appropriate. To assure considerations, comments should be received no later than 30 days after publication of this rule.

VII. Effective Dates

1. HCFA cannot begin to certify policies until the Panel's initial determinations as to which States cannot be expected to establish programs that meet the requirements of the statute become effective. Section 1882(i) of the Act specifies that Panel's initial determinations must be submitted to Congress no later than January 1, 1982 and that they become effective 60 days later. In counting those 60 days, "days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation". (See section 1882(i)(2)(B) of the Act.) The Panel's report was transmitted by the Secretary on February 2, 1982.

The reporting or recordkeeping provisions that are included in this final rule in §§ 403.232 and 403.239–403.258 will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and a notice to that effect has been published in the **Federal Register.**

As previously indicated, this certification process applies only to policies issued in those States that do not have a regulatory program meeting Federal standards. If the Panel reverses an earlier negative determination, by approving the State's regulatory program, any policy that HCFA has previously reviewed, and that is issued in that State, will immediately cease to come under the voluntary certification program.

Insuring organizations wishing to submit policies subject to the Secretary's review and certification under these regulations should mail the material required under 42 CFR 403.232 to:

Voluntary Certification Program, Medigap Operations Staff, c/o Office of the Bureau Director, Bureau of Program Operations, Health Care Financing Administration, Room 500 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207

2. The earliest effective date of HCFA's certification of a policy is July 1, 1982 or later. That is also the first date that a certified policy may display the emblem or that an insurer may advertise that policy to be certified (section 1882(i) of the Act).

VIII. Impact Analyses

A. Executive Order 12291

The Secretary has determined that these interim final regulations do not meet the criteria for a major rule, as defined by section 1(b) of Executive Order 12291, because they do not have an economic effect of $100 million or otherwise meet the threshold criteria of the executive order. We expect that this rule will impose a maximum cost of approximately $125,000 on the insurance industry in meeting the filing requirements. Based on our estimate of the number of States that will be included in the voluntary certification program, we have projected that 50 companies will submit two policies each to HCFA for review. Assuming that virtually all of these companies have access to an automated data base, the estimated average cost per company for the two policies is approximately $2,500. Therefore, the total cost is about $125,000. In addition, the provisions of these regulations should stimulate competition among insurers marketing all types of policies to supplement Medicare.

B. Regulatory Flexibility Analysis

The Secretary certifies, under section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that the regulations proposed in this interim final rule will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's

negative certification is that only a few of the organizations that market health insurance will come under the voluntary certification program.

There are approximately 1800 organizations marketing health insurance in the United States. There are no comprehensive studies available at this time that identify the total number of organizations that market some sort of policy to supplement Medicare. However, based on comprehensive data furnished by the Federal Trade Commission on Medicare supplemental policies offered in five States, limited data furnished by the insurance industry, and additional information obtained from several States that list all organizations marketing supplemental policies, we have been able to identity 160 organizations that market supplemental policies. (However, there is no way of determining precisely how many of the organizations market policies that meet the statutory and regulatory definition of a voluntary certification program.) Of the 160 organizations, only seven are small entities, that is, independently owned and operated and not dominant in their field of operation. Among these seven, only two organizations market policies to supplement Medicare in States that we believe will come under the voluntary certification program.

IX. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if as a result of comments we believe that changes are needed in these regulations, we will publish the changes in the **Federal Register** and respond to the comments in the preamble of that document.

List of Subjects

42 CFR Part 403

Medicare supplemental insurance, Voluntary certification program, Medicare supplemental health insurance panel.

42 CFR Chapter IV is amended as set forth below.

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS [AMENDED]

1. The entire contents of Part 401 are transferred from Subchapter B to Subchapter A.

2. The table of contents for the chapter is amended by adding a title for Subchapter A, reserving Parts 400, 402, and 404, and adding a new Part 403 to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter A—General Provisions

Part
400 [Reserved]
401 General Administrative Requirements
402 [Reserved]
403 Special Programs and Projects
404 [Reserved]

* * * * *

3. Subchapter A is amended by adding a title, reserving Parts 400, 402 and 404, moving the entire contents of Part 401 to subchapter A from subchapter B, adding a new Part 403, reserving Subpart A of Part 403, and adding a new Subpart B of Part 403 to read as follows:

SUBCHAPTER A—GENERAL PROVISIONS

PART 403—SPECIAL PROGRAMS AND PROJECTS

Subpart A—[Reserved]

Subpart B—Medicare Supplemental Policies

Sec.
403.200 Basis and scope.

General Provisions

403.201 State regulation of insurance policies.
403.205 Medicare supplement policy.
403.206 General standards for Medicare supplemental policies.
403.210 NAIC model standards.
403.215 Loss ratio standards.

State Regulatory Programs

403.220 Supplemental Health Insurance Panel.
403.222 State with an approved regulatory program.

Voluntary Certification Programs: General Provisions

403.231 Emblem.
403.232 Requirements and procedures for obtaining certification.
403.235 Review and certification of policies.
403.239 Submittal of material to retain certification.
403.245 Loss of certification.
403.248 Administrative review of HCFA determinations.

Voluntary Certification Program: Loss Ratio Provisions

403.250 Loss ratio calculations: General provisions.
403.251 Loss ratio date and time frame provisions.
403.253 Calculation of benefits.
403.254 Calculation of premiums.
403.256 Loss ratio supporting data.
403.258 Statement of actuarial opinion.

Authority: Sections 1102, 1871, 1874(a), and 1882 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395kk(a), and 1395ss).

§ 403.200 Basis and scope.

(a) *Provisions of the legislation.* This subpart implements, in part, section 1882 of the Social Security Act. The intent of that section is to enable Medicare beneficiaries to identify Medicare supplemental policies that do not duplicate Medicare, and that provide adequate, fairly priced protection against expenses not covered by Medicare. The legislation establishes certain standards for Medicare supplemental policies and provides two methods for informing Medicare beneficiaries which policies meet those standards:

(1) Through a State approved program, that is, a program that a Supplemental Health Insurance Panel determines to meet certain minimum requirements for the regulation of Medicare supplemental policies; and

(2) In a State without an approved program, through certification by the Secretary of policies voluntarily submitted by insuring organizations for review against the standards.

(b) *Scope of subpart.* This subpart sets forth the standards and procedures HCFA will use to implement the voluntary certification program.

General Provisions

§ 403.201 State regulation of insurance policies.

(a) The provisions of this subpart do not affect the right of a State to regulate policies marketed in that State.

(b) Approval of a policy under the voluntary certification program, as provided for in § 403.235(b), does not authorize the insuring organization to market a policy that does not conform to applicable State laws and regulations.

§ 403.205 Medicare supplemental policy.

(a) Except as specified in paragraph (d) of this section, "Medicare supplemental policy" (policy) means a health insurance policy or other health benefit plan—

(1) That a private entity offers to a Medicare beneficiary; and

(2) That is primarily designed, or is advertised, marketed, or otherwise purported to provide payment for expenses incurred for services and items that are not reimbursed under the Medicare program because of deductibles, coinsurance, or other limitations under Medicare.

(b) Unless otherwise specified in this subpart, the term "policy" includes both policy form and policy.

(1) "Policy form" means the form of health insurance contract that is

approved by and on file with the State agency for the regulation of insurance.

(2) "Policy" means the contract—

(i) Issued under the policy form; and

(ii) Held by the policyholder.

(c) Medicare supplemental policy includes the following:

(1) An individual policy.

(2) A group policy.

(d) Medicare supplemental policy does not include any of the following health insurance policies or health benefit plans:

(1) A policy or plan of one or more employers for employees, former employees, or any combination thereof.

(2) A policy or plan of one or more labor organizations for members, former members, or any combination thereof.

(3) A policy or plan of the trustees of a fund established by one or more labor organizations, one or more employers, or any combination, for any one or combination of the following:

(i) Employees.

(ii) Former employees.

(iii) Members.

(iv) Former members.

(4) A policy or plan of a profession, trade, or occupational association, if the association—

(i) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) Has been maintained in good faith for a purpose other than obtaining insurance; and

(iii) Has been in existence for at least two years before the date of its initial offering of a Medicare supplemental health insurance policy to its members.

(5) For purposes of the voluntary certification program, a policy issued to an employee or to a member of a labor organization as an addition to a franchise plan (a plan that enables members of the same entity to purchase an individual policy marketed to them under group underwriting procedures), if the plan is in existence on July 1, 1982.

§ 403.206 General standards for Medicare supplemental policies.

(a) For purposes of the voluntary certification program described in this subpart, a policy must meet—

(1) The National Association of Insurance Commissioners (NAIC) model standards as defined in § 405.210; and

(2) The loss ratio standards specified in § 403.215.

(b) Except as specified in paragraph (c) of this section, the standards specified in paragraph (a) of this section must be met in a single policy.

(c) In the case of a nonprofit hospital or a medical association where State law prohibits the inclusion of all benefits in a single policy, the standards specified in paragraph (a) of the section must be met in two or more policies issued in conjunction with one another.

§ 403.210 NAIC model standards.

(a) "NAIC model standards" means the National Association of Insurance Commissioners (NAIC) "Model Regulation to Implement the Individual Accident and Insurance Minimum Standards Act" (as amended and adopted by the NAIC on June 6, 1979, as it applies to Medicare supplemental policies). Copies of the NAIC model standards can be purchased from the National Association of Insurance Commissioners at 350 Bishops Way, Brookfield, Wisconsin 53004, and from the NIARS Corporation, 318 Franklin Avenue, Minneapolis, Minnesota 55404. The NAIC model standards are also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, N.W., Washington, D.C. 20408.

(b) The policy must comply with the provisions of the NAIC model standards, except as follows:

(1) "Policy", for purposes of this paragraph, means individual and group policy, as specified in § 403.205. The NAIC model standards limit "policy" to individual policy.

(2) The policy must meet the loss ratio standards specified in § 403.215.

§ 403.215 Loss ratio standards.

(a) The policy must be expected to return to the policyholders, in the form of aggregate benefits provided under the policy—

(1) At least 75 percent of the aggregate amount of premiums in the case of group policies; and

(2) At least 60 percent of the aggregate amount of premiums in the case of individual policies.

(b) For purposes of loss ratio requirements, policies issued as a result of solicitation of individuals through the mail or by mass media advertising are considered individual policies.

State Regulatory Programs

§ 403.220 Supplemental Health Insurance Panel.

(a) *Membership.* The Supplemental Health Insurance Panel (Panel) consists of—

(1) The Secretary or a designee, who serves as chairperson, and

(2) Four State Commissioners or Superintendents of Insurance appointed by the President. (The terms Commissioner or Superintendent of Insurance include persons of similar rank.)

(b) *Functions.*

(1) The Panel determines whether or not a State regulatory program for Medicare supplemental health insurance policies meets and continues to meet minimum requirements specified in section 1882 of the Social Security Act.

(2) The chairperson of the Panel informs the State Commissioners and Superintendents of Insurance of all determinations made under paragraph (b)(1) of this section.

§ 403.222 State with an approved regulatory program.

(a) A State has an approved regulatory program if the Panel determines that the State has in effect under State law a regulatory program that provides for the application of standards, with respect to each Medicare supplemental policy issued in that State, that are equal to or more stringent than those specified in section 1882 of the Social Security Act.

(b) "Policy issued in that State" means—

(1) A group policy, if the holder of the master policy resides in that State; and

(2) An individual policy, if the policy is—

(i) Issued in that State; or

(ii) Issued for delivery in that State.

(c) A policy issued in a State with an approved regulatory program is considered to meet the NAIC model standards in § 403.210 and loss ratio standards in § 403.215.

Voluntary Certification Program: General Provisions

§ 403.231 Emblem.

(a) The emblem is a graphic symbol, approved by HHS, that indicates that HCFA has certified a policy as meeting the requirements of the voluntary certification program, specified in § 403.232.

(b) Unless prohibited by the State in which the policy is marketed, the insuring organization may display the emblem on policies certified under the voluntary certification program.

(c) The manner in which the emblem may be displayed and the conditions and restrictions relating to its use will be stated in the letter with which HCFA notifies the insuring organization that a policy has been certified. The insuring organization must comply with these conditions and restrictions.

(d) If a certified policy is issued in a State that later has an approved regulatory program, as provided for in § 403.222, the insuring organization may display the emblem on the policy until the earliest of the following:

(1) When prohibited by State law or regulation.

(2) When the policy no longer meets the requirements for Medicare supplemental policies specified in § 403.206.

(3) The date the insuring organization would be required to submit material to HCFA for annual review in order to retain certification, if the State did not have an approved program (see § 403.239).

§ 403.232 Requirements and procedures for obtaining certification.

(a) To be certified by HCFA, a policy must meet—

(1) The NAIC model standards specified in § 403.210;

(2) The loss ratio standards specified in § 403.215; and

(3) Any State requirements applicable to a policy—

(i) Issued in that State; or

(ii) Marketed in that State.

(b) An insuring organization requesting certification of a policy must submit the following to HCFA for review:

(1) A copy of the policy form (including all the documents that would constitute the contract of insurance that is proposed to be marketed as a certified policy).

(2) A copy of the application form including all attachments.

(3) A copy of the uniform certificate issued under a group policy.

(4) A copy of the outline of coverage, in the form prescribed by the NAIC model standards.

(5) A copy of the Medicare supplement buyers' guide to be provided to all applicants if the buyers' guide is not the HCFA/NAIC buyers' guide.

(6) A statement of when and how the outline of coverage and the buyers' guide will be delivered and copies of applicable receipt forms.

(7) A copy of the notice of replacement and statement as to when and how that notice will be delivered.

(8) A list of States in which the policy is authorized for sale. If the policy was approved under a deemer provision in any State, the conditions involved must be specified.

(9) A copy of the loss ratio calculations, as specified in § 403.250.

(10) Loss ratio supporting data, as specified in § 403.256.

(11) A statement of actuarial opinion, as specified in § 403.258.

(12) A statement that the insuring organization will notify the policyholders in writing, within the period of time specified in § 403.245(c), if the policy is identified as a certified policy at the time of sale and later loses certification.

(13) A signed statement in which the president of the insuring organization, or a designee, attests that—

(i) The policy meets the requirements specified in paragraph (a) of this section; and

(ii) The information submitted to HCFA for review is accurate and complete and does not misrepresent any material fact.

§ 403.235 Review and certification of policies.

(a) HCFA will review policies that the insuring organization voluntarily submits, except that HCFA will not review a policy issued in a State with an approved regulatory program under § 403.222.

(b) If the requirements specified in § 403.232 are met, HCFA will—

(1) Certify the policy; and

(2) Authorize the insuring organization to display the emblem on the policy, as provided for in § 403.231.

(c) If HCFA certifies a policy, it will inform all State Commissioners and Superintendents of Insurance of that fact.

§ 403.239 Submittal of material to retain certification.

(a) HCFA certification of a policy that continues to meet the standards will remain in effect, if the insuring organization files the following material with HCFA no later than the date specified in paragraph (b) or (c) of this section:

(1) Any changes in the material, specified in § 403.232(b), that was submitted for previous certification.

(2) The loss ratio supporting data specified in § 403.256(b).

(3) A signed statement in which the president of the insuring organization, or a designee, attests that—

(i) The policy continues to meet the requirements specified in § 403.232(a); and

(ii) The information submitted to HCFA for review is accurate and complete and does not misrepresent any material fact.

(b) Except as specified in paragraph (c) of this section, the insuring organization must file the material with HCFA no later than June 30 of each year. The first time the insuring organization must file the material is no later than June 30 of the calendar year that follows the year in which HCFA—

(1) Certifies a new policy; or

(2) Certifies a policy that lost certification as provided in § 403.245.

(c) If the loss ratio calculation period, used to calculate the expected loss ratio for the last actuarial certification submitted to HCFA, ends before the June 30 date of paragraph (b) of this section, the insuring organization must file the material with HCFA no later then the last day of that rate calculation period.

§ 403.245 Loss of certification.

(a) A policy loses certification if—

(1) The insuring organization withdraws the policy from the voluntary certification program; or

(2) HCFA determines that—

(i) The policy fails to meet the requirements specified in § 403.232(a); or

(ii) The insuring organization has failed to meet the requirements for submittal of material specified in § 403.239.

(b) If a policy loses its certification, HCFA will inform all State Commissioners and Superintendents of Insurance of that fact.

(c) If a policy that displays the emblem, or that has been marketed as a certified policy without the emblem, loses certification, the insuring organization must notify each holder of the policy, or of a certificate issued under the policy, of that fact. The notice must be in writing and sent by the earlier of—

(1) The date of the first regular premium notice after the date the policy loses its certification; or

(2) 60 days after the date the policy loses its certification.

§ 403.248 Administrative review of HCFA determinations.

(a) This section provides for administrative review if HCFA determines—

(1) Not to certify a policy; or

(2) That a policy no longer meets the standards for certification.

(b) If HCFA makes a determination specified in paragraph (a) of this section, it will send a notice to the insuring organization containing the following information:

(1) That HCFA has made such a determination.

(2) The reasons for the determination.

(3) That the insuring organization has 30 days from the date of the notice to—

(i) Request, in writing, an administrative review of the HCFA determination; and

(ii) Submit additional information to HCFA for review.

(4) That, if the insuring organization requests an administrative review, HCFA will conduct the review, as provided for in paragraph (c) of this section.

(5) That, in a case involving loss of certification, the HCFA determination will go into effect 30 days from the date

of the notice, unless the insuring organization requests an administrative review. If the insuring organization requests an administrative review, the policy retains its certification until HCFA makes a final determination.

(c) If the insuring organization requests an administrative review, HCFA will conduct the review as follows:

(1) A HCFA official, not involved in the initial HCFA determination, will initiate and complete an administrative review within 90 days of the date of the notice provided for in paragraph (b) of this section.

(2) The official will consider—

(i) The original material submitted to HCFA for review, as specified in §§ 403.232(b) or 403.239(a); and

(ii) Any additional information, that the insuring organization submits to HCFA.

(3) Within 15 days after the administrative review is completed, HCFA will inform the insuring organization in writing of the final decision, with an explanation of the final decision.

(4) If the final decision is that a policy lose its certification, the loss of certification will go into effect 15 days after the date of HCFA's notice informing the insuring organization of the final decision.

Voluntary Certification Program: Loss Ratio Provisions

§ 403.250 Loss ratio calculations: General provisions.

(a) *Basic formula.*

The expected loss ratio is calculated by determing the ratio of benefits to premiums.

(b) *Calculations.*

The insuring organization must calculate loss ratios according to the provisions of §§ 403.251, 403.253, and 403.254.

§ 403.251 Loss ratio date and time frame provisions.

(a) "Initial calculation date" means the first date of the period that the insuring organization uses to calculate the policy's expected loss ratio.

(1) The initial calculation date may be before, the same as, or after the date the insuring organization sends the policy to HCFA for review, except—

(2) The initial calculation date must not be earlier than January 1 of the calendar year in which the policy is sent to HCFA.

(b) "Loss ratio calculation period" means the period beginning with the initial calculation date and ending with the last day of the period for which the insuring organization calculates the policy's scale of premiums.

(c) To calculate "present values", the insuring organization may ignore discounting (an actuarial procedure that provides for the impact of a variety of factors, such as lapse of policies) for loss ratio calculation periods not exceeding 12 months.

§ 403.253 Calculation of benefits.

(a) *General provisions.*

(1) Except as provided for in paragraph (a)(2) of this section, calculate the amount of "benefits" by—

(i) Adding the present values on the initial calculation date of—

(A) Expected incurred benefits in the loss ratio calculation period, to—

(B) The total policy reserve at the last day of the loss ratio calculation period: and

(ii) Subtracting the total policy reserve on the initial calculation date from the sum of these values.

(2) To calculate the amount of "benefits" in the case of community or pool rated individual or group policies rerated on an annual basis, calculate the expected incurred benefits in the loss ration calculation period.

(b) *Calculation of total policy reserve.*

(1) *Option for calculation.* The insuring organization must calculate "total policy reserve" according to the provisions of paragraph (b)(2) or (b)(3) of this section.

(2) *Total policy reserve: Federal provisions.*

(i) "Total policy reserve" means the sum of—

(A) Additional reserve; and

(B) The reserve for future contingent benefits.

(ii) "Additional reserve" means the amount calculated on a net level reserve basis, using appropriate values to account for lapse, mortality, morbidity, and interest, that on the valuation date represents—

(A) The present value of expected incurred benefits over the loss ratio calculation period; less—

(B) The present value of expected net premiums over the loss ratio calculation period.

(iii) "Net premium" means the level portion of the gross premium used in calculating the additional reserve. On the day the policy is issued, the present value of the series of those portions equals the present value of the expected incurred claims over the period that the gross premiums are computed to provide coverage.

(iv) "Reserve for future contingent benefits" means the amounts, not elsewhere included, that provide for the extension of benefits after insurance coverage terminates. These benefits—

(A) Are predicated on a health condition existing on the date coverage ends;

(B) Accrue after the date coverage ends; and

(C) Are payable after the valuation date.

(3) *Total policy reserve: State provisions.* "Total policy reserve" means the total policy reserve calculated according to appropriate State law or regulation.

§ 403.254 Calculation of premiums.

(a) *General provisions.*

To calculate the amount of "premiums", calculate the present value on the initial calculation date of expected earned premiums for the loss ratio calculation period.

(b) *Specific provisions.*

(1) "Earned premium" for a given period means—

(i) Written premiums for the period; plus—

(ii) The total premium reserve at the beginning of the period; less—

(iii) The total premium reserve at the end of the period.

(2) "Written premiums in a period" means—

(i) Premiums collected in that period; plus—

(ii) Premiums due and uncollected at the end of that period; less—

(iii) Premiums due and uncollected at the beginning of that period.

(3) "Total premium reserve" means the sum of—

(i) The unearned premium reserve;

(ii) The advance premium reserve; and

(iii) The reserve for rate credits.

(4) "Unearned premium reserve" means the portion of gross premiums due that provide for days of insurance coverage after the valuation date.

(5) "Advance premium reserve" means premiums received by the insuring organization that are due after the valuation date.

(6) "Reserve for rate credits" means rate credits on a group policy that—

(i) Accrue by the valuation date of the policy; and

(ii) Are paid or credited after the valuation date.

§ 403.256 Loss ratio supporting data.

(a) For purposes of requesting HCFA certification under § 403.232, the insuring organization must submit the following loss ratio data to HCFA for review:

(1) A statement of why the policy is to be considered, for purposes of the loss

ratio standards, an individual or a group policy.

(2) The earliest age at which policyholders can purchase the policy.

(3) The general marketing method and the underwriting criteria used for the selection of applicants to whom coverage is offered.

(4) What policies are to be included under the one policy form, by the dates the policies are issued.

(5) The loss ratio calculation period.

(6) The scale of premiums for the loss ratio calculation period.

(7) The expected level of earned premiums in the loss ratio calculation period.

(8) The expected level of incurred claims in the loss ratio calculation period.

(9) A description of how the following assumptions were used in calculating the loss ratio.

(i) Morbidity.

(ii) Mortality.

(iii) Lapse.

(iv) Assumed increases in the Medicare deductible.

(v) Impact of inflation on reimbursement per service.

(vi) Interest.

(vii) Expected distribution, by age and sex, of persons who will purchase the policy in the coming year.

(viii) Expected impact on morbidity by policy duration of—

(A) The process used to select insureds from among those that apply for a policy; and

(B) Pre-existing condition clauses in the policy.

(b) For purposes of requesting continued HCFA certification under § 403.239(a), the insuring organization must submit the following to HCFA:

(1) A description of all changes in the loss ratio data, specified in paragraph (a) of this section, that occurred since HCFA last reviewed the policy.

(2) The past loss ratio experience for the policy, including the experience of all riders and endorsements issued under the policy. The loss ratio experience data must include earned premiums, incurred claims, and total policy reserves that the insuring organization calculates—

(i) For all years of issue combined; and

(ii) Separately for each calendar year since HCFA first certified the policy.

§ 403.258 Statement of actuarial opinion.

(a) For purposes of certification requests submitted under § 403.232(b) and subsequent review as specified in § 403.239(a), "statement of actuarial opinion" means a signed declaration in which a qualified actuary states that the assumptions used in calculating the expected loss ratio are appropriate and reasonable, taking into account actual policy experience, if any, and reasonable expectations.

(b) "Qualified actuary" means—

(1) A member in good standing of the American Academy of Actuaries; or

(2) A person who has otherwise demonstrated his or her actuarial competence to the satisfaction of the Commissioner or Superintendent of Insurance of the domiciliary State of the insuring organization.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 17, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 30, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-20082 Filed 7-23-82; 8:45 am]

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federal register

Monday
July 26, 1982

Part IV

Department of the Interior

Bureau of Land Management

Wild Free-Roaming Horse and Burro Protection, Management and Control; Amendment To Provide a Fee for Adoption

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

Wild Free-Roaming Horse and Burro Protection, Management and Control; Amendment To Provide a Fee for Adoption

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide for the establishment of a fee for the adoption of a wild free-roaming horse or burro. This fee would be established under the authority of section 304 of the Federal Land Policy and Management Act of 1976 and is designed to recover part of the costs incurred by the United States in connection with adoption program activities.

DATE: Comments by September 24, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John S. Boyles, (202) 653–9215.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would establish a custodial fee that would be paid in connection with the adoption of a wild free-roaming horse or burro. The fee would be established under the authority granted the Secretary of the Interior by section 304 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734) to require payment to reimburse the United States for reasonable costs with respect to activities such as the adoption of a wild free-roaming horse or burro. The fee would be designed to recover only a portion of the costs of the adoption program (i.e., transportation, freezemarking, veterinarian services, application processing, animal feed and handling, compliance and title transfer).

While the Secretary of the Interior does not believe that all of the factors set out in section 304 of the Federal Land Policy and Management Act must be taken into consideration, the Secretary did consider these factors as follows:

(1) The Secretary determined that a fee which represented the actual cost connected with the adoption of a wild free-roaming horse or burro would unnecessarily discourage potential adopters and lead to increased cost to the United States for holding and caring for animals and for eventually destroying them, as required by law. However, the Secretary has determined that actual costs will be charged for transportation expenses since transporting the animals in bulk reduces the transportation costs to an adopter below that for transporting a single animal. Transportation is provided as a service enjoyed only by an adopter who does not choose to pick-up an animal at a holding facility near the point of capture.

(2) The monetary value of the rights or privileges sought is approximately the value of the animal itself. The payment that would be established in this proposed rulemaking is a fairly accurate reflection of the monetary value of the benefit received by the adopter of a horse or burro.

(3) A flat fee rather than a fluctuating fee was selected because of the difficulty of determining the exact cost incurred for each animal and because it was a more efficient process. The fluctuating fee is limited to transportation costs since these are more efficiently determined.

(4) It is recognized that there is a general public interest and benefit in both the removal of excess wild free-roaming horses and burros from the public lands and in their humane treatment and care. However, the adopter also receives a benefit not shared by other members of the general public. For this reason, it was decided that the adopter should provide a share of the cost of the adoption program, but that the public interest served by the adoption is an appropriate basis for charging less than actual costs.

(5) Similarly, an adopter, by providing humane care and treatment to a wild free-roaming horse or burro, is in a sense providing a public service. Again, this was determined to be an approprate reason to reduce the amount of the custodial fee below that of actual costs.

The Bureau of Land Management has the management responsibility for wild free-roaming horses and burros located on the public lands under its jurisdiction. Over the past few months the Bureau has conducted a pilot program under which a fee has been levied for the adoption of wild free-roaming horses and burros. The payment that would be established by this proposed rulemaking is based on that pilot program. The initial reaction to the fee has been acceptable and the fee program would now be made a part of the wild free-roaming horse and burro program by the promulgation of this rulemaking.

The principal author of this proposed rulemaking is John S. Boyles, Division of Wild Horses and Burros, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This proposed rulemaking would set a fee for the adoption of wild free-roaming horses and burros. The fee is uniform for everyone wishing to adopt a wild free-roaming horse or burro and will have no different impact on small entities than on individuals or large entities.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, Wildlife.

PART 4700—WILD FREE-ROAMING HORSE AND BURRO PROTECTION, MANAGEMENT AND CONTROL

Under the authority of the Act of December 15, 1971, as amended (16 U.S.C. 1331–1340), the Act of June 28, 1934 (43 U.S.C. 315–315r) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), it is proposed to amend Part 4700, Group 4700, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Section 4740.4–2 is renumbered § 4740.4–3 and is amended by revising paragraph (d) to read:

§ 4740.4–3 [Amended]

* * * * *

(d) Before wild free-roaming horses or burros are transferred, the applicant shall:

(1) Pay a custodial fee of $200 for each horse and $75 for each burro, except there shall be no custodial fee for an unweaned offspring under 6 months of age accompanying its mother, plus any transportation costs incurred for the transportation of the animals to the point of pickup; and

(2) Sign a cooperative agreement that incorporates provisions for custodial maintenance, including, but not limited to, provisions for proper maintenance of the animals and protection from inhumane treatment and commercial exploitation.

2. A new § 4740.4–2 is added to read:

§ 4740.4–2 Applications.

Any qualified person, organization or government agency wishing to take custody of a wild free-roaming horse or burro shall file an application with the Denver Service Center of the Bureau of Land Management. The application shall be filed on a form approved by the Director, Bureau of Land Management, and shall be accompanied by a nonrefundable advance payment of $25. If custody of a wild free-roaming horse or burro is granted by the authorized officer, the advance payment shall be applied against the custodial fee required to be paid at the time the cooperative agreement required by § 4740.4–3 of this title is executed.

Frank A. DuBois,

Acting Assistant Secretary of the Interior.

July 2, 1982.

[FR Doc. 82–20122 Filed 7–23–82; 8:45 am]

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20.....30162, 31297
410.....31299
661.....28971
681.....30270

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). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

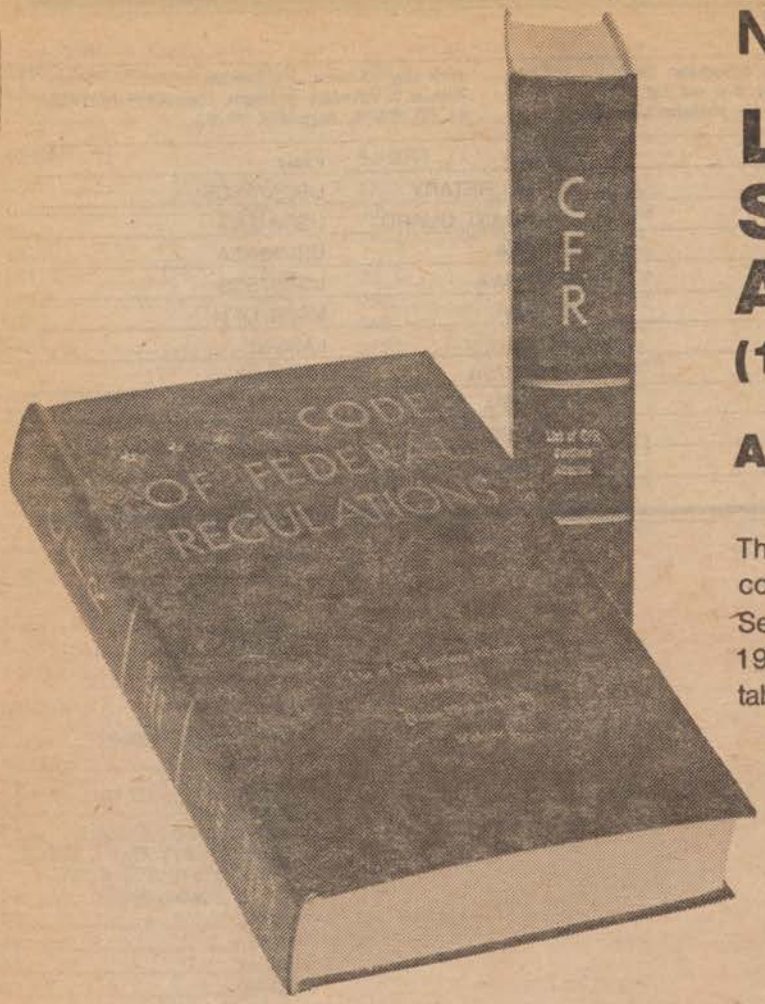
List of Public Laws

Last Listing July 23, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S. 881 / Pub. L. 97–219 Small Business Innovation Development Act of 1982. (July 22, 1982; 96 Stat. 217) Price: $2.00.

S. 1230 / Pub. L. 97–220 Olympic Commemorative Coin Act. (July 22, 1982; 96 Stat. 222) Price: $2.00.



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